

California Extends Defamation Privilege Defenses to Assault, Sexual Harassment, and Workplace Discrimination Complainants

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On October 10, 2023, Governor Gavin Newsom signed into law [Assembly Bill \(AB\) No. 933](#). The new law provides further protection to individuals who are victims of sexual offenses and are sued under state defamation law. AB 933 extends the California Civil Code’s definition of a privileged communication in defamation actions to include communications made about an individual’s own experience of sexual assault, sexual harassment, workplace harassment or discrimination, and cyber sexual bullying. AB 933 also permits prevailing defendants in such a defamation action to recover their attorneys’ fees and costs, treble the damages they incur by being a defendant, and punitive damages. The law becomes effective on January 1, 2024.

Quick Hits

- Effective January 1, 2024, defendants who are sued for making defamatory statements based on their own experience(s) as victims of others’ sexual assaults and other sexual misconduct may assert the privilege as a bar to liability.
- The privilege also extends to statements about an individual’s own workplace discrimination experiences.
- These same individuals may recover attorneys’ fees and costs, treble damages, and punitive damages if they prevail when sued for defamation.

Privileged Communications

In California, defamation includes written and oral false and unprivileged statements of fact that have a tendency to cause damage to someone’s reputation. California Civil Code Section 47 designates certain types of publications and communications as “privileged” and protects the makers of privileged statements from defamation lawsuits even if the statements have a tendency to damage another’s reputation.

Since January 1, 2019, Section 47 has protected employers and their employees who are sexual harassment victims from defamation claims. Section 47(c)(1) broadens the definition of “privileged publication or broadcast” to include a complaint of sexual harassment by an employee (without malice) to an employer based upon credible evidence. Similarly, Section 47(c)(2) extends the privilege to communications between an employer and “interested persons” (without malice) regarding sexual harassment complaints. This privilege includes an employer’s communication as to whether it would not rehire a former employee due to its conclusion that the individual engaged in sexual harassment.

SB 933

AB 933 expands the definition of a privileged communication to include a communication made by an individual, without malice, regarding an incident of sexual assault, harassment, or discrimination.

Who qualifies as an “individual”?

The privilege protects only individuals who have had “a reasonable basis to file a complaint of sexual assault, harassment, or discrimination.” In other words, the new law protects only the individual who actually experienced the underlying conduct (e.g., the sexual harassment or sexual assault). The new law protects the individual even if the individual does not actually file a complaint about the sexual misconduct.

What is a “communication”?

AB 933 defines “communication” broadly to include factual information relating to:

- “An act of sexual assault”;
- “An act of sexual harassment”;
- “An act of workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, aiding, abetting, inciting, compelling, or coercing an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing workplace harassment or discrimination”;
- “An act of harassment or discrimination, or an act of retaliation against a person for reporting harassment or discrimination, by the owner of a housing accommodation”; or
- “An act of cyber sexual bullying,” as defined by California’s Education Code.

What relief can a prevailing defendant obtain if he or she successfully asserts this new privilege?

In most defamation cases, defendants cannot recover attorneys’ fees if they prevail. Under AB 933, however, any prevailing defendant in a defamation action brought against the defendant for making a privileged communication under Section 47.1 will be entitled to recover attorneys’ fees and costs, as well as treble damages and punitive damages.

For more information on this and other new California laws, please join us for our upcoming webinar, “[California Legislative Update: A Busy 2023 Brings Big Changes for Employers](#),” which will take place on Monday, October 30, 2023, from 11 a.m. to 12 noon (PDT). The speakers, [Christopher W. Olmsted](#) and [Charles L. Thompson, IV](#), will discuss the key takeaways from this and other new California laws. Register [here](#).

Ogletree Deakins will continue to monitor developments and will provide updates on the [California](#) blog as additional information becomes available.

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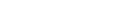
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