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California Employers at Risk for Retaliation, Take Note

If there is one thing worse than sexual harassment in the workplace, it's retaliation against a victim of harassment as a result of reporting harassment. Existing law in California prohibits an employer from terminating, discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment, domestic violence, sexual assault or stalking [Labor Code, Section 230]. Assembly Bill-171 [presented by Gonzalez, D-San Diego] seeks to broaden the protections for such victims by providing a "*rebuttable presumption*" of unlawful retaliation if an employer within 90 days following either the date when the victim provides notice to the employer or when the employer has actual knowledge of the status, discharges, threatens to discharge, demotes, suspends, or takes any other adverse action against the victim-employee. "Harassment" in this context means sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

A 2016 report by the EEOC Select Task Force on the Study of Harassment in the Workplace found that 3 out of 4 victims of harassment never even talked to a supervisor, manager, or union representative about the harassing conduct. Victims of harassing behavior fear they won't be believed or will be blamed or subject to social and/or professional retaliation, such as being terminated. These concerns are well-founded. A 2003 study found that 75% of employees who complained of workplace mistreatment experienced retaliation in some form.

The statistics may improve given the recent public support for victims of harassment in the workplace through such movements as #metoo and Times Up, but employers must take the lead in their organizations by clarifying and identifying all forms of harassment and retaliation, not only out of moral and legal duties, but because doing so is just good business. Many employees on both the giving and receiving end of harassment do not understand what words and/or actions cross the line; all employees will be protected the more they know. To be sure, the reach of harassment and retaliation extend far beyond the obvious direct victims. Coworkers and others interested in the organization who see, hear or otherwise witness harassment and/or retaliation are all part of the cost. As training and effective harassment prevention efforts continue, workplace harassment and retaliation will not be tolerated. Businesses will be proactive and take specific steps to ensure that is the case, or legislation such as AB-171 will determine the outcome for them.

[AB-171](#) has passed in the State Assembly and is headed to the Senate for review with the full legislature vote expected by mid-September.

Questions? Contact Stokes Wagner.