

# In #MeToo era, accused harassers may seek injunctions to stop internal investigations

Employers facing a sexual harassment claim often act quickly to remove an alleged harasser from the workplace. After all, they've been told in the decades since the U.S. Supreme Court first ruled on sexual harassment that doing so helps show they acted promptly to stop harassment.

Now sexual harassment claims are on the rise, in the wake of the #MeToo social media movement. There has been predictable backlash.

Some alleged harassers are fighting back, arguing that the accusations do irreparable harm to their reputations. And they're not just threatening to file lawsuits.

They're seeking immediate temporary injunctions to halt internal harassment investigation and save their jobs.

The 9th Circuit Court of Appeals, which covers California employers, has recently ruled that such injunctions may be an appropriate temporary remedy. That greatly increases the odds that accused employees will call a lawyer if you move to suspend them with or without pay while you investigate the allegations.

**Recent case:** John was a long-serving tenured professor at Santa Clara University. When a former student went to the administration and complained that he had sexually harassed her, the university suspended him pending the results of an internal investigation.

He immediately sued for due process violations, age discrimination, intentional infliction of emotional distress, defamation and other state law claims. He then asked the court to issue immediate relief in the form of reinstatement. He argued he had a substantial likelihood of success on the merits of his lawsuit and that he would suffer irreparable reputational harm if he was not immediately reinstated.

The trial court denied his request, concluding that even if he were to prove that his reputation would be harmed by false allegations, that he had a loss of opportunity to pursue his chosen profession and suffered emotional distress, he could not show that the delay in the legal process would result in *irreparable* harm.

The court said that in the employment context, being discharged under ordinary circumstances isn't itself harmful enough to be irreversible. After all, employees who win lawsuits can collect back pay and damages for emotional suffering.

John appealed, arguing he was entitled to an injunction.

The 9th Circuit Court of Appeals agreed with John. It first noted that there had been another California case that did allow an injunction following a mere transfer to another position.

That case had involved a teacher who was HIV-positive. The employer, upon discovering his status, moved him immediately to an administrative position. The court in that case said the man could demonstrate irreparable harm from the loss of job satisfaction and from emotional distress.

In John's case, the 9th Circuit concluded that the lower court had erred when it refused to consider whether John suffered irreparable harm when suspended. The court sent the case back to the trial court for a complete analysis of whether John is due an injunction pending trial. (*Heineke v. Santa Clara University, et al.*, 9th Cir., 2018)

**Final note:** Now is a good time to call your attorney to discuss whether and under what circumstances it is wise to suspend an employee pending an investigation into wrongdoing.