

March 2019

\$90.7 Million and Counting ...

Lawsuit Settlement Costs Continue to Soar

by Patrick Monette-Shaw

It's been observed elsewhere that keeping a bully on staff is the equivalent of burning a big pile of money in the back of your building.

By extension, keeping bully's employed in San Francisco City government is like throwing \$90.7 million — and growing — of taxpayer funds down the toilet. Will there ever be a taxpayer revolt in San Francisco?

Clearly, the costs of settlements awarded, and the costs of City Attorney time and expenses involved in fighting lawsuits filed by City employees that have now reached \$90.7 million, is just the tip of the iceberg in the total costs of workplace bullying. It's nearly impossible to estimate the financial costs associated with employees' lost productivity, lower morale, increased absenteeism, and costs associated with employee turnover, recruitment, and attrition.

City managers and our elected officials cannot afford to ignore the high cost of bullying, nor should taxpayers. After all, in the 11-year period between January 1, 2007 and December 14, 2018 there have been at least 461 lawsuits filed by City employees for violations of various prohibited personnel practices. To date, 359 cases have been concluded and 102 remain pending.

The term "prohibited personnel practices" refers to behavior banned by existing federal, state, and local laws as unlawful — unwanted behavior like sexual harassment and sexual discrimination, sexual orientation discrimination, racial discrimination and harassment, age discrimination, disability discrimination, wrongful termination, and other illegal practices.

It's worth repeating that it's clear from those 461 lawsuits that you can only push employees so far before they fight back, a concept apparently completely lost on our Mayor, San Francisco's Department of Human Resources, department heads, senior managers in every City department, and the City Attorney's Office.

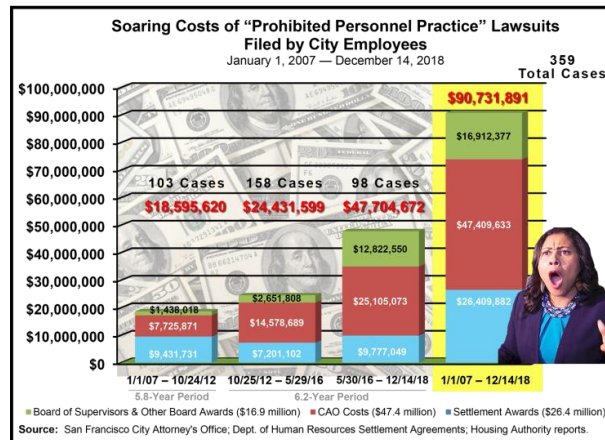
This On-Going Series of Articles

Back on April 16, 2013 the *San Francisco Examiner* carried [an article by Chris Roberts](#) reporting \$11 million had been awarded to City employees in 103 prohibited personnel practice lawsuits. The \$11 million Mr. Roberts initially reported was subsequently confirmed to be even higher, at a minimum of at least \$12.1 million, due in large measure to under-reporting by the City Attorney's Office of actual settlement amounts.

In May 2013, the *Westside Observer* kindly published my initial [article](#), "*High Costs of City Attorney's Advice*" on the costs of retaliation and bullying of City employees.

Following up to obtain fuller data prior to issuing my first update in July 2016, additional data revealed the \$12.1 million had grown to \$18.6 million, by finally adding in the City Attorney's time and expenses trying to stop the lawsuits.

Three years later I published a first update in July 2016, reporting that Dr. Derek Kerr — the former Senior Physician Specialist at Laguna Honda Hospital for over 20 years wrongfully terminated for his exposé of the raid of the hospital's



Mayor London Breed: Poor Mayor Breed inherited the massive problems and associated costs of lawsuits filed by City employees, a significant percentage of which were filed during the watch of her predecessor, Mayor Ed Lee. Of the 359 lawsuits concluded to date, only two were filed in Court after Lee died on December 12, 2017.

Keeping bully's employed in San Francisco City government is like throwing \$90.7 million of taxpayer funds down the toilet.

