

UCLA

**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

California - Sexual Orientation and Gender Identity Law and Documentation of
Discrimination

Permalink

<https://escholarship.org/uc/item/3284n0n1>

Author

Sears, Brad

Publication Date

2009-09-23



MEMORANDUM

From: Williams Institute
Date: September 2009
RE: **California – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

The California Fair Employment Practices and Housing Act (“FEHA”) prohibits discrimination based on sexual orientation or gender identity, in both public and private employment as well as housing.

Despite having strong state laws in place, discrimination against LGBT state and local government employees has been well documented. Examples solely from the last 20 years include:

- A captain in the Los Angeles Fire Department with 36 years of experience was retaliated against, and his career prematurely ended, because he reported a sexually inappropriate comments and racial, sexual, and sexual orientation harassment aimed at a firefighter in the Department. A jury awarded the plaintiff damages of \$1,730,848 under the California Fair Employment and Housing Act, and the court of appeal affirmed the award. Bressler v. City of Los Angeles, 2009 WL 200242 (Jan. 29, 2009)(unpublished).
- In 2009, a Superior Court jury in Newport Beach ruled in favor of a veteran police officer who claimed he was denied promotions several times because he was incorrectly perceived by the police department as being gay. Despite his outstanding annual evaluations, the sergeant was stereotyped as being gay and denied promotion because he was single and physically fit. The jury ruled for the sergeant on claims of discrimination based on perceived sexual orientation and retaliation, and awarded \$8,000 in past lost earnings, \$592,000 in future earnings, and \$600,000 for noneconomic losses, for a total verdict of \$1.2 million.¹
- A gay police officer for the city of Huntington Beach was subjected to disparaging and harassing comments and conduct regarding his sexuality, but no action was taken against the perpetrators in response to his complaints. In 2008, the city settled a discrimination suit brought by the officer, for a sum that reportedly could eventually reach \$2.15 million, including a \$150,000 lump sum payment to end the lawsuit, and a lifetime monthly disability entitlement of \$4,000.²
- A University of California-Davis police officer brought suit against the University

¹ LESBIAN & GAY L. NOTES (May 2009).

² LESBIAN & GAY L. NOTES (Summer 2008).

for harassment based on his sexual orientation in 2005, alleging that when other officers discovered he was gay, they subjected him to harassment including homophobic slurs and a death threat, and his supervisor referred to him as a “fucking faggot” and retaliated against him after he lodged complaints in response to the treatment from other officers. The UC Regents settled the case in 2008 for \$240,000.³

- An employee of the Los Angeles Police Department filed suit alleging that the LAPD discharged her in retaliation for her complaints about mistreatment due to her sexual orientation. In 2008, a superior court judge rejected a motion to dismiss the lawsuit.⁴
- In 2008, a new teacher in the Ravenswood City School District was pressured into quitting his job after revealing to students that he had been gay while instructing the students not to use derogatory language in reference to gay men. He filed a lawsuit and the School District settled the case, agreeing to pay the teacher a year’s salary.⁵
- In 2008, two lesbian public school bus drivers reported being subjected to a hostile work environment because of their sexual orientation.⁶
- In 2008, a lesbian corrections officer reported that she was subjected to a hostile work environment because of her sexual orientation.⁷
- In 2008, a deputy fire marshal passed the test for the position of Battalion Chief, but was not promoted. He subsequently learned that the fire chief told another employee that he believed the deputy was not promotable due to his being gay. After the deputy filed an internal complaint, the work environment became progressively more hostile.⁸
- An employee of Atascadero State Hospital who was not hired for the position of Unit Supervisor claimed discrimination on the bases of race (Mexican), sexual orientation (heterosexual), and age (46). The candidate selected was Caucasian, under 40, and it was “common knowledge” that this individual would be selected before interviews were held. The case was closed because the evidence found in the DFEH investigation did not establish a violation of the statute. A right to sue was issued. California Dep’t of Mental Health, Atascadero State Hospital. Closed December 26, 2007.

³ *Former UC Davis Officer Sues Cops, University*, KCRA 3, <http://bit.ly/vwA4u>.

⁴ LESBIAN & GAY L. NOTES (Mar. 2008).

⁵ LESBIAN & GAY L. NOTES (Mar. 2008).

⁶ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

⁷ *Id.*

⁸ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

- In 2007, a volleyball coach was awarded \$5.85 million in damages in her discrimination suit against Fresno State University after the University refused to renew her contract. The coach had alleged that this was a result of her advocacy of gender equity and her perceived sexual orientation.⁹
- A California Highway Patrol Motor Carrier Inspector claimed differential treatment, retaliation and constructive transfer. Upon disclosure of the employee's sexual orientation during an internal investigation, the employee's federally issued computer was taken, Department of Transportation overtime was halted, and the employee was interrogated. A complaint was filed with the Department of Fair Employment and Housing ("DFEH"). The DFEH case was closed because the complainant elected court action. A right to sue letter was issued.¹⁰
- In 2007, the head women's basketball coach and her domestic partner were unlawfully fired by San Diego Mesa College after the coach repeatedly advocated for equal treatment of female student-athletes and women coaches, and following publication in a local paper of an article identifying the two women as domestic partners.¹¹
- In 2007, an African-American lesbian firefighter who sued the Los Angeles Fire Department on charges of racial and sexual orientation harassment was awarded \$6.2 million in compensatory damages and \$2,500 in punitive damages by a jury. Two other firefighters who filed lawsuits contending they suffered retaliation for supporting her also won a \$1.7 million jury verdict, and a \$350,000 settlement, respectively.¹²
- In 2007, a police chief decided not to promote an officer to a position she was qualified for, and for which no other qualified person was found, and instead eliminated the position, because the officer was transgender.¹³
- In 2007, the San Jose Public School District fired two openly gay women claiming they violated the dress code, but they believed it was because they were openly gay.¹⁴
- A police sergeant was transferred to South Lake Tahoe where she allegedly experienced a hostile environment due to her gender (female) and sexual

⁹ LESBIAN & GAY L. NOTES (Summer 2007).

¹⁰ Complaint of Discrimination under the Provisions of the California Fair Employment and Housing Act, [Redacted] v. California Highway Patrol, Department of Fair Employment and Housing, Case No. E2000607H0121-00-se (Aug. 10, 2007) [herein after FEHA Complaint, Case No. (date).].

¹¹ Nat'l Center for Lesbian Rts., Employment Case Docket: *Sulpizio v. San Diego Mesa College*, <http://bit.ly/LoLOt> (last visited Sept. 5, 2009).

¹² *Id.*

¹³ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

¹⁴ *Id.*

orientation (homosexual). Allegedly, she was disciplined for conduct that male officers were not, and was forced to transfer to a clerical position in another office. The DFEH case was closed because an immediate right to sue was requested.¹⁵

- An employee alleged wrongful termination by University of California, Food Stamp Nutrition Education Program, on the bases of sex (male), and sexual orientation (gay). He alleged that he was terminated after complaining about anti-gay material on a computer. The case was close by administrative decision and a right to sue was issued.¹⁶
- A conservationist in the California Conservation Corps alleged that after her sexual orientation was revealed after she had a friend spend the night with her at a camp, she received numerous reprimands damaging to her career and her ability to supervise was questioned. In addition, she alleged that the next week an investigation was conducted by senior supervisors, who spoke with other conservationists about how they felt about the lesbian conservationist having her “girlfriend” spend the night. A policy was then issued that no overnight guests were to be allowed. Previously, overnight guests had been allowed for heterosexual couples. The case was closed because the DFEH could not conclude there was a violation of the statute. A right to sue was issued.¹⁷
- A Surgical Clinical Nurse at the University of San Francisco School of Medicine was laid off, allegedly due to not being a good fit for the job. The nurse believed that the decision was motivated by discrimination on the bases of sexual orientation (gay), medical condition (HIV positive), and religion (non-Evangelical Christian). Upon investigation, the DFEH determined the evidence did not show a violation of the statute. The case was closed by administrative decision and the DFEH issued a right to sue.¹⁸
- An employee of the University of California/CAPS alleged discrimination on the basis of sexual orientation (lesbian) and race (African-American), claiming denial of a promotion and issuance of a notice of intent to dismiss. The employer contended the dismissal arose because the employee falsified her resume (criminal record, including fraud), and there were discrepancies related to dispersals of petty cash for client surveys. The case was closed by administrative decision and a right to sue was issued.¹⁹
- An employee alleged he was denied a position at the University of California, Irvine/Mental Health because of his homosexuality. The employer contended it was because a background check showed the employee had violated relevant aspects of the professional code of conduct as a licensed psychiatric technician.

¹⁵ FEHA Complaint, Case No. E200708e0853-00-sc (Dec. 18, 2007).

¹⁶ FEHA Complaint, Case No. E200708C014900b (Aug. 28, 2007).

¹⁷ FEHA Complaint, Case No. E200607E0372-00 (Oct. 15, 2007).

¹⁸ FEHA Complaint, Case No. E200506A0797-00-pr (Jan. 12, 2007).

¹⁹ FEHA Complaint, Case No. E200607A0383-00-b (Oct. 27, 2006).

The DFEH closed the case by administrative decision and issued a right to sue.²⁰

- A police officer was denied promotion, and an external candidate was selected in one of the few instances in the department's history. The officer alleged racial and sexual orientation discrimination. The DFEH case was closed because an immediate right to sue was requested.²¹
- A Program Technician alleged retaliation and a hostile work environment by the California Department of Health Services based on sexual orientation (lesbian), marital status (domestic partner), and religion (Baptist), after putting up a Lavender Committee (Union) poster, which she was asked to remove because it was controversial. Allegedly, her supervisor made remarks like "God don't like the ugly," or "the Lesbian is here, let's go." The DFEH case was closed by administrative decision and a right to sue was issued.²²
- A gay man working as a cook for the California Youth Authority was awarded one million dollars in non-economic damages after a jury and court found that he was subjected to severe sexual orientation harassment on a daily basis. Hope v. California Youth Auth., 36 Cal. Rptr. 3d 154 (Cal. Ct. App. 2005).
- In 2005, a department supervisor at the University of California-Davis drew up a dress code specifically targeting one gay male employee, prohibiting him from wearing mid-length pants. The supervisor also forbade him from bringing the Gay and Lesbian Yellow Pages into the office.²³
- An employee of a veterans' home alleged discrimination on the basis of sexual orientation as the reason for his termination, in violation of FEHA. The veterans' home said the termination was due to the employee performing a non-standard procedure. The employee contended that he was suspended because of his sexual orientation, and that heterosexual employees with the same conduct were not suspended. The DFEH recommended no further action be taken and provided a right to sue.²⁴
- In 2004, the City of Los Angeles agreed to pay out \$200,000 and \$450,000 to settle sexual orientation discrimination claims by two police officers. Both claimed that they were harassed and suffered career setbacks due to homophobia in the police department. According to an Associated Press report on Dec. 27, 2004, these added to other settlements would cumulate to nearly \$3 million paid out by the city to settle sexual orientation discrimination claims brought by eight

²⁰ FEHA Complaint, Case No. E200506-K-0047-00 (Sept. 27, 2006).

