



EMPLOYMENT LITIGATION CONFERENCE

Renaissance Newport Beach Hotel | January 22, 2026 | Newport Beach, CA

Sexual Orientation & Gender Identity Claims



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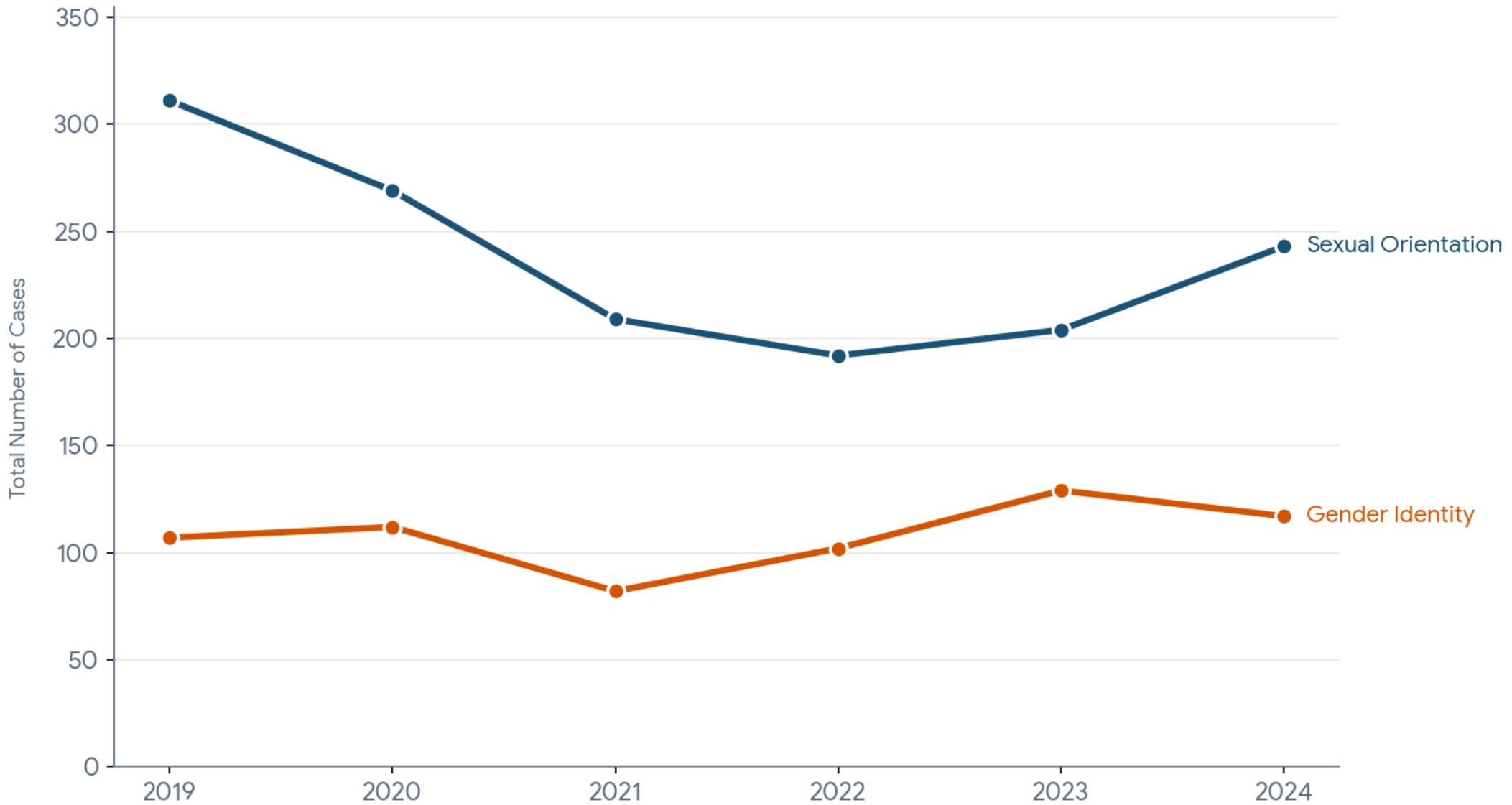


