

LITIGATION



March 11, 2026

Via E-mail: civiljuryinstructions@jud.ca.gov

Mr. Eric Long
Advisory Committee on Civil Jury Instructions
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

re: Invitation to Comment—CACI 26-01

Dear Mr. Long:

The Jury Instructions Committee of the California Lawyers Association’s Litigation Section has reviewed the proposed revisions to civil jury instructions (CACI 26-01) and appreciates the opportunity to submit these comments.

1. CACI No. 100. Preliminary Admonitions

a. We suggest adding “applications” to the list of reference materials in the second sentence of the seventh paragraph of the instruction to encompass applications that may be used online or offline: “Do not use online tools, applications, dictionaries, the internet, or other reference materials.”

b. We suggest adding the following language after the first paragraph in the Directions for Use:

“Technology is continuously evolving. The court should consider whether, in the context of a particular case, it is necessary to identify specific examples of prohibited tools or methods by which contact or research can occur.”

2. CACI No. 441. Negligent Use of Deadly Force by Peace Officer—Essential Factual Elements

Agree.

3. CACI No. 1305B. Battery by Police Officer (Deadly Force)—Essential Factual Elements

Agree.

4. CACI No. 2500. Disparate Treatment—Essential Factual Elements (Gov. Code, § 12940(a))

a. We agree with the proposed revision to the Directions for Use and suggest that the same revision be made in CACI No. 2507 and any other instructions citing *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203 on this point.

b. We would revise language in the citation in the penultimate bullet point in the Sources and Authority for greater clarity: “disapproved on ~~other grounds~~ another point in”

5. CACI No. 2512. Limitations on Remedies—Same Decision

Agree.

6. CACI No. 2521A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

Agree.

7. CACI No. 2521B. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

Agree.

8. CACI No. 2521C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

Agree.

9. **CACI No. 2522A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))**

Agree.

10. **CACI No. 2522B. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))**

Agree.

11. **CACI No. 2522C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))**

Agree.

12. **CACI No. 2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements**

Agree.

13. **CACI No. 2547. Disability-Based Associational Discrimination—Essential Factual Elements**

Agree.

14. **CACI No. 2570. Age Discrimination—Disparate Treatment—Essential Factual Elements**

Agree.

15. **CACI No. 2740. Violation of Equal Pay Act—Essential Factual Elements (Lab. Code, § 1197.5)**

a. We agree with the proposed revisions to the instruction.

b. We agree with the proposed revisions to the Directions for Use.

c. We would revise the fourth bullet point in the Sources and Authority to state “Labor Code section 1197.5(1)(3).”

d. The quotation from *Hall v. County of Los Angeles* (2007) 148 Cal.App.4th 318, 324, in the seventh bullet point refers to “equal work,” but the statutory standard has been changed to “substantially similar work.” (Lab. Code, § 1197.5, subds. (a), (b).) The quotation is no longer accurate and potentially misleading, so we would strike this bullet point.

16. CACI No. 2741. Affirmative Defense—Different Pay Justified

Agree.

17. CACI No. 2742. Bona Fide Factor Other Than Sex, Race, or Ethnicity

Agree.

18. CACI No. 3061. Discrimination in Business Dealings—Essential Factual Elements (Civ. Code, § 51.5)

We would revise the proposed new third paragraph in the Directions for Use for greater clarity:

~~The Unruh Civil Rights Act is not limited to the categories expressly mentioned in the statute~~ may protect personal characteristics not expressly enumerated in the act. (*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1392 [127 Cal.Rptr.3d 794].) Although section 51.5 is a separate statute, the analysis is similar. ~~(*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1392 [127 Cal.Rptr.3d 794], at p. 1404~~ [the analysis under Civil Code section 51.5 is the same as the analysis under the Unruh Civil Rights Act].) Therefore, this instruction allows the user to “insert other actionable or protected characteristic...” throughout. ~~Nevertheless, there are limitations on expansion beyond the statutory classifications. A three-part analysis determines whether a claim can be based on an unenumerated personal characteristic.~~ First, ~~the claim must be based on a~~ personal characteristic must be similar to those listed in the statute. Second, the court must consider whether the alleged discrimination was justified by a legitimate business reason. Third, the consequences of allowing the claim to proceed must be taken into account. (*Semler, supra*, 196 Cal.App.4th pp. 1392–1393; see *Harris, supra*, 52 Cal.3d at pp. 1159–1162.) ~~However, these issues are most likely to be resolved by the~~ The court rather than the jury should conduct the analysis. (See *Harris, supra*, 52 Cal.3d at p. 1165; *Semler*, 196 Cal.App.4th at pp. 1395–1403.) If there are contested factual issues, additional instructions or special interrogatories may be necessary.

19. CACI No. 3102A. Employer Liability for Enhanced Remedies—Both Individual and Employer Defendants (Welf. & Inst. Code, §§ 15657, 15657.05; Civ. Code, § 3294(b))

a. The proposed new paragraph in the Directions for Use reflects the view that the 2025 statutory amendments affect the standard of proof to impose liability for enhanced remedies on an employer under Welfare and Institutions Code section 15657, subdivision (c). We question whether this is correct.

Welfare and Institutions Code section 156657, subdivision (c) states that the standards set forth in Civil Code section 3294, subdivision (b) must be satisfied before liability for damages or attorney fees under section 15657 may be imposed on an employer. Courts have held that the

findings required under Civil Code section 3294, subdivision (b) must be established by clear and convincing evidence. (*CRST, Inc. v. Superior Court* (2017) 11 Cal.App.5th 1255, 1262; *Barton v. Alexander Hamilton Life Ins. Co. of America* (2003) 110 Cal.App.4th 1640, 164.) CACI No. 3102A reflects this same standard (i.e., clear and convincing evidence) for findings under section 15657, subdivision (c).

