

## Memo: 25 Years of California Legislature's Sexual Harassment Settlements

*Tuple Legal is California's only political research law firm. Tuple occasionally publishes memos on matters of public interest, like this one. By Ryan Hughes ([contact](#)).*

Political Research Services >



The renewed attention to sexual harassment in the State Capitol<sup>1</sup> includes scrutiny of settlements made by the California Legislature for harassment. Reports on those settlements have been wildly inconsistent, to the point where media outlets widely disagree on even the total sum of payments.<sup>2 3 4</sup>

Tuple Legal obtained and reviewed settlement records, court filings, historical news reports, and other documents to compile a database of the Legislature's sexual harassment, sex discrimination, and gender discrimination settlements from the past 25 years.

This memo has two purposes:

1. It details all known settlements from the past 25 years. It is meant to serve as a resource for victims of sexual harassment in the Capitol to make informed decisions on how to proceed. (If you are reading for that purpose, I would advise you to consult a reputable employment law attorney before taking any other steps—especially before filing a report with your Rules Committee. Attorney consultations are often free.)
2. It presents new findings about the scope and handling of the Legislature's sexual harassment settlements.

This memo does *not* account for the thousands of sexual harassment incidents in the State Capitol that have gone unreported. Nor does it account for complaints of harassment that did not result in a settlement. It only accounts for those incidents that resulted in a formal settlement.

### Key Findings

#### Settlement Amounts

The Legislature has paid out at least \$1.9 million for sexual harassment complaints in the past 25 years. In 2017 dollars, the amount is \$2.8 million.<sup>5</sup>

In many cases it is not possible to verify that employees' settlements involved claims of sexual harassment; they may have or may not have. In those uncertain cases, the Legislature paid out \$306,000 over the past 25 years. In 2017 dollars, the amount is \$360,000.

#### “No-reemployment” Clauses May Be Particularly Burdensome to Capitol Victims

Many of the settlement agreements Tuple Legal obtained contain a “no-reemployment” clause, which prevents victims from seeking employment with the Senate or Assembly in the future. Attorneys include those clauses in employee settlement agreements to keep disgruntled employees from obtaining settlements, subsequently reapplying for hire, and making a second claim against the employer for misconduct in the later employment application. (Though, the 9th Circuit Court of Appeals has called validity of those clauses into question.<sup>6</sup>)

Use of no-reemployment clauses may be appropriate in some employee separation agreements, but routine use of them for sexual harassment victims in the Capitol may be particularly burdensome to the victims. Employment positions in the Senate and

Assembly represent a large portion of state-level political and policy jobs. Being banned from one of the chambers creates a significant disadvantage for political and policy staffers who endure sexual harassment.

## Confidentiality Clauses Are Not Worth the Paper on Which They Are Printed

Many of the Legislature's settlement agreements contain confidentiality clauses that purportedly bind legislative houses and aggrieved employees from disclosing the terms of a settlement. These clauses provide very little actual confidentiality.

The Legislative Open Records Act does not protect settlement agreements from public disclosure.<sup>7</sup> Any member of the public may request and receive a copy of them. The only redactions in disclosed files are for signatures—not employee names. That is how reporters most often obtain and write stories about settlements. Settlements can generate media coverage of employees even in cases where reporters *only* know that an employee received a settlement—and no information as to why.<sup>8</sup> As noted in the next section, settlements rarely name alleged perpetrators, thereby leaving only victims' names in media reports.<sup>9</sup>

## Including Only Limited Details in Settlement Agreements Shields Harassers from Scrutiny, Making the Legislature Complicit in Sexual Harassment Behavior

While the Legislature must disclose settlement agreements, it is not required to disclose details of sexual harassment investigations.<sup>10</sup> Knowing that settlement agreements will be public—but not files pertaining to sexual harassment investigations—the Legislature routinely includes as few details as possible in settlement agreements. The agreements typically do not list the nature of complaints made by employees, nor the persons against whom complaints are lodged. At their essence, the Legislature's settlement agreements only say: 1) an employee claims some type of workplace misconduct occurred, 2) the Legislature denies any misconduct occurred, but 3) the two sides will settle the matter for a sum of money.

