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New California law protects sexual assault/harassment survivors from retaliatory lawsuits

A LITIGATOR'S GUIDE TO LEVERAGING CIVIL CODE SECTION 47.1

Survivors of sexual harassment and assault deserve the right to speak up without being punished for it. California's Civil Code section 47.1 was enacted to protect them from retaliatory lawsuits – and to give them legal tools to fight back.

In October 2023, California passed AB933, enacting Civil Code section 47.1, creating a qualified privilege for communications made in connection with reports or claims of sexual assault, harassment, and discrimination. The statute was the product of collaborative work by legislators and advocates, including the California Employment Lawyers Association (CELA), and Equal Rights Advocates (ERA). The goal behind the law was clear: Protect survivors and whistleblowers from retaliatory legal claims meant to punish them for coming forward.

In a recent case, we obtained what appears to be the first judgment under this new law. The case involved a classic retaliatory cross-complaint filed against our client after she reported sexual harassment internally and later filed a civil lawsuit. Along with our co-counsel, Melvin Belli, we used section 47.1 as one of three privileges to seek summary judgment, and the court granted it in full. This article walks through the statute, how we applied it, and how other plaintiff-side attorneys can incorporate it into their litigation strategy.

The law: Civil Code § 47.1

Civil Code section 47.1 establishes a qualified privilege that shields individuals who speak out about harassment, discrimination, and similar misconduct. The statute protects communications made to employers, government agencies, or in court proceedings, as long as those statements were not made with actual malice. It applies regardless of whether litigation has commenced and extends to statements made in good faith for the purpose of addressing misconduct.

This new section complements existing privileges under Civil Code sections

47(b) and 47(c), providing a much-needed layer of protection for employees who report unlawful conduct and then find themselves facing retaliatory lawsuits in response.

A tool for accountability – not just defense

Beyond its shield function, section 47.1 contains a powerful enforcement mechanism that every plaintiff-side litigator should be aware of.

If a person is hit with a retaliatory claim in violation of section 47.1, they can file their own civil action under the statute. And this is not symbolic relief.

Section 47.1 allows for:

- Treble actual damages
- Statutory damages of at least \$10,000
- Attorney's fees and costs to the prevailing plaintiff

These remedies give real teeth to the law. A retaliatory lawsuit is no longer just a nuisance to be dismissed. It can backfire with serious financial consequences for the party filing it.

This transforms section 47.1 into an affirmative tool for enforcing accountability. It deters misuse of the courts and gives survivors a way to strike back – not just defensively, but through affirmative recovery. For plaintiff-side attorneys, this creates both leverage and the potential for meaningful client relief, even in cases where the original lawsuit is still pending.

If your client is targeted with a cross-complaint designed to punish them for reporting unlawful conduct, consider not only moving to strike or dismiss but also asserting a claim under section 47.1. It can be a strategic counterweight to abusive litigation tactics.

The case: *Young v. Alameda Health System, et al.*

Our client, Ramonia Young, was employed by Alameda Health System (AHS), a public healthcare entity. In late 2021, she

made internal complaints to AHS reporting that a coworker, John Adams, had made sexually harassing comments toward her. AHS conducted an investigation and issued Adams a formal disciplinary memorandum.

In May 2023, Ms. Young filed a civil complaint alleging sexual harassment and other related claims. Several months later, Adams filed a cross-complaint against Ms. Young. He asserted four causes of action: defamation, intentional interference with contractual relations, intentional interference with prospective economic relations, and retaliation under the Fair Employment and Housing Act. His claims were based entirely on Ms. Young's internal complaint and her civil lawsuit.

There were no allegations that Ms. Young had publicized her claims outside the legal process or workplace channels. There was no evidence of malice. Yet the cross-complaint forced our client to defend herself for exercising her legal rights.

This is the precise type of retaliatory litigation that section 47.1 was intended to address.

The strategy: Combining three privileges

We moved for summary judgment on the cross-complaint, relying on three privileges under California law. Each one provided an independent basis for judgment in our client's favor.