Hypothetical Case

- **Employer:**
Community Support Network — CA nonprofit serving LGBTQ+ clients; markets itself as inclusion-centered.
- **Employee:**
Pete Smith — White, heterosexual, cisgender man; 22-year employee; Senior Director with strong performance history.
- **Key Facts:**
 - New CEO states leadership should “better reflect the community” and that there are “too many straight white men” in senior roles.
 - Pete is removed from donor-facing spokesperson role and told to focus on internal work.
 - Pete applies for newly created VP role; CEO asks if he can “center queer voices.”
 - Role given to a newer LGBTQ+ hire with less experience.
 - Pete’s reporting line is downgraded; leadership stipend removed (“realignment”).
 - Leadership group chat includes comments like “we need fewer straight white men in leadership.”
 - Pete complains to HR; no investigation.
 - Pete receives first negative performance memo citing “tone” and “cultural alignment.”
 - Pete is terminated for “lack of alignment.”
 - Replacement hire identifies as LGBTQ+.
- **Issue:**
Reverse discrimination and retaliation under FEHA.

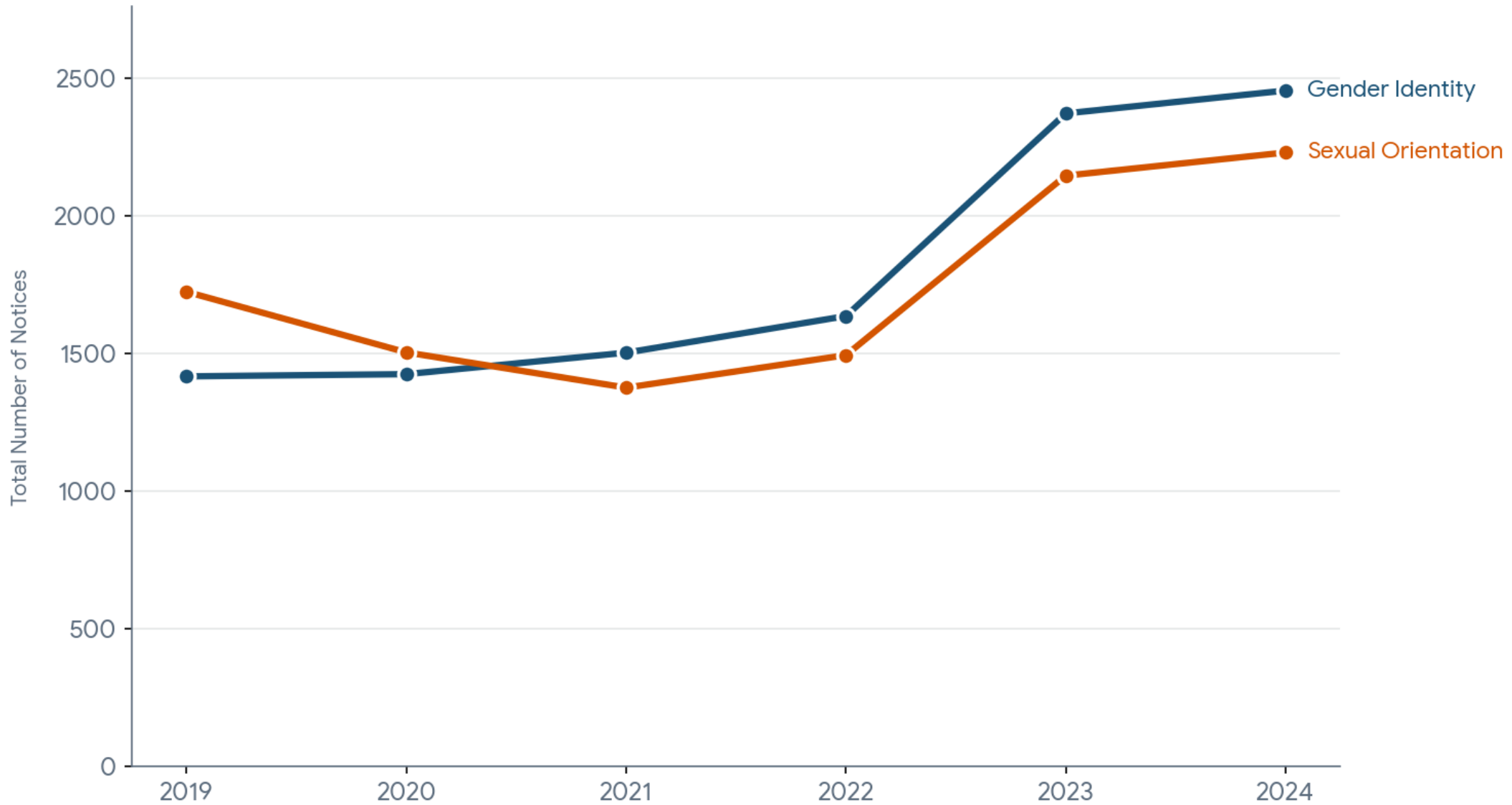


Employment Complaints Received (2019–2024)





Right-to-Sue Notices Issued (2019–2024)





Reference Cases

- Gay Law Students Ass'n v. Pac. Tel. & Tel. Co., 24 Cal. 3d 458. The California Supreme Court held that arbitrary exclusion of qualified individuals from employment opportunities by a state-protected public utility violated the state constitutional rights of the victims of such discrimination. The court recognized that discrimination against homosexuals in employment was contrary to California public policy, even though the Fair Employment Practice Act (FEPA) at the time did not explicitly prohibit discrimination based on sexual orientation. The court emphasized that the state may not exclude homosexuals as a class from employment opportunities without a showing that an individual's homosexuality rendered them unfit for the job . Gay Law Students Ass'n v. Pac. Tel. & Tel. Co., 24 Cal. 3d 458, Gay Law Students Asso. v. Pacific Tel. & Tel. Co., 65 Cal. App. 3d 608.
