

# Workplace Investigation Bibliography

Welcome to AWI's workplace investigation bibliography. Our goal is to supplement this bibliography with additional information and authorities on an ongoing basis. If there are cases, articles, statutes or other information that you would like us to consider including in this bibliography, please email that information to [office@aowi.org](mailto:office@aowi.org).

AWI wishes to thank and acknowledge the Alameda County Law Library for its invaluable assistance in creating this bibliography.

## I. CASES

### A. Adequacy of the Investigation

1. [\*Bradley v. Cal. Dept. Corrections\*, 158 Cal.App.4th 1612 \(2008\).](#)
2. [\*Chavez v. Thomas & Betts Corp.\*, 396 F.3d 1088 \(10th Cir. 2005\).](#)
3. [\*Cotran v. Rollins Hudig Hall\*, 17 Cal.4th 93 \(1998\).](#)
4. [\*Gilmore v. Union Pacific Railroad Co.\*, 857 F.Supp.2d 985 \(2012\).](#)
5. [\*King v. United Parcel Service, Inc.\*, 152 Cal.App.4th 426 \(2007\).](#)
6. [\*Kramer v. Wasatch County Sheriff's Office\*, 743 F.3d 726 \(2014\).](#)
7. [\*McGrory v. Applied Signal Technology Inc.\*, 212 Cal. App. 4th 1510 \(2013\).](#)
8. [\*Nazir v. United Airlines, Inc.\*, 178 Cal.App.4th 243 \(2009\).](#)
9. [\*Porter v. Erie Foods\*, 576 F.3d 629 \(2009\).](#)
10. [\*Silva v. Lucky Stores, Inc.\*, 65 Cal.App.4th 256 \(1998\).](#)
11. [\*Vallimont v. Chevron Research & Tech.\*, 2011 WL 1979483 \(May 23, 2011\).](#)

### B. Attorney-Client Privilege / Attorney Work Product

1. [\*Chubb & Son, Petitioner, v. The Superior Court of San Francisco County, Respondent; Tracy Lemmon, Real Party in Interest\*, 228 Cal.App.4th 1094 \(2014\)](#)
2. [\*Costco Wholesale Corp. v. Superior Court\*, 47 Cal.4th 725 \(2009\).](#)

3. [\*Kaiser Foundation Hospital. v. Superior Court\*, 66 Cal. App. 4th 1217 \(1998\).](#)
4. [\*Koumoulis v. Independent Financial Marketing Group, Inc.\*, 295 F.R.D. 28 \(2013\)](#)
5. [\*Sandra TE v. South Berwyn School District 100\*, 600 F.3d 612 \(7th Cir. 2010\).](#)
6. [\*Walker v. County of Contra Costa\*, 227 F.R.D 529 \(N.D. Cal. 2005\).](#)
7. *Wartell v. Purdue University*, Slip Copy (2014)
8. *Davis v. City of Seattle*, Not Reported in F.Supp.2d (2007)
9. [\*Wellpoint Health Networks, Inc. v. Superior Court of Los Angeles County\*, 59 Cal.App.4th 110 \(1997\).](#)

C. **Privacy / Employer Access to Employee-Generated Content**

1. [\*City of Ontario v. Quon\*, 560 U.S. \\_\\_\\_, 130 S.Ct. 2619 \(2010\).](#)
2. [\*Konop v. Hawaiian Airlines, Inc.\*, 302 F.3d 868 \(9th. Cir. 2002\).](#)
3. [\*Pietrylo v. Hillstone Restaurant Group\*, 2009 WL 3128420, U.S. Dist LEXIS 88702 \(D.N.J. 2009\).](#)
4. [\*Stengart v. Loving Care Agency\*, 990 A.2d 650 \(2010\).](#)
5. [\*Holmes v. Petrovich Development Co.\*, 191 Cal.App.4th 1047 \(2011\).](#)
6. [\*Sunbelt Rentals, Inc. v. Victor\*, --- F.Supp.2d ---- \(2014\) 2014 WL 4274313.](#)
7. [\*Aventa Learning, Inc. v. K12, Inc.\*, 830 F.Supp.2d 1083 \(2011\).](#)