²¹ FEHA Complaint, Case No. E200607E0174-00-rc (July 28, 2006).

²² FEHA Complaint Case No. E200506E1408-00-b (Apr. 6, 2006).

²³ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

²⁴ FEHA Complaint, Case No. E200506M0403-00-b (Sept. 21, 2005).

different police officers in recent years.²⁵

- In 2004, a lesbian teacher who did not fit traditional gender norms was repeatedly transferred from site to site and once thrown against the wall by a principal. The school district and the union refused to intervene.²⁶
- In 2004, a gay man faced harassment and isolation at work in a county department, causing him stress-related health problems. Although he knew California law had sexual orientation protections, he was afraid that the county and union would not enforce the law.²⁷
- A municipal worker who had been harassed based on other employees' perception that he was gay was discharged in connection with allegations that he had inappropriately sexually harassed volunteers in the department. He contested the allegations and the court determined that the city had violated his due process rights. Martinez v. Personnel Board of the City of Loma Linda, 2003 WL 429505 (Cal. Ct. App. Feb. 24, 2003).
- A state agency employee reported that he had tried to persuade the agency to provide domestic partner benefits in 2002. This caused conflict with his boss and he was put on administrative leave and eventually terminated.²⁸
- A police cadet for the City of Oakland was forced to resign after being harassed by training instructors because of his perceived sexual orientation. A jury returned a verdict in favor of the plaintiff on his discrimination and harassment claims in the amount of \$500,000, and the appellate court affirmed the judgment. Hoey-Custock v. City of Oakland, 2002 Cal. App. pub. LEXIS 7692 (2002).
- In 2001, the Beverly Hills School Board paid a gay man formerly employed as the Superintendent of Schools \$159,000 to settle his discrimination complaint against the school district. He was discharged as superintendent after allegations surfaced that he had misused a district credit card, but he claimed that story was a pretext for anti-gay discrimination, arguing that all the expenses incurred on the card were legitimate business expenses. After being discharged, he was hired as superintendent of a school district in Long Island, New York.²⁹
- A lesbian employed by the San Jose Police Department alleged that when she objected to performing strip searches, she was referred to internal affairs rather than being provided with counseling and training, as would normally be the case. She also said her attempts to transfer to other units where she would not have to perform such searches were thwarted because of her sexual orientation. In 2001,

²⁵ LESBIAN & GAY L. NOTES (Jan. 2005), available at <http://bit.ly/vwBVH>.

²⁶ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

²⁷ *Id.*

²⁸ *Id.*

²⁹ LESBIAN & GAY L. NOTES (May 2001), available at <http://bit.ly/41pXwR>.

she won a \$935,000 jury verdict in her sexual orientation discrimination case against the San Jose Police Department, but the superior court judge found that the verdict was not supported by the evidence and ordered a new trial.³⁰

- Parents in the San Leandro Unified School District complained to the school board about the a public high school English teacher who helped establish a Gay-Straight Alliance at the school to provide support and protect students from harassment. After the teacher discussed these events with his class, the school issued the teacher a letter of censure, and the school board adopted a new policy requiring that undefined ‘controversial issues’ need to be cleared with the principal before they are broached in class. *Debro v. San Leandro Unif. Sch. Dist.*, 2001 U.S. Dist. LEXIS 17388 (N.D. Cal. Oct. 11, 2001).
- An award-winning high school teacher experienced severe and continuing harassment and discrimination at Oceanside High School because of her sexual orientation. Administrative officials failed to investigate this harassment or take corrective action, refused to promote her because of disapproval of her lifestyle, and threatened retaliation if she pursued her complaints. After the Court of Appeal rejected the district's attempt to dismiss her discrimination claim, the district reached a settlement with the teacher under which she resigned and the district paid her \$140,000 and provided annual sensitivity training to its employees of issues of sexual orientation discrimination. *Murray v. Oceanside Unif. Sch. Dist.*, 79 Cal. App. 4th 1338, 95 Cal. Rptr. 2d 28 (Cal. App. 4th Dist., Div. 1 2000).
- In 2000, a lesbian high school teacher filed a complaint with the California Labor Commission against the Hemet Unified School District charging that administrators had discriminated against her when they removed a female student from her class whose parents objected to their daughter being taught by a lesbian. The teacher had assigned students to talk about an important person in their lives, and she voluntarily discussed her same-sex partner as an example. The California Labor Commission ruled in favor of the teacher and the school board appealed that decision.³¹
- A gay teacher filed a discrimination claim with the California State Labor Department after the Rio Brave-Greeley Union School District granted the requests of parents to remove students from his classes bases solely on their perception that the was gay. The Labor Commissioner ordered the district to stop removing students from the teacher's classes and to cease treating employees differently based on their sexual orientation. A settlement was then reached under which the district agreed to adopt a non-discrimination policy, to reject any parental request to transfer students based on the “ethnicity, race, national origin, age, sex, actual or perceived sexual orientation, disability, or political or religious

³⁰ LESBIAN & GAY L. NOTES (Dec. 2001), available at <http://www.qrd.org/qrd/usa/legal/Igln/2001/12.01>.

³¹ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 30 (2000 ed.)(hereinafter “HOSTILE CLIMATE” ([year] ed.)).

beliefs of classroom teachers,” and to make a public statement in support of the teacher.³²

- A highway patrol officer was harassed by his co-workers for five years, including finding anti-gay pornographic cartoons taped to his mailbox, urine in his locker, and a ticket for “sex with dead animals” on his windshield. After he complained, the harassment continued and he resigned in 1993. In 1999, a state court jury awarded him \$1.5 million in damages and legal fees for the harassment to which he was subjected by his co-workers, under the state statute prohibiting employment discrimination based on sexual orientation.³³
- An elementary school teacher alleged that the school board failed to renew her contract because of “her relationship with a lesbian teacher at the school.” After a closed hearing on the matter, a school board member told a local citizen on the street, “[i]f you knew what I knew, you’d know that we made the right decision.” The teacher sued for wrongful discharge and defamation. *Songer v. Dake*, 1999 WL 603796 (Cal. Ct. App. July 29, 1999).
- A commander in the California National Guard with a record of “outstanding performance” was pressured by his commanding officer “to communicate to members of [his] unit that [he] was not homosexual.” As a result, he sent a letter to his commanding officer in which he stated: “I am compelled to inform you that I am gay.” His commanding officer instituted proceedings to withdraw his federal recognition as an officer with the United States Army National Guard, and he was terminated from the National Guard. *Holmes v. Cal. Nat. Guard*, 124 F.3d 1126 (9th Cir. 1997), *reh’g, en banc denied*, 155 F.3d 1049 (9th Cir. 1998), *cert. denied*, 525 U.S. 1067 (1999).
- When a teacher notified officials at Center High School that she was going to begin the process for gender reassignment surgery, the district distributed a letter to all district parents. After four parents complained, the school board voted to fire the teacher, citing her “evident unfitness for service.” The teacher filed a complaint with the state labor commissioner seeking to be reinstated to her teaching position, and later reached a settlement with the school board in which she agreed to resign.³⁴
- A lesbian claimed she was constructively discharged by the West Contra Costa County Unified School District after she told her immediate supervisor that she was a lesbian. In 1997, a jury awarded her a \$360,000 award in her sexual orientation discrimination suit against the district.³⁵

³² LESBIAN & GAY L. NOTES (Apr. 1999), available at <http://bit.ly/4EkQci>.

³³ HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA’S WORKPLACES (2001), available at <http://bit.ly/kThbS>.

³⁴ HOSTILE CLIMATE (2000 ed.), *supra* note 31, at 92.

³⁵ LESBIAN & GAY L. NOTES (Summer 1997), available at <http://bit.ly/ZUFT3>.

- In the late 1990s, a Bay Area public school teacher was unable to secure a full-time teaching contract in any of the several school districts to which she applied after she had transitioned. She then applied for an entry-level federal job, and after two days and multiple hours of interviews and screening, she was turned down for the position immediately after she disclosed her transgender status on a comprehensive medical questionnaire.³⁶
- In 1996, a controversy arose in Los Angeles about personally invasive questions to which a lesbian police officer was subjected when she filed claims about harassment on the job based on her gender and sexual orientation. The ACLU wrote to the city on her behalf, resulting in a City Attorney move to narrow the scope of questions asked “in areas involving personal relationships” and to train lawyers in the workers’ compensation division on how to elicit relevant information without invading the privacy rights of claims applicants.³⁷
- In 1995, a committee on teacher credentials recommended to the California Teacher Credentialing Commission that two San Francisco high school science teachers have their teaching credentials revoked as a result of a 1992 incident when a classroom speaker from Community United Against Violence, a gay anti-violence group, made sexually explicit comments to a class of eleventh graders during a discussion with the class. Parent complaints to the school administration about the incident were rebuffed on the ground that the teachers themselves had done nothing wrong. But the parents then filed charges with the credentialing commission. A spokesperson for the San Francisco Unified School District cited the good records of the teachers and urged that the commission “let them continue their careers.”³⁸
- In 1994, two Los Angeles police officers filed suit alleging physical and verbal harassment on the basis of sexual orientation. They alleged that the LAPD had done nothing to implement guidelines for treatment of gays and lesbians on the job that were adopted as part of the settlement of a previous lawsuit. One of the officers had experienced verbal and physical harassment, other officers refusing to speak or work with him, and a supervisor continually greeting him in an effeminate tone with a lisp. The other officer had been advised to conceal her homosexuality because the department was “not yet ready to accept gays” and she would not make it through the academy or probation if her sexual orientation were known. Although she followed this advice, she was subjected to frequent anti-gay harassment that escalated when she participated in an investigation of anti-gay harassment of a fellow officer, and she was later denied a promotion because of her sexual orientation. At a press conference announcing the suit, another officer alleged that in the past year five gay or lesbian police officers had been forced off the job, out of the department, or to sick leave status, due to anti-

³⁶ SHANNON MINTER & CHRISTOPHER DALEY, *TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO’S TRANSGENDER COMMUNITIES* (Nat’l Center for Lesbian Rts. & Transgender L.Center 2003).

³⁷ LESBIAN & GAY L. NOTES (Feb. 1996), *available at* <http://bit.ly/hVma6>.

