

Sexual Harassment Prevention for Non-Supervisory Employees in California

Support Materials



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Video Transcript

Sexual harassment is illegal in California and not tolerated in any workplace.

It's estimated that 50% of women and 20% of men have experienced sexual harassment at work.

Sexual harassment can inflict serious damage on an organization's productivity and morale.

And individuals named in sexual harassment complaints could lose their jobs, their reputations and even their careers.

Additionally, employees may be found personally liable in court for acts of harassment.

In California, sexual harassment is defined by both the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964

Federal law defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment."

The Fair Employment and Housing Act (FEHA) defines sexual harassment as "harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions."

There are two types of sexual harassment – Quid Pro Quo and Hostile Environment.

Quid Pro Quo

Quid Pro Quo sexual harassment occurs when a manager or supervisor withholds or awards job benefits on the basis of sexual favors.

This includes work assignments, hiring, termination, promotions or demotions, positive or negative performance reviews or any other job related benefit.

Quid Pro Quo sexual harassment is a serious offense and just one instance is usually sufficient for a plaintiff to win a lawsuit.

In California, managers and employers can be held liable even if a threat was not carried out or if a threat was only implied.

For instance, a manager who suddenly blocks a subordinate employee's promotion after that employee asks the manager to stop rubbing her shoulders could be found guilty of Quid Pro Quo sexual harassment even though there was no verbal threat of adverse employment action.

Additionally, California courts have ruled that managers and their employers cannot require employees to tolerate unwelcome sexual advances as a condition of employment.

For instance, a supervisor in a restaurant could be found guilty of Quid Pro Quo harassment if he tells his employees that they should put up with lewd comments and inappropriate touching because it's part of the job of being a waitress.

Hostile Environment Harassment

Hostile Environment harassment occurs when the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

Federal courts have adopted the "Reasonable Person Standard" when addressing sexual harassment. In other words, would a reasonable person find the behavior offensive?

The fact is that most behaviors that are continuous and unwanted and based on sex meet this standard. The safe way to avoid sexual harassment is to avoid these behaviors entirely.

Hostile environment sexual harassment can occur between employees of the same sex, between employees of different sexes and between employees of any rank or position in the organization.

Harassing jokes, comments or other behavior can create a hostile work environment even if they aren't directly targeted at the individual making the harassment complaint.

For example, a transgendered employee who was forced to endure jokes and hostile comments by co-workers, even if the comments were not directed at the employee personally, may have the legal basis to file a harassment complaint.

Sexual harassment is often perpetrated between co-workers, but it also occurs between employees and individuals not directly employed by an organization.

Individuals such as contractors, consultants, delivery persons, vendors and even customers.

Sexual harassment can occur anywhere that employees represents their organization. This includes work parties, dinner with clients, conferences, trade shows, sales calls and charity events.

Sexual harassment can be perpetrated in person, on the phone, through text messages, instant messages, emails, or through social networking sites.

Inappropriate Behaviors

The following inappropriate behaviors are specifically mentioned by the Fair Employment in Housing Act as forms of sexual harassment:

- Unwanted sexual advances like flirting, propositions, or repeated requests for dates.
- Actual or threatened retaliation for filing a sexual harassment complaint.
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters.
- Making or using derogatory comments, epithets, slurs, or jokes.
- Sexual comments including graphic comments about an individual's body.
- Using sexually degrading words to describe an individual; or sending suggestive or obscene letters, notes, or invitations.
- Unwanted touching such as shoulder massages, hugging and back scratching.
- Physically assaulting a co-worker or impeding or blocking an individual's movements or ability to work.
- Making derogatory comments about a person's sexual orientation, gender identity or gender expression.
- Making inappropriate remarks or jokes about a woman's pregnancy, childbirth or other related medical conditions.

Other inappropriate behaviors that could lead to illegal harassment include:

- Gossiping or spreading rumors about sexual topics, or engaging in sexual conversations that are overheard by others.
- The use of demeaning or offensive names such as honey, sweetie, hottie, baby, girl, boy or hunk.
- Offensive gender based comments or behaviors that degrade people simply because of their gender, such as, “A woman’s place is in the kitchen, not the boardroom.”

California Specifics:

Under California law employers must display a poster and distribute a brochure made by the Department of Fair Employment and Housing or create an equivalent brochure of their own.

Additionally, employees must be given a written harassment and retaliation policy immediately upon hire.

The DFEH brochure and the written harassment and retaliation policy are separate documents and one cannot replace the other.

If 10% or more of an organization’s employees speak a particular language other than English, the policy must be translated into that language.

This harassment and retaliation policy must:

- Include a list of all current protected categories covered under the FEHA
- Indicate that managers, supervisors, co-workers and third parties are prohibited from engaging in unlawful conduct.
- Create a complaint process and procedure as defined by the DFEH.

Complaint Process and Procedures:

Employers in California must take all reasonable steps to prevent discrimination and harassment from occurring and employees are encouraged to speak up if they feel they are being harassed or if they witness the harassment of a co-worker.

California regulations specifically warn employees not to use peer pressure to discourage victims from filing a complaint.

