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Chapter 951: A Step Towards Ending Sexual Harassment

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Chapter 951: A Step Towards Ending Sexual Harassment

Trisha Mannie*

Code Sections Affected

Civil Code § 51.9 (enacted), Government Code §§ 12930, 12948 (enacted).
SB 224 (Jackson); 2018 STAT. CH. 951.

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I. INTRODUCTION

Shortly after a jury found Bill Cosby guilty of sexual assault,¹ another famous Hollywood mogul, Harvey Weinstein, was arrested and charged for similar reasons.² In May 2018, Harvey Weinstein was arrested on charges of rape and other misconduct involving two women, while other women—many of whom are well-known celebrities—accused Weinstein of sexual harassment and assault.³ Accusations against Weinstein stemmed from his use of status, money, and power as a long-standing film producer.⁴ Weinstein became well-established from working on movies as widely-recognized as the cult classic *Pulp Fiction*,⁵ but tarnished his name by transforming what many women expected to be professional meetings into terrifying and traumatic experiences.⁶

Now, famous women are exposing unprofessional situations with current or potential employers dating back to the beginning of their careers.⁷ Women hired to play lucrative roles are sometimes placed in vulnerable positions in which they fear for the future of their careers as their employers make unwelcome advances, such as inviting them to their hotel rooms.⁸ Post-suggestive behaviors, statements warning actresses not to tell others of incidents of sexual harassment creates a state of mind that may be petrifying.⁹ Women may feel as though their careers are dependent on their acceptance or refusal of these advancements.¹⁰ The media is increasingly exposing incidents of sexual harassment.¹¹ In fact, a *New York Times* investigation revealed more than three decades of sexual harassment allegations against Weinstein, including settlements he made with former employees.¹²

The allegations made about Weinstein are only one example of sexual harassment in the workplace.¹³ There are countless allegations across industries

1. See generally Graham Bowley & Jon Hurdle, *Bill Cosby is Found Guilty of Sexual Assault*, N.Y. TIMES (Apr. 26, 2018), <https://www.nytimes.com/2018/04/26/arts/television/bill-cosby-guilty-retrial.html> (on file with *The University of the Pacific Law Review*) (explaining how Bill Cosby was found guilty of sexual assault).

2. Jodi Kantor & Rachel Adams, *Gwyneth Paltrow, Angelina Jolie and Others Say Weinstein Harassed Them*, N.Y. TIMES (Oct. 10, 2017), <https://www.nytimes.com/2017/10/10/us/gwyneth-paltrow-angelina-jolie-harvey-weinstein.html> (on file with *The University of the Pacific Law Review*).

3. *Id.*

4. *Id.*

5. *Harvey Weinstein*, ENCYCLOPEDIA BRITANNICA, (May 25, 2018), <https://www.britannica.com/biography/Harvey-Weinstein> (on file with *The University of the Pacific Law Review*).

6. Kantor & Adams, *supra* note 2

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Infra* Part IV.B. (describing two main types of sexual harassment occurrences in the workplace: “hostile environment” and “quid pro quo”).

where those in powerful positions use this advantage by attempting to manipulate people based on their reciprocity of sexual advances (quid pro quo sexual harassment) and unprofessional comments.¹⁴ Shortly after the Weinstein scandals started to surface, the We Said Enough Movement¹⁵ drafted a letter signed by women from every part of the political spectrum.¹⁶ This letter highlights the exhaustion of dealing with sexual harassment as women try to maintain their jobs and succeed in their careers.¹⁷ Similarly, the #MeToo Movement¹⁸ and the Time's Up Movement¹⁹ are aimed at cultivating a community of resources to help people through the process of dealing with and reporting sexual harassment and sexual violence.²⁰

Although laws against sexual harassment exist, the laws should clarify that people across all industries in powerful positions will be held accountable for their actions.²¹ Due to the recent exposure of numerous sexual harassment cases, it is important to clarify these legal boundaries.²² For many years, women have struggled with sexual harassment in the workplace, making it harder to achieve success within their careers and hindering their economic security.²³ Chapter 951 aims to provide notice to those in the workplace to deter discriminatory behavior, which has created a predatory environment where those with power and influence have taken advantage of those looking to develop their talent in the workplace.²⁴

II. LEGAL BACKGROUND

Sexual harassment is currently prohibited under Title VII of the Civil Rights Act of 1963,²⁵ California Civil Code § 51.9 (Unruh Civil Rights Act),²⁶ and the

14. *Id.*

15. Marisa Lagos & Scott Shafer, 'Enough': California's Women In Politics Call Out Sexual Harassment, NPR (Oct. 18, 2017), <https://www.npr.org/2017/10/18/558513045/-enough-california-s-women-in-politics-call-out-sexual-harassment> (on file with *The University of the Pacific Law Review*) (describing the letter many powerful women in California have signed, indicating their experiences with sexual harassment across industries).

