A Guide to Defamation for Survivors of Sexual Assault or Harassment

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LEGALMOMENTUM
The Women's Legal Defense and Education Fund

Acknowledgements

Legal Momentum, the Women's Legal Defense and Education Fund — originally founded as the NOW Legal Defense and Education Fund — is the nation's first and longest-serving legal advocacy organization advancing women's rights and gender equality. For the past five decades Legal Momentum has employed strategic litigation, legislative advocacy, and education initiatives to promote gender equality under the law and in our society.

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The statements, finding and conclusions of this report are that of Legal Momentum and the authors alone.

Disclaimer: This report does not constitute legal advice and should not be relied upon as such. Individuals and organizations considering legal action should consult their own legal counsel.

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Overview

The #MeToo movement that began in 2017 encouraged many sexual harassment and sexual assault survivors to speak up and share their stories, many for the first time. Many survivors find solace in raising their voices or warning others about their experience with a particular person or institution. In response, there has been a surge in retaliatory defamation lawsuits by their abusers. Alternatively, some survivors find themselves harmed by public claims that their revelations of sexual harassment/assault were false, or have other harmful falsities spread about them in retaliation for speaking about their experience, and have brought defamation lawsuits against abusers who have defamed them after they spoke out. A 2020 review of court records and media reports by Mother Jones found 100 lawsuits filed between 2014 and 2020, with nearly half of those filed after the MeToo hashtag began trending in October 2017.[1]

All survivors deserve to decide whether and how they share their experiences. But bringing or defending oneself against defamation claims can be financially costly, emotionally harmful, and drag out over many months or even years. The purpose of this resource is to provide an overview of the principles of defamation claims and to provide a reference for the defamation statute in your state. Many of the terms used throughout are legal terms of art or portions of the law that are specially defined by statute or case law. This guide provides, to the extent possible, a plain language explanation of those principles and is meant to merely inform those speaking about their experience or contemplating it. It does not constitute, and is not a substitute for, legal advice by an attorney well-versed in defamation law and licensed to practice in your state.

Defamation laws exist in every state and vary from state to state. However, there are legal principles common across all state defamation laws and elements of defamation laws with significant overlap from state to state. Part One provides a plain language explanation of the elements of defamation common to most defamation laws and some recent examples of defamation claims involving speech about sexual harassment/assault. Because defamation laws are found in state law, Part Two provides a compilation of all state defamation laws in the U.S.

Part 1

WHAT IS DEFAMATION

Defamation is an **untrue statement** said or written about someone that **damages that person's reputation.** Defamation laws exist in every state and offer protection to individuals whose reputations are damaged as a result of another person making false statements about them. This, however, must be balanced against the constitutional protections of freedom of speech and freedom of the press. If the statement at issue is written, the specific legal claim is libel; if the statement is spoken, the specific legal claim is slander.

GENERALLY, THE ELEMENTS THAT MUST BE PROVEN TO ESTABLISH DEFAMATION ARE:

1. a publication of the statement to someone other than the person or entity defamed;
2. a false statement of fact;
3. the false statement is of and concerning a person or entity;
4. the false statement is harmful to the reputation of the person or entity; and
5. the false statement is made with the required level of fault.

The person who brings a defamation lawsuit (i.e., the person who alleges that they are the subject of, and harmed by, a defamatory statement) is the *plaintiff* and the person against whom the lawsuit is brought is the *defendant*.

WHAT DOES IT MEAN TO PUBLISH A STATEMENT?

To prove a statement has been "published," a defamation plaintiff has to show that the defamatory statement was communicated to a third person.[2] The plaintiff must prove that a third party actually heard and understood the statement. It is not enough to simply assert that this is the case.[3] The plaintiff does not have to prove that the publication of the statement was intentional, only that the person who made the statement knew or should have known that another person would hear or read the communication.[4]

WHAT IS A FALSE STATEMENT OF FACT?

At its core, defamation requires a *false* statement. For a statement to be actionable (meaning, it can properly be the basis for a defamation lawsuit) it must be one of fact. Stating an opinion typically does not leave someone liable for defamation because opinions cannot be objectively verified. Even a provably false statement will typically not be actionable as defamatory if the statement is expressing a subjective view, an interpretation, a theory, or conjecture rather than a claim to be in possession of an objectively verifiable fact.[5] Similarly, rhetorical speech, or "loose, figurative or hyperbolic language" are generally considered opinion statements and protected speech.[6]

However, couching a statement as an opinion will not automatically shield the person who makes the statement from liability. If a statement implies some false underlying facts, it could be defamatory. Someone could shield their statement from defamation liability by fully disclosing the non-defamatory facts on which their opinion is based. Here is an example commonly used to explain this: Someone makes the statement, "I think my neighbor is an alcoholic." Without more, this statement might in fact be actionable as defamation if it can be proven false. However, this same statement would likely not be actionable as defamation if the speaker discloses the facts on which their opinion is based, such as, "My neighbor moved in six months ago. He works downtown and I have seen him during that time only twice, in his backyard around 5:30 with a drink in his hand. I think he must be an alcoholic." Knowing the facts on which the opinion is based, the listener can form their own conclusion as to whether the neighbor is an alcoholic, so the statement is not defamatory.[7]

HOW IS TRUTH OR FALSITY PROVEN?