D. **Retaliation**

1. [\*Brush v. Sears Holdings Corp.\*, 466 Fed.Appx. 781 \(2012\).](#)
2. [\*Crawford v. Metropolitan Government of Nashville and Davidson County\*, 129 S.Ct. 846 \(2009\).](#)
3. [\*Thompson v. North American Stainless, LP\*, 562 U.S. 170, 131 S.Ct. 863 \(2011\).](#)
4. [\*McDonnell v. Cisneros\*, 84 F.3d 256 \(1996\).](#)

5. [University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 \(2013\).](#)

## II. STATUTORY AUTHORITY

### A. **Federal**

1. Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*)
2. Whistleblower Protection Act of 1989 (5 U.S.C. 1211-1215, 1218-1219, 1221-1222) and the Whistleblower Protection Enhancement Act of 2012 ("WPEA"), Pub.L. 112-199.
3. Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 1983, 42 U.S.C. § 2000e-2(a)(1))
4. Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, Pub. L. 90-202).
5. Equal Pay Act of 1963 (Pub. L. 88-38) (29 U.S.C. § 206)
6. The Pregnancy Discrimination Act of 1978 (42 U.S.C. Chap 21, § 701(k) of the Civil Rights Act of 1964 Title VII).

### B. **States - California**

1. Civil Code §1785.1 *et seq.*--California Credit Reporting Agencies Act.
2. Civil Code §1786 *et seq.*--California Investigative Consumer Reporting Agencies Act.
3. Government Code §§12940, 12945, 12945.2 – California Fair Housing and Employment Act.
4. Government Code §3250 *et seq.*--Firefighters Procedural Bill of Rights.
5. Government Code §3300 *et seq.*--Public Safety Officers Bill of Rights.
6. Government Code §8547 *et seq.*—California Whistleblower Protection Act.

### III. REGULATIONS

- A. 16 C.F.R. 600.1 *et seq.* and Appendix to 16 C.F.R. Part 600, “Statements of General Policy or Interpretations” regarding the Federal Credit Reporting Act.
- B. 29 C.F.R. 24.100 *et seq.* Labor, Procedures for the handling of retaliation complaints under the employee protection provisions of six environmental statutes and section 211 of the energy reorganization act of 1974, as amended.
- C. 29 C.F.R. 1600 *et seq.* Regulations Relating to Labor, Equal Employment Opportunity Commission.

### IV. PERIODICALS

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- B. Alexander, Charlotte S.; Prasad, Arthi, *Bottom-up Workplace Law Enforcement: An Empirical Analysis*. Indiana Law Journal, 89 Ind. L.J. 1069 (2014).
- C. Ardalean, Paula, et al., *Development of Employment Rights and Responsibilities from 1985 to 2010*. ABA Journal of Labor & Employment Law, 25 Lab. Law. 449 (2009-2010).
- D. Baer, Miriam H. *Corporate Policing and Corporate Governance: What Can We Learn from Hewlett-Packard's Pretexting Scandal*, University of Cincinnati Law Review, 77 U. Cincinnati Law Review 523 (2008-2009).
- E. Beiner, Theresa M., *The Many Lanes out of Court: Against Privatization of Employment Discrimination Disputes*. Maryland Law Review, 73 Md. L. Rev. 837 (2013-2014).
- F. Brake, Deborah L., *Retaliation in the EEO Office*. Tulsa Law Review. 50 Tulsa L. Rev. 1 (2014).
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- H. Calisti, Mindy C., *You Are Being Watched: The Need for Notice in Employer Electronic Monitoring*, 96 Kentucky Law Journal 649 (2007-2008).
- I. Chu, Samantha Jean Cheng, *The Workplace Bullying Dilemma in Connecticut: Connecticut's Response to the Healthy Workplace Bill*. Connecticut Public Interest Law Journal, 13 Conn. Pub. Int. L.J. 351 (2013-2014).

