

# Organizations May Sue Employers Based On Time Spent Opposing Unfair Competition

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Under the unfair competition law (UCL), Cal. Bus. & Prof. Code § 17200 *et seq.*, a plaintiff may bring a cause of action for any “unlawful, unfair or fraudulent business act or practice.” Generally, a UCL claim will be brought as a violation of rules set out in other laws or may be brought for any practice that is “unfair” even if not statutorily prescribed.

As a prerequisite to bringing a UCL claim, a plaintiff must have standing. This inquiry often turns on whether the plaintiff suffered an “injury in fact,” *i.e.*, whether the plaintiff suffered “loss of money or property” as a result of the unfair competition at issue. In a recent opinion, the California Supreme Court [held](#) that an organization may have standing to pursue a UCL claim if the organization diverted its resources to combat the alleged unfair competition. *California Med. Ass’n v. Aetna Health of California Inc.*, 2023 WL 4553703 (Cal. July 17, 2023).

This expansion of UCL standing could have significant implications for employers—potentially opening up a new group of plaintiffs who may obtain standing to challenge employer practices through their own actions. For instance, while the Court previously held in [Amalgamated Transit](#) that unions were precluded from bringing a UCL claim on the basis of associational standing, a union might be able to obtain standing by diverting their resources to combat allegedly “unfair” employer actions.

Fortunately for employers, the Court limited their opinion in several ways:

- *First*, the opinion is limited to organizational standing. The court expressly did not expand associational or individual (including class) standing based on a diversion of resources theory. *Amalgamated Transit* thus remains good law. Moreover, the Court acknowledged a line of federal district court cases holding that individuals do *not* have standing on the basis that they diverted resources to combat unfair competition; nevertheless, the Court declined to weigh in on individual standing.
- *Second*, the Court rejected the argument that a diversion of resources that is made during or in preparation for litigation could establish standing. Instead, the

defendant's actions must have threatened the organization's mission and caused the organization to divert resources to address the threat outside of litigation.

- *Third*, the Court also excluded organizations that were created to manufacture standing and organizations whose sole mission is to deter unfair competition. In either of these cases, there is no diversion of resources.

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