Truth is an absolute, unqualified defense to defamation (other defenses are discussed below). When the statement(s) at issue involve a survivor choosing to speak about their victimization, this might seem simple. However, this can be challenging because it may require the survivor to prove their own credibility regarding details of their victimization; essentially litigating the assault/harassment itself.

The test for truth or falsity of a statement is generally *substantial accuracy*. To determine if a statement is substantially accurate, courts will consider whether the "gist and sting" of the allegedly defamatory statement would have a worse effect on the mind of the reader than the truth.[8] When the statements at issue involve allegations of sexual harassment or assault — which are rarely witnessed by others and for which there may not be any physical evidence — proving the truth of a statement may mean baring the details of the sexual harassment/assault and having one's credibility on the allegations judged. This can essentially mean litigating the facts of one's victimization, often for the first time.

Who has the burden to prove the statement is false is dependent on state law and may depend on factors such as: whether the statements are about public figures/officials or private individuals and whether the statements concern matters of public or private concern. This is discussed below.

WHAT DOES IT MEAN TO BE "OF AND CONCERNING" A PERSON OR ENTITY?

In order to be actionable, a defamatory statement must be "of and concerning" the plaintiff. This means that a defamation plaintiff must show that a reasonable person would understand that the statement was referring to the plaintiff. The plaintiff's name doesn't necessarily have to be used in the statement. Courts will evaluate whether the plaintiff is *reasonably identifiable* based on the statement and the surrounding circumstances. For example, courts have dismissed defamation lawsuits where the statements at issue refer to a large group of people from which an individual member would not be easily discernible (e.g., "wives of Hells Angels" is too large and broad a group to easily discern individual members).[9]

WHAT HARM DOES A STATEMENT HAVE TO CAUSE TO BE DEFAMATORY

A defamatory statement is a statement that tends "to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."[10] Specific examples of the type of harm found to be actionable under defamation laws are based in state law and case law. A common example is the loss of a job or business opportunities based on a defamatory statement. Generally, a defamation plaintiff will need to prove the manner in which they have been harmed by the false statement(s).

There are, however, some types of false statements that are generally considered defamatory and deemed harmful, without any proof of actual harm to the specific person's reputation. These types of statements are considered defamation *per se*. These include: allegations of criminal activity; allegations that one has contracted a "loathsome" (communicable or venereal) disease; allegations that injure one's trade, business, or profession; and allegations of serious sexual misconduct. Statements that imply, insinuate or make an innuendo regarding these sorts of things could also be considered defamatory *if* a reasonable listener/reader of the statement would understand that it is conveying one of these sorts of facts.

STANDARD OF FAULT

No one can be liable for defamation unless it is sufficiently established that the person who made the false statement did so with fault. The type of fault that the defendant must have acted with changes depending on the status of the person/entity the statement is about. Public officials and public figures who claim they have been harmed by defamatory statements are required to prove that the defendant acted with "actual malice" which is when someone lies on purpose with the intent to harm another person, or where someone was reckless about whether the statement was true or not but said it anyway. This actual malice standard focuses on the speaker's state of mind at the time they made the statement at issue. Ordinary citizens who bring a defamation claim are generally required to prove that the defendant acted negligently when making the statement, which courts have explained means that they did not exercise the care that a reasonable person would. This standard does vary from state-to-state but below are some general definitions.

WHO IS A PUBLIC OFFICIAL?

Public officials are elected and appointed individuals who appear to have substantial responsibility for control over public and government affairs.[11] Examples of public officials include: governors, legislators, judges, police officers, corrections officers, high school principals and district attorneys.

WHO IS A PUBLIC FIGURE?

There are two types of public figures recognized in defamation law: (1) **"all purpose" public figures** and (2) **"limited purpose" public figures.**

"All purpose" public figures are private individuals who occupy "positions of such persuasive power and influence that they are deemed public figures for all purposes…They invite attention and comment."[12] Examples of all purpose public figures include: celebrities, well-known professional athletes and CEOs of major corporations.

"Limited purpose" public figures are individuals who have "thrust themselves to the forefront of the particular controversies in order to influence the resolution of the issues involved."[13] These are individuals who deliberately shape debate on specific public controversies (e.g. a local engineer vocal during controversy over a public infrastructure project)[14] or have distinguished themselves in a particular field (e.g. a widely published and recognized leading expert on art authentication)[15]. They are considered public figures regarding only those specific activities/fields. Some sexual assault/harassment survivors who have spoken publicly about high-profile abusers have been found to be limited purpose public figures.[16]

CORPORATE ENTITIES

In general, the same standards that are used to determine if an individual is a public figure are also applied to determining whether a corporate entity is a public figure.

DOES IT MATTER WHO MADE THE STATEMENT?

In some states the standard of fault is different when the speaker is media (e.g., a news publication such as The New York Times) versus non-media speakers and whether the statement concerns issues of public concern versus a private concern. See Part Two for state-specific information.

WHAT IS CONSIDERED A PUBLIC CONCERN?

A statement that relates to any matter of political, social, or other concern to the community or a subject of legitimate news interest, meaning a topic of general interest and of value and concern to the public. [17] Statements about matters of public concern are generally protected free speech and granted greater protection from defamation liability because, if they weren't, individuals and the media would censor themselves, depriving society of crucial information. For example, statements exposing public corruption.