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Bar Chart Illustration: Patrick Monette-Shaw
Breed Photo: "Styrofoam Monster" campaign ad.

patient gift fund spent on staff perks instead — had uncovered the underlying data through a public records request to the City Attorney in October 2012, which I performed a secondary data analysis of.

By the time of my [first update](#) (July 2016), the City’s costs had grown to \$41.6 million through May 29, 2016. By the [second update](#) (April 2017), total costs grew again to \$58.2 million through March 8, 2017. By the [third update](#) (April 2018), costs had risen to \$70 million through December 22, 2017. In this fifth article — the fourth update — costs climbed by another \$20.7 million in the one-year period between December 23, 2017 and December 14, 2018 to a total of \$90.7 million since 2007 — a whopping 649.6 percent change increase since the \$12.1 million was reported in May 2013.

The source of the data are public records from the City Attorney’s Office, the Board of Supervisors, San Francisco’s Department of Human Resources, and other Boards and commissions authorized to settle and approve lawsuits on behalf of the City.

Current Update of Lawsuits

After placing a records request on December 13, 2018 to learn how many lawsuits may have been settled in the one-year period between December 23, 2017 and December 14, 2018, the City Attorney’s Office took 41 calendar days in which to respond with corrected information on February 4, after initially providing clearly flawed and incorrect data on December 31, 2018.

It was shocking learning on February 4 an additional 38 lawsuits had been concluded at an increased cost of \$20.7 million in the one-year period over the \$70 million *Westside Observer* last reported in March 2018. That’s the largest one-year increase since first beginning writing this series of articles.

A good chunk of the \$20.7 million one-year increase involved a class-action lawsuit filed by Muni drivers against the SFMTA on July 16, 2012 alleging violations of Compensation law, in which the drivers were awarded an \$8 million settlement. But that doesn’t include the lawsuits’ total costs.

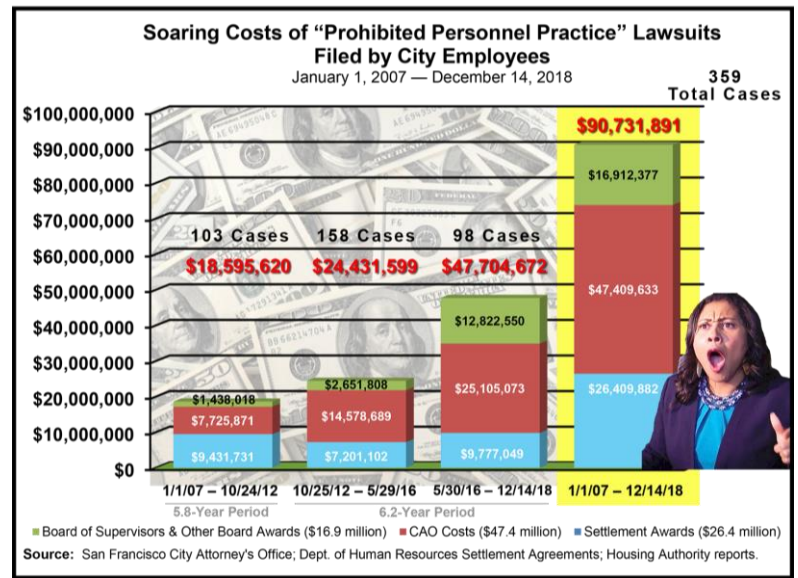
Figure 1 shows the significance of the total costs, split almost evenly between City attorney time and expenses (\$47.4 million) vs. settlement awards authorized by the City attorney’s Office, the Board of Supervisors, and other City boards and commissions authorized to settle lawsuits on behalf of the City (\$43.3 million).

San Francisco Examiner reporter Joe Fitzgerald Rodriguez initially [reported](#) on December 25, 2016 that the drivers were likely to earn that award because the MTA had failed to properly pay drivers overtime in violation of the California Labor Code and San Francisco’s Minimum Wage Ordinance. Drivers were required to clock in at one bus yard, and then travel — unpaid — to a second bus yard to pick up buses they were assigned to drive.