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- L. Cleveland, Matthew J.; Metzler, Mary Theresa, *Disclosure of Witness Statements in Workplace Investigations: The National Labor Relations Board's New Test and Resulting Challenges for the Parties*. ABA Journal of Labor and Employment Law. 29 A.B.A. J. Lab. & Emp. L. 15 (2013-2014).
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- P. Fink, Jessica K., *In Defense of Snooping Employers*. University of Pennsylvania Journal of Business Law. 16 U. Pa. J. Bus. L. 551 (2013-2014).
- Q. First, Harry, *Branch Office of the Prosecutor: The New Role of the Corporation in Business Crime Prosecutions*, Vol. 89 N.C. L. Rev. 23 (2010-2011).
- R. Garrie, Daniel B., *Limiting the Affirmative Defense in the Digital Workplace*. Michigan Journal of Gender & Law. 19 Mich. J. Gender & L. 229 (2012-2013).
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- U. Green, Matthew W. Jr., *What's So Reasonable about Reasonableness - Rejecting a Case Law-Centered Approach to Title VII's Reasonable Belief Doctrine*. University of Kansas Law Review. 62 U. Kan. L. Rev. 759 (2013-2014).
- V. Green, Michael Z., *Against Employer Dumpster-Diving for Email*. South Carolina Law Review. 64 S. C. L. Rev. 323 (Winter 2012).

- W. Green, Michael Z., *Retaliatory Employment Arbitration*. Berkeley Journal of Employment and Labor Law. 35 Berkeley J. Emp. & Lab. L. 201 (2014).
- X. Howe, John; Hardy, Tess; Cooney, Sean, *Mandate, Discretion, and Professionalization in an Employment Standards Enforcement Agency: An Antipodean Experience*. Law & Policy. 35 Law & Pol'y 81 (January-April 2013).
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- II. Mao, Florence Z., *Is Litigation Your Final Answer: Why the Healthy Workplace Bill Should Include an ADR Provision*. *Journal of Law and Policy*, 21 J.L. & Pol'y 679 (2013).
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- KK. Miller, David, *Legislating Our Reasonable Expectations: Making the Case for a Statutory Framework to Protect Workplace Privacy in the Age of Social Media*. *University of Miami Business Law Review*, 22 U. Miami Bus. L. Rev. 49 (2013-2014).
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## V. BOOKS

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VI. **OTHER RESOURCES:**

- A. **Blog: Corporate Compliance. Discusses corporate policies, procedures, underlying practices, and management practices**
  - 1. <http://www.walkthecompliancewalk.com/>
- B. **California Department of Fair Employment and Housing**
  - 1. <http://www.dfeh.ca.gov>
- C. **Government Accountability Project (GAP)**
  - 1. <http://www.whistleblower.org/>
- D. **Labor & Employment Law Blog**
  - 1. <http://www.laboremploymentlawblog.com/>
- E. **Management Practices Group**
  - 1. <http://www.managementpractices.com/>
- F. **Mountain States Employers Council, Inc.**
  - 1. [http://www.msec.org/msecservices/investigation\\_services.asp](http://www.msec.org/msecservices/investigation_services.asp)
- G. **National Employment Lawyers Association (NELA)**
  - 1. <http://www.nela.org/NELA/>
- H. **Society for Human Resource Management (U.S.)**
  - 1. <http://www.shrm.org/Pages/default.aspx>

**I. Society of Corporate Compliance and Ethics (SCCE)**

1. <http://www.corporatecompliance.org>

**J. US Department of Labor**

1. <http://www.dol.gov/>
2. <http://www.osha.gov>
3. <http://www.whistleblowers.gov>
4. OSHA Whistleblower Investigations Manual -  
[https://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-03-003.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-003.pdf)

**K. U.S. Equal Employment Opportunity Commission (EEOC)**

1. <http://www.eeoc.gov/>
2. Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, Number 915.002 (June 18, 1999)  
<http://www.eeoc.gov/policy/docs/harassment.html>

**L. Workplace Investigations Blog**

1. <http://www.workplaceinvestigationsblog.com>