PRIVILEGED STATEMENTS

Some types of statements are *privileged* or protected from liability for defamation. The types of statements which are privileged varies from state-to-state but there are a lot of commonalities. Part Two provides some state-specific information about privileges where they appear in statutes. Others are defined in case law. Here is a list of common privileges:

- **Official government activities**: Statements made by legislators, judges, and executive agency officials in connection with governmental functions.
- **Judicial proceedings**: Statements made in judicial proceedings that are reasonably related to the proceeding.
- **Spousal communications**: Statements made between spouses.
- **Disciplinary proceedings**: Statements made in connection with attorney disciplinary proceedings.
- **Certain communications regarding employment**: Statements made in the course of an employer's duties which include but are not limited to: references, evaluations, warnings, investigative reports, and discharge letters.
- **Statements made based on common interest**: Statements made in good faith where someone has an interest or duty and the statement is made to another who has a corresponding interest or duty. For example, a school principal's duty to share with parents' information that may affect the welfare of their child.
- **Fair reports**: Statements that are fair and substantially accurate reports of official proceedings.
- **Fair comment or neutral reporting**: Accurate and disinterested reports of statements made by a responsible, prominent organization or individual that contain a serious charge on a matter of public interest against another figure or organization. This is a limited privilege.
- **Reporters' Privilege**: The U.S. Constitution and state statutes offer qualified protections so that journalists are not compelled to testify about confidential information or sources.[18]
- **Anonymous Speech**: The Supreme Court has ruled repeatedly that the right to anonymous free speech is protected by the First Amendment.[19]

When survivors of sexual harassment/assault speak about their victimization and experience those statements may fall under some of these privileges. For example, many states provide special protections for communications made to government agencies. This could include a report or disclosure of potential criminal conduct made to the police. Statements made discussing information contained in a public record, such as a filed lawsuit or police report, may be protected under a state's "**fair report**" privilege. Statements made by a survivor of workplace sexual harassment to their company's human resources department might fall under a state's "**common interest**" privilege.

OTHER DEFENSES AND CONSIDERATIONS

"Libel-Proof" Plaintiff: This is a legal principle that applies in limited circumstances. It applies where the subject of a defamatory statement already has a reputation that is so tarnished that additional defamatory statements cannot cause harm.

Statute of Limitation: Each state has a statute of limitations, which is a time limit that applies to when a claim for defamation may be brought. Lawsuits brought after that time limit has expired will be subject to dismissal. The time limit is different depending on state law.

Anti-SLAPP Statutes: Twenty-nine states currently have statutes that allow a mechanism to quickly dismiss meritless defamation lawsuits filed against people for statements which are an exercise of their First Amendment rights. "SLAPP" stands for "Strategic Lawsuit Against Public Participation" and these laws are meant to avoid retaliatory lawsuits brought to intimidate and silence opponents and critics who had spoken out publicly. The scope of these anti-SLAPP statutes vary greatly among the states that have them. Some survivors have been able to successfully use an anti-SLAPP law to quickly defend against a defamation claim.[20] Part Two of this guide provides information about Anti-SLAPP statutes in the states that have them.

Defamation claims on behalf of a deceased person: In general, defamation claims cannot be brought for statements made about a deceased person.

WHAT HAPPENS WHEN SOMEONE IS FOUND LIABLE FOR DEFAMATION?

When a person successfully brings a lawsuit, meaning the defendant is found liable for defamation, the plaintiff is entitled to damages. Damages compensate an individual for the reputational harm resulting from a defamatory statement. Generally, there are three types of damages available: (1) **actual damages**, (2) **presumed damages** and (3) **punitive damages**.

TYPES OF DAMAGES

Actual/Special Damages: Actual damages compensate the plaintiff for actual losses, which are quantifiable and are meant to restore the person to the position they would have been in had the defamatory statement never been made. This can include financial losses the plaintiff has suffered with respect to their property, business, trade, profession or occupation. For example, actual damages could include any lost income or lost earning capacity (ability to earn income). Actual damages can also include losses for the effects of reputational harm which can be assigned some monetary value, such as shame, mortification, or pain and suffering experienced by the plaintiff.

Presumed Damages: Presumed damages may be awarded for reputational harm resulting from statements that are defamatory per se. Because it is accepted that these types of defamatory statements are inherently harmful, even if the plaintiff cannot prove actual — or specific — damages a judge or jury can assume that the plaintiff has suffered harm to their reputation or some other loss.

Punitive Damages: Punitive damages are designed to punish the defendant for particularly egregious conduct, and to deter them from engaging in similar conduct in the future. In order to obtain punitive damages in a defamation case, the plaintiff usually needs to show that the person who made the defamatory statement acted with malice (i.e., spite, ill will, or bad faith) or fraud.

If a defamatory statement is retracted, corrected or clarified that may reduce the damages that the subject of the statement can be awarded after a defamation lawsuit. This depends on state law.