Litigation privilege (Civil Code § 47(b))

Ms. Young's statements made in her civil lawsuit were protected under the absolute litigation privilege. This includes allegations made in court documents and during litigation proceedings. Additionally, her internal complaint to AHS was protected because AHS is a public entity, and its internal investigations are considered "official proceedings authorized by law."

New anti-retaliation privilege (Civil Code § 47.1)

Even if the absolute litigation priv-

ilege did not apply, section 47.1 offered a clear path to defeating the defamation claim. The statute protects good-faith communications regarding sexual harassment or discrimination, as long as they are not made with actual malice. Adams admitted in deposition that his defamation claim was based entirely on the internal complaint and the civil lawsuit. He also admitted he had no evidence that Ms. Young made any knowingly false statements.

Common-interest privilege (Civil Code § 47(c))

We also invoked the common-interest privilege, which protects non-malicious statements made within a shared business interest. Ms. Young's report to her employer fell squarely within this category, as it addressed workplace conduct and allowed the employer to take corrective action.

The judgment: Full defense victory – for the plaintiff!

On September 18, 2025, the Alameda County Superior Court entered judgment in favor of Ms. Young on all causes of action in the cross-complaint. The court found that her statements were protected under California law and that Adams had no admissible evidence to support his claims. This was, to our knowledge, the first judgment obtained under Civil Code section 47.1.

Importantly, the judgment did not rely solely on the new law. The court also recognized the litigation privilege and common-interest privilege. However, section 47.1 served as a clear and additional shield. It provided a new and powerful argument that bolstered the motion and reflected the Legislature's intent to prevent these kinds of retaliatory legal tactics.

Practice tips: How to use section 47.1

effectively

If you represent plaintiffs in harassment, discrimination, or retaliation cases, section 47.1 can be a valuable tool when faced with a retaliatory counterclaim. Here are some strategies to keep in mind.

Watch for defamation or interference claims

Be alert when a defendant files a cross-complaint that alleges defamation, intentional interference, or retaliation based on your client's decision to come forward. These claims often signal an attempt to silence or intimidate the plaintiff. Section 47.1 was written to address exactly this pattern.

Make a clean record early

Use written discovery and depositions to pin down the basis of the counterclaim. Ask what specific statements are alleged to be false or defamatory. Where were they made? Who were they made to? If the answer is only "in the lawsuit" or "to the employer," you're likely on strong ground to assert the privileges.

Assert all applicable privileges in your motion

Don't rely on section 47.1 alone. Combine it with section 47(b) and 47(c) where applicable. Courts may be more comfortable ruling when multiple privileges apply. Explain the legal basis for each and show how the undisputed facts line up.

Focus on malice

Under section 47.1 and 47(c), the plaintiff has to show malice to overcome the privilege. Shift the burden. Once you've shown the communication is privileged, demand that the opposing party come forward with admissible evidence of actual malice. In many cases, they won't be able to do so.

Use the statute as a proactive enforcement tool

If the defendant files a retaliatory

cross-complaint, consider filing a separate cause of action under section 47.1. With treble damages, mandatory minimums, and attorney's fees, it can serve as an effective deterrent and remedy for your client.

Conclusion

Civil Code section 47.1 gives plaintiff-side attorneys a strong set of legal tools – some defensive, some proactive – to protect and advocate for workers who report unlawful conduct. Our case shows that the statute works when used properly and can deliver complete judgment for the client. But it can also offer more than just protection. It opens the door to compensation, deterrence, and justice in response to retaliatory legal tactics.

As more lawyers begin to incorporate this statute into their litigation approach, it has the potential to shift the power dynamic. Survivors should not have to fear being sued for speaking the truth. With section 47.1, they don't have to. 

Barbara ("Brandi") Figari Cowan is the founder of Workplace Advocates, P.C., a statewide practice representing employees in matters involving discrimination, harassment, retaliation, and wrongful termination. Ms. Figari Cowan is the immediate past Chair of the California Employment Lawyers Association ("CELA") and has served on its Executive Board since 2014.

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