³⁸ LESBIAN & GAY L. NOTES (Oct. 1995), *available at* <http://bit.ly/1D2Hvo>.

gay harassment.³⁹

- The first openly gay officer in the Los Angeles Police Department, who had graduated from the Academy at the top of his class, experienced severe harassment and hostility on the basis of sexual orientation, including other officers refusing to back him up in life-threatening situations. After the department refused to investigate, he believed his life was in danger, and he left the department. He filed a sexual orientation employment discrimination lawsuit against the city of Los Angeles. In 1993, he settled the case, leading to his reinstatement to the force, but he then filed a second lawsuit, charging the city and numerous police staff with violating the settlement agreement, as well as his federal and state constitutional and state statutory rights. He also challenged the LAPD's decision to suspend him for "unauthorized recruiting" of lesbians and gay men to join the force, and for allegedly wearing his uniform without permission in a photo in a gay weekly, and at gay pride and AIDS-awareness events. The Court ordered the LAPD to rescind his suspension and pay him for the time lost. This second lawsuit prompted the city to make widespread improvements in its sexual orientation employment policies. Settlement discussions to make further improvements to city and LAPD employment policies continued for years.⁴⁰
- A lesbian who worked in the Los Angeles Police Department experienced ongoing harassment based on her sexual orientation after she was "outed" by her roommate to her classmates at the police academy. For example, it took nearly twice as long for backup to arrive as it should have when she responded to a burglary call. Several of her colleagues made comments about physically harming a gay speaker to her class at the academy, including comments such as placing bombs in bodily orifices and shutting "that fag up." As a result of the harassment she faced, she said that she wouldn't recommend law enforcement as a career. She suffered from ulcers, shingles, and high blood pressure and felt as though she had no other career options.⁴¹
- A videotape showing Simi Valley police officers ridiculing gays and other groups emerged as a lawsuit alleging discriminatory attitudes and practices was filed against the department. Although the tape's producers claimed it was intended as a joke for a departing officer, other officers say it revealed widespread intolerance. One scene in the video, which takes place in the police chief's office, suggests a male officer wants to return to work so that he can continue an affair with a male police investigator. In it, one officer says "A lot of people don't want to work with a coke freak." Another responds, "Or a [homosexual]." Reportedly,

³⁹ LESBIAN & GAY L. NOTES (Sept. 1994), available at <http://bit.ly/adQhm>.

⁴⁰ Lambda Legal, All Cases: *Grobeson v. City of Los Angeles*, <http://bit.ly/1mcZ82> (last visited Sept. 5, 2009); HUMAN RIGHTS CAMPAIGN, *supra* note 33.

⁴¹ ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 33-38 (Routledge 1996).

an anti-gay slur was used repeatedly.⁴²

- A gay man in a city police department in Southern California reported that instructors in the police academy made comments to his class about gay people, including “Did you did hear that they’re actually letting fags on this department now? Isn’t that disgusting? That’s really sick.” During a conversation about hate crimes, the Sergeant raised the example of someone being physically assaulted for being gay and that such an incident would be considered a hate crime. Several of the officers responded with comments such as “That’s a matter of opinion” and “Oh, yeah. Cruelty to animals.” He brought the comments to the attention of the Sergeant, who responded that he hadn’t heard the comments.⁴³
- A gay man who was placed with a more experienced teacher when he first began teaching in a public high school in Santa Clara was notified by the supervisor after only one day of teaching that things weren't working. The more experienced teacher stated that he was “uncomfortable with your alternative lifestyle, which he said he picked up from your mannerisms, and he doesn't want you influencing his students.”⁴⁴
-

A review of Administrative Decisions conducted by the Department of Fair Employment and Housing (“DFEH”) shows that they were generally resolved by issuance of a right to sue at the complainant’s request when electing court action, or were closed by administrative decision (finding no basis for further action). Sample summaries may be found in Section III.B *infra* regarding administrative investigations for which factual background is available.

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

⁴² HOSTILE CLIMATE (2000 ed.), *supra* note 31, at 113-14.

⁴³ Buhrke, *supra* note 41, at 58-62.

⁴⁴ WARREN J. BLUMENFELD, ONE TEACHER IN 10 58-64 (Kevin Jennings, ed., Alyson 1994).

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

The FEHA prohibits public and private discrimination in employment on the bases of race, religion, color, sex, gender identity, sexual orientation, physical or mental disability, medical condition, including genetic characteristics, marital status, age, national origin or ancestry.⁴⁵ Discrimination in public works contracts on any of these bases is also prohibited. California law allows employees to dress consistently with their gender identity.⁴⁶

Unless based on a bona fide occupational qualification, it is an unlawful employment practice in California to engage in any of the discriminatory practices outlined above. The law covers businesses regularly employing five or more persons.⁴⁷

2. Enforcement & Remedies

The requirements of FEHA are contained in great specificity in California.⁴⁸ Regulations on the administration of FEHA and the DFEH are located in Chapter 3 of Title 8 of the California Code of Regulations.⁴⁹

The Fair Employment and Housing Commission may assess administrative fines against an employer. Together with any actual damages assessed, the amount of this fine may not exceed \$150,000 per employee.⁵⁰ Administrative fines are available only when the commission finds express or implied guilt, oppression, fraud, or malice. The amount of the fine will take into consideration willful, intentional, or purposeful conduct, refusal to prevent or eliminate discrimination, harassment, conduct without just cause or excuse, and multiple FEHA violations.⁵¹ Public entities are not subject to administrative fines.⁵²

The Fair Employment and Housing Commission may also assess civil penalties up to \$25,000 against an employer to be awarded to a person denied freedom from violence or intimidation under Section 51.7 of the Unruh Civil Rights Act.⁵³

Complaints must be brought through the Fair Employment and Housing Commission. The commission will investigate any complaints and take the actions it deems appropriate. Once the commission closes the case, it provides a Notice of Case

⁴⁵ CAL. GOV. CODE §§ 12900 *et seq.* (2003).

⁴⁶ CAL GOV. CODE §§ 12926, 12949; *see also* AB 14, Civil Rights Act of 2007.

⁴⁷ CAL. GOV. CODE § 12926.

⁴⁸ CAL. GOV. CODE 12900 *et. seq.*

⁴⁹ CAL. CODE REG. (online ed. 2009), <http://bit.ly/S5DzJ> (last visited Sept. 5, 2009).

⁵⁰ CAL. GOV. CODE § 12970 (1999).

⁵¹ CAL. GOV. CODE § 1297.

⁵² CAL. GOV. CODE § 12970.

⁵³ CAL. GOV. CODE § 12970.

Closure, which also creates a right to sue for the aggrieved party.⁵⁴ After filing a complaint, the complainant may elect court action, and request that the commission immediately close the case. This will terminate the investigation unless the FEHC continues it on its own initiative.

B. Attempts to Enact State Legislation

In 1984, Governor George Deukmejian vetoed Assembly Bill 1, the first bill in California that would have banned job discrimination on the basis of sexual orientation.⁵⁵

In 1991, Governor Pete Wilson vetoed Assembly Bill 101, which would have prohibited discrimination based on sexual orientation as part of the FEHA.⁵⁶ In 1992, Governor Wilson signed a different bill that added sexual orientation to the Labor Code rather than to the FEHA.⁵⁷ The next day he vetoed the Civil Rights Restoration Act of 1992 (substantially the same as the 1991 bill).⁵⁸ By amending FEHA, the vetoed bill would have given a state agency jurisdiction to impose criminal penalties for violations, whereas the bill signed the day before provided more limited enforcement remedies. Assembly Speaker Willie Brown said the veto “shows a callous disregard for the basic rights of many Californians who have felt the sting and humiliation of discrimination.”⁵⁹

In 1998, Governor Wilson again characterized as “unnecessary” a bill that would have moved sexual orientation protection from the California Labor Code to FEHA. The governor returned the bill, unsigned, to the legislature. State Senator Dick Mountjoy denounced the bill for giving “special rights” to gays and lesbians and threatened to promote a public referendum to overturn the law if the governor failed to veto the legislation.⁶⁰

In 1999, Assembly Speaker Antonio Villaraigosa submitted Assembly Bill 1001, adding sexual orientation to the anti-discrimination provisions of the State Fair Employment and Housing Act, which became law.⁶¹ During the legislature’s consideration of the bill, Assembly member Pat Bates argued that the bill granted “special rights” to gay men and lesbians and state Sen. Richard Mountjoy claimed that being gay “is a sickness...an uncontrolled passion similar to that which would cause someone to rape.”⁶²

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

⁵⁴ CAL. GOV. CODE §§ 12965, 12962.

⁵⁵ *California Gay Rights Timeline*, PINK NEWS, <http://www.pinknews.co.uk/aroundtheworld/tag/vetoes>.

⁵⁶ Nancy Gibbs, *Civil Rights: Test Case for Gay Cause*, TIME, Oct. 14, 1991, available at <http://bit.ly/1cwTcH>.

⁵⁷ *California Gay Rights Timeline*, supra note 55.

⁵⁸ Associated Press, *California Governor Vetoes Civil Rights Bill*, N.Y. TIMES, Sept. 28, 1992, available at <http://bit.ly/NZtGM>.

⁵⁹ *Id.*

⁶⁰ HOSTILE CLIMATE (1998 ed.), supra note 31.

⁶¹ *California Gay Rights Timeline*, supra note 55.

⁶² HOSTILE CLIMATE (2000 ed.), supra note 31.

1. **Executive Orders**

Executive Order B-54-79, effective April 4, 1979, prohibited discrimination in state employment on the basis of sexual orientation.

2. **State Government Personnel Regulations**

By statute through the FEHA and Unruh Civil Rights Act, Executive Order, and Attorney General Opinion, all branches of state and local governments are prohibited from discriminating on the same bases as private employers within the state.

3. **Attorney General Opinions**

California Attorney General's Opinion number 83-707 (December 27, 1983) prohibited public agencies from discriminating in their employment practices on the basis of sexual orientation.

D. **Local Legislation**

The following California municipalities prohibit employment discrimination based on sexual orientation or gender identity: City of Berkeley, Cathedral City, City of Costa Mesa, City of Davis, City of Laguna Beach, City of Long Beach, City of Los Angeles, City of Oakland, City of Sacramento, City of San Diego, City of San Francisco, City of San Jose, City of Santa Cruz, City of Santa Monica, City of West Hollywood, Los Angeles County, San Mateo County, and Santa Cruz County.

E. **Occupational Licensing Requirements**

A review of professional licensing requirements in California revealed no policies that could serve as pretext for discrimination against LGBT individuals. The requirements for individual licenses are available in Title 16 of the California Code of Regulations.⁶³

⁶³ CAL. CODE REG., *supra* note 49.

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees

Bressler v. City of Los Angeles, 2009 WL 200242 (Jan. 29, 2009).

In *Bressler v. City of Los Angeles*, the California 2nd District Court of Appeal affirmed (in an unpublished decision) a jury finding that the plaintiff, a captain in the LA Fire Department, suffered unlawful retaliatory conduct by those in authority in the Department, prematurely ending his career, because he reported a sexually inappropriate comment made by a superior to a subordinate and because he reported racial, sexual and sexual orientation harassment aimed at a lesbian firefighter in the Department. The jury verdict affirmed by the court of appeal awarded Bressler damages of \$1,730,848 under the state's Fair Employment and Housing Code.

Bressler served as a Fire Captain with the LAFD for 26 years. Prior to his employment with the LAFD, he had been a firefighter and a fire captain with another city for 10 years. From 1983 through July 2004, Bressler was assigned to LAFD Fire Station 96 in Chatsworth. With the exception of his first performance evaluation, and his last performance evaluation, Bressler always received a "satisfactory" or "satisfactory plus" rating from his supervisors at the LAFD. Bressler's claims against the city were based on Bressler's allegations that the city and several of its employees retaliated against Bressler after he (1) reported a sexually inappropriate comment made by Captain II Wesley Elder; and (2) made verbal and written reports about discrimination and harassment directed at Firefighter Brenda Lee, an African-American lesbian.⁶⁴

Hope v. California Youth Auth., 36 Cal. Rptr. 3d 154 (Cal. Ct. App. 2005).