DEFAMATION IN THE POST-#MeToo ERA

In the wake of the #MeToo movement, survivors have increasingly been threatened with, and faced with, lawsuits alleging their statements are defamatory. Some of these have been high-profile. For example, in October 2017 Harvey Weinstein threatened a defamation suit against the New York Times prior to, and after, its release of a report detailing eight settlements with women who accused him of sexually harassing them.[21] Author Stephen Elliott filed a federal defamation lawsuit against Moira Donegan and still-unnamed Jane Does over allegations about him in the crowd-sourced "Shitty Media Men" spreadsheet.[22] And former President Trump tweeted that Supreme Court Justice Brett Kavanaugh should sue people for libel over allegations of sexual assault and misconduct.[23]

In some instances, survivors who chose to speak out about sexual assault and harassment by high-profile individuals have then been subjected to public accusations by those abusers that they are liars. Some such survivors have used defamation laws to bring lawsuits against those who perpetuated those untruthful statements.[24]

Sexual harassment and assault are abuses which disempower victims. All survivors should be able to reclaim power by speaking about their experience if they so choose and in the forum they choose. But defending oneself against a defamation claim or bringing a defamation claim can be extremely costly, financially and emotionally, and drag on for a long time. Understanding what sorts of statements, and in what contexts, might subject oneself to liability is an important first step. Because the law varies from state-to-state and much of it has been defined through case law, specific legal advice from a qualified attorney is important to fully understand defamation laws, which can be complex. This guide is not a substitute for that legal advice but hopefully provides a basic overview, understanding and empowerment.

SOURCES

[1] Madison Pauly, *She Said, He Sued: How libel law is being turned against survivors*, Mother Jones (March/April 2020) https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/.

[2] *Belcher v. Little*, 315 N.W.2d 734, 737 (Iowa 1982).

[3] *Adler v. Am. Standard Corp.*, 830 F.2d 1303, 1307 (4th Cir. 1987).

[4] Restatement (Second) of Torts § 577.

[5] *See Gray v. St. Martin's Press, Inc.*, 221 F.3d 243, 248 (1st Cir. 2000).

[6] *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990).

[7] Restatement (Second) of Torts § 566 cmt. c, ill. 3 (1977).

[8] *See, e.g., Chau v. Lewis*, 771 F.3d 118 (2d Cir. 2014).

[9] *See Barger v. Playboy Enterprises*, 564 F.Supp. 1151 (1983).

[10] Restatement (Second) of Torts, § 559.

[11] *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

[12] *Id.*

[13] *Id.*

[14] *See Carr v. Forbes, Inc.*, 259 F.3d 273 (4th Cir. 2001).

[15] *See Biro v. Conde Nast*, 963 F. Supp. 2d 255 (S.D.N.Y. 2013).

[16] *Judge dismisses defamation claim against Roy Moore campaign,* Associated Press (August 10, 2021), https://apnews.com/article/senate-elections-roy-moore-506a66c978cf6abe59cf3b4829b92ae9

[17] *See Snyder v. Phelps*, 562 U.S. 443 (2011).

[18] *See, e.g., Branzburg v. Hayes*, 408 U.S. 665 (1972).

[19] *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

[20] *Dababreh v. Lopez*, 2021 Cal. App. Unpub. LEXIS 6258 (Cal. App. 3d) (October 1, 2021).

[21] *See* David E. McGraw, Truth in Our Times: Inside the Fight for Press Freedom in the Age of Alternative Facts (2019).

[22] *See Elliott v. Donegan*, 469 F. Supp. 3d 40 (E.D.N.Y. 2020); Conor Fridersdorf, *A Lawsuit Tests the Limits of Anonymous Speech*, The Atlantic (Oct. 22, 2018), https://www.theatlantic.com/ideas/archive/2018/10/stephen-elliott-moira-donegan-shitty-media-men/573223/.

[23] David Cohen, *Trump stands up for Brett Kavanaugh over 'liable,'* Politico (Sept. 15, 2019), https://www.politico.com/story/2019/09/15/trump-brett-kavanaugh-1496181.

[24] *Clifford v. Trump*, 339 F. Supp. 3d 915 (C.D. Cal. 2018), *appeal filed*, No. 18-56351 (9th Cir. Oct. 16, 2018); *McKee v. Cosby*, 874 F.3d 54 (1st Cir. 2017); *Giuffre v. Dershowitz*, 410 F. Supp. 3d 564, 566 (S.D.N.Y. 2019).

Part 2

50 STATE DEFAMATION SURVEY

The following pages include a chart listing, for each state: the elements of defamation and the statute in which they can be found; the statute of limitations for defamation claims; whether the state's law recognizes defamation per se; and whether the state has an anti-SLAPP statute. This does not constitute, nor is it a substitute for, legal advice and counsel.

