

# Sexual Harassment Prevention in California For Managers and Supervisors

## Support Materials



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**Important Notice:** It's crucial that employers in California educate themselves on all aspects of harassment and discrimination law. AB1825 mandates 2 hours of sexual harassment training every 2 years for supervisors. This video and quiz are just one component of a complete sexual harassment training program and were designed as a supplement to assist employers in complying with the law. The material in this video and quiz are for informational purposes only and should not be construed as legal advice. Employers have a responsibility to ensure that all required information is covered by its training program.

## **Transcript of Video:**

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 managers named in sexual harassment complaints could lose their job, their reputation and even their career.

Employers and their supervisors must take reasonable steps to prevent harassment from occurring.

Managers who fail to prevent sexual harassment or who engage in sexual harassment themselves can be found personally liable in court.

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 (DFEH) 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. One single mistake could end a manager's career.

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.

Managers have the dual responsibility of avoiding harassing conduct themselves while preventing it in the workforce they manage.

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 represent 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 FEHA 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:**

California managers and supervisors who work for employers with 50 or more employees must complete 2 hours of sexual harassment training every two years and new managers or supervisors must receive this training within 6 months of hire.

A manager or supervisor is defined as any individual who possesses the authority "to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them."

Employers must maintain all documentation about sexual harassment training for managers and supervisors for 2 years.

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 employee speak a 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 DFEH
- 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 DFEH

**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.

**DFEH 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.

DFEH lists EEO Officers, HR Managers, another supervisor, a hotline or an ombudsman as suitable choices for reporting.

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

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 who receive complaints must remain objective and thoroughly document the facts of the case. The documentation must be factual and not interject opinion.

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

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

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 with 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.

### **Liability**

Employers are generally liable for the actions of their supervisors or managers and both supervisory and non-supervisory employees may be held personally liable for their actions.

If an employer has not taken "all reasonable steps to prevent harassment from occurring" as is required by law, the employer can be held liable for harassment.

Additionally, if the employer knew or should have known of harassment by a “non-employee, then the employer may liable for the actions of the non-employee as well.

Victims of harassment are entitled to damages even if no loss of pay, benefits or employment opportunity was suffered.

Employers may avoid liability in situations where the harassment was perpetrated by non-supervisory personal and if all aspects of the law were followed.

### **Protecting Yourself from Harassment Complaints**

The best way for managers and supervisors to protect themselves from sexual harassment complaints is to make objective, job-related personnel decisions.

A manager’s personal and professional lives should be kept separate. At work, every decision should be made based on job specific facts.

Managers should avoid compromising situations whenever possible. Office and conference room doors should be kept open and blinds should be raised in office windows. Meetings should be held with groups of employees or in public if possible.

Conversations should be kept on job-related or non-personal topics and physical contact should be limited to a handshake.

When traveling, managers should meet with employees in hotel lobbies and dine in public restaurants. Planning ahead will help avoid misperceptions.

### **Managers Responsibilities**

Preventing harassment starts with managers and supervisors setting the example. This happens, not only by following the organization’s policies and procedures, but also by making the goal of a respectful workplace his or her top priority.

Managers should always take sexual harassment seriously. This means never telling or laughing at inappropriate jokes or comments even if the manager thinks his or her employees will not be offended. A manager’s actions are the single most important factor in preventing harassment in the workplace.

Social media is a particularly dangerous place for managers. Comments, pictures or videos placed on a manager’s personal social media pages can contribute to a hostile work environment. Especially, if other employees are part of the manager’s social network.

Employees should be educated through ongoing, formal sexual harassment prevention training sessions and through informal counseling sessions when managers encounter inappropriate behaviors that need to be addressed.

It's critical that managers clearly communicate the organization's progressive discipline policy as it pertains to sexual harassment. Employees need to understand that written warnings, suspension, demotion and even termination could result from inappropriate behaviors.

Employees should be warned that it's illegal to retaliate for a harassment complaint and that retaliation will also lead to disciplinary actions up to and including termination.

Additionally, they should be informed that California regulations specifically warn employees to not use peer pressure to discourage victims from filing a complaint.

Managers should periodically inspect the workplace for objectionable items, artwork and behaviors. A manager's presence in work areas can greatly reduce inappropriate conduct and catch minor problems before they rise to the level of illegal harassment.

Watch for the warning signs of unreported sexual harassment; such as, changes in behavior or appearance, increased absences, withdrawal from co-workers, avoidance of particular people or negative changes to work performance.

### **In Conclusion**

It's every manager's responsibility to create a safe, comfortable environment for all employees; a workplace free of harassment and fear and full of respect.

Managers who take this duty seriously not only will avoid legal trouble, but will create a healthy, productive work environment with high employee morale as well.