In *Hope v. California Youth Authority*, the plaintiff, Bruce Hope, a gay man, worked as a cook for the California Youth Authority, and sued for sexual orientation harassment in violation of FEHA. The appellate court upheld the jury verdict in Hope's favor, stating that the harassment that Hope suffered was sufficiently severe and pervasive. The employer argued that the jury verdict was not supported by evidence. The court disagreed, finding that Hope was subjected to sufficiently severe sexual orientation harassment, his superiors either knew or should have known of the harassment, and the youth correctional facility that employed Hope did not take corrective action. The court found hostile environment evidence, including evidence that Hope's supervisor and others called Hope derogatory names on a daily basis, that a non-supervisory worker instructed wards not to assist the employee, forcing Hope to complete work alone (while others had assistance), that another employee endangered Hope by telling the wards that Hope was not protected by the system, and that Hope's promotion

⁶⁴ *Bressler v. City of Los Angeles*, 2009 WL 200242 (Jan. 29, 2009) (unpublished).

was revoked in violation of the employer's policy. In support of economic damages, the court found that the employer's mitigation argument failed because the employer offered no evidence of the amount that the employee might have earned through reasonable effort. The court also concluded that a non-economic damages award of \$ 1 million did not shock the conscience.

Martinez v. Personnel Board of the City of Loma Linda, 2003 WL 429505 (Cal. Ct. App. Feb. 24, 2003).

The California Court of Appeal, 4th District, affirmed a ruling by a San Bernardino County Superior Court that the City of Loma Linda violated the due process rights of a municipal worker whose employment was terminated in a proceeding where he was not afforded the opportunity to review all the evidence against him. Jaime Martinez was widely regarded by other employees as being gay, and claimed he was being subjected to harassment. When the city clerk's teenage sons volunteered for summer work in the city department where Martinez was employed, other employees warned them that Martinez was gay and might try to put the moves on them. The boys later reported that Martinez had done so, and he was discharged. When he grieved his discharge, the personnel department conducted an investigation, but refused to share with Martinez all of the statements that it had collected, and upheld the discharge, which he appealed to the courts. The trial court determined that Martinez was entitled to see the evidence against him, and was affirmed on this count by the court of appeal.⁶⁵

Hoey-Custock v. City of Oakland, 2002 Cal. App. pub. LEXIS 7692 (2002).

In *Hoey-Custock*, a police cadet employed by the City of Oakland, California, became the victim of harassment because of his perceived sexual orientation. Hoey-Custock opted to resign and filed a complaint against the City alleging discrimination under the Fair Employment and Housing Act ("FEHA") based upon his sexual orientation. A jury returned a verdict in favor of Hoey-Custock on his discrimination and harassment claims in the amount of \$500,000, and the city appealed. On appeal, the court issued an unpublished decision affirming the judgment in favor of Hoey-Custock.

At the police academy, a training instructor stepped on Hoey-Custock during an exercise, remarking: "[Y]ou can't be that weak." The instructor then asked Hoey-Custock "whether he lived in San Francisco" in a manner which Hoey-Custock understood to be asking him if he was gay. A second instructor made "disparaging and demeaning remarks ridiculing gay men." During a class, the second instructor asked if trainees knew what a "queen" was, explaining that "a queen is a man who puts on a lady's dress and sells his body." The instructor then stated: "Wait until you have to search one of these ladies, as opposed to searching a woman prostitute." A fellow recruit complained that Hoey-Custock was being harassed during training, and superiors questioned Hoey-Custock about the harassment. Hoey-Custock confirmed the allegations against recruits, but was afraid to accuse his instructors. As a result of Hoey-Custock's

⁶⁵ *Martinez v. Pers. Bd. of Loma Linda*, 2003 WL 429505 (Cal. App. Feb. 24, 2003).

complaints, officers placed the accused recruits on leave and Hoey-Custock was escorted from the building. Later, Hoey-Custock overheard someone asking, “Who is the fucking faggot who had the trainees removed?” and saw officers mocking homosexuals in the locker room. Thereafter, Hoey-Custock was ostracized from participation in paired training exercises by fellow recruits, and he failed two final defense tests. As a result of failing his final tests, Hoey-Custock was given a highly subjective remedial examination; he was the only recruit given the remedial exam to be terminated from the academy.⁶⁶

Debro v. San Leandro Unif. Sch. Dist., 2001 U.S. Dist. LEXIS 17388 (N.D. Cal. Oct. 11, 2001).

Karl Debro, a heterosexual public high school English teacher, expressed support for LGBT students in the classroom and helped establish the Gay-Straight Alliance at the school to provide support and protect students from harassment. In reaction, parents of two students formed a group in order “to attempt to stop the discussion of social issues in the classroom and particularly to combat what they saw as the ‘promotion’ of homosexuality.” At a school board meeting, the parents spoke out against Debro and other teachers who discussed social issues in the classroom. Shortly thereafter, Debro discussed the events of the school board meeting with his class. Formal complaints were filed against Debro by students’ parents and Debro was ultimately issued letters of “disciplinary warning” by the school. In May, a hearing was held before the school board. All seven board members voted to keep the censure in Debro’s files. In addition, a new policy was devised that states that undefined “controversial issues” need to be cleared with the principal before they are broached in class.

Debro brought suit against the San Leandro Unified School District alleging that the warnings were imposed as retaliation for his exercise of First Amendment rights. In deciding whether Debro’s actions were protected by the First Amendment, the Court stated that “it is certainly possible to speak about racial diversity and tolerance for gays and lesbians as part of classroom instruction, perhaps particularly in an English class.” Nevertheless, the court held that Debro’s discussion of the school board meeting was unprotected, even though the meeting was a matter of public interest, because he departed from classroom instruction.

After the trial court ruled against Debro, the ACLU of Northern California helped his appeal with a friend-of-the-court brief, arguing that Debro’s speech was constitutionally protected. Before the federal appeals court heard the case, the case settled favorably for Debro.⁶⁷

Murray v. Oceanside Unif. Sch. Dist., 79 Cal. App. 4th 1338, 95 Cal. Rptr. 2d 28 (Cal. App. 4th Dist., Div. 1 2000).

⁶⁶ *Hoey-Custock v. City of Oakland*, 2002 Cal. App. pub. LEXIS 7692 (Cal. Ct. App. 2002).

⁶⁷ *Debro v. San Leandro Unif. Sch. Dist.*, 2001 U.S. Dist. LEXIS 17388 (N.D. Cal. Oct. 11, 2001).

Dawn Murray, an award-winning high school teacher, brought a claim against the Oceanside Unified School District for harassment and discrimination based on her sexual orientation. Murray experienced severe and continuing discrimination while employed as a teacher at Oceanside High School because of her sexual orientation. For years she endured various insults, criticism, suggestive remarks concerning sexual activity, and rumor mongering by fellow employees and a consequent failure to investigate or take corrective action by administrative officials. The school failed to promote her to Student Activities Director, though she was the top candidate, because it disapproved of her lifestyle. Murray was told that if she pursued her complaints, she would suffer adverse job consequences. On several occasions, obscene and harassing graffiti was painted outside of her classroom and no investigation was conducted by Oceanside administrators. She was verbally harassed during an after-school meeting when the principal mentioned Murray's sexual orientation to the audience. On three occasions, she had her class cancelled based on complaints from a parent and a fellow teacher with improper motives based on her sexual orientation.

On appeal, the Court of Appeal rejected the district's attempt to dismiss the discrimination claim, thereby reinstating Murray's claim with a unanimous appellate ruling. The school district then settled with Murray. Under the settlement agreement, Murray resigned her position and the School District agreed to pay her \$140,000 and to provide annual sensitivity training to its employees of issues of sexual orientation discrimination.⁶⁸

Songer v. Dake, 1999 WL 603796 (Cal. Ct. App. July 29, 1999).

Jane Songer's contract as an elementary school teacher in St. Helena Unified School District in California was not renewed in 1993. She asked for a closed hearing before the Board, convinced that she was discharged because of "her relationship with a lesbian teacher at the school," but after the hearing the Board found she was discharged for proper work-related reasons. According to Songer, shortly after the Board decision, one of her friends encountered a Board member in the street, who asked why the Board had discharged Songer. This Board member allegedly said, "If you knew what I knew, you'd know that we made the right decision." Songer subsequently sued in federal court for wrongful discharge, appending a state defamation claim. Her federal charges were dismissed, and she brought a defamation action in state court, which the trial judge dismissed on motion, finding that the alleged statement by the Board member was a statement of opinion protected by the 1st Amendment. The California First District Court of Appeal reversed the lower court in an unpublished decision, finding that it was not dispositive that the defendant's alleged statement was in the form of an opinion. Noting the U.S. Supreme Court's recent weakening of the traditional opinion/fact distinction in defamation cases, the court found that the statement, if made, could be found to imply a factual assertion about Songer's fitness and qualifications as a teacher, which if untrue might be *per se* defamatory.⁶⁹

⁶⁸ *Murray v. Oceanside Unif. Sch. Dist.*, 79 Cal. App. 4th 1338, 95 Cal. Rptr. 2d 28 (Cal. Ct. App. 2000).

⁶⁹ *Songer v. Dake*, 1999 WL 603796 (Cal. Ct. App. July 29, 1999).

Holmes v. Cal. Nat. Guard, 124 F.3d 1126 (9th Cir. 1997), *reh'g, en banc, denied*, 155 F.3d 1049 (9th Cir. 1998), *cert. denied*, 525 U.S. 1067 (1999).

In *Holmes*, a commander in the California National Guard with a record of “outstanding performance” received “pressure” from his commanding officer “to communicate to members of [his] unit that [he] was not homosexual.” As a result, *Holmes* sent a letter to his commanding officer in which he stated: “I am compelled to inform you that I am gay.” Based on such letter, *Holmes*’ commanding officer instituted proceedings to withdraw *Holmes*’ federal recognition as an officer with the United States Army National Guard. A national withdrawal board finalized the withdrawal, and *Holmes* received a termination notification from the U.S. Army National Guard of California based upon the withdrawal of his federal recognition. Upon his withdrawal, *Holmes* remained an officer of the State Reserve.

Holmes filed suit in a California district court against the California National Guard and the United States Army National Guard alleging he was discharged for violating the “Don’t Ask, Don’t Tell” policy (the “Policy”); a violation of his federal and state constitutional rights to equal protection and free speech. The District Court granted summary judgment in favor of *Holmes*’ federal equal protection and free speech claims but dismissed all other claims.

On appeal, the Ninth Circuit reversed the lower court’s judgment in favor of *Holmes*. Upon considering *Holmes*’ equal protection challenge to the constitutionality of the Policy, the Circuit Court subjected the Policy to rational basis review. The court held that the government’s proffered explanation for excluding gay men – that they expose troops to combat liabilities and present risks to “unit cohesion” – was a legitimate interest.⁷⁰

Yancey v. State Pers. Bd., 167 Cal.App.3d 478, 213 Cal.Rptr. 634 (Cal. Ct. App. 1985).