Although the MTA Board approved the \$8 million [settlement](#) on January 3, 2017, the CAO took its sweet time and didn’t officially close the drivers’ lawsuit until February 28, 2018. And more shockingly, when the CAO finally reported the closure of the lawsuit, the CAO revealed it had its spent \$746,970 in City Attorney time and an additional \$1,884,989 in City Attorney expenses for a total of \$2.6 million in addition to the \$8 million settlement approved by MTA’s Board.

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Figure 1: Cumulative Costs of Lawsuits Filed by City Employees



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“ The City Attorney’s Office revealed it had its spent a total of \$2.6 million fighting the lawsuit in addition to the \$8 million settlement approved by the MTA, for a total of \$10.6 million — half of the \$20.7 million one-year increase. ”

This single lawsuit cost the City and its taxpayers a total of \$10.6 million — half of the \$20.7 million one-year increase — because MUNI felt it didn't need to follow California's Labor Code!

Of the 359 lawsuits concluded to date, only two were filed in Court during Breed's watch as mayor after Lee died on December 12, 2017. By contrast, of the 102 lawsuits still pending as of December 15, 2018, 61 of them were filed before Lee died and 41 of them were filed during Breed's term as mayor.

The Top-Seven Lawsuit Categories

The City Attorney's Office has 32 separate categories of prohibited personnel practices. As in past year, wrongful termination and racial discrimination lawsuits filed by City employees against the City have accounted for the lion's share of settlements awards and CAO time and expenses.

Table 1: Top-Seven Categories of Prohibited Personnel Practice Lawsuits — January 1, 2007 – December 14, 2018

Code	Type of Case	# of Cases	% of Total Cases	CAO Settlement Amount	BoS & Other Awards	CAO Time & Expenses	Total Costs	% of Total Costs	Pending Cases	Total # of Cases
1	6010 Wrongful Termination (Emp agst. City)	57	15.9%	\$ 5,737,310	\$ 3,467,412	\$ 11,150,872	\$ 20,355,593	22.4%	8	65
2	6035 Racial Discrimination (Emp agst. City)	55	15.3%	\$ 4,821,293	\$ 435,000	\$ 9,508,836	\$ 14,765,129	16.3%	4	59
3	6020 Compensation (Employee against City)	16	4.5%	\$ 1,465,063	\$ 9,042,383	\$ 3,631,914	\$ 14,139,360	15.6%	2	18
4	6099 Other-Actions by Employees against City	69	19.2%	\$ 2,586,621	\$ 1,011,410	\$ 5,860,655	\$ 9,458,686	10.4%	18	87
5	6080 Disability Discrimination (Emp v City)	51	14.2%	\$ 3,108,943	\$ 737,034	\$ 4,120,088	\$ 7,966,065	8.8%	13	64
6	6030 Sexual Discrimination (Emp against City)	14	3.9%	\$ 2,502,500	\$ 431,193	\$ 2,808,740	\$ 5,742,433	6.3%		14
7	6050 Sexual Harassment (Emp against City)	21	5.8%	\$ 1,788,942	\$ 220,395	\$ 3,262,712	\$ 5,272,049	5.8%	2	23
Total Top-Seven Categories		283	78.8%	\$ 22,010,671	\$ 15,344,827	\$ 40,343,817	\$ 77,699,315	85.6%	47	330
Percent of All Total Cases		78.8%		83.3%	90.7%	85.1%	85.6%		46.1%	71.6%
Total All Cases		359	99.2%	\$ 26,409,882	\$ 16,912,377	\$ 47,409,633	\$ 90,731,891	100.0%	102	461

Source: San Francisco City Attorney's Office, multiple public records requests since 2007.