Complaint Procedures:

Employees in California have the right to report harassment to someone other than their direct supervisor and they must be allowed to submit harassment complaints orally or in writing.

Additionally, employees have the right to report the sexual harassment to the DFEH within 1 year of the harassment incident and must be given the departments' contact information.

Complainants must have all their individual rights and their employer's obligations fully explained.

Harassment complaints must be treated with confidentiality whenever possible however complete confidentiality cannot be guaranteed.

Employees have the legal right to be free from retaliation for filing a harassment complaint and employers must ensure that retaliation does not occur.

Supervisors in California must report all complaints (without exception) to a designated company representative such as an HR manager.

Complaints must receive a quick response and a timely and impartial investigation by a qualified representative.

A determination based on the investigation must also be made in a timely fashion and reported immediately to the complainant, the accused, witnesses, and all other parties directly concerned.

If it's determined that illegal harassment occurred then immediate action must be taken to stop the harassment, ensure that it does not reoccur and ensure that no retaliation occurs because of the complaint.

If disciplinary action is warranted, then it should be executed promptly using the organization's progressive discipline policy. In addition, periodic follow-ups should be undertaken to watch for reoccurrences of the harassment and instances of retaliation.

All actions taken to remediate the complaint must be communicated to the complainant.

Lastly, appropriate action must be taken to remedy the complainant's damages.

Appropriate remedies include policy changes by the employer, re-hiring or reinstatement, back pay, promotions; and fines and damages for emotional distress.

If complainants disagree with the findings of the investigation or with the actions taken to remediate the harassment, they have the right to lodge a complaint within 1 year of the harassment with the DFEH.

All employees must be given contact information for the DFEH.

The DFEH serves as a neutral party and seeks to resolve disputes. If evidence of harassment is found and settlement attempts fail, a lawsuit may be filed on behalf of the complainant.

Complainants also have the right to pursue a private civil lawsuit in court once the complaint has been filed with the DFEH.

Consequences:

Sexual harassment has consequences.

Sexual harassment can result in disciplinary actions including written warnings, suspension, demotion and even termination.

It's also illegal to retaliate for a sexual harassment complaint. This can also lead to disciplinary actions up to and including termination.

Additionally, perpetrators of sexual harassment can be found personally liable in court.

In Conclusion

What can you do to prevent sexual harassment? It's Simple.

Leave offensive behaviors at the door, treat everyone with respect and speak up when you witness harassment. If you feel that you have been harassed, report it.

Every employee deserves a safe, comfortable environment at work. A workplace free of harassment and fear and full of respect. It's up to everyone to do their part in preventing harassment.

Employee Quiz

1. (T / F) California courts have ruled that managers and their employers cannot require employees to tolerate unwelcome sexual advances as a condition of employment.
2. (T / F) Quid Pro Quo sexual harassment is a serious offense, however one single instance almost never is considered illegal. It takes a pattern of behavior by the accused for a plaintiff to win a lawsuit.
3. (T / F) One of the most important aspects of California harassment law is that employers must take reasonable steps to prevent harassment from occurring.
4. (T / F) Hostile Environment harassment occurs when the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.
5. (T / F) For harassing jokes, comments or other behavior to create a hostile work environment they need to be directly targeted at the individual making the harassment complaint. Bystanders cannot make a harassment claim.
6. (T / F) Sexual harassment can occur anywhere that employees represent their organization. This includes work parties, dinner with clients, conferences, trade shows, sales calls and charity events.
7. (T / F) In California, a pattern of making derogatory comments about a person's sexual orientation, gender identity or gender expression could be considered illegal harassment.
8. (T / F) Pregnancy is protected from harassment under California law, however childbirth or other related medical conditions are not.
9. (T / F) Employees in California have the right to report harassment to someone other than their direct supervisor and they must be allowed to submit harassment complaints orally or in writing.
10. (T / F) Supervisors in California are allowed to use their own personal judgement about whether to report a harassment complaint or to handle it themselves.
11. (T / F) Employees have the right to report harassment to the Department of Fair Employment and Housing (DFEH) for up to 10 years after the harassment occurred.
12. (T / F) Employers are not responsible for harassment committed by "non-employees" such as customers.

13. (T / F) Both supervisory and non-supervisory employees may be held personally liable in court for their actions.
14. (T / F) California regulations specifically warn employees to not use peer pressure to discourage victims from filing a complaint.
15. (T / F) Although threatening retaliation often results in disciplinary actions, it is not illegal.

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Employee Quiz Answer Key

1. **(T / F)** California courts have ruled that managers and their employers cannot require employees to tolerate unwelcome sexual advances as a condition of employment.
2. **(T / F)** Quid Pro Quo sexual harassment is a serious offense, however one single instance almost never is considered illegal. It takes a pattern of behavior by the accused for a plaintiff to win a lawsuit.
3. **(T / F)** One of the most important aspects of California harassment law is that employers must take reasonable steps to prevent harassment from occurring.
4. **(T / F)** Hostile Environment harassment occurs when the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.
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DFEH Harassment Brochure:

<https://www.dfeh.ca.gov/files/2016/09/DFEH-185-ENG.pdf>

Helpful Links:

<https://www.dfeh.ca.gov>

<https://www.eeoc.gov>

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