Plaintiff, a correctional officer at the California Medical Facility, was fired after he was found wearing women’s clothing while off-duty. Relying upon testimony from Plaintiff and medical doctors that Plaintiff was not homosexual, and that his behavior was “medical” in nature, “stress related,” and “transitory in nature,” the court held that no “substantial relationship” existed between Plaintiff’s behavior and his ability to perform his job functions: “On the basis of the record before us, we conclude that no substantial evidence exists that appellant is unfit for his employment, and that if any discipline is warranted, the penalty imposed was grossly excessive.”

After Plaintiff was discovered near his home by police officers wearing women’s clothing (he was not charged with any criminal conduct), he was dismissed from his job as a correctional officer pursuant to Government Code section 19572 subdivision

⁷⁰ *Holmes v. Cal. Nat. Guard*, 124 F.3d 1126 (9th Cir. 1997), *reh'g, en banc, denied*, 155 F.3d 1049 (9th Cir. 1998), *cert. denied*, 525 U.S. 1067 (1999).

(t), which permits discipline of an employee for “failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.” The matter was heard before a Board hearing officer, who made the following pertinent findings: “[Appellant] was considered a good Officer and had no blemishes on his prior seven-year employment record. However, it must be found that the dismissal action was warranted. [par.] [Appellant] has attributed his wearing of female clothing to job-related stress which he now feels he can handle. But it must be recognized that this incident is widely known at the institution and would as a practical matter cause [Appellant] to have great difficulty in working with other Correctional Officers and inmates. This in itself would create a difficult if not impossible situation and in addition would place [Appellant] in an atmosphere far more stressful than the normal job circumstances which existed at the time of the ... episode. [par.] The Department [of Corrections] just cannot be required to run the risk of employing [Appellant] in a stressful security position when his reaction to stress is so unusual.” The Board adopted the hearing officer's findings and decision.

Yancey filed a petition under Code of Civil Procedure section 1094.5, seeking a writ of mandate restoring his job. The trial court applied the substantial evidence test in reviewing the Board's decision; it found the evidence supported the Board's decision and denied relief. The court of appeal reversed, finding that no substantial evidence exists that appellant is unfit for his employment. The court observed: “When measuring appellant's conduct under the statute in light of existing precedent, one is struck by certain obvious distinguishing characteristics between the instant case and others where discipline was imposed. Appellant did not commit a criminal act, he was not wilfully [sic] disobedient, he did not violate any rule or regulation of the department, he was not dishonest, everyone agreed he was cooperative and completely candid in his disclosures, he was not insubordinate, and his prior work record was exemplary. None of this is disputed. Furthermore, although the record is not altogether clear on this point, the sole reason for appellant's behavior appears to be medical, and may have been caused in some degree by the job itself. It also appears to be transitory in nature.”⁷¹

Gay Law Students Assoc. v. Pacific Tel. & Tel. Co., 595 P.2d 592 (Cal. 1979).

Plaintiffs, a student group and individuals, challenged a public utility company's policy of discriminating against homosexuals *per se* in employment decisions, alleging violation of the Equal Protection clause. The Fair Employment Commission refused to hear Plaintiffs' claims, stating that homosexuals were not a protected class. The lower court upheld the Commission's refusal. The California Supreme Court reversed the lower court, holding that the public utility's actions constituted state action, and that all groups of individuals were protected from “arbitrary employment discrimination” under the Equal Protection clause. The court held that discrimination against homosexuals without an individualized determination that the applicant/employee's homosexuality “renders [him] unfit” for the employment function is a violation of the Equal Protection clause.⁷²

⁷¹ *Yancey v. State Pers. Bd.*, 167 Cal.App.3d 478, 213 Cal.Rptr. 634 (Cal. Ct. App. 1985).

⁷² *Gay Law Students Assoc. v. Pacific Tel. & Tel. Co.*, 595 P.2d 592 (Cal. 1979).

McLaughlin v. Bd. of Med. Exam'rs, 35 Cal. App. 3d 1010 (Cal. Ct. App. 1973).

Plaintiff, a medical doctor, had his medical license revoked for “moral turpitude” after he was charged with the solicitation of a homosexual act from another adult (an out-of-uniform police officer) in a public restroom. Plaintiff denied the charges. The court upheld the revocation, reasoning that Plaintiff’s homosexual proclivities could cause him to be a danger to his patients if he was unable to control his sexual urges.⁷³

Bd. of Educ. v. Calderon, 35 Cal. App. 3d 490 (Cal. Ct. App. 1973).

Plaintiff, a public school teacher, was discharged by the school board of a public school after he was arrested on a college campus for the crime of engaging in oral copulation, despite the fact that he was acquitted from the criminal charges. Plaintiff did not directly challenge factual findings that he committed oral copulation. The lower court and the appellate court upheld the school board’s decision on the basis that Plaintiff’s conduct was “immoral.”⁷⁴

Morrison v. State Bd. of Educ., 461 P.2d 375 (Cal. 1969).

The California State Board of Education revoked the teaching license of Plaintiff, a teacher at a state public school, on the basis of homosexuality *per se*. Plaintiff was alleged to have engaged in private, adult, consensual “non-criminal” homosexual conduct (i.e. did not involve sodomy, oral copulation, or other similar acts) with another teacher; Plaintiff admitted to the behavior, but denied being a practicing homosexual. The State Board of Education found that this conduct constituted “immoral conduct,” “unprofessional conduct,” and involved “moral turpitude,” and therefore determined that it had cause to revoke his license pursuant to applicable regulations. The lower court agreed. The California Supreme Court reversed the lower court’s decision, holding that dismissal for “immoral conduct,” “unprofessional conduct,” or “moral turpitude” must be related to fitness for the occupation in question, and that no such nexus had been shown in this case.

Morrison, a secondary school teacher, held two teaching diplomas issued by the California State Board of Education. An accusation was filed with the State Board of Education charging that the diplomas should be revoked for cause because Morrison had engaged in private sexual activity with another man. A hearing examiner made recommendations, later adopted by the Board, to revoke the diplomas finding that the sexual relationship constituted “immoral and unprofessional conduct and acts involving moral turpitude” -- grounds for revocation under section 13202 of the Education Code. As a result of the action, Morrison was unable to teach at any public school in the state. The trial court, exercising independent judgment on the weight of the evidence, reached the same conclusion as the hearing examiner.

⁷³ *McLaughlin v. Bd. of Med. Exam'rs*, 35 Cal. App. 3d 1010 (Cal. Ct. App. 1973).

⁷⁴ *Bd. of Educ. v. Calderon*, 35 Cal. App. 3d 490 (Cal. Ct. App. 1973).

A California Court of Appeal affirmed the trial court's determination of immoral and unprofessional conduct and acts involving moral turpitude that justified revocation of the teaching diplomas. Despite the trial court's finding of no direct evidence that the acts complained of or Morrison's sexual orientation in any manner affected his ability and willingness to perform as a teacher or had any effect at any time on any pupils taught by him, the court was persuaded that the acts themselves, and that they became known publicly, established the requisite "immorality" and "moral turpitude."

The Supreme Court of California disagreed with the Court of Appeal, stating that the extramarital sexual relationship against a background of years of satisfactory teaching would not justify revocation of the diplomas without any showing of an adverse effect on fitness to teach. Though the homosexual nature of the sexual activity itself was not enough to justify revocation according to the Supreme Court of California, the ultimate inquiry of whether a teacher's homosexuality had an adverse effect on fitness to teach was left with the Board, subject to review by the Superior Court. The case was remanded to the Superior Court for application of the proper standard to the evidence.⁷⁵

Sarac v. State Bd. of Educ., 249 Cal. App. 2d 58 (Cal. Ct. App. 1967).

The California State Board of Education revoked the teaching license of Plaintiff, a public school teacher, after he was criminally charged for engaging in public homosexual acts at a public beach, for the reason that such conduct was "immoral" and "unprofessional" pursuant to the applicable regulation. Plaintiff was alleged to have "rubbed, touched and fondled the private sexual parts" of another man. Both the lower court and the appellate court upheld the license revocation. Rather than focusing on the public nature of the act, the appellate court reasoned that homosexual behavior "has long been contrary and abhorrent to the social mores and moral standards" of California and is "clearly, therefore, immoral conduct" under the regulation.⁷⁶

2. Private Employers

Collins v. Shell Oil Co., 1991 Cal. App. LEXIS 783 (Cal. Super. Ct. App. Dep't. 1991).

In *Collins v. Shell Oil Co.*, the court found that preparing a memo on "house rules" for safe sex at a gay party was protected political activity in light of increasing awareness in the gay community of the need for safe sexual practices.

Soroka v. Dayton Hudson Corp., 18 Cal. App. 4th 1200 (Cal. Ct. App. 1991)

In *Soroka v. Dayton Hudson Corp.*, 18 Cal. App. 4th 1200 (Cal. Ct. App. 1991), the court held that FEHA and the Labor Code were violated by pre-employment psychological screening tests that contained questions concerning sexual orientation.

B. Administrative Complaints

⁷⁵ *Morrison v. State Bd. of Educ.*, 461 P.2d 375 (Cal. 1969).

⁷⁶ *Sarac v. State Bd. of Educ.*, 249 Cal. App. 2d 58 (Cal. Ct. App. 1967).

Many of the DFEH complaints contain no information related to the underlying action, and merely provide notice of the right to sue. This section summarizes the administrative investigations for which factual information was available.

E200506M0403-00-b. Closed September 21, 2005. An employee of a veterans' home alleged discrimination on the basis of sexual orientation as the reason for termination in violation of FEHA. The veterans' home said the termination was due to the employee performing a non-standard procedure. The employee contended that he was suspended because of his sexual orientation, and that heterosexual employees with the same conduct were not suspended. The case was closed by administrative decision. The DFEH recommended no further action be taken and provided a right to sue.

E200506M1386-00. Closed November 8, 2006. A custodian at the University of California-Berkeley alleged sexual harassment on the basis of perceived sexual orientation. Allegedly, the supervisor sent messages of a sexual nature, the conduct was verbally reported to the Human Resources Department, and no response was given. The supervisor contended that he never engaged in this conduct, and the allegations arose in retaliation to his write-up of the employee for insubordination. The DFEH closed the case because it was unable to conclude that the investigative findings established a statutory violation, and found that the employer took prompt action (the investigation was coordinated by Labor Relations Advocate at UC Berkeley). The case closure provided the right to sue.

E200506-K-0047-00. Closed September 27, 2006. An employee alleged he was denied a position at the University of California-Irvine/Mental Health because of his homosexuality. The employer contended it was because a background check showed the employee had violated relevant aspects of the professional code of conduct as a licensed psychiatric technician. The DFEH closed the case by administrative decision and issued a right to sue.

E200607E0174-00-rc. *Chang v. Regents of the University of California*. Closed July 28, 2006. A police officer was denied promotion, and an external candidate was selected in one of the few instances in the department's history. The officer alleged racial and sexual orientation discrimination. The DFEH case was closed because an immediate right to sue was requested.