16. *Id.*

17. *Id.*

18. Alix Langone, #MeToo and Time's Up Founders Explain the Difference Between the 2 Movements — And How They're Alike, TIME (Mar. 22, 2018), <http://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/> (on file with *The University of the Pacific Law Review*) (explaining #MeToo as being a movement focused on healing, sharing experiences, and providing resources to victims of sexual violence).

19. *Id.* (distinguishing the Times Up Movement from the #MeToo movement by emphasizing its focus on workplace equality, with sexual harassment being one way to stop employment disparities).

20. *Id.*

21. SENATE FLOOR, FLOOR ANALYSIS OF SB 224, at 1 (Jan. 11, 2018).

22. *Id.* at 3.

23. *Id.*

24. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 224, at 2–3 (Jan. 9, 2018).

25. 42 U.S.C.A. § 2000(e) (West 2018).

26. CAL. CIV. CODE § 51.9 (West 2018).

Fair Employment and Housing Act under Government Code § 12900, et. seq.²⁷ However, it is not uncommon for sexual harassment, as well as other forms of gender discrimination, to invade the workplace.²⁸

Section A explains Title VII of the Civil Rights Act of 1963, a commonly referenced federal law regarding sexual harassment.²⁹ Section B describes current California legislation prohibiting sexual harassment.³⁰ Section C discusses the California’s Fair Employment and Housing’s (DFEH) current involvement in sexual harassment incidents and complaints.³¹

A. Title VII of the Civil Rights Act of 1963 (Title VII)

Title VII prohibits discrimination in regards to “compensation, terms, conditions, or privileges of employment.”³² These categories are not meant to limit the areas of employment where discrimination is prohibited, but instead refer to an entire range of unequal treatment towards men and women in the workplace.³³ In 1980, the Equal Employment Opportunity Commission (EEOC) established guidelines acknowledging sexual harassment as a type of sex discrimination that is unlawful under Title VII.³⁴

To violate Title VII, the sexual harasser’s behavior must be severe or pervasive, making the work environment abusive to employees based on their sex.³⁵ The “severity” and “pervasiveness” of a person’s conduct involves sexually discriminate “intimidation, ridicule, and insult . . . that alter the conditions of the victims employment and create[s] an abusive working environment.”³⁶ The victim must also show that the behavior is not simply vulgar, but has discriminatory intent.³⁷ Sex-based discrimination that creates an aggressive or intimidating workplace environment contributes to the perpetuation of inequality in the

27. CALIFORNIA ATTORNEY GENERAL’S OFFICE, UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES 37, 44 (3d ed. 2001); CAL. GOV. CODE § 12900, et. Seq. (West 2018).

28. ERA Staff, *Stronger California Advocates Network Launches 2018 Legislative Agenda to Combat Sexual Harassment*, EQUAL RTS. ADVOC. (Mar. 19, 2018), <https://www.equalrights.org/stronger-california-advocates-network-launches-2018-legislative-agenda-combat-sexual-harassment/> (on file with *The University of the Pacific Law Review*).

29. *Infra* Part II.A.

30. *Infra* Part II.B.

31. *Infra* Part II.C.

32. 42 U.S.C.A. § 2000(e) (West 2018).

33. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986) (citing *Los Angeles Dep’t of Water and Power v. Manhart*, 435 U.S. 702, 707 (1978)).

34. *Id.* at 65.

35. *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 265 (2006).

36. *Id.* at 279 (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)).

37. *Id.* at 280.

workplace.³⁸ Because of the offensive nature of a sexual harasser's acts, sex discrimination is comparable to racial discrimination with the only recourse being the privilege of having a job and earning a living.³⁹

B. California Legislation Before Chapter 951

This Section describes California law preceding the enactment of Chapter 951. Subsection 1 analyzes California Civil Code § 51.9,⁴⁰ which is part of the Unruh Civil Rights Act.⁴¹ Subsection 2 discusses California Fair Employment and Housing Act and how it differs from Title VII.⁴²

1. Unruh Civil Rights Act

The Unruh Civil Rights Act prohibits discrimination based on “race, color, religion, sex, national origin, ancestry or disability” in every kind of business establishment.⁴³ The Unruh Act covers “all types of arbitrary discrimination” and “prohibits discrimination based on personal characteristics, geographical origin, physical attributes, and individual beliefs.”⁴⁴ It has been judicially and statutorily molded to encompass sexual harassment derived from concepts such as personal traits or beliefs, and aims to protect those within or associated with a protected class.⁴⁵ Thus, the Unruh Act bars discrimination against people due to their sexual orientation, age, and other similar origins of discriminatory beliefs.⁴⁶

Under California Civil Code § 51.9, liability for sexual harassment arises when (1) a “business, service, or professional relationship” exists between two people; (2) unwanted sexual advances or requests that are severe or pervasive are made; and (3) there is no easy, uncomplicated, way to terminate the relationship without causing personal harm or economic loss.⁴⁷ The statute lists multiple business, service, or professional relationships including attorney, psychotherapist, teacher, landlord, and real estate agent.⁴⁸ Additionally, the statute states that people involved in relationships *similar* to those specifically exemplified are also liable for sexual harassment.⁴⁹

38. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67 (1986).