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
Alabama	• A false and defamatory statement concerning the plaintiff. • An unprivileged communication of that statement to a third party. • Fault amounting at least to negligence. • Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication of the statement. (Ala. Code § 6-5-182; *see also Jackson v. WAFF, LLC*, 109 So. 3d 1123, 1126 (Ala. Civ. App. 2012).)	Two years (Ala. Code § 6-2-38(k).)	Yes	None
Alaska	• A false and defamatory statement. • An unprivileged publication to a third party. • Fault amounting at least to negligence. • Either per se actionability or special damages. (*State v. Carpenter*, 171 P.3d 41, 51 (Alaska 2007).)	Two years (Alaska Stat. Ann. § 09.10.070.)	Yes	None
Arizona	• Publication of a false and defamatory communication concerning a private person or a public official or public figure in relation to a purely private matter. • The speaker knows that the statement is false and that it defames the other. • The speaker acts in reckless disregard. • The speaker acts negligently. (*Desert Palm Surgical Grp., P.L.C. v. Petta*, 343 P.3d 438, 449 (Ariz. Ct. App. 2015).)	One year (Ariz. Rev. Stat. § 12-541(1).)	Yes	Ariz. Rev. Stat. Ann. § 12-751 (2022).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
Arkansas	• The defamatory nature of the statement of fact. • The statement's identification of or reference to the plaintiff. • Publication of the statement by the defendant. • The defendant's fault in the publication. • The statement's falsity. • Damages. (*Addington v. Wal-Mart Stores, Inc.*, 105 S.W.3d 369, 379 (Ark. App.2003).)	One year for slander (Ark. Code Ann. § 16-56-104.) Three years for libel (Ark. Code Ann. § 16-56-105.)	No	Ark. Code Ann. § 16-63-504 (2019).
California	• The intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage. (*Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 264 (9th Cir. 2013).)	One year (Cal. Civ. Proc. Code § 340(c).)	Yes	Cal. Civ. Proc. Code §425.16 (2023).
Colorado	• A defamatory statement concerning another. • Published to a third party. • With fault amounting to at least negligence on the part of the publisher. • Either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by publication. (*Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 757 F.3d 1125, 1136 (10th Cir. 2014).)	One year (Colo. Rev. Stat. Ann. § 12-80-103(1)(a) (West 2022).)	Yes	Colo. Rev. Stat. Ann. § 13-20-1101(3) (West 2019).
Connecticut	• The defendant published a defamatory statement. • The defamatory statement identified the plaintiff to a third person. • The defamatory statement was published to a third person. • The plaintiff's reputation suffered injury resulting from the statement. (*Thibodeau v. Am. Baptist Churches of Conn.*, 994	Two years (Conn. Gen. Stat. Ann. § 52-597.)	Yes	Conn. Gen. Stat. Ann. § 52-196a (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	A.2d 212, 222 (Conn. App. Ct. 2010).)			
Delaware	• The communication's defamatory character. • Publication. • That the communication refers to the plaintiff. • The third party's understanding of the communication's defamatory character. • Injury. (*Tri-State Energy Sols., LLP v. KVAR Energy Sav. Inc.*, 845 F. Supp. 2d 615, 619 (D. Del. 2012).)	Two years (Del. Code Ann. tit. 10 § 8119.)	Yes	Del. Code Ann. tit. 10 §§ 8136-8138 (2018).
District of Columbia	• The defendant made a false and defamatory statement concerning the plaintiff. • The defendant published the statement without privilege to a third party. • The defendant's fault in publishing the statement amounted to at least negligence. • The statement was either actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm. (*Mattiaccio v. DHA Grp., Inc.*, 87 F. Supp. 3d 169, 183 (D. D.C. 2015).)	One year (D.C. Code § 12-301(4).)	Yes	D.C. Code Ann. § 16-5501 (2019).
Florida	• The defendant published a false statement. • The statement was about the plaintiff. • The statement was made to a third party. • The falsity of the statement caused injury to the plaintiff. (*Valencia v. Citibank Intern*, 728 So.2d 330 (Fla. 1999).)	Two years (Fla. Stat. Ann. § 95.11(4)(h).)	Yes	Fla. Stat. Ann. § 768.295 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
Georgia	• A false and defamatory statement concerning the plaintiff. • An unprivileged communication to a third party. • Fault by the defendant amounting at least to negligence. • Special harm or the actionability of the statement irrespective of special harm. (O.C.G.A. § 51-5-4 (slander); O.C.G.A. § 51-5-1 (libel); *Infinite Energy, Inc. v. Pardue*, 713 S.E.2d 456, 460 (Ga. App. 2011).)	One year (Ga. Code Ann. § 9-3-33.)	Yes	Ga. Code Ann. § 9-11-11.1 (2019).
Hawaii	• A false and defamatory statement concerning another. • An unprivileged publication to a third party. • Fault amounting at least to negligence on the part of the publisher (actual malice where the plaintiff is a public figure). • Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. (*Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd.*, 58 P.3d 1196, 1218 (Haw. 2002).)	Two years (Haw. Rev. Stat. § 657-4.)	Yes	Haw. Rev. Stat. Ann. §634G (West 2022).
Idaho	•Communication concerning the plaintiff to others. • The information was defamatory. • The plaintiff was damaged because of the communication. (Idaho Code § 18-4801 (libel); *Clark v. Spokesman-Review*, 163 P.3d 216, 219 (Idaho 2007).)	Two years (Idaho Code § 5-219(5).)	Yes	None