The amendments to Welfare and Institutions Code section 15657 and new section 15657.02 arguably do not affect the standard of proof under section 15657, subdivision (c), which still requires proof under the standards set forth in Civil Code section 3294, subdivision (b) and does not refer to section 15657.02. We believe the better view is that the statutory amendments do not affect the standard of proof under subdivision (c) and therefore would strike the proposed new paragraph until a published opinion holds to the contrary.

b. We would strike the proposed new bullet point in the Sources and Authority for the same reason .

20. CACI No. 3102B. Employer Liability for Enhanced Remedies—Employer Defendant Only (Welf. & Inst. Code, §§ 15657, 15657.05; Civ. Code, § 3294(b))

Our comments are the same as for CACI No. 3102A.

21. CACI No. 3104. Neglect—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657)

Agree.

22. CACI No. 3107. Physical Abuse—Enhanced Remedies Sought (Welf. & Inst. Code, § 15657)

Agree.

23. VF-3102. Neglect—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.57, 15657; Civ. Code, § 3294(b))

a. We agree with reversing the order of questions 6 and 7 in the verdict form. We suggest that similar questions in VF-3103 (questions 6 and 7) and VF-3105 (questions 5 and 6) also be reordered.

b. The proposed new language after question 7 states that the jury should answer question 8 if the answer to “question 6 [or 7] is yes.” We believe the jury should answer question 8 if the answer to question 6 is yes, and there is no need to refer to question 7. Striking “[or 7]” would simplify this verdict form and eliminate the ambiguity that arises in the next sentence (“If you answered no, stop here ...”) from the failure to specify no to both questions 6 and 7 or no to either question 6 or 7. Accordingly, we would strike “[or 7].”

c. We would strike “or question 7” from the proposed new language in the Directions for Use for the reasons stated in our comments to CACI No. 3102A.

24. VF-3103. Neglect—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.57, 15657; Civ. Code, § 3294(b))

We would strike “question 6 or” from the proposed new language in the fifth paragraph of the Directions for Use for the reasons stated in our comment a to CACI No. 3102A.

25. VF-3104. Physical Abuse—Individual or Individual and Employer Defendants (Welf. & Inst. Code, §§ 15610.63, 15657; Civ. Code, § 3294(b))

a. We agree with the proposed revisions to the verdict form, except we would delete “[or 6]” in the language following question 6 for the reasons stated in our comment b to VF-3102.

b. We would delete “or question 6” from the proposed new language in the fourth paragraph of the Directions for Use for the reasons stated in our comment a to CACI No. 3102A.

26. VF-3105. Physical Abuse—Employer Defendant Only (Welf. & Inst. Code, §§ 15610.63, 15657; Civ. Code, § 3294(b))

We would delete “question 5 or” from the proposed new language in the fourth paragraph of the Directions for Use for the reasons stated in our comment a to CACI No. 3102A.

27. CACI No. 3920. Loss of Consortium (Noneconomic Damage)

Agree.

28. VF-3907. Damages for Loss of Consortium (Noneconomic Damage)

Agree.

29. CACI No. 4000. Conservatorship—Essential Factual Elements

Agree.

30. CACI No. 4002. “Gravely Disabled”

Agree.

31. CACI No. 4320. Affirmative Defense—Implied Warranty of Habitability

a. We agree with the proposed revisions to the instruction.

b. The statement “The habitability characteristics set out in (i) and (j) only apply to leases entered into, amended, or extended on or after January 1, 2026,” in the third paragraph of the Directions for Use lacks a citation. The appropriate citation is Civil Code section 1941.1, subdivision (a)(10) & (11), which we would add.

c. The citation following the final sentence in the third paragraph of the Directions for Use, “There are exceptions to these two required characteristics,” should be Civil Code section 1941.1, subdivision (b), and not Code of Civil Procedure section 1174.1(b).

32. CACI No. 4350. Breach of Implied Warranty of Habitability—Essential Factual Elements

a. We agree with the proposed revisions to the instruction.

b. The statement “The habitability characteristics set out in (i) and (j) only apply to leases entered into, amended, or extended on or after January 1, 2026,” in the fourth paragraph of the Directions for Use lacks a citation. The appropriate citation is Civil Code section 1941.1, subdivision (a)(10) & (11), which we would add.

c. The citation following the final sentence in the fourth paragraph of the Directions for Use, “There are exceptions to these two required characteristics,” should be Civil Code section 1941.1, subdivision (b), and not Code of Civil Procedure section 1174.1(b).

33. CACI No. 5000. Concluding Instructions

a. We suggest adding “applications” to the list of reference materials in the last sentence of the third paragraph of the instruction to encompass applications that may be used online or offline: “Do not use online tools, applications, dictionaries, or other reference materials.”

b. We suggest adding the following language after the first paragraph in the Directions for Use:

“Technology is continuously evolving. The court should consider whether, in the context of a particular case, it is necessary to identify specific examples of prohibited tools or methods by which contact or research can occur.”

c. We agree with the proposed revisions to the fifth bullet point in the Sources and Authority and suggest that the same revisions be made to the same language in the twelfth bullet point in the Sources and Authority for CACI No. 100.

Sincerely,

Reuben A. Ginsburg
Chair, Jury Instructions Committee of the
California Lawyers Association’s
Litigation Section