Table 1 illustrates, in part:

- Of the \$90.7 million in total costs since January 2007, the 283 concluded lawsuits in the top-seven categories accounted for \$77.7 million (85.6%) of the total costs.
- The 57 concluded wrongful termination lawsuits that cost \$20.3 million accounted for nearly a quarter of the \$90.7 million in total costs, despite representing only 15.9% of the total 359 lawsuits concluded.
- The City spent a staggering \$11.1 million trying to stop the 57 concluded wrongful termination lawsuits.
- The 35 sexual discrimination and sexual harassment lawsuits accounted for 9.7% of the total 359 lawsuits but accounted for \$11 million (12.1%) of total costs.
- Of the 38 lawsuits concluded between December 23, 2017 and December 14, 2018, 21 of them were filed in San Francisco Superior Court. Court records show that 11 of those 21 cases had explicitly named "retaliation" in their initial court filings, in addition to their main causes of action.

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Table 2 (at the end of this article) lists all of the 32 categories of prohibited personnel practice lawsuit costs.

Other Oddities

Other oddities in the new one-year data include:

- In a case filed by San Francisco firefighters John H. Danner, III, et al. [Superior Court Case # CGC-10-501981] filed on July 28, 2010 alleging Age Discrimination, the firefighters were awarded a settlement of zero dollars on October 16, 2018,

while the CAO spent \$1.7 million between City Attorney time and expenses fighting their lawsuit. It took the City Attorney eight years and three months to conclude and report the lawsuit settlement and associated costs.

Between the MUNI drivers' and firefighters' two lawsuits, the CAO spent a combined \$4.3 million trying to stop both cases, fully 47.8% of the \$8.9 million in CAO time and expenses in the \$20.7 million in total costs for the 38 lawsuits.

In the first 103 lawsuits Roberts first reported in the *Examiner* in 2013, we later learned that the highest amount of CAO litigation costs for a single lawsuit had involved just \$529,597. Now the City Attorney apparently feels emboldened to run up costs of litigation in a single lawsuit to \$2.6 million. Can anybody say "over-litigation"?

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In a case not yet concluded, the CAO has reportedly run up \$4 million to \$6 million (or more) in costs fighting a single wrongful termination lawsuit. Watch this space for further updates on that lawsuit and the eventual settlement awarded.

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- Fully 18 of the 38 lawsuits concluded during the one-year period received no settlement awards at all, but the CAO ran up \$5.4 million in time and expenses in those 18 lawsuits, 59.8% of the total \$8.9 million in CAO time and expenses for all 38 cases.
- The \$20.7 million one-year increase reported here includes a \$400,000 settlement award paid to police officers Juanita Stockwell, et al. [Superior Court lawsuit #CGC-15-549482 filed on December 17, 2015] against the SFPD. The Board of Supervisors passed Ordinance #239-18 on second reading on October 2, 2018 that was approved by the Mayor on October 12, 2018, awarding Stockwell et al. the \$400,000 settlement. But the CAO is still listing it as a “pending” unresolved lawsuit as of February 4, 2019, fully two months after the Mayor approved the settlement. The CAO didn't report its time and expenses for the case, claiming the Plaintiffs have appealed their lawsuit, so the case is still officially open. It's thought the \$20.7 million will climb higher, perhaps significantly.
- On February 4, 2019 the CAO responded to a records request about a previously-reported pending case. Amazingly, the CAO admitted that their “final closing processes” are delayed, and often it has to keep a matter open even though the case is otherwise concluded. The CAO admitted that sometimes it fails to report settlement awards and costs of litigation in some matters when a case is finally closed between records requests.

It is not known how many times in the past this has occurred, or whether the CAO has failed to provide accurate data in the past for lawsuits that are formally closed after a records request for a particular reporting period is provided due to its internal processes for coding the dates individual cases are finally closed. It's not known how many cases have *not* been included in the running count of 359 concluded lawsuits, and whether the \$90.7 million is actually under-reported.

