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Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.

Proving "Sufficient Similarity" In Retaliation Cases

In California, employees with retaliation claims may utilize evidence of the employer's similar improper conduct involving other employees. Such evidence is often termed "sufficient similarity" or "me too" evidence and, depending on the cause of action, may be valuable when a pattern of conduct exists which is directed at more than one employee in a similar protected class or category. Thus, retaliation plaintiffs and their attorneys not only focus on the facts surrounding the incident which is the heart of their cause of action, they also determine if there exists any evidence of "sufficiently similar" retaliation against other employees.

In [McCoy v. Pacific Maritime Association, 216 Cal.App.4th 283 \(2013\)](#), the California Appeals Court found that "me-too evidence" which is probative of an employer's intent in retaliating against an employee, may be admissible evidence under California Evidence Code § 350. [Pantoja v. Anton, 198 Cal.App.4th 87, 115 \(2011\)](#). "Because intent is an element in an unlawful retaliation claim, evidence that a defendant intentionally retaliated against other employees for the same conduct engaged in by the

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

About Gray & Associates P.C.



plaintiff would be relevant." [McCoy at 297](#). The court observed that determining whether such claims are sufficiently similar to constitute relevant evidence is inherently fact intensive. [Sprint/United Management Co. v. Mendelsohn, 552 U.S. 379, 388 \(2008\)](#).

Evidence of "sufficiently similar" conduct may be proven by showing that another employee, holding a similar position to the plaintiff, was retaliated against for engaging in similar conduct as the plaintiff. The similar conduct could include reports of sexual harassment or discrimination, or violation of workplace laws. The employer, on the other hand, is likely to raise objections to such evidence based on relevance and privacy.

Another defense strategy against me-too evidence is the argument that it is inadmissible character evidence. Character evidence may not be used to show that an employer illegally discriminated against an employee. [Beyda v. City of Los Angeles, 65 Cal.App.4th 511 \(1998\)](#). While evidence of harassment of other employees unknown to the plaintiff is not admissible to prove a defendant's propensity to harass, such evidence may, however, be admissible to prove intent or the other matters listed in [California Labor Code Â§ 1101\(b\)](#).

The court clarified the limitations of Beyda, which did not address whether the evidence could be admitted under the provisions of California Labor Code § 1101(b), in [Johnson v. United Cerebral Palsy/Spastic Children's Foundation, 173 Cal.App.4th 740, 760 \(2009\)](#). The Johnson court reaffirmed that "sufficient similarity" evidence is admissible under rule 404(b) of the Federal Rules of Evidence to show intent or motive for the purpose of bringing into question an employer's stated reason for an adverse employment action. This evidence can create an issue of material fact as to whether the stated reason for the employer's conduct was pretextual and whether the actual reason was unlawful.

Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues.

Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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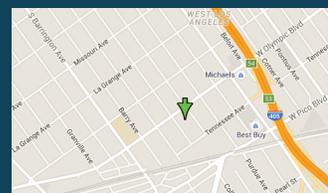
Because proving sufficient similarity turns on the facts in a particular case, one must be attentive to all of the events at a place of employment, not just those things that directly affect an individual's job performance. The court in [Beyda](#) made it clear that the workplace is viewed on a macro level: "The plaintiff's work environment is affected not only by conduct directed at herself but also by the treatment of others. A woman's perception that her work environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers." [Beyda](#) at 519.

Knowledge of how an employer treats other employees may constitute admissible evidence in an individual retaliation case and may establish a pattern of malicious conduct, which is one factor that a jury considers in awarding punitive damages. A retaliation case is fortified by "me-too" evidence.

Keeping current on the evolving world of employment law, especially issues such as employer retaliation, necessitates the competence and advice of a knowledgeable labor and employment law attorney. Schedule a free consultation with Nancy Gray to help protect your rights under both California and federal law. Call (310) 452-1211 or visit

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