E200506A0797-00-pr. Closed January 12, 2007. A Surgical Clinical Nurse at University of San Francisco School of Medicine as was laid off, allegedly due to not being a good fit for the job. The nurse believed that the decision was motivated by discrimination on the bases of sexual orientation (gay), medical condition (HIV positive), and religion (non-Evangelical Christian). Upon investigation, the DFEH determined the evidence did not show a violation of the statute. The case was closed by administrative decision and the DFEH issued a right to sue.

E200506E1408-00-b. Closed April 6, 2006. The DFEH case against the California Department of Health Services was closed by administrative decision and a right to sue was issued. A Program Technician alleged retaliation and a hostile work environment based on sexual orientation (lesbian), marital status (domestic partner), and religion (Baptist), after putting up a Lavender Committee (Union) poster, which she was asked to remove because it was controversial. Allegedly, her supervisor made remarks like “God don’t like the ugly,” and “the Lesbian is here, let’s go.” No direct retaliation could be identified.

E200708C014900b. Closed August 28, 2007. An employee alleged wrongful termination by University of California, Food Stamp Nutrition Education Program, on the bases of sex (male), and sexual orientation (gay). He alleged that he was terminated after complaining about anti-gay material on a computer. The case was close by administrative decision and a right to sue was issued.

E2000405C118800rse. The Complaint was executed June 5, 2005. A women’s volleyball coach was terminated, allegedly due to her sex (female), marital status (single), and sexual orientation (homosexual). California State University, Fresno, through the Athletic Director, said she was terminated because her position was not renewed. The volleyball coach believed the termination was in retaliation for complaining about disparate gender treatment and the failure to provide equal resources and opportunities to female athletics. She alleged that her position was filled by a less qualified, married male. The file did not contain information about the outcome of this matter.

E200607E0372-00. Closed October 15, 2007. A conservationist initiated an investigation of the California Conservation Corps. The conservationist alleged that her sexual orientation was revealed after she had a friend spend the night with her at a camp. She claimed she received numerous reprimands damaging to her career on this account and her ability to supervise was questioned. In addition, she alleged that the next week an investigation was conducted by senior supervisors, who spoke with other conservationists about how they felt about the lesbian conservationist having her “girlfriend” spend the night. A policy was then issued that no overnight guests were to be allowed. Previously, overnight guests had been allowed for heterosexual couples. The employer contended that the change in policy was due to a sponsor’s request. A review of the employee’s case file showed verbal reprimands and write-ups before this event. The case was closed because the DFEH could not conclude there was a violation of the statute. A right to sue was issued.

E200708e0853-00-sc. Closed December 18, 2007. A police sergeant was transferred to South Lake Tahoe where she allegedly experienced a hostile environment due to her gender (female) and sexual orientation (homosexual). Allegedly, she was disciplined for conduct that male officers were not, and was forced to transfer to a clerical position in another office. The DFEH case was closed because an immediate right to sue was requested.

E200607A0383-00-b. Closed October 27, 2006. The case against the University of California/CAPS was closed by administrative decision and a right to sue was issued. The employee alleged discrimination on the basis of sexual orientation (lesbian), and race (African-American), claiming denial of a promotion and issuance of a notice of intent to dismiss. The employer contended the dismissal arose because the employee falsified her resume (criminal record, including fraud), and there were discrepancies related to dispersals of petty cash for client surveys.

E2000607H0121-00-se. Closed August 10, 2007. A California Highway Patrol Motor Carrier Inspector claimed differential treatment, retaliation and constructive transfer. Based on a citizen's complaint that the inspector was abusing the position, an internal investigation was initiated. Upon disclosure of the employee's sexual orientation, the employee's federally issued computer was taken, Department of Transportation overtime was halted, and the employee was interrogated. The case was closed because the complainant elected court action. A right to sue was issued.

California Dep't of Mental Health, Atascadero State Hospital. Closed December 26, 2007. The employee claimed discrimination when not hired for the position of Unit Supervisor. The employee claimed discrimination on the bases of race (Mexican), sexual orientation (heterosexual), and age (46). The candidate selected was Caucasian, under 40, and it was "common knowledge" that this individual would be selected before interviews were held. The case was closed because the evidence found in the DFEH investigation did not establish a violation of the statute. A right to sue was issued.

C. Other Documented Examples of Discrimination

Newport Beach Police Department

In 2009, a Superior Court jury in Newport Beach ruled in favor of a veteran police officer who claimed he was denied promotions several times because he was incorrectly perceived by the police department as being gay. Sergeant Neil Harvey claimed that despite his outstanding annual evaluations, he was stereotyped as being gay and denied promotion because he was single and physically fit. The jury awarded \$8,000 in past lost earnings, \$592,000 in future earnings, and \$600,000 for noneconomic losses, for a total verdict of \$1.2 million. The jury ruled for Harvey on claims of discrimination based on perceived sexual orientation, retaliation, and failure of the city to prevent discrimination, but rejected his hostile work environment claim. The City Council voted on March 24, 2009 to authorize counsel to file motions challenging the verdict.⁷⁷

San Diego Mesa College

⁷⁷ LESBIAN & GAY L. NOTES (May 2009).

In 2007, Lorri Sulpizio and her domestic partner, Cathy Bass, were unlawfully fired by San Diego Mesa College (Mesa) after Sulpizio repeatedly advocated for equal treatment of female student-athletes and women coaches, and following publication in a local newspaper of an article identifying Sulpizio and Bass as domestic partners. Sulpizio was the Head Women's Basketball Coach at Mesa and Bass assisted the team and served as the team's Director of Basketball Operations for over eight years. On September 8, 2008, the Office of Civil Rights (OCR) of the U.S. Department of Education found "disparities with respect to the scheduling of games, the provision of locker rooms, practice and competitive facilities, and the provision of medical and training facilities." The OCR concluded that those disparities had "a disparate, negative impact on female athletes" and "collectively established a violation of Title IX." A jury trial on Sulpizio and Bass's discrimination, harassment, and retaliation claims is scheduled to begin in San Diego Superior Court in September 2009.⁷⁸

City of Huntington Beach Police Department

In 2008, the City of Huntington Beach settled a discrimination suit brought by Adam Bereki, a gay police officer, for a sum that reportedly could eventually reach \$2.15 million, including a \$150,000 lump sum payment to end the lawsuit, and a lifetime monthly disability entitlement of \$4,000. Bereki is 29. According to a news report on July 1 in the *Orange County Register*, Bereki joined the police force in 2001 and began to be subjected to "disparaging and harassing comments and conduct regarding his sexuality" a year later when rumors spread among the police officers that he was gay. Bereki claims he complained to supervisors three times about the treatment he was receiving, but no action was ever taken against the perpetrators. The city did eventually undertake an internal affairs investigation, but has never revealed the result, citing confidentiality laws.⁷⁹

University of California- Davis Police Department

In 2008, the UC Regents settled a harassment claim brought by Calvin Chang for \$240,000. Calvin Chang, a UC-Davis police officer, brought suit against the University for harassment based on his sexual orientation in 2005. When other officers discovered that Chang was gay, they subjected him to harassment including homophobic slurs and a death threat. His supervisor referred to him as a "fucking faggot" and retaliated against him after he lodged complaints in response to the treatment from other officers.⁸⁰

Los Angeles Police Department

In 2008, a superior court judge rejected a motion to dismiss Shelby Feldmeier's lawsuit alleging that the Los Angeles Police Department had discharged her because she complained about mistreatment due to her sexual orientation. Feldmeier has alleged that

⁷⁸ Nat'l Center for Lesbian Rts., Employment Case Docket: *Sulpizio v. San Diego Mesa College*, <http://bit.ly/LoLOt> (last visited Sept. 5, 2009).

⁷⁹ LESBIAN & GAY L. NOTES (Summer 2008).

⁸⁰ *Former UC Davis Officer Sues Cops, University*, KCRA 3, <http://bit.ly/vwA4u>.

male officers made frequent offensive comments about homosexuality and asked about her sexual orientation while she was assigned to Wilshire Station as a probationary employee. She claims that her complaints to superiors were not taken seriously. The suit alleges wrongful termination and retaliation in violation of state law.⁸¹

Ravenswood City School District

In 2008, *The Palo Alto Daily News* (Feb. 7, 2008) reported that the Ravenswood City School District had settled a sexual orientation discrimination claim by paying the plaintiff, Emmitt Hancock, a year's salary. Hancock, then a new teacher, said that on the first day of school in 2004 he overheard boys on the playground calling each other derogatory names used to describe gay men. He told them not use such language, and when they asked why he told them he had been gay for five years but was now married. The word spread, parents contacted the school with protests, and Hancock claims that the school administration pressured him to quit his job, which he did in February 2005, filing suit in October of that year.⁸²

California Public School

In 2008, two lesbian public school bus drivers reported being subjected to a hostile work environment because of their sexual orientation.⁸³

Correctional Facility

In 2008, a lesbian corrections officer reported that she was subjected to a hostile work environment because of her sexual orientation.⁸⁴

Municipal Fire Department

In 2008, a deputy fire marshal passed the test for the position of Battalion Chief, but was not promoted. He subsequently learned that the fire chief told another employee that he believed the deputy was not promotable due to his being gay. After the deputy filed an internal complaint, the work environment became progressively more hostile.⁸⁵

Fresno State University

In 2007, a Fresno County Superior Court jury awarded \$5.85 million in damages to Lindy Vivas in her discrimination suit against Fresno State University, accepting her claim that the school refused to renew her contract as the volleyball coach because of her

⁸¹ LESBIAN & GAY L. NOTES (Mar. 2008).

⁸² LESBIAN & GAY L. NOTES (Mar. 2008).

⁸³ E-mail from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 26, 2009, 17:09:00 EST) (on file with the Williams Institute).

⁸⁴ *Id.*

⁸⁵ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

advocacy of gender equity and her perceived sexual orientation. The gender equity claim was brought under Title IX of the federal Higher Education Act, and the sexual orientation claim was based on state anti-discrimination law. The verdict was almost \$2 million more than Vivas had sought in her complaint, and counsel for the university announced their belief that the jury must have been confused.⁸⁶

Los Angeles Police Department

In 2007, a Los Angeles County jury awarded \$6.2 million in compensatory damages and \$2,500 in punitive damages to Brenda Lee, an African-American lesbian firefighter who had sued the Los Angeles Fire Department on charges of racial and sexual orientation harassment in violation of state law. Two other firefighters who filed lawsuits contending they suffered retaliation for supporting Lee, Lewis Bressler and Gary Mellinger, were also vindicated in earlier proceedings. Bressler won a \$1.7 million jury verdict in April, and Mellinger settled his case last year for \$350,000.⁸⁷

Municipal Police Department

In 2007, a police chief decided not to promote an officer to a position she was qualified for, and for which no other qualified person was found, and instead eliminated the position, because the officer was transgender.⁸⁸

San Jose Public School District

In 2007, the San Jose Public School District fired two openly gay women claiming they violated the dress code, but they believed it was because they were openly gay.⁸⁹

University of California-Davis

In 2005, a department supervisor at the University of California-Davis drew up a dress code specifically targeting one gay male employee, prohibiting him from wearing mid-length pants. The supervisor also forbade him from bringing the Gay and Lesbian Yellow Pages into the office.⁹⁰

Los Angeles Police Department

In 2004, the City of Los Angeles agreed to pay out \$200,000 to settle a sexual orientation discrimination claim by Police Sgt. Robert Duncan and \$450,000 to settle a

⁸⁶ LESBIAN & GAY L. NOTES (Summer 2007).