39. *Id.*

40. *Infra* Part II.B.1.

41. *Infra* Part II.B.2.

42. *Infra* Part II.B.3.

43. CALIFORNIA ATTORNEY GENERAL'S OFFICE, UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES 37 (3d ed. 2001).

44. *Id.* at 45.

45. *Id.* at 37–38.

46. *Id.* at 37.

47. CAL. CIV. CODE § 51.9 (West 2018).

48. *Id.*

49. *Id.* (emphasis added).

2. California Fair Employment and Housing Act (FEHA)

The FEHA is another statute that includes harassment under the umbrella term “discrimination” by stating that it is unlawful to exhibit discriminatory behaviors against an employee via “compensation, terms, conditions, or privileges of employment.”⁵⁰ Legislators intended the FEHA to maintain the right to pursue or preserve employment without facing discrimination.⁵¹

The main differences between Title VII and the FEHA pertain to people covered under each statute.⁵² The FEHA addresses a broader range of classes, adding “gender identity and expression, disability, age, and marital status” to Title VII’s inclusive classes of “race, color, religion, sex, national origin, and genetic information.”⁵³ Also, the FEHA extends to employers with a minimum of five employees, whereas Title VII only covers employers with fifteen or more employees.⁵⁴

When interpreting if an act is considered sexual harassment under the FEHA, it must be determined whether a reasonable person would find the act offensive in order to differentiate simple teasing from hostile or abusive behaviors.⁵⁵ Both the FEHA and cases interpreting Title VII use the same “severe or pervasive” standard, and distinguish simple vulgarities from discriminatory behaviors to establish a sexual harassment claim.⁵⁶ Although Title VII and the FEHA differ in some regards, they both work to rid the workplace of sexual harassment and Title VII is often used in cases to decode the FEHA.⁵⁷

C. DFEH Involvement

In 2016, California’s Fair Employment and Housing Counsel developed guidelines to help employers manage sexual harassment in the workplace.⁵⁸ These guidelines emphasize the importance of taking sexual harassment encounters seriously, and that it will prompt an investigation if necessary.⁵⁹ The guidelines clearly state that effective sexual harassment programs are supposed to “buy in

50. CAL. GOV’T CODE § 12940(a) (West 2018).

51. *Id.* (citing *Flannery v. Cal. Highway Patrol*, 61 Cal. App. 4th 629 (1st Dist. 1998)).

52. Rodney Mesriani, *The Main Differences Between Title VII and California’s FEHA*, AVVO (Aug. 9, 2012), <https://www.avvo.com/legal-guides/ugc/the-main-differences-between-title-vii-and-california-feha> (on file with *The University of the Pacific Law Review*).

53. *Id.*

54. *Id.*

55. *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 284 (2006).

56. *Id.* at 280.

57. *Id.* at 278.

58. DEP’T OF FAIR EMPLOYMENT AND HOUSING, CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING WORKPLACE HARASSMENT GUIDE FOR CALIFORNIA EMPLOYERS (2016).

59. *Id.*

from the top,” indicating that people in managerial positions act as role models for appropriate behavior in the workplace.⁶⁰

Under the current guidelines, when someone reports a sexual harassment incident, the employer conducts the investigation themselves.⁶¹ The guidelines provide extensive information on what to do when sexual harassment occurs and how to conduct an investigation, if necessary.⁶² The DFEH also highlights the importance of having an anti-sexual harassment program and emphasizes that this prevention strategy is not only legally required but will help limit liability.⁶³

Existing law allows a victim to file a complaint with the DFEH within one year of the incident for any violations of the FEHA or the Unruh Act.⁶⁴ Filing a complaint initiates an “administrative process” where the DFEH launches an investigation.⁶⁵ If the DFEH finds the claim to be valid, it tries to settle the issue.⁶⁶ If a settlement cannot be reached, an administrative hearing is required.⁶⁷ There is always an option to file a lawsuit privately; however, if this is done, the DFEH will not take any action against any complaint filed in relation to the incident.⁶⁸

