

# One Minute Memo®



## Office Marital Dispute Did Not Trigger Employer's Duty to Investigate

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**Seyfarth Synopsis:** In *Nakai v. Friendship House Association of American Indians, Inc.*, the California Court of Appeal considered whether marital disputes that spill into the workplace trigger FEHA's marital status protections and an employer's duty to investigate. First, the case reiterates that alleged misconduct arising from marital discord does not always implicate FEHA—particularly if one is married to the CEO's daughter. More importantly, the case confirms that not every complaint of alleged misconduct requires an investigation before disciplining an at-will employee.

### The Facts

For over twenty years, Orlando Nakai worked as a counselor at Friendship House, a drug and alcohol rehabilitation center in San Francisco. He married a co-worker whose mother happened to be Friendship House's CEO. Nakai, his wife, and his mother-in-law worked together for fourteen years.

By 2016, though, the marriage was deteriorating. Nakai's wife called her mother (the CEO) to report that Nakai had a gun, was angry at their co-workers, and was dangerous. The next morning, Nakai's mother-in-law placed him on administrative leave and then, without investigating her daughter's allegations, terminated Nakai's employment.

Nakai sued Friendship House for marital-status discrimination and for failing to investigate his wife's complaints, both in asserted violation of FEHA. The trial court granted summary judgment to Friendship House. Nakai appealed.

### The Court of Appeal's Decision

FEHA prohibits marital status discrimination. By way of example, employers cannot refuse to hire single people because they are single. But the Court of Appeal agreed with the trial judge that Friendship House did not fire Nakai because of his marital status. Rather, Friendship House ended Nakai's employment because of a trait unique to his spouse—her relationship with the CEO, which does not amount to marital status discrimination. Even if Friendship House had terminated Nakai's employment because he was married to the CEO's daughter, such an action would not be because of Nakai's marital status, and so the action would not support a claim of marital-status discrimination.

Next, the Court of Appeal considered Friendship House's failure to investigate the claims made by Nakai's wife. The Court of Appeal explained that FEHA does not create contractual due process rights in connection with an alleged perpetrator's

employment. Absent a contractual or statutory provision to the contrary, employers considering the plight of an employee accused of misconduct “may act peremptorily, arbitrarily, or inconsistently, without providing specific protections such as prior warning, fair procedures, objective evaluation, or preferential reassignment.”

While contracts requiring “good cause” for termination may, under some circumstances, create a reasonable investigation requirement, Nakai produced no such contract or even evidence of an implied agreement. His employment was at-will. Consequently, the Court of Appeal rejected his argument that he had a contractual right to have his employer investigate his wife’s complaints.

Nor was Nakai otherwise entitled to an investigation. The Court of Appeal held that any duty to investigate would apply only to complaints of conduct—such as unlawful discrimination or harassment—that FEHA prohibits. The complaints alleged against Nakai did not implicate prohibited conduct or protected status.

The Court of Appeal concluded by considering whether, under FEHA, employers owe alleged perpetrators any duty to investigate the validity of complaints made against them. The Court of Appeal strongly suggested that, at least as to “alleged threats of workplace violence,” FEHA imposes no such duty.

## **What *Friendship House* Means for Employers**

*Friendship House* provides guidance to employers faced with workplace marital disputes. But its real value lies in the perspective it provides regarding employers’ duty to investigate misconduct complaints: unless there is a claim of prohibited conduct relating to protected status, there is no obligation to investigate. Nevertheless, employers should always consider investigating complaints before disciplining employees, as this may be a way to forestall future lawsuits or further acrimony among employees.

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