⁸⁷ LESBIAN & GAY L. NOTES (Summer 2007).

⁸⁸ E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

⁸⁹ *Id.*

⁹⁰ *Id.*

claim by Officer Alan Weiner. Both claimed that they were harassed and suffered career setbacks due to homophobia in the police department. According to an Associated Press report on Dec. 27, 2004, these added to other settlements would cumulate to nearly \$3 million paid out by the city to settle sexual orientation discrimination claims brought by eight different police officers in recent years.⁹¹

Contra Costa County Public School

In 2004, a lesbian teacher who did not fit traditional gender norms was repeatedly transferred from site to site and once thrown against the wall by a principal. The school district and the union refused to intervene.⁹²

California State Agency

In 2004, a state agency employee reported that he had tried to persuade the agency to provide domestic partner benefits in 2002. This caused conflict with his boss and he was put on administrative leave and eventually terminated.⁹³

El Dorado County Department

In 2004, a gay man faced harassment and isolation at work in a county department, causing him stress-related health problems. Although he knew California law had sexual orientation protections, he was afraid that the county and union would not enforce the law.⁹⁴

Beverly Hills School District

In 2001, the Beverly Hills School Board paid Robert Pellicone, a gay man formerly employed as the Superintendent of Schools, \$159,000 to settle his discrimination complaint against the school district. Pellicone was discharged as superintendent after allegations surfaced that he had misused a district credit card, but Pellicone claimed that story was a pretext for anti-gay discrimination, arguing that all of the expenses incurred on the card were legitimate business expenses. After being discharged, Pellicone was hired as superintendent of the Shoreham-Wading River School District on Long Island, New York.⁹⁵

San Jose Police Department

In 2001, Dawn Goodman won a \$935,000 jury verdict in her sexual orientation discrimination dispute with the San Jose Police Department—\$435,000 in compensatory

⁹¹ LESBIAN & GAY L. NOTES (Jan. 2005), available at <http://bit.ly/vwBVH>.

⁹² E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ LESBIAN & GAY L. NOTES (May 2001), available at <http://bit.ly/41pXwR>.

damages and \$500,000 in punitive damages. However, a Santa Clara County superior court judge found that the verdict was not supported by the evidence and ordered a new trial. Goodman, who is a lesbian, alleged that when she objected to performing strip searches she was referred to internal affairs rather than being provided with counseling and training, as would normally be the case. She also said her attempts to transfer to other units where she would not have to perform such searches were thwarted because of her sexual orientation.⁹⁶

Hemet Unified Public School

In 2000, Alta Kavanaugh, a lesbian high school teacher, filed a complaint with the California Labor Commission against the Hemet Unified School District charging that administrators had discriminated against her when they removed a female student from her class. The student's parents objected to their daughter being taught by a lesbian. The student's mother, Janiece Betrand, said she requested that her child be removed because homosexuality is against her religious beliefs. "I believe she was teaching tolerance in the classroom, and she was being sneaky about it," Betrand said. Kavanaugh had assigned students to talk about an important person in their lives, and she voluntarily discussed her same-sex partner as an example. The California Labor Commission ruled in favor of Kavanaugh. The school board appealed that decision.⁹⁷

Rio Brave-Greeley Public School

In 1999, James Merrick, a gay school teacher who filed a discrimination claim with the California State Labor Department after the Rio Brave-Greeley Union School District granted the requests of parents to remove students from his classes, reached a settlement prompted by a Labor Commissioner's ruling in favor of his complaint. Merrick filed discrimination complaints with both the state Labor Commission and the school district. Although the school board voted unanimously to dismiss Merrick's complaint, the state Labor Commission found that "by granting requests for the removal of students when such requests were based solely on [Merrick's] perceived sexual orientation, the school district fostered 'different treatment in an aspect of employment' based upon [Merrick's] perceived sexual orientation." The agency ordered the district to stop removing students from Merrick's classes and to cease treating employees differently based on their sexual orientation.

Under the settlement, which has been approved by the Bakersfield Board of Education, the school district will adopt a non-discrimination policy and will specifically agree to reject any parental request to transfer students based on the "ethnicity, race, national origin, age, sex, actual or perceived sexual orientation, disability, or political or religious beliefs of classroom teachers." The Board will also make a public statement of support for Merrick. Merrick was a recent recipient of the Teacher of the Year Award from the Bakersfield Chamber of Commerce.⁹⁸

⁹⁶ LESBIAN & GAY L. NOTES (Dec. 2001), available at <http://www.qrd.org/qrd/usa/legal/lgl/2001/12.01>.

⁹⁷ HOSTILE CLIMATE (2000 ed.), *supra* note 31.

⁹⁸ LESBIAN & GAY L. NOTES (Apr. 1999), available at <http://bit.ly/4EkQci>.

California Highway Patrol

In 1999, a state court jury awarded Thomas Figenshu \$1.5 million in damages and legal fees for the anti-gay harassment to which he was subjected by his co-workers, ruling that it was illegal under the state statute prohibiting employment discrimination based on sexual orientation. Figenshu worked as an officer with the California Highway Patrol from 1983 to 1993. After he was promoted to sergeant and transferred to west Los Angeles in 1988, co-workers began to harass him. Anti-gay pornographic cartoons were taped to his mailbox. A ticket for “sex with dead animals” was left on his windshield. He found urine on his clothes in his locker. Figenshu was commonly the object of anti-gay slurs. After Figenshu complained, an officer was reprimanded and another suspended, but the harassment continued. To remove himself from the hostile work environment, Figenshu resigned in 1993.⁹⁹

Center High School

Before the summer 1999 recess, teacher David Warfield began a process for gender reassignment surgery to become Dana Rivers and drew the ire of parents and officials at Center High School and the local school board. Soon after Rivers notified officials of her intention, the board distributed a letter about her decision to all of the district’s parents, four of whom wrote back to complain. Citing what it said was her “evident unfitness for service,” the school board voted 3-2 in June to fire Rivers, withholding its official announcement to her until September. After she was notified, Rivers filed a complaint with the state labor commissioner seeking to be reinstated to her teaching position. Rivers later dropped the complaint she made to the state labor commissioner as part of a settlement with the school board in which she also agreed to resign.¹⁰⁰

West Contra Costa County Public School

In 1997, Jan Overholtzer won a \$360,000 jury award in her sexual orientation discrimination suit against the West Contra Costa County Unified School District. Overholtzer claimed she was constructively discharged after she told her immediate boss that she was a lesbian, as a result of harassment and demeaning treatment. \$15,000 of the award was designated as punitive damages.¹⁰¹

Bay Area California Public School

In the late 1990s, a transgender Bay Area public school teacher was unable to secure a full-time teaching contract in any of the several school districts to which she applied after she had transitioned. Needing work, she then applied to an entry-level federal job. After two days and multiple hours of interviews and screening, she was

⁹⁹ HUMAN RIGHTS CAMPAIGN, DOCUMENTING DISCRIMINATION: A SPECIAL REPORT FROM THE HUMAN RIGHTS CAMPAIGN FEATURING CASES OF DISCRIMINATION BASED ON SEXUAL ORIENTATION IN AMERICA’S WORKPLACES (2001), available at <http://bit.ly/kThbS>.

¹⁰⁰ HOSTILE CLIMATE (2000 ed.), *supra* note 31, at 92.

¹⁰¹ LESBIAN & GAY L. NOTES (Summer 1997), available at <http://bit.ly/ZUFT3>.

turned down for the position immediately after she disclosed her transgender status on a comprehensive medical questionnaire.¹⁰²

Los Angeles Police Department

In 1996, a controversy arose in Los Angeles about personally invasive questions to which a lesbian police officer was subjected when she filed claims about harassment on the job based on her gender and sexual orientation. The ACLU wrote to the city on her behalf, resulting in a City Attorney move to narrow the scope of questions asked “in areas involving personal relationships” and to train lawyers in the worker’s compensation division on how to elicit relevant information without invading the privacy rights of claims applicants.¹⁰³

San Francisco Public School

In 1995, a committee on teacher credentials recommended to the California Teacher Credentialing Commission that two San Francisco high school science teachers have their teaching credentials revoked as a result of a 1992 incident when a classroom speaker from Community United Against Violence, a gay anti-violence group, made sexually explicit comments to a class of eleventh graders. According to news reports, the teachers had combined their classes to hear the speakers, who engaged in discussion with the students that led to some sexual comments by one of the speakers. When students told their parents what had happened, parents confronted the school administration. Parent complaints to the school administration were rebuffed on the ground that the teachers themselves had done nothing wrong. The parents then filed charges with the credentialing commission. A spokesperson for the teachers’ union expressed shock at the committee’s recommendation, and a spokesperson for the San Francisco Unified School District cited the good records of the teachers and urged that the commission “let them continue their careers.”¹⁰⁴

Los Angeles Police Department

In 1994, Los Angeles police officers Lance LaPay and Natasha Benavides filed suit in Los Angeles County Superior Court against the City of Los Angeles, the Police Department, Chief Willie Williams, seven individual officers and up to one hundred “John Does,” alleging physical and verbal harassment on the basis of sexual orientation in violation of state and local law. They alleged that the Police Department had done nothing to implement guidelines for treatment of gays and lesbians on the job that were adopted by the city council as part of the settlement of a lawsuit brought by Sergeant Mitchell Grobeson. At a press conference announcing the suit, Grobeson alleged that in the past year five gay or lesbian police officers had been forced off the job, out of the department or to sick leave status due to anti-gay harassment.

¹⁰² SHANNON MINTER & CHRISTOPHER DALEY, *TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO’S TRANSGENDER COMMUNITIES* (Nat’l Center for Lesbian Rts. & Transgender L.Center 2003).

¹⁰³ LESBIAN & GAY L. NOTES (Feb. 1996), *available at* <http://bit.ly/hVma6>.

¹⁰⁴ LESBIAN & GAY L. NOTES (Oct. 1995), *available at* <http://bit.ly/1D2Hvo>.

Lance Lapay worked for the Los Angeles Police Department from 1988 to 1993. During his training in the police academy and while on the force, Lapay was subjected to continuous anti-gay harassment and forced to work in a hostile environment sanctioned and encouraged by department supervisors. While Lapay was working in the internal affairs section, one sergeant continually greeted him in an effeminate tone with a lisp. Some officers verbally and physically harassed him. Others refused to speak with him, even when serving as his partner. And others told supervisors they would not work with him because he was gay. Although a few officers complained to superiors about the harassment Lapay received — one filed a formal complaint — the department failed to investigate or take any action. In August 1993, Lapay filed a claim for workers' compensation for stress, anxiety and related symptoms associated with harassment and discrimination. The claim was denied.