III. CHAPTER 951

By identifying investors, producers, directors, lobbyists, and elected officials as professions where sexual harassment can and does occur, Chapter 951 reinforces that people in powerful positions will be held accountable for engaging in sexual harassment.⁶⁹ This powerful addition validates the idea that sexual harassers in these professional relationships will be liable for sexual harassment.⁷⁰ The California Senate amended Chapter 951 in July 2018 to eliminate the current requirement that liability for sexual harassment exists only if the relationship is not easily terminated.⁷¹ In addition to this less restrictive rule, Chapter 951 broadens the scope of liability to include relationships where a business, service, or professional relationship do not yet exist, but are offered.⁷²

Lastly, Chapter 951 revises two governmental codes that give the DFEH the ability to investigate any complaints it receives regarding sexual harassment

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. CAL. ATTORNEY GENERAL’S OFFICE, UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES 39 (3d ed. 2001).

65. *Id.*

66. *Id.* at 40.

67. *Id.*

68. *Id.*

69. CAL. CIV. CODE § 51.9 (amended by Chapter 951).

70. Telephone Interview with Nora Lynn, Staffer, Capitol Office (June 20, 2018) (notes on file with *The University of the Pacific Law Review*).

71. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 224, at 4 (July 3, 2018).

72. *Id.*

issues.⁷³ Adding sexual harassment to the list of civil rights concerns in the workplace that the DFEH is qualified to inspect creates a sense of support for those who file complaints and assures victims they can seek recompense themselves, or have the DFEH assist them with an investigation.⁷⁴ As Senator Hannah-Beth Jackson, co-author of Chapter 951, stated:

Women’s rights are human rights. When we empower women in the workplace, it’s good for our families, our economy, and our future . . . We have to combat the cultural and systemic discrimination that strips women of their right to pursue a career free from sexual harassment and abuse.

Chapter 951 strives to clarify that regardless of the relationship, sexual harassment cannot occur in the workplace and a victim does not need to fear losing his or her job because of the harassment.⁷⁵

IV. ANALYSIS

Chapter 951 is one step towards decreasing, and eventually eliminating, sexual harassment in the workplace.⁷⁶ Chapter 951 works with a complement of other sexual harassment bills to create a strong effect that gives women a voice.⁷⁷ The enactment of Chapter 951 is indicative of a societal recognition that women’s livelihoods should not be dictated by whether or not a man is sexually interested in them.⁷⁸ Although existing law already prohibits sexual harassment, Chapter 951 will hopefully incentivize women who have been harassed to report their encounters to prevent future occurrences, instead of feeling confined and quieted.⁷⁹

Section A discusses how changes made by Chapter 951 provide steps towards eliminating sexual harassment.⁸⁰ Section B discusses current practices of inequality and discrimination in the workplace that Chapter 951 aims to mute.⁸¹ Section C elaborates on the fact that sexual harassment is not limited to women.⁸²

73. *Id.* at 5.

74. *Id.*

75. Telephone Interview with Nora Lynn, *supra* note 70.

76. *Id.*

77. *Id.*

78. *Id.*

79. Melanie Mason, *California State Senator Introduces Measure to Crack Down on Sexual Harassment in Silicon Valley*, L.A. TIMES (Aug. 17, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-state-senator-introduces-1502994052-htmlstory.html> (on file with *The University of the Pacific Law Review*).

80. *Infra* Part IV.A.

81. *Infra* Part IV.B.

82. *Infra* Part IV.C.

Section D examines Chapter 951's role in achieving a work environment that portrays equality and respect for all genders.⁸³ Section E considers Chapter 951's practical impact in ending sexual harassment in the workplace.⁸⁴

A. How the New Legislation Strives to End Sexual Harassment

This Section discusses how Chapter 951 changes existing law to accomplish the objective of ending sexual harassment in the workplace.⁸⁵ Subsection 1 discusses the inclusion of investors, elected officials, lobbyists, directors and producers as examples of professional relationships where sexual harassment may lead to liability, whether the relationship is official or not.⁸⁶ Subsection 2 elaborates on the removal of the requirement that professional relationships must not have the ability to be easily terminated to enforce liability.⁸⁷ Subsection 3 explores the DFEH's potential involvement in sexual harassment complaints.⁸⁸

1. Adding Examples and Extending the Scope of Civil Code § 51.9

By adding investors, elected officials, lobbyists, directors, and producers as examples of professional relationships to California Civil Code § 51.9 of the Unruh Civil Rights Act, Chapter 951 gives fair notice to people in these relationships of potential liability for sexual harassment.⁸⁹ By recognizing professional relationships with disproportionate power dynamics and significant potential for abuse, Chapter 951 deters sexual harassment and sexual violence in the workplace.⁹⁰ Further, Chapter 951 assures potential sexual harassment victims that the law protects them.⁹¹ In the past, many women did not voice their concerns about sexual harassment because they were unaware of their legal protections and feared repercussions from exposing their harassers.⁹² By reiterating that sexual harassment can occur in any professional relationship, and that harassers will be held accountable for their actions, Chapter 951 helps give a voice to women who have remained silent about their past experiences with sexual harassment in the workplace.⁹³

83. *Infra* Part IV.D.