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In addition to the oddities noted above, there are other problems with the data.

Misclassification of Lawsuit Categories Obscures Data

As noted in previous articles in this series, we may never know exactly how many wrongful termination or racial discrimination lawsuits cases have actually been brought by San Francisco city employees. That's because of the way they are classified by the City Attorney's Office, which appears to use a different nomenclature to categorize cases than the Courts do.

“ The City Attorney's Office appears to use a different nomenclature to categorize cases than the Courts do. ”

- The CAO reclassified a “6035 Racial Discrimination” lawsuit as a “6005 First Amendment Violation” case.
- The CAO reclassified a Superior Court lawsuit alleging 10 factors — including Racial Discrimination, Harassment Based on Race, Constructive Discharge, Retaliation, and Harassment Based on Disability, along with five other causes — as a “6099 Other-Actions.”
- The CAO classified two “6010 Wrongful Discharge” lawsuits as “6080 Disability Discrimination” cases.
- The CAO classified another “6010 Wrongful Discharge” lawsuit as a “6070 General Harassment” case. Another “Wrongful Termination” lawsuit was reclassified as a “6099 Other-Actions” case.
- A lawsuit alleging sex-based harassment by a lesbian supervisor (which would make it a “6060 Sexual Orientation Harassment”) case was classified by the CAO as a “6070 General Harassment” case.
- The CAO classified a “6080 Disability Discrimination” lawsuit as a “9113 Miscellaneous” case.
- The CAO classified a “6050 Sexual *Harassment*” lawsuit as a “6030 Sexual *Discrimination*” case.
- The CAO classified a probable “6055 *Racial* Harassment” lawsuit as a “6050 *Sexual* Harassment” case.
- The Juanita Stockwell, et al. lawsuit [Superior Court case #CGC-15-549482] was first reported by the CAO as pending as of December 23, 2017 as a “6099 Other Actions” lawsuit, but the CAO changed it to a “6020 Compensation” lawsuit that remains pending as of December 15, 2018, with no explanation as to why it was reclassified to another category while it was still pending.

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Could the San Francisco City Attorney’s Office deliberately be misclassifying various lawsuits into other categories to fudge the actual number of prohibited personnel lawsuits in each category?

San Francisco Taxpayer’s Lost Opportunity

The Board of Supervisors just created a *lost* opportunity for San Francisco taxpayers.

On December 13, 2018 both the U.S. Senate and House of Representatives passed legislation unanimously in both chambers to reform how sexual harassment lawsuits are handled on Capitol Hill — including holding lawmakers liable for paying for sexual harassment and retaliation settlements out of their own pockets, rather than the former practice of having U.S. taxpayers foot the bill.

During hearings on amending the City’s existing sexual harassment prevention training Ordinance to cover all forms of harassment against City employees, I urged the Board of Supes to pass legislation similar to the U.S. Senate and House of Representatives by requiring City employee-defendants found guilty of harassment in a court of law to have to pay settlement costs out of their own pockets. It would be the surest and fastest way to stop the harassment if the perps knew they’d have to pay the settlements themselves, and the behavior would stop almost instantly.

“ The Board of Supervisors created a *lost* opportunity for San Franciscans by turning a cold shoulder and failing to introduce amendments to require defendants to pay settlements themselves. ”

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The Board of Supervisors turned a cold shoulder and failed to consider and introduce amendments to require defendants to pay settlements themselves.

As long as the City — by way of taxpayers — have to pick up the costs, there is no incentive for the wrongdoers to stop harassing and bullying other City employees, because there are no meaningful consequences to their own wallets!

If taxpayers really want to be let off the hook in paying for the sexual harassment settlements, they should demand that the Board of Supervisors require the offenders to pay the costs out of their own pockets. Taxpayers could have already saved \$11 million in the 35 sexual discrimination and sexual harassment lawsuits settled to date.