When Natasha Benavides applied to work with the police department in 1987, she revealed during a background investigation that she was a lesbian. The officer assigned to her case advised her to conceal her homosexuality because the department was “not yet ready to accept gays” and that she would not make it through the academy or probation if her sexual orientation were known. Although Benavides followed his advice, she was subjected to frequent anti-gay harassment that only escalated when she participated in an investigation of anti-gay harassment of a fellow officer. When Benavides complained publicly about the situation, the harassment against her escalated again. In 1993, she lost a promotion because of her sexual orientation. In December 1993, Benavides filed a workers' compensation claim for stress and anxiety.¹⁰⁵

Los Angeles Police Department: Mitchell Grobeson

Mitchell Grobeson was the first openly gay officer in the Los Angeles Police Department. Grobeson graduated from the Los Angeles Police Department Academy at the top of his class and began to rise quickly in the department as an officer. Rumors began to circulate in 1984 that he was gay after a county sheriff stopped him with another man in a predominantly gay neighborhood. After the incident, Grobeson's fellow officers harassed him regularly. Further, he was placed in danger when they refused to back him up in life-threatening situations. Nonetheless, Grobeson was promoted to sergeant more quickly than any of his peers. As the harassment increased, however, the department refused to investigate. Believing his life was in danger, Grobeson left the department and filed a sexual orientation employment discrimination lawsuit with two other officers against the City of Los Angeles.

In 1993, Grobeson settled the case. The settlement led to his reinstatement to the force, but Grobeson then filed a second lawsuit, charging the city and numerous police staff with violating the settlement agreement, as well as his federal and state constitutional and state statutory rights. Grobeson also challenged the LAPD's decision to suspend him for his “unauthorized recruiting” of lesbians and gay men to join the force, and for allegedly wearing his uniform without permission in a photo in a gay weekly, and at gay pride and AIDS-awareness events. The Court ordered the LAPD to

¹⁰⁵ LESBIAN & GAY L. NOTES (Sept. 1994), *available at* <http://bit.ly/adQhm>.

rescind Grobeson's suspension and pay him for the time lost. This second lawsuit prompted the city to make widespread improvements in its sexual orientation employment policies. Settlement discussions to make further improvements to city and LAPD employment policies continued for years.¹⁰⁶

1. **Declarations in Support of Grobeson**

(a) **8-year LAPD officer**

“The Department requires that police officers adopt a ‘macho’ attitude, and an essential part of that ‘macho’ attitude is the hatred of homosexuals. The Department’s extreme bias against homosexuals is bred into every new generation of officers. No other attitude toward homosexuals is tolerated. Even those officers who have no prejudices against homosexuals when they join the force soon come to realize that they must at least pretend to despise homosexuals or risk being ostracized.

The Department has many ways to pressure its officers to accept its prejudice against homosexuals. I sat through countless roll calls in which the sergeant or lieutenant in charge would hold up a bulletin describing a homosexual suspect and tell us to ‘get this fruit.’ All sorts of offensive comments would then be made about the suspect’s sexual orientation and suspected lifestyle. I remember one particularly disturbing incident in which we were told to look out for a suspect who was believed to have AIDS. The officers at roll call had an absolute field day with this information, making fun of the individual and his suffering, stating that they did not want to be the one to make the arrest.”¹⁰⁷

(b) **LAPD officer**

“During the five years that I have served as a police officer, I have heard countless insults directed at gays and lesbians...and witnessed numerous instances of officers

¹⁰⁶ Lambda Legal, All Cases: *Grobeson v. City of Los Angeles*, <http://bit.ly/1mcZ82> (last visited Sept. 5, 2009); Human Rights Campaign, *supra* note 23.

¹⁰⁷ Declaration of John Roe-1 (Nov. 21, 1989), *Grobeson v. City of Los Angeles*, LASC Case No. C 700134, 70-71.

making rude and offensive comments to anyone in custody who 'appears' to be homosexual.

When I was at the Police Academy, I heard derogatory comments made about gays and lesbians on a daily basis. It was common to hear officers talking about 'faggots' and 'bull dykes.' These offensive remarks were made by both the cadets and the training officers, and other supervisory personnel responsible for instructing the cadets in proper police conduct.

I remember one particularly disturbing incident in which my fellow cadets publicly humiliated a member of the gay community, who had been invited to address our class as part of our cultural awareness training. When it was announced that a gay man was going to be talking to us, many of the cadets sitting near me began to make such comments as, 'Oh shit, there's a faggot coming.' When he got up in front of us, many cadets laughed and nudged each other. Throughout his presentation, cadets made offensive remarks in my presence about the 'queen,' the 'fairy princess,' the 'faggot' who addressed us. After this speech, the level of hostility directed at homosexuals increased at the Academy. Many of my fellow cadets expressed outrage that a 'fruit' had been allowed to come and talk to us.

The hostility toward homosexuals was just as great when I left the Academy and joined the force as an officer. The general attitude toward homosexuals at Harbor Division, where I was first assigned as a probationary officer, was negative. I continually heard my fellow officers and watch commanders make anti-gay comments. The attitude toward homosexuals was worse at Pacific Division and Hollywood Division, my two assignments after I left Harbor. At both of those Divisions, the hostility toward...the gay community was extreme.

It has been my experience that officers within the Department who are suspected of being homosexual are subjected to continual harassment by other members of the Department. Some of the harassment is overt. For example, when I was at the Pacific Division, I witnessed my fellow officers engage in numerous acts of retaliation against a sergeant who was believed to be gay. The officers refused to treat the sergeant with respect, and instead subjected him to such humiliating treatment as turning their back on him when he talked or walking away

whenever he approached. They repeatedly refused to follow direct orders that he gave them. They made offensive comments about his sexual orientation and private sexual life behind his back, further undermining his authority. On at least one occasion, I heard fellow officers discuss how they had ‘set up’ the sergeant because he was gay. Finally, the officers refused to respond to any of the sergeant’s calls for back-up, placing him in possible jeopardy and seriously interfering with his ability to do an effective job as an officer.”¹⁰⁸

(c) **14-year LAPD officer**

“I can attest to the fact that the Department condones and indeed fosters hatred of homosexuals.

The general attitude in the Department towards homosexuals is that of disgust. Officers make anti-gay remarks frequently. Supervisors reinforce the idea that officers must be ‘macho’ by making jokes about ‘fruits and faggots’...This kind of conduct has been going on in the Department basically unchecked, since I joined the force as an officer in 1972.

I hear homophobic comments on a nearly daily basis. At roll call, it is not uncommon for some officer to make some joke about ‘faggots’ and ‘fruits.’ At one roll call within the past several months, one of my sergeants stated to the assembled officers that ‘all goddamn faggots should be fired.’ I have heard these types of anti-gay comments ever since I joined the Department. They are made by supervisors and officers alike.”¹⁰⁹

Los Angeles Police Department: Sue Herold

Sue Herold, a lesbian, worked in the Los Angeles Police Department. Before a speaker arrived to present to her class in the academy, several of her colleagues made comments about physically harming the speaker, who was gay. Comments such as placing bombs in bodily orifices and shutting “that fag up” terrified Herold. After Herold was outed by her roommate to her classmates at the police academy, Herold was harassed and was not supported by her colleagues. For example, Herold responded to a burglary call, and it took nearly twice as long for backup to arrive as it should have. In response to the harassment she faced, Herold said that she wouldn’t recommend law enforcement as a

¹⁰⁸ Declaration of John Doe-2 (Nov. 21, 1989), *Groberson v. City of Los Angeles*, *supra*, ¶¶ 2,6-8.

¹⁰⁹ Declaration of John Doe-1, *supra* note 61, at ¶¶ 2, 5, and 7.

career. She suffered from ulcers, shingles, and high blood pressure and felt as though she had no other career options.¹¹⁰

Simi Valley Police Department

A videotape showing Simi Valley police officers ridiculing gays and other groups emerged as a lawsuit alleging discriminatory attitudes and practices was filed against the department. In the suit, two white officers claimed the department had harassed them after they filed worker's compensation claims, and a black officer alleged that he was racially harassed. Although the tape's producers claimed it was intended as a joke for a departing officer, other officers say it revealed widespread intolerance. Former police chief and current City Council member Paul Miller, who was amongst those featured in the video, had no comment. One scene in the video, which takes place in Miller's former office, suggests a male officer wants to return to work so that he can continue an affair with a male police investigator. In it one officer says "A lot of people don't want to work with a coke freak." Another responds, "Or a homosexual." Reportedly, an anti-gay slur was used repeatedly.¹¹¹

Municipal Police Department

"B," a gay man, who asked that his real name not be used, transferred from a university police department in Massachusetts to a city police department in Southern California. Instructors in the police academy made comments to B's class about gay people, including "Did you did hear that they're actually letting fags on this department now? Isn't that disgusting? That's really sick." During a conversation about hate crimes, the Sergeant raised the example of someone being physically assaulted for being gay and that such an incident would be considered a hate crime. Several of B's colleagues responded with comments, such as "That's a matter of opinion" and "Oh, yeah. Cruelty to animals." B brought the comments to the attention of the Sergeant, who responded that he hadn't heard the comments. B then told the Sergeant that he expected respect from his co-workers and that if he heard any derogatory comments, he would sue the department. From that point forward, B felt that his colleagues kept their distance and were careful about what they said.¹¹²

Bookser High School

Warren Blumenfeld, a gay man, worked in a public high school in Santa Clara, California. When he first began teaching, Blumenfeld was placed with a more experienced teacher. After one day of working with this teacher, Blumenfeld was notified by the supervisor that things weren't working. The more experienced teacher stated that he was "uncomfortable with your alternative lifestyle, which he said he picked

¹¹⁰ Buhrke, *supra* note 41, at 33-38.

¹¹¹ HOSTILE CLIMATE (2000 ed.), *supra* note 31, at 113-14.

¹¹² Buhrke, *supra* note 31, at 58-62.

up from your mannerisms, and he doesn't want you influencing his students.” Blumenfeld was then placed with another teacher who gave him a glowing review.¹¹³

¹¹³ WARREN J. BLUMENFELD, ONE TEACHER IN 10 58-64 (Kevin Jennings, ed., Alyson 1994).

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

E. Education

Kern County

In 1999, prompted by a group of gay citizens who offered to lead an effort to combat local hate crimes, Pastor Douglas Hearn, a Kern County Human Relations commissioner said, “I [am] opposed to having homosexuals lead in the community. Because any man who wants to have sex with another man has a problem. He’s really sick and doesn’t know it.” In an interview, he elaborated, saying he believed “Gays have a right to live, shop and be human beings,” but that he also felt that “if they were teaching our youth, I’d be scared they might rape them or something.”¹¹⁴

Fremont School District

In 1997, the president of the Fremont school board wrote a blatantly homophobic letter to the local daily newspaper. In his letter, he stated that “anyone practicing homosexuality reduces their life expectancy from about 75 to around 44 years of age, the obvious conclusion should occur: This is not something to celebrate or promote, especially when horrible health problems...are brought to light.” He also stated that issues of health and harassment should not be “mix[ed],” and concluded his letter: “Protect all from harassment, but do not celebrate or promote unhealthy lifestyles.”¹¹⁵

¹¹⁴ HOSTILE CLIMATE (1999 ed.), *supra* note 31, at 80.

¹¹⁵ HOSTILE CLIMATE (1997 ed.), *supra* note 31, at 40.