This practice effectively shields offenders from scrutiny unless details of a given matter are leaked to the media or filed with another governmental agency.<sup>11</sup> In other words, our Legislature is doing what it can to actively hide harassers.




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## Legislature Payouts and Settlement Terms

### Verified Instances of Sex Discrimination Claims

This table includes all known instances of employee settlements that involved a claim for sexual harassment. Use the plus icon (+) to view detailed information on a given settlement, including gag clauses<sup>12</sup>, no-reemployment clauses, information on whether an employee was moved to another office in the Capitol, and attorney fees.

More	Year	House	Complaint Against	Total Amount (Known)	Total Amount (2017 Dollars)	Details
	2017	Senate	Bob Phelan and Patricia O'Brien	\$89,500	\$89,500	Employee claimed he "experienced and was forced to tolerate offensive and unpr racist, sexist, and homophobic comments and biases."
	2017	Assembly	Steve Fox (D)	\$100,000	\$100,000	Employee alleged that Fox once indecently exposed himself to her, when she wen apartment to bring him to a required Assembly session.
	2015	Assembly	Steve Fox (D)	\$110,000	\$115,937	Employee alleged Fox made inappropriate sexual comments.
<b>Total</b>				<b>\$1,944,112</b>	<b>\$2,753,688</b>	

More	Year	House	Complaint Against	Total Amount (Known)	Total Amount (2017 Dollars)	Details
<a href="#">+</a>	2010	Senate	Rod Wright (D)	\$120,000	\$139,139	Employee claimed "The environment in Sen. Roderick Wright's office is beyond anyone would expect of a public official or even any employer in the 20th century totally intolerable towards women and certainly black women."
<a href="#">+</a>	2009	Senate	Shawn Kim and Tammy Tran	\$51,600	\$60,580	Employee claimed she was subjected to multiple instances of sexually harassing behavior by a co-worker, including statements about her appearance, pregnancy, calling her a "stupid fucking bitch." She maintains her complaints were ignored by who said, "That's just Shawn being Shawn."
<a href="#">+</a>	2008	Assembly	Unknown	\$0	\$0	Employee claimed in court filings she was the subject of sexual harassment, but settled for \$0. Settlement agreement indicates that employee's release of claims was in exchange for Assembly not seeking attorneys' fees against employee.
<a href="#">+</a>	2005	Assembly	Rebecca Cohn (D)	\$48,943	\$63,561	Employee accused Cohn of creating an uncomfortable workplace by, among other things, talking explicitly about her sex life, wearing inappropriate clothing, and asking the employee to hold her undergarments during a photo shoot for San Jose Magazine.
<a href="#">+</a>	2003	Assembly	Jon Waldie	\$540,000	\$746,216	Employee maintained she was harassed for breast-feeding her baby at work.
<a href="#">+</a>	2000	Assembly	Lou Papan (D) and Luke Breit	\$140,000	\$210,729	Employee claimed her supervisor tried to kiss her when they were discussing a project and kept putting his arms around her. She also said that at a charity golf tournament Papan kept asking her to stand on a table and take off her sweater.
<a href="#">+</a>	1998	Senate	Richard Polanco (D)	\$113,669	\$182,696	Employee alleged that she had been transferred from her job for refusing to "respond" to Polanco's advances."
<a href="#">+</a>	1997	Assembly	Mickey Conroy (R) and Pete Conaty	\$360,900	\$591,629	Employee claimed that, "If we were in a hotel for a fund-raiser, [Conroy] would come in and make comments such as, he did not know if he should make one hotel room reservation, since he had two women with him."
<a href="#">+</a>	1996	Assembly	Tom Connolly (D) (first victim)	\$100,000	\$167,480	Employee sued for sexual harassment. Abuser was later convicted of having sex with a 17-year-old girl.
<a href="#">+</a>	1996	Assembly	Tom Connolly (D) (second victim)	\$100,000	\$167,480	Employee sued for sexual harassment. Abuser was later convicted of having sex with a 17-year-old girl.
<a href="#">+</a>	1995	Assembly	Harvey Trice (R)	\$10,000	\$17,085	Employee complained that over a two-year period she was the target of vulgar sexual remarks.
<a href="#">+</a>	1995	Assembly	Rusty Areias (D) and John Barry Wyatt	\$59,500	\$101,656	Employee claimed her boss subjected her "to continued unwelcomed sexual advances which she rejected. She alleges that her boss sought to touch her in an inappropriate manner, yelled at her in public using obscene terms, and described his own sexual activities."
<b>Total</b>				<b>\$1,944,112</b>	<b>\$2,753,688</b>	