It's clear from the \$70 million to now at least \$90.7 million in settlement awards and City Attorney time and expenses in employees' legitimate lawsuits that bullying, and abuse does not involve a boss or supervisor berating employees for merely taking too many coffee breaks. Several of those lawsuits named department heads — at the Department of Public Health (twice), Laguna Honda Hospital, the City Attorney's Office, and the Police Department, among others — as defendants in the respective lawsuits.

Bullying and verbal abuse is rampant and tolerated in City government because of the "tone" set at the top. There are a lot of mid-level City managers who spout their MBA degrees and who believe they are entitled to browbeat and bully their subordinates because abusing employees will advance their managerial careers. It's the culture at the top that needs to change.

City employees don't need somebody to better define what is meant by "bullying and verbal abuse." They know it, can smell it a mile away, and have seen it because it happens way too often and happens in almost every City department!

As Chris Roberts noted in his April 2013 *Examiner* article, statewide legislation to make workplace bullying illegal had no sponsors, and the legislation was never introduced. And it hasn't been introduced since 2013. Just ask Melania Trump how her "Be Best" campaign is going to battle on-line bullying of children. Probably not much better.

If the U.S. Congress can pass legislation requiring offenders to pick up the costs, San Francisco should be able to, too.

Burning \$90.7 million — and counting — of taxpayer funds in San Franciscans back yards is unconscionable. How long will the problem continue to be ignored at City Hall?

Monette-Shaw is a columnist for San Francisco's Westside Observer newspaper, and a member of the California First Amendment Coalition (FAC) and the ACLU. He operates stopLHHdownsize.com. Contact him at monette-shaw@westsideobserver.com.

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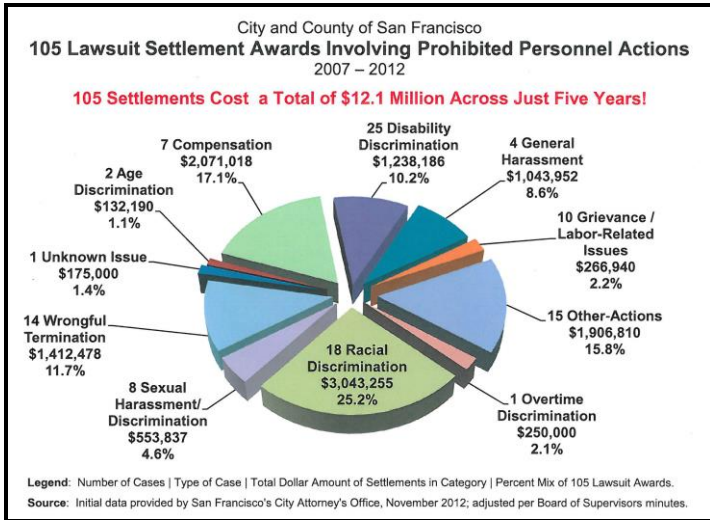
Table 2: Costs of 32 Categories of Prohibited Personnel Practice Lawsuits — January 1, 2007 – December 14, 2018