84. *Infra* Part IV.E.

85. *Infra* Part IV.A.

86. *Infra* Part IV.A.1.

87. *Infra* Part IV.A.2.

88. *Infra* Part IV.A.3.

89. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71.

90. Janet Burns, *California Bill Tweaks Sexual Harassment Law to Account for Venture Capital*, FORBES (Aug. 27, 2017), <https://www.forbes.com/sites/janetwburns/2017/08/27/california-bill-tweaks-sexual-harassment-law-to-account-for-venture-capital/#2484beec3688> (on file with *The University of the Pacific Law Review*).

91. SENATE JUDICIARY COMMITTEE, *supra* note 24, at 2.

92. Burns, *supra* note 90.

93. *Id.*

Under the Unruh Civil Rights Act, absent an established business, service, or professional relationship, sexual harassers are not liable for their misconduct.⁹⁴ The Senate amended Chapter 951 to extend protections against sexual harassment to those who are offered a business, service, or professional relationship, but have not yet agreed to it.⁹⁵ By broadening the scope of protection against sexual harassment, Chapter 951 emphasizes that being on the verge of a business, service, or professional relationship or in the midst of one does not change the fact that sexual harassment is wrong and that those who engage in this type of act should be adequately disciplined.⁹⁶

2. *Removing the “Easily Terminated” Requirement*

Before the enactment of Chapter 951, the Unruh Civil Rights Act stated that a victim of sexual harassment must be able to prove that the relationship could be easily terminated before the harasser can be held liable.⁹⁷ Under the Unruh Civil Rights Act, it does not matter how offensive a comment is; if there is a way to easily end the relationship, the sexual harasser will not be held liable for his or her actions.⁹⁸ This requirement suggested that the victim was at fault because he or she could have “easily terminated” the relationship and failed to do so.⁹⁹ Chapter 951 eliminates this requirement and strays from the notion of blaming the victim.¹⁰⁰

Blaming victims for sexual harassment has historically been an ongoing issue.¹⁰¹ Studies show that gender plays a role in assigning blame for sexual harassment,¹⁰² and it is common for a victim to not report episodes of sexual harassment due to fear of being blamed by the harasser or because he or she blames themselves.¹⁰³ Eliminating the requirement of proving that a relationship is not easily terminable when reporting sexual harassment portrays a societal awareness

94. CAL. CIV. CODE § 51.9 (amended by Chapter 951).

95. *Id.*

96. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 5.

97. CIV. § 51.9.

98. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71.

99. *Id.* at 4–5.

100. *Id.* at 4.

101. Margaret De Judicibus & Marita P. McCabe, *Blaming the Target of Sexual Harassment: Impact of Gender Role, Sexist Attitudes, and Work Role*, 44 SEX ROLES, nos. 7–8, 401, 402 (Plenum Publishing Corp. 2001).

102. *See id.* at 414 (discussing a survey by Jensen and Gutek examining sexual harassment and blaming mindsets of employees, revealing men more than women agreed that when “a woman is asked by a man to engage in sexual relations, it’s usually because she did something to bring it about.” The survey also suggests those in an environment where sexual harassment is persistent and normalized can change their gender-based views and conduct in relation to the culture of their environment.).

103. *See* De Judicibus & McCabe, *supra* note 101 (referencing Adams, Kottke, & Padgitt, 1983; Fitzgerald et al., 1988; and Jensen & Gutek, 1982, who state that “fear of being blamed by the perpetrator and others, and self-blame are significant deterrents to reporting sexual harassment”).

that it is not up to the victim to remove himself or herself from a situation, but rather, the situation should not have occurred in the first place.¹⁰⁴ It is reasonable for those in professional relationships to not expect to be sexually harassed while at work.¹⁰⁵ Chapter 951 helps promote the necessary recognition that sexual harassment in the workplace is inappropriate behavior. It does this by removing the historically inaccurate practice of victim-blaming and eliminating the “easily terminated” requirement.