## Unverified Instances of Sex Discrimination Claims

This table lists details of employee settlement agreements that may or may not have included elements of sexual harassment. The records available are not complete enough to conclude one way or the other.

More	Year	House	Complaint Against	Total Amount (Known)	Total Amount (2017 Dollars)	Details
<a href="#">+</a>	2017	Senate	Unknown	\$4,500	\$4,500	Unknown
<a href="#">+</a>	2015	Senate	Unknown	\$45,084	\$47,517	Unknown
<a href="#">+</a>	2014	Senate	Unknown	\$85,400	\$91,319	Reports of employee being fired for nepotism.
<a href="#">+</a>	2011	Senate	Unknown	\$89,500	\$101,096	Type of harassment sustained unknown.
<a href="#">+</a>	2007	Senate	Unknown	\$0	\$0	Unknown
<a href="#">+</a>	2007	Senate	Unknown	\$0	\$0	Unknown
<a href="#">+</a>	2007	Senate	Unknown	\$45,000	\$54,456	Unknown
<a href="#">+</a>	1997	Senate	Don Sweat	\$32,000	\$52,458	Unknown
<a href="#">+</a>	1994	Senate	Cliff Berg	\$5,000	\$8,684	Unknown
	<b>Total</b>			<b>\$306,484</b>	<b>\$360,030</b>	

1. Following accusations of lurid sexual harassment by Harvey Weinstein, the #MeToo movement, and Sacramento's [We Said Enough](#) open letter. ↩
2. Myers, [The Times asked the California Legislature about sexual harassment. Here's what we learned — and what we still don't know](#), L.A. Times (Nov. 11, 2017) (at least \$250,000 since 2006). ↩
3. Ronayne, [Harassment, Racism Settlements Cost Legislature \\$580K Since 2012](#), Associated Press (Nov. 1, 2017) (\$580,000 since 2012) ↩
4. Koseff, [Harassment claim against California legislator cost taxpayers \\$100,000](#), Sac. Bee (Oct. 18, 2017) (\$850,000 in the past two decades). ↩
5. Calculated by adjusting each settlement amount using the California Consumer Price Index. ↩
6. See *Golden v. Cal. Emergency Physicians Med. Group* (9th Cir. 2015) 782 F.3d 1083. ↩
7. Cal. Govt. Code § 9075 (no applicable exceptions to disclosure). ↩
8. See McGreevy, [Harassment claim against legislator settled in secret, records show](#) (Dec. 12, 2011) (L.A. Times describing \$89,500 settlement for which it had no details); see also Ronayne, [Harassment, Racism Settlements Cost Legislature \\$580K Since 2012](#), Associated Press (Nov. 1, 2017) (Associated Press describing \$3,500 settlement for which it had no details). ↩
9. *Id.* ↩
10. Cal. Govt. Code § 9075(k). ↩
11. Such as the Dept. Fair Employment and Housing (DFEH) or the courts. ↩
12. Clauses making the terms of the agreement confidential or requiring "non-disparagement." ↩