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8	6070 General Harassment (Emp against City)	17	4.7%	\$ 1,326,452	\$ 782,500	\$ 1,905,101	\$ 4,014,053	4.4%	4	21
9	6075 Age Discrimination (Emp against City)	10	2.8%	\$ 204,690	\$ -	\$ 2,499,174	\$ 2,703,864	3.0%	5	15
10	4103 Labor Related Issue	11	3.1%	\$ 711,916	\$ 776,250	\$ 653,618	\$ 2,141,784	2.4%	10	21
11	9054 Lit - Pre-Litigation Claims	2		\$ 1,175,000		\$ 172,155	\$ 1,347,155	1.5%	8	10
12	4099 Other (Employee Conduct)	3	0.8%	\$ 194,000		\$ 380,143	\$ 574,143	0.6%	1	4
13	6055 Racial Harassment (Emp against City)	2	0.6%	\$ 210,000		\$ 314,524	\$ 524,524	0.6%	2	4
14	4810 Retirement	3	0.8%	\$ 100,000		\$ 369,948	\$ 469,948	0.5%		3
15	9999 Unknown (From CAO)	1	0.3%	\$ 175,000		\$ 201,725	\$ 376,725	0.4%	1	2
16	4101 Grievance Arbitration	5	1.4%	\$ 206,697		\$ 95,218	\$ 301,915	0.3%		5
17	4030 Sexual Orient. Harass. (Emp. Conduct)	1	0.3%			\$ 108,856	\$ 108,856	0.1%		1
18	9925 Defamation	1	0.3%	\$ 15,000		\$ 82,216	\$ 97,216	0.1%	1	2
19	9113 Miscellaneous	1		\$ 46,200	\$ 8,800	\$ 28,130	\$ 83,130	0.1%		1
20	4102 PERB Matters	6	1.7%	\$ 10,000		\$ 48,949	\$ 58,949	0.1%		6
21	9056 Lit-Other	4	1.1%	\$ 19,678		\$ 38,196	\$ 57,874	0.1%	18	22
22	6005 First Amendment Violation (Emp vs City)	1	0.3%			\$ 55,685	\$ 55,685	0.1%		1
23	4599 Other Malpractice	1	0.3%			\$ 47,493	\$ 47,493	0.1%		1
24	4025 Racial Harassment (Employee Conduct)	1	0.3%			\$ 33,082	\$ 33,082	0.0%		1
25	6015 Assault by another employee	1	0.3%			\$ 17,316	\$ 17,316	0.0%		1
26	2099 Other (Police)	1	0.3%			\$ 11,532	\$ 11,532	0.0%	1	2
27	41 Labor Relations	1	0.3%	\$ 4,578		\$ 487	\$ 5,065	0.0%		1
28	9051 Lit-Breach of Contract	2	0.6%			\$ 2,268	\$ 2,268	0.0%		2
29	4104 Prevailing Wage Enforcement								2	2
30	6025 Compel Arbitration (Emp against City)								1	1
31	6040 Sexual Orientation Discrim (Emp vs City)	1	0.3%							1
32	6060 Sexual Orientation Harassment (Emp vs City)								1	1
Totals — All 32 Categories		359	99.2%	\$ 26,409,882	\$ 16,912,377	\$ 47,409,633	\$ 90,731,891	100.0%	102	461

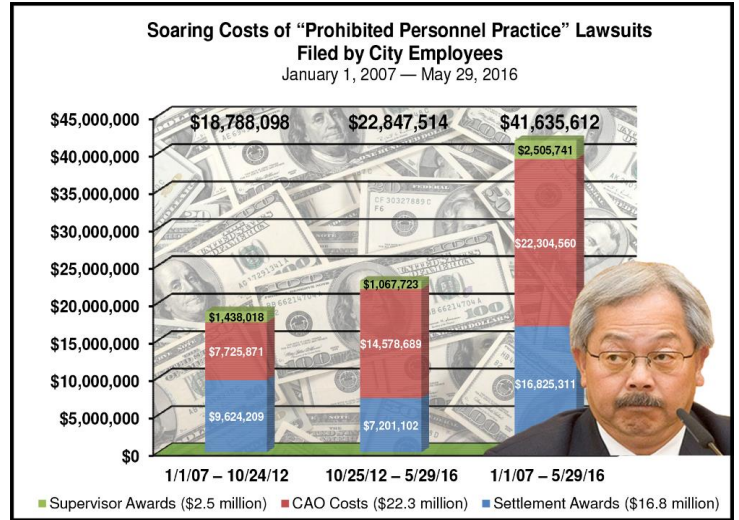
Source: San Francisco City Attorneys Office, multiple public records requests since 2007.

Note that Table 2 illustrates 359 of the lawsuits brought by City employees have concluded as of December 14, 2018 and 102 lawsuits remain pending.