- Taylor v. Nabors Drilling USA, LP, 222 Cal. App. 4th 1228. The California Court of Appeal held that persistent homophobic slurs and harassment tied to perceived sexual orientation could constitute severe or pervasive harassment under FEHA. The court emphasized that harassment need not involve physical threats to be actionable and that verbal harassment alone could create a hostile work environment if it was sufficiently severe or pervasive . Taylor v. Nabors Drilling USA, LP, 222 Cal. App. 4th 1228.
- Husman v. Toyota Motor Credit Corp., 12 Cal. App. 5th 1168. 12 Cal.App.5th 1168 (2017) The California Court of Appeal held that circumstantial evidence, including stereotypical remarks and comparator evidence, could support claims of sexual-orientation discrimination and retaliation under FEHA. The court found that summary judgment was improperly granted because the plaintiff presented sufficient evidence to raise triable issues of fact regarding the employer's discriminatory motive . Husman v. Toyota Motor Credit Corp., 12 Cal. App. 5th 1168.
- Nichols v. Azteca Rest. Enters., 256 F.3d 864. (9th Cir. 2001) The Ninth Circuit held that harassment based on failure to conform to gender stereotypes constitutes sex discrimination under Title VII. The court found that the plaintiff, a male employee, was subjected to a hostile work environment due to persistent verbal abuse targeting his perceived failure to conform to traditional male gender norms. This case has been heavily relied upon in California FEHA cases involving gender expression .
- Doe v. Department of Corrections & Rehabilitation, 43 Cal. App. 5th 721. 43 Cal.App.5th 721 (2019)** The California Court of Appeal held that gender identity and gender expression are protected characteristics under FEHA. The court emphasized that adverse treatment tied to transgender status constitutes unlawful discrimination. The court also clarified that the denial of reasonable accommodations for a transgender employee could not be used to support a separate retaliation claim under FEHA . Doe v. Department of Corrections & Rehabilitation, 43 Cal. App. 5th 721.
- Ames v. Ohio Department of Youth Services, 605 U.S. 303 (2025) [prima facie standard is not different in “reverse discrimination” cases]
- Liberty Mutual thermonuclear verdict
- Mahler v. Judicial Council of California, 67 Cal.App.5th 82 (2021). Evidence of discrimination based on a protected class is not offset by evidence that other members of the same class received favorable treatment.



Questions?