

Tips For Employers As Calif. Court Limits Harassment Liability

By **Ellen Connelly Cohen** (October 16, 2026)

In what appears to be the first published California appellate decision to address the question, a court recently held that an employer cannot face strict liability for sexual harassment under the state's Fair Employment and Housing Act merely because the alleged harasser supervises employees.

As to the supervisor-harassment theory at issue, strict liability applies only where the harasser is the plaintiff's supervisor and acts in a supervisory capacity when the harassment occurs. The Court of Appeal of the State of California, Second Appellate District issued the decision in *Doe v. Wells Fargo Bank NA* on Oct. 5.



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The decision underscores the value of accurately documenting job roles and reporting lines so they reflect how supervisory authority works in practice. Where the alleged harasser is neither the plaintiff's supervisor nor the employer's agent, the negligence standard remains.

The Background

Jane Doe worked as a wealth adviser at Wells Fargo. The alleged harasser, Eric Pagel, was an investment strategist. Doe contended that Pagel supervised certain support staff, but it was undisputed that he had no supervisory authority over Doe.

Doe claimed that on a business trip to Bakersfield, California, Pagel sexually assaulted her while she was intoxicated. About a month later, Doe told one of her other co-workers who had also been on the trip that Pagel had commented on her body and was "becoming more and more aggressive." The co-worker dismissed Doe's concerns and said Pagel was "harmless." The co-worker did not escalate Doe's concerns to Wells Fargo.

Doe subsequently reported the sexual assault and harassment to Wells Fargo's ethics hotline and her manager. The company placed Pagel on paid administrative leave and commenced an investigation, interviewing witnesses and gathering evidence, including text messages and photos, ultimately culminating in a 28-page report.

The investigation concluded that Doe's assault and harassment allegations were unsubstantiated, but it did find violations of the company's workplace conduct and professionalism policies. Wells Fargo issued Pagel a final notice warning that future violations could lead to immediate termination.

Doe filed a lawsuit in the Superior Court of Los Angeles County against Wells Fargo, Pagel and the other co-workers present on the Bakersfield trip. Among other claims, Doe asserted a FEHA sex harassment cause of action against Wells Fargo.

Wells Fargo moved for summary judgment, contending that Doe could not prevail on her sex harassment claim under a strict liability theory because Pagel never supervised Doe. The company also argued that it could not be liable under a negligence standard because it immediately and appropriately responded to Doe's complaint.

Doe opposed, arguing that Wells Fargo was strictly liable for harassment by any supervisor,

regardless of whether the harasser supervised her. She did not address the company's potential liability under the negligence "knew or should have known" standard.

The trial court granted Wells Fargo's motion for summary judgment, agreeing with the company's arguments on both claims.

The Court of Appeal's Holding

The Court of Appeal affirmed Wells Fargo's summary judgment win, explaining that "[w]hen an employee supervises people other than the plaintiff and has no supervisory authority over the plaintiff, that employee's role as a supervisor has no relevance to his or her relationship with the plaintiff. As to the plaintiff, the harasser is a coworker."

The court noted that FEHA's harassment provision does not use the term "strict liability"; courts have inferred that standard from the statute's treatment of harassment by employees who are not supervisors or agents, where a negligence standard applies.

After concluding that FEHA's statutory text does not clearly resolve whether the term "supervisor" means any supervisor or the plaintiff's supervisor, the court considered FEHA's purpose, prior cases and the practical consequences of each interpretation.

Against this backdrop, the court observed that "[s]exual harassment by the plaintiff's supervisor is a more pernicious social problem than harassment by a coworker," given the power differential. In contrast, where the harasser does not have supervisory authority over the plaintiff, that power differential is not present.

The court noted that a contrary interpretation would lead to arbitrary and unreasonable results. It posited a hypothetical involving two co-workers of equal rank: Pat, whose duties include supervising subordinates, and Morgan, whose responsibilities are equally important, but do not include supervising others. Under the rationale urged by Doe, the employer would be strictly liable if Pat sexually harasses Morgan, but the negligence standard would apply if Morgan harasses Pat.

The court also relied on prior California cases describing strict liability as applying to harassment by the victim's supervisor when that individual is acting in a supervisory capacity. However, the court did not limit the rule to the plaintiff's direct or immediate supervisor.

The court noted that FEHA's definition of "supervisor" as set forth in California Government Code Section 12926(t) goes beyond simply the power to hire and fire, and reaches the authority to use independent judgment to discipline, reward, adjust grievances, assign and direct other employees, among other responsibilities, or effectively to recommend such action. Given this broad definition, others with authority over the plaintiff beyond their immediate manager may qualify.

Practical Takeaways for California Employers

The decision focused only on the strict liability question because of the specific procedural posture of the case. Doe did not address Wells Fargo's negligence argument in opposition to summary judgment, and did not challenge the trial court's ruling on that issue on appeal, forfeiting that issue.

However, for purposes of other lawsuits, employers should remember that defeating strict

liability is not the end of the story. Instead, the inquiry will shift to the negligence "knew or should have known" standard. This points to the importance of having a robust reporting system where employees have multiple avenues to lodge complaints, and where reports of misconduct are promptly and thoroughly investigated.

Employers should also ensure that all employees — not just managers — are trained to escalate complaints. Note that the co-worker Doe initially complained to dismissed her concerns. Meaningful training on how to recognize and route complaints is also important for defending against FEHA claims of failure to prevent harassment under California Government Code Section 12940(k).

Even where the alleged harasser is the victim's supervisor, a defense to strict liability may still be available. As Doe explained, "[a]n employer can only be strictly liable for sexual harassment by a supervisor if the harasser is the plaintiff's supervisor acting in the capacity of a supervisor when the harassment occurs." This line of defense can be especially important in cases involving alleged misconduct that occurred off-site or during nonworking hours.

In light of FEHA's sweeping definition of "supervisor," employers may want to audit lines of reporting, define roles and document responsibilities. Companies with clear org charts — where reality matches the documentation — will be in a better position to establish which employees qualify as supervisors at summary judgment and trial.

Relatedly, to establish who has supervisory authority over the plaintiff, defense attorneys conducting depositions and obtaining declarations in a harassment case should take care to track FEHA's definition of "supervisor," and get admissions that go beyond just the power to hire and fire. Notably, FEHA's definition includes those who effectively recommend action. For instance, Pagel had no power to hire or fire, but provided input to those who reviewed other employees' performance.

Doe leaves open whether an employer may be strictly liable for harassment by an employee who qualifies as its agent. The court did not reach that issue because Doe did not argue that Pagel was Wells Fargo's agent, but plaintiffs in other cases may pursue this alternative theory.

Multistate employers should note that other states may apply a different rule. For example, in *Sangamon County Sheriff's Department v. Illinois Human Rights Commission* in 2009, the Illinois Supreme Court held that under the Illinois Human Rights Act, the harasser's relationship to the plaintiff is irrelevant and supervisory status alone is sufficient to trigger strict liability for the employer. Doe expressly disagreed with Sangamon's interpretation insofar as the Illinois statute is analogous to FEHA.

The Bottom Line

From the defense perspective, Doe is a welcome decision in FEHA harassment cases. After Doe, the alleged harasser's supervisory status alone is not enough to trigger strict liability; what matters is whether the alleged harasser has supervisory authority over the plaintiff and was acting in a supervisory capacity when the alleged misconduct occurred.

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