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
Illinois	• Allege facts demonstrating that the defendant made a false statement about the plaintiff. • The defendant made an unprivileged publication of that statement to a third party. • The publication caused damages. (*Rupcich v. United Food & Commercial Workers Int'l Union Local 881*, 69 F. Supp. 3d 889, 903 (N.D. Ill. 2014).)	One year (735 Ill. Comp. Stat. 5/13-201.)	Yes	735 Ill. Comp. Stat. Ann. 110/15 (2019).
Indiana	• Defamatory imputation. • Malice. • Publication. • Damages. (*Martino v. W. & S. Fin. Grp.*, 715 F.3d 195, 206 (7th Cir. 2013).)	Two years (Ind. Code § 34-11-2-1.)	Yes	Ind. Code Ann. § 34-7-7-1 to 34-7-7-10 (2021).
Iowa	• Defendant made a false statement about the plaintiff. • The statement was made with malice. • The statement was communicated to somebody other than the plaintiff. • The statement tended to injure the reputation of the plaintiff, exposed the plaintiff to public hatred, contempt, or ridicule, or injured the plaintiff in his efforts to maintain his business. • Damage. • The amount of damage. (*Mills v. Iowa*, 924 F. Supp. 2d 1016, 1029 (S.D. Iowa 2013).)	Two years (Iowa Code Ann. § 614.1(2).)	Yes	None
Kansas	• Defamatory language about the plaintiff. • Published to a third party. • Injury to reputation. (*Dominguez v. Davidson*, 974 P.2d 112, 117 (Kan.	One year (Kan. Stat. Ann. § 60-514(a).)	Yes	Kan. Stat. Ann. § 60-5320 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	1999).)			
Kentucky	• Defamatory language. • About the plaintiff. • Which is published. • Which causes injury to the Plaintiff's reputation. (*Foster v. Jennie Stuart Med. Ctr., Inc.*, 435 S.W.3d 629, 636 (Ky. App. 2013).)	Ky. Rev. Stat. §413.140(1)(d)	Yes	None
Louisiana	• A false and defamatory statement concerning another. • An unprivileged publication to a third party. • Fault. • Injury. (*Murungi v. Texas Guaranteed*, 693 F. Supp. 2d 597, 606 (E.D. La. 2010).)	One year (La. Code Civ. Proc. Ann. art. 3492.)	Yes	La. Code Civ. Proc. Ann. art. 971 (2018).
Maine	• A false and defamatory statement concerning another. • An unprivileged publication to a third party. • Fault amounting at least to negligence on the part of the publisher. • Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. (*Cole v. Chandler*, 752 A.2d 1189, 1193 (Me. 2000).)	Two years (Me. Rev. Stat. Ann. tit. 14 § 753.)	Yes	Me. Rev. Stat. Ann. tit. 14 § 556 (2023).
Maryland	• The defendants published a defamatory statement to a third person. • The statement was false. • The defendants were legally at fault for making	One year (Md. Code Ann., Cts. & Jud. Proc. § 5-	Yes	Md. Code Ann., Cts. & Jud. Proc. § 5-807 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	statement. • The plaintiff suffered harm. (*Ali v. Giant Food LLC/Stop & Shop Supermarket Co., LLC*, 595 F. Supp. 2d 618, 622 (D. Md. 2009).)	105.)		
Massachusetts	• That the defendant made a statement concerning the plaintiff to a third party. The statement could damage the plaintiff's reputation in the community. • The defendant was at fault in making the statement. • The statement either caused the plaintiff economic loss or is actionable without proof of economic loss. (*McGunigle v. City of Quincy*, 132 F. Supp. 3d 155, 177 (D. Mass. 2015).)	Three years (Mass. Gen. Laws Ann. ch. 260, § 4.)	Massachusetts has abolished the separate category of defamation per se at least in part.	Mass. Gen. Laws Ann. ch. 231, § 59H (2022).
Michigan	• A false and defamatory statement concerning the plaintiff. • An unprivileged communication to a third party. • Fault amounting to at least negligence on the part of the publisher. • Actionability of the statements irrespective of special harm, or existence of special harm caused by the publication. *Ryniewicz v. Clarivate Analytics*, 803 Fed.Appx. 858, 866 (6th Cir. 2020).	One year (Mich. Comp. Laws § 600.5805.)	Yes, but only regarding criminal offense chastity.	None
Minnesota	• The defamatory statement is communicated to someone other than the plaintiff. • The statement is false. • The statement tends to harm the plaintiff's reputation and to lower her in the estimation of the	Two years (Minn. Stat. Ann. § 541.07.)	Yes	None Minnesota adopted anti-SLAPP legislation in 1994.

