

## Employment-Related Claims

**Failure to Prevent Harassment, Discrimination or Retaliation:** An employer has an affirmative duty to take steps to assure that harassment, discrimination or retaliation do not occur in the workplace. To prevail on a claim that your employer failed to do so, you must prove that (1) you were an employee of or applied to the defendant for a job, or you were providing services under a contract with the defendant, (2) you were subject to harassing conduct or discrimination because you were (or were believed to be), or were associated with someone who was (or was believed to be) in a protected group - or you were subject to retaliation because you opposed the employer's unlawful and discriminatory employment practices, or filed a complaint with, testified before or assisted in a proceeding before the Dept. of Fair Employment & Housing, (3) the defendant failed to take reasonable steps to prevent the harassment, discrimination or retaliation, (4) you were harmed, and (5) the defendant's failure to take reasonable steps to prevent harassment, discrimination or retaliation was a substantial factor causing your harm. CACI 2527.

**Defense for Later-Discovered Misconduct:** An employer has a defense to a discrimination claim under FEHA if it can prove that (1) the employee engaged in misconduct, (2) the misconduct was sufficiently severe that the employer would have discharged him or her because of that misconduct alone, had the employer known of it, and (3) the employer would have discharged the employee for his or her misconduct as a matter of a settled company policy. CACI 2506.