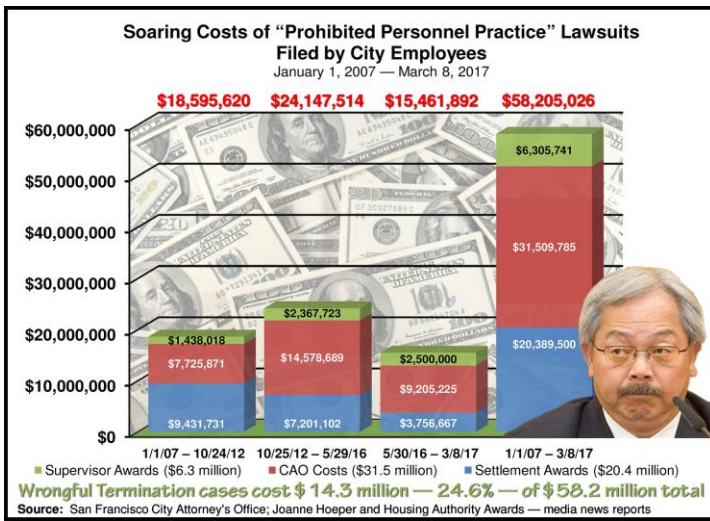
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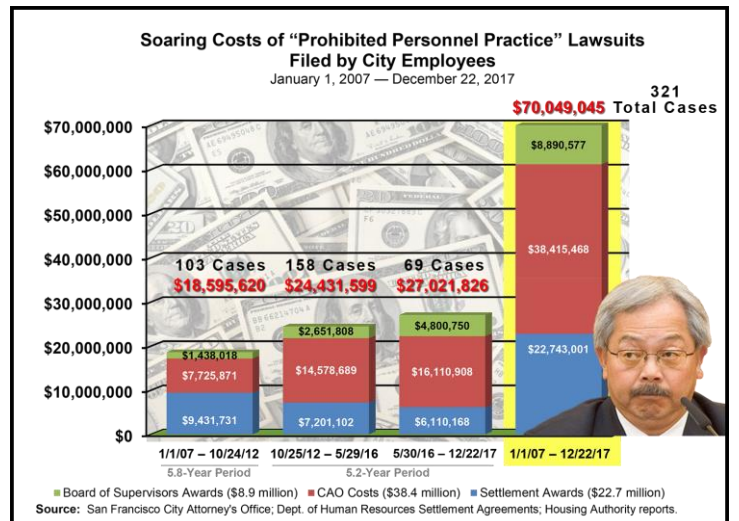
May 2013: Initial Article



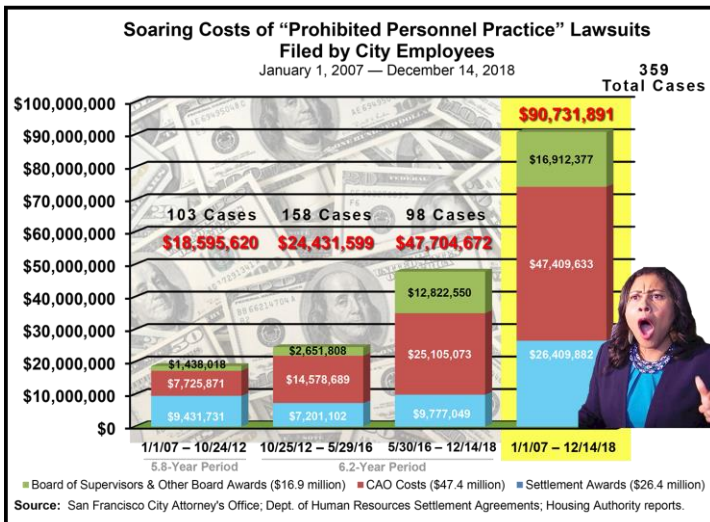
July 2016: First Update



April 2017 Second Update



April 2018: Third Update



March 2019: Fourth Update