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	community. (*Chambers v. The Travelers Cos., Inc.*, 764 F. Supp. 2d 1071, 1083 (D. Minn. 2011).)			However, Minnesota courts found the statute unconstitutional. (*Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 637–38 (Minn. 2017); *Mobile Diagnostic Imaging v. Hooten*, 889 N.W.2d 27, 35 (Minn. Ct. App. 2016).)
Mississippi	• A false and defamatory statement concerning the plaintiff. • Unprivileged publication to a third party. • Fault amounting at least to negligence on the part of the publisher. • Either actionability of statement irrespective of special harm or existence of special harm caused by publication. (*Beauchene v. Miss. Coll.*, 986 F. Supp. 2d 755, 766 (S.D. Miss. 2013).)	One year (Miss. Code Ann. § 15-1- 35.)	Yes	None
Missouri	• The defendant published a false statement that was harmful to the plaintiff and caused pecuniary loss. • The defendant intended for the publication to cause harm or recognized that the publication would do so.	Two years (Mo. Rev. Stat. § 516.140.)	No	Mo. Rev. Stat. § 537.528 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	• The defendant knew the statement was false or acted in reckless disregard of its truth or falsity. (*Alticor, Inc. v. Nat'l Union Fire Ins. Co. of Pa.*, 916 F. Supp. 2d 813, 822 (W.D. Mich. 2013).)			
Montana	• The published material is false. • The defendants are chargeable with fault in the publication. Injury to the plaintiff. (Mont. Code Ann. § 27-1-801 to 27-1-803; *Madison v. Yunker*, 589 P.2d 126, 133 (Mont. 1978).)	Two years (Mont. Code Ann. § 27-2-204.)	Yes	None
Nebraska	• A false and defamatory statement concerning the plaintiff. • An unprivileged publication to a third party. • Fault amounting to at least negligence on the part of the publisher. • Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. (*Steinhausen v. HomeServices of Neb., Inc.*, 857 N.W.2d 816, 828 (Neb. 2015).)	One year (Neb. Rev. St. § 25-208.)	Yes	Neb. Rev. Stat. Ann. § 25-21, 243 (2019).
Nevada	• A false and defamatory statement by the defendant. • An unprivileged publication to a third person. • Fault, amounting to at least negligence. Actual or presumed damages. (*Okeke v. Biomat USA, Inc.*, 927 F. Supp. 2d 1021, 1026 (D. Nev. 2013).)	Two years (Nev. Rev. Stat. § 11.190.)	Yes	Nev. Rev. Stat. Ann. § 41.650 to 670 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
New Hampshire	• A false and defamatory statement about the plaintiff. • An unprivileged publication to a third party. • Fault amounting at least to negligence on the part of the publisher. • Either actionability of the statement irrespective of special harm or existence of special harm caused by the publication. (Restatement (Second) of Torts, § 558.)	Three years (N.H. RSA § 508:4.)	Yes	None
New Jersey	• The assertion of a false and defamatory statement concerning another. • The unprivileged publication of that statement to a third party. • Fault amounting at least to negligence by the publisher. Restatement (Second) of Torts § 558; *Albion Engineering Co. v. Harford Fire Insurance Co.*, 779 Fed.Appx. 85, 88 (3rd Cir. 2019).	One year (N.J.S.A. 2A:14-3.)	Yes	None
New Mexico	• The defendant published a defamatory factual communication concerning the plaintiff that was false. • The defendant either knew it was false, or was negligent in determining whether it was false. • The person receiving the communication understood that it was defamatory. • The plaintiff's reputation was injured or harmed as result of the published statement. (*Osuagwu v. Gila Reg'l Med. Ctr.*, 938 F. Supp. 2d 1180, 1197 (D.N.M. 2013).)	Three years (N.M. Stat. Ann. § 37-1- 8.)	Yes	N.M. Stat. Ann. § 38-2-9.1 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
New York	• A false statement about the plaintiff. • Published to a third party without authorization or privilege. • Through fault amounting to at least negligence on the part of the publisher. • The statement either constitutes defamation per se or caused special damages. (*Trent v. Town of Brookhaven*, 966 F. Supp. 2d 196, 207 (E.D.N.Y. 2013).)	One year (CPLR 215.)	Yes	Y. Civ. Rights § 70-a & 76-a (2020).
North Carolina	• The defendant caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff. • The defamatory statement was published to a third person. (*Craven v. Cope*, 656 S.E.2d 729, 732 (N.C. 2008).)	One year (N.C. Gen. Stat. § 1-54(3).)	Yes	None
North Dakota	<u>Libel:</u> • Libel is a false and unprivileged publication by writing. • The publication exposes any person to hatred, contempt, ridicule, or obloquy, or which causes the person to be shunned or avoided, or which has a tendency to injure. (N.D.C.C. § 14-02-03.) <u>Slander:</u> • A false and unprivileged publication other than libel. • The publication charges any person with a crime, or with having been indicted, convicted, or punished for a crime. • The publication imputes to the person the present	Two years (N.D. Cent. Code § 28-01-18.)	Yes	None

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	existence of an infectious, contagious, or loathsome disease. • The publication tends directly to injure the person regarding the person's office, profession, trade, or business, either by: • imputing to the person general disqualifications in those respects which the office or other occupation peculiarly requires; or imputing something with reference to the person's office, profession, trade, or business that has a natural tendency to lessen its profits. • The publication imputes to the person impotence or want of chastity. • By natural consequence, the publication causes actual damage. (N.D.C.C. § 14-02-04.)			
Ohio	• A false and defamatory statement concerning another. • An unprivileged publication to a third party. • Fault amounting at least to negligence on the part of the publisher. • Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. (*Osborn v. Knights of Columbus*, 401 F. Supp. 2d 822, 827 (N.D. Ohio 2005).)	Two years (Ohio R.C. 2305.11(A).)	Yes	None
Oklahoma	• Publishing of a defamatory falsehood concerning a private person (or a public official or figure regarding a purely private matter not affecting his official conduct, fitness, or capacity) if: - the utterer knows the statement is false; - the publisher acts in reckless disregard of	One year (Okla. Stat. tit. 12, § 95(A)(4).)	Yes	Okla. Stat. tit. 12 § 1432 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	whether the statement is false or not; or - the speaker acts negligently in failing to ascertain that the statement is false. (Okla. Stat. tit. 12, §§ 1441, 1442; *Anson v. Erlanger Minerals & Metals, Inc.*, 702 P.2d 393, 396 (Okla. 1985).)			
Oregon	• The making of a defamatory statement. • Publication of the defamatory material. • A resulting special harm, unless the statement is defamatory per se and therefore gives rise to presumptive special harm. (*Nat'l Union Fire Ins. Co. v. Starplex Corp.*, 188 P.3d 332, 347 (Or. App. 2008).)	One year (Or. Rev. Stat. § 12.120.)	Yes	Or. Rev. Stat. Ann. §31.150 (2023).
Pennsylvania	• A defamatory communication. • Publication of a defamatory communication by the defendant. • The communication's application to the plaintiff. • Understanding by the reader or listener of the statement's defamatory meaning. • Understanding by the reader or listener that the statements refer to the plaintiff. (*Bennett v. Itochu Intern., Inc.*, 682 F. Supp. 2d 469, 476 (E.D. Pa. 2010).)	One Year (42 Pa. Cons. Stat. Ann. § 5523(1).)	Yes	27 Pa. Stat. and Cons. Stat. Ann. §§ 7707, 8301–03 (2019).
Rhode Island	• A false and defamatory statement concerning another. • An unprivileged communication to a third party. • Fault amounting to at least negligence. • Damages. (*Pelumi v. Gateway Healthcare*, 2013 WL 1363532, at *9 (D.R.I. Apr. 3, 2013).)	One year for slander (R.I. Gen. Laws § 9-1-14(a).) Three years for libel (R.I. Gen. Laws 9-1-14(b).)	Yes	R.I. Gen. Laws § 9-33-1 to 9-33-4 (2019).