3. Changes in DFEH Involvement

Although the DFEH Workplace Harassment Guide illustrates important steps to combat sexual harassment in the workplace, Chapter 951 proposes additional measures to further combat this impending problem.¹⁰⁶ Modifying California Government Code § 12930 (f)(2) under Chapter 951 allows victims of sexual harassment to go through the DFEH when they make a complaint.¹⁰⁷ Prior law allowed the DFEH “to receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation” of various civil rights in the workplace.¹⁰⁸ Chapter 951 adds California Civil Code § 51.9 to that list of civil rights, which gives victims the choice to seek redress themselves or enlist the help of a DFEH investigation.¹⁰⁹ Chapter 951 also modifies California Government Code § 12948 to include California Civil Code § 51.9 in the FEHA’s list of codes establishing rights it deems unlawful “to deny or to aid, incite, or conspire in the denial of rights.”¹¹⁰ Both of these additions depict the increasing recognition of sexual harassment and the realization that anti-sexual harassment rules need to pervade the law for these offensive behaviors to stop.¹¹¹

B. Inequality and Discrimination in the Workplace

Inequality and discrimination, as exemplified by sexual harassment, are major ongoing issues in the workplace.¹¹² There are two types of sexual harassment that can occur at work: “hostile environment” and “quid pro quo.”¹¹³ Chapter 951 aims

104. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 4–5.

105. *Id.* at 5.

106. *Id.*

107. CAL. CIV. CODE § 51.9 (amended by Chapter 951).

108. CAL. GOV’T CODE § 12930 (amended by Chapter 951).

109. CIV. § 51.9.

110. CAL. GOV’T CODE § 12948 (amended by Chapter 951).

111. CIV. § 51.9.

112. *See generally* A STRONGER CALIFORNIA ADVOCATES NETWORK, A STRONGER CALIFORNIA: SECURING ECONOMIC OPPORTUNITY FOR ALL WOMEN, 2018 LEGISLATIVE AGENDA (2018) [hereinafter A STRONGER CALIFORNIA] (describing inequalities faced by women in the workplace and legislation aimed at decreasing the incidence of these career-hindering behaviors in the workplace).

113. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT, NO. N-915-050 (1990).

to rid the workplace of both.¹¹⁴

A “hostile environment” occurs when the work environment becomes aggressive due to sexual harassment.¹¹⁵ Additionally in this type of environment there is unwarranted “discriminatory [sex-based] intimidation, ridicule, and insult that is ‘sufficiently severe or pervasive’” making the work environment “abusive.”¹¹⁶ Chapter 951 admonishes hostile work environments by transparently asserting there are boundaries between those in professional relationships that should not be crossed in the workplace.¹¹⁷ Thus, business people in powerful positions are on notice of the potential liability created by sexual harassment behaviors.¹¹⁸ Chapter 951 also helps make sexual harassment in the workplace more easily recognizable through its pervasiveness in the law by adding California Civil Code § 51.9 to the list of civil rights protected by the DFEH. This addition helps victims recognize that sexual harassment incidents creating “hostile environments” should not be ignored, but instead reported.¹¹⁹

“Quid pro quo” occurs when current or potential employers base employment decisions on a person’s reaction to sexually harassing conduct.¹²⁰ A common example of “quid pro quo” sexual harassment is where someone withholds or grants a job promotion “in exchange for sexual favors.”¹²¹ Californians, being a part of one of the largest economies in the world, acknowledge that working women play a large role in maintaining the economy.¹²² However, these women often encounter sexual harassment that may force them out of their jobs if they do not react the way the harasser wants them to.¹²³

By removing the existing requirement that forces the victim to show the professional relationship was not easily terminable, Chapter 951 purges the work environment of “quid pro quo” sexual harassment.¹²⁴ This change eradicates the implication that victims are to blame for sexual harassment incidents.¹²⁵ The removal of the “easily terminable” requirement makes it clear that the victim’s inability to end the relationship or current situation does not play a role in whether

114. Civ. § 51.9.

115. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *supra* note 113.

116. *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 279 (2006) (citing *Harris v. Forklift Systems, Inc.* 510 U.S. 17 (1993)).

117. SENATE JUDICIARY COMMITTEE, *supra* note 24, at 2.

118. *Id.* at 6.

119. *Supra* Part IV.A.3 (discussing changes to DFEH involvement in reporting).

120. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, *supra* note 113.

121. *Id.*

122. *See generally* A STRONGER CALIFORNIA, *supra* note 112 (considering women’s role in California’s economy and their struggles with sexual harassment in the workplace).

123. *Id.*

124. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 4–5.