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
South Carolina	• A false and defamatory statement concerning the plaintiff. • An unprivileged publication to a third party. • Fault on the part of the publisher. Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. (*King v. Charleston Cty. Sch. Dist.*, 664 F. Supp. 2d 571, 586 (D.S.C. 2009)	Two years (S.C. Code Ann. § 15-3- 550.)	Yes	None
South Dakota	Libel: • A false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. (SDCL 20-11-3.) Slander: • A false and unprivileged publication, other than libel, which: - Charges any person with crime, or with having been indicted, convicted, or punished for crime; - Imputes to him the present existence of an infectious, contagious, or loathsome disease; - Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or	Two years (SDCL 15-2-15(1).)	Yes	None

State	Elements	Statute of Limitations	Defamation Per Se	Anti-SLAPP
	business that has a natural tendency to lessen its profit; - Imputes to him impotence or want of chastity; or - By natural consequence, causes actual damage. (SDCL 20-11-4.)			
Tennessee	• A party published a statement • With knowledge that the statement is false and defaming to the other; or • With reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement. (*Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999).)	Six months for slander (Tenn. Code Ann. § 28-3-103.) One year for libel (Tenn. Code Ann. § 28-3-104.)	No	Tenn. Code Ann. § 20-17-101 to 20-17-110 (2019).
Texas	Libel: • A defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury. (Tex. Civ. Prac. & Rem. Code Ann. § 73.001.) Slander: • A false oral statement that is published to a third person without a legal excuse, which refers to an ascertainable person. (*Randall's Food Mkts., Inc. v. Johnson*, 891	One year (Tex. Civ. Prac. & Rem. Code Ann. § 16.002.)	Yes	Tex. Civ. Prac. & Rem. § 27.001 to 27.011 (2019).

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	S.W.2d 640, 646 (Tex. 1995).)			
Utah	• The defendant published the statements (in print or orally). • The statements were false. • The statements were not subject to privilege. • The statements were published with the requisite degree of fault. • The statements resulted in damages. (Utah Code § 45-2-2; *Oman v. Davis Sch. Dist.*, 194 P.3d 956, 972 (Utah 2008).)	One year (Utah Code § 78B-2-302(4).)	Yes	Utah Code Ann. § 78B-25-101 to 78B-25-115 (2023).
Vermont	• A false and defamatory statement. • Some negligence, or greater fault, in publishing the statement. • Publication to at least one third person. • Lack of privilege in the publication. • Special damages, unless actionable per se. • Some actual harm so as to warrant compensatory damages. (*Lent v. H.J. Huntoon*, 470 A.2d 1162, 1168 (Vt. 1983).)	Three years (Vt. Stat. Ann. tit. 12, § 512.)	Yes	Vt. Stat. Ann. tit. 12, § 1041 (2023).
Virginia	• Publication. • False defamatory statement. • Concerning the plaintiff. (*Jarrett v. Goldman*, 2005 WL 1323115, at *6 (Va. Cir. Ct. May 31, 2005).)	One year (Va. Code Ann. § 8.01-247.1.)	Yes	Va. Code Ann. § 8.01-223.2 (2020).

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Washington	• Falsity. • An unprivileged communication. • Fault. • Damages. (*Klontz v. Puget Sound Power & Light Co.*, 951 P.2d 280, 281 (Wash. App. 1998).)	Two years (RCW 4.16.100(1).)	Yes	UPEPA, 2021 Wash. Legis. Serv., ch. 259, § 2.
West Virginia	• Defamatory statement. • A nonprivileged communication to a third party. • Falsity. • Reference to the plaintiff. • At least negligence on the part of the publisher. • Resulting injury. (*Greenfield v. Schmidt Baking Co., Inc.*, 485 S.E.2d 391, 399 (W. Va. 1997).)	One year (W. Va. Code § 55- 2-12.)	Yes	*Harris v. Adkins*, 432 S.E.2d 549 (W.Va. 1993).
Wisconsin	• A false statement. • The statement is communicated to a third person. • The statement tends to harm the reputation of the subject to lower that person in the estimation of the community or deters others from associating or dealing with him. (*Rumpel v. Bank of Buffalo*, 1992 WL 50176, at *2 (Wis. Ct. App. Jan. 22, 1992).)	Three years (Wis. Stat. § 893.57)	Yes	None
Wyoming	• A defamatory communication which subjects the plaintiff to hatred, contempt, ridicule, or scorn or which causes him to be shunned or avoided. • One that tends to injure his reputation to diminish the esteem, respect, goodwill, or confidence in which he is held. *Hill v. Stubson*, 420 P.3d 732, 741 (Wyo. 2018).	One year (Wyo. Stat. Ann. § 1-3-105.)	Yes	None