125. *Id.* at 4.

the harasser should be liable for his or her actions.¹²⁶ According to the United States Supreme Court, voluntary acceptance of sexual conduct does not invalidate sexual harassment; rather, the victim must show that the employer could tell the behavior was “unwelcome[ed].”¹²⁷ Chapter 951 is directly related to the concept of “quid pro quo” in that the victim’s response to sexual harassment, whether the professional relationship is “easily terminable” or not, should not alter the dynamics of a business or service relationship.¹²⁸ Not only should unwarranted sexual harassment not occur in the workplace, but refusal of unwarranted sexual advances should not hinder a person’s professional growth.¹²⁹

C. Effects of Anti-Sexual Harassment Movements

Many of the anti-sexual harassment movements—including We Said Enough,¹³⁰ #MeToo, and Time’s Up¹³¹—have a similar goal and strategy: to end sexual harassment in the workplace by giving victims a voice.¹³² The public nature of these movements act as an outcry to cease the horrendous reality of sexual harassment and create societal awareness.¹³³ Hearing stories from others about experiences with sexual harassment have given people the courage to speak up as they realize the ubiquity of sexual harassment in the workplace.¹³⁴

With the DFEH’s increased involvement provided by Chapter 951’s inclusion of California Civil Code § 51.9 in California Government Code § 12390 (f)(2) and California Government Code § 12948, it is evident that victims of sexual harassment deserve to be heard.¹³⁵ Complaints made to the DFEH will be investigated and the situation will be properly forwarded to ensure redress for violations of civil rights due to sexual harassment in the workplace.¹³⁶ These changes show victims that their claims are valid and should not be ignored.¹³⁷ Based on these changes to existing law, it is unambiguous that people in the workplace are entitled to respect within professional relationships exemplified through the illegality of sexual harassment and reinforcement that those who

126. *Id.*

127. U.S. EQUAL EMP’Y OPPORTUNITY COMM’N, *supra* note 113.

128. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 4.

129. *Id.* at 3–4.

130. WE’VE SAID ENOUGH, <https://www.wesaidenough.com/home> (last visited June 19, 2018) (on file with *The University of the Pacific Law Review*).

131. Langone, *supra* note 18.

132. *Id.*

133. Adam Nagourney & Jennifer Medina, *Women Denounce Harassment in California’s Capital*, N.Y. TIMES (Oct. 17, 2017), <https://www.nytimes.com/2017/10/17/us/california-women-sexual-harassment-sacramento.html> (on file with *The University of the Pacific Law Review*).

134. *Id.*

135. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 5.

136. *Id.*

137. *Id.*

violate this right should be penalized.¹³⁸ The implementation of Chapter 951 acknowledges the outspoken voices within these movements as legislation is updated to clarify sexual harassment regulations and encourage sexual harassment reporting and discipline.¹³⁹

D. What About Men?

A majority of cases in the press involve women speaking out about being sexually harassed, but there are instances where men are harassed as well.¹⁴⁰ Over the past ten years, about twenty percent of complaints submitted to the EEOC have been from men.¹⁴¹ According to Ernie Haffner, a Title VII attorney, sexual harassment of men is very underreported because of a societal typecast that men should not be affected by it.¹⁴²

Fortunately, existing laws protect both genders.¹⁴³ Just as SB 224 will hopefully encourage women to recognize that sexual harassment behaviors in the workplace should be reported—not accepted—it hopes to do the same for men.¹⁴⁴ In other words, Chapter 951 is not gender-specific.¹⁴⁵ It recognizes that despite existing law, sexual harassment still occurs regardless of whether the victim is male or female.¹⁴⁶ Additionally, Chapter 951 makes it easier for victims to seek help and report these incidents by adding the aforementioned professions, broadening the scope of the law, removing the requirement that the relationship must be easily terminable, and encouraging DFEH involvement.¹⁴⁷ Sexual harassment is an ongoing issue in the workplace and laws like Chapter 951 strive to permanently end the occurrence of these indecencies.¹⁴⁸

138. *Id.*

139. See CAL. CIV. CODE § 51.9 (amended by Chapter 951) (indicating legislative changes to increase the awareness and likelihood of reporting sexual harassment incidents).

140. See generally Evan Gibbs, *Terry Crews and Male-On-Male Sexual Harassment*, ABOVE THE LAW (Dec. 7, 2017), <https://abovethelaw.com/2017/12/terry-crews-and-male-on-male-sexual-harassment/> (on file with *The University of the Pacific Law Review*) (discussing Terry Crews' allegations of sexual harassment against Hollywood talent agent Adam Venit).

141. Michael Chandler, *Men Account for Nearly 1 in 5 Complaints of Workplace Sexual Harassment With the EEOC*, WASH. POST (Apr. 8, 2018), https://www.washingtonpost.com/local/social-issues/men-account-for-nearly-1-in-5-complaints-of-workplace-sexual-harassment-with-the-eeoc/2018/04/08/4f7a2572-3372-11e8-94fa-32d48460b955_story.html?utm_term=.10e6d378725e (on file with *The University of the Pacific Law Review*).

142. *Id.*

143. See CIV. § 51.9 (providing legislation that deters sexual harassment in the workplace without language favoring one sex over the other).

144. *Id.*

145. *Id.*

146. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 1–2.

147. CIV. § 51.9.

148. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 4.

E. Will Chapter 951 Actually Make A Difference?

Chapter 951 has faced no official opposition.¹⁴⁹ Registered support for the bill included the California Employment Lawyers Association, Equal Rights Advocates, Teamsters, and SAG-AFTRA.¹⁵⁰ With the aim of ending sexual harassment at its forefront, Chapter 951 received a positive response from investors, businesswomen, people working in technology, and those trying to join the industry.¹⁵¹ Directors, producers, and lobbyists were not pleased by the attention Chapter 951 brings to their industry; however, sexual harassment is a huge problem that needs to be addressed.¹⁵²

Chapter 951 does not work alone to end the sexual harassment epidemic,¹⁵³ but acts as an intermediate step towards ridding multiple industries of sexual harassment.¹⁵⁴ Several bills worked together to ensure that “money and privilege do not change basic human interaction,” and encourage respect towards one another in the workplace.¹⁵⁵ These bills include enhancing awareness and reporting of sexual harassment for both victims and bystanders.¹⁵⁶ This legislation acts to protect those victimized by degrading comments and unwarranted sexual advances.¹⁵⁷ Chapter 951 cannot eliminate sexual harassment alone; however, with the increasing awareness of a need for sexual harassment discipline and legislation being pushed forward with the same goal, it is likely that together, the proposed laws will make a difference.¹⁵⁸

149. *Id.* at 6.

150. *Id.*

151. Burns, *supra* note 90.

152. Telephone Interview with Nora Lynn, *supra* note 70.

153. *See generally* A STRONGER CALIFORNIA, *supra* note 112 (listing bills that involve eliminating sexual harassment in the workplace).

154. Telephone Interview with Nora Lynn, *supra* note 70.

155. *Id.*

156. *See* Email from Nora Lynn, SB 224 Staffer, 2018 Sexual Harassment Legislation (June 20, 2018) (on file with *The University of the Pacific Law Review*) (emphasizing bills that complement Chapter 951 and its aim to rid the workplace of sexual harassment and sexual violence); SB 1300, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as amended on Aug. 20, 2018, but not enacted) (bolstering sexual harassment training by making it mandatory for all employees to participate, and including a bystander training portion to educate employees on how to intercept, report, and file complaints); AB 1870, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as amended on Aug. 21, 2018, but not enacted) (moving to extend the cutoff date for filing a claim of sexual harassment from one year to three years); SB 1038, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as amended on June 25, 2018, but not enacted) (highlighting that people can be held personally responsible for acts of retribution against a victim filing a claim for sexual harassment or discrimination in the workplace); AB 3081, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (as amended on Aug. 24, 2018, but not enacted) (making it unlawful for an employer to terminate, discriminate, or seek vengeance against an employee who is a victim of sexual harassment).

157. *Id.*

158. Telephone Interview with Nora Lynn, *supra* note 70.

V. CONCLUSION

For years, women have struggled with sexual harassment in the workplace.¹⁵⁹ Recently, the media has played a huge role in publicizing misconduct involving sexual harassment within well-known industries.¹⁶⁰ With Chapter 951, co-author Senator Jackson hopes to encourage women to come forward with their experiences, and ensure they are provided with legal protection against sexual harassment in business, service, or professional relationship ventures, including those with investors, elected officials, lobbyists, directors, and producers.¹⁶¹ This transparency provides more protection to the same types of relationships before they are officially established, while also creating notice of liability to potential harassers in these professional relationships.¹⁶² Chapter 951 strives to make the reporting process easier and clearer for victims of sexual harassment by removing requirements perpetuating the stigma of victim blaming, and eliciting investigative help from the DEFH.¹⁶³ Chapter 951 represents California's progressive goal to end sexual harassment in the workplace by abandoning the idea that it is acceptable for professionals to participate in behaviors that have hindered a woman's career success for years.¹⁶⁴ Chapter 951 recognizes that women should not be devalued with degrading remarks of objectification, but instead uplifted and treated fairly as they noticeably contribute to prosperity within their industries.¹⁶⁵

159. Lagos & Shafer, *supra* note 15.

160. *Supra* Part I (explaining the media's interest and exposure of sexual harassment within industries as exemplified through examples, such as Bill Cosby and Harvey Weinstein).

161. CAL. CIV. CODE § 51.9 (amended by Chapter 951).

162. ASSEMBLY COMMITTEE ON JUDICIARY, *supra* note 71, at 4.

163. *Id.*

164. Burns, *supra* note 90.

165. *Id.*