## 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) In California, managers and employers can be held liable even if the threat of adverse employment action was not carried out or if the threat was only implied.
4. (T / F) One of the most important aspects of California harassment law is that employers and their supervisors must take reasonable steps to prevent harassment from occurring.
5. (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.
6. (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.
7. (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.
8. (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.
9. (T / F) Pregnancy is protected from harassment under California law, however childbirth or other related medical conditions are not.
10. (T / F) 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.
11. (T / F) Employees must be given a written harassment and retaliation policy within 6 months of hire.
12. (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.

13. (T / F) Supervisors in California must report all complaints (without exception) to a designated company representative such as an HR manager.
14. (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.
15. (T / F) Once a complaint has been filed with the DFEH, complainants lose the right to pursue a private civil lawsuit in court.
16. (T / F) Employers are not responsible for harassment committed by “non-employees” such as customers.
17. (T / F) Victims of harassment are entitled to damages even if no loss of pay, benefits or employment opportunity was suffered.
18. (T / F) Employers may avoid liability in situations where the harassment was perpetrated by non-supervisory personnel and if all aspects of the law were followed, however employers are generally liable for actions taken by managers and supervisors.
19. (T / F) Both supervisory and non-supervisory employees may be held personally liable in court for their actions.
20. (T / F) Comments, pictures or videos placed on a manager’s personal social media pages cannot contribute to a hostile work environment.
21. (T / F) California regulations specifically warn employees to not use peer pressure to discourage victims from filing a complaint.
22. (T / F) Although retaliation often results in disciplinary actions, it is not illegal.
23. (T / F) Preventing harassment starts with managers and supervisors setting the example. This happens, not only by following the organization’s policies and procedures, but also by making the goal of a respectful workplace his or her top priority.
24. (T / F) Negative changes to work performance could be a sign that an employee is suffering from harassment.
25. (T / F) California law prohibits employers from terminating the employment of an employee who is guilty of illegal harassment or retaliation.

## 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.
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6. (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.
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writing.

13. **(T / F)** Supervisors in California must report all complaints (without exception) to a designated company representative such as an HR manager.
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15. **(T / F)** Once a complaint has been filed with the DFEH, complainants lose the right to pursue a private civil lawsuit in court.
16. **(T / F)** Employers are not responsible for harassment committed by “non-employees” such as customers.
17. **(T / F)** Victims of harassment are entitled to damages even if no loss of pay, benefits or employment opportunity was suffered.
18. **(T / F)** Employers may avoid liability in situations where the harassment was perpetrated by non-supervisory personal and if all aspects of the law were followed, however employers are generally liable for actions taken by managers and supervisors.
19. **(T / F)** Both supervisory and non-supervisory employees may be held personally liable in court for their actions.
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22. **(T / F)** Although retaliation often results in disciplinary actions, it is not illegal.
23. **(T / F)** Preventing harassment starts with managers and supervisors setting the example. This happens, not only by following the organization’s policies and procedures, but also by making the goal of a respectful workplace his or her top priority.
24. **(T / F)** Negative changes to work performance could be a sign that an employee is suffering from harassment.
25. **(T / F)** California law prohibits employers from terminating the employment of an employee who is guilty of illegal harassment or retaliation.

# Important Sexual Harassment Training Requirements for Supervisors (From the DFEH)

## ***What Employers Must Train?***

Employers with at least 50 employees or independent contractors must provide two hours of sexual harassment prevention training to all supervisory employees once every two years. The employer must train employees within six months of them taking a position as a supervisor.

## ***Which Employees are Considered Supervisors?***

Employers must train all supervisors in California. A supervisor is anyone with authority to hire, fire, assign, transfer, discipline, or reward other employees. A supervisor is also anyone with the authority to effectively recommend (but not take) these actions, if exercising that authority requires the use of independent judgment.

## ***What Must be Included in the Training?***

Employers must provide sexual harassment prevention training in a classroom setting, through interactive E-learning, or through a live webinar. E-learning training must provide instructions on how to contact a trainer who can answer questions within two business days.

Any training must explain:

- The definition of sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964.
- The statutes and case-law on prohibiting and preventing sexual harassment;
- The types of conduct that can be sexual harassment.
- The remedies available for victims of sexual harassment.
- Strategies to prevent sexual harassment.
- Supervisors' obligation to report harassment.
- Practical examples of harassment.
- The limited confidentiality of the complaint process.
- Resources for victims of sexual harassment, including to whom they should report it.
- How employers must correct harassing behavior.
- What to do if the supervisor is personally accused of harassment.
- The elements of an effective anti-harassment policy and how to use it.
- "Abusive conduct" under Government Code section 12950.1, subdivision (g)(2).
- List all of the *protected classes* in California

### ***Who Can Conduct Sexual Harassment Training?***

There are three types of qualified trainers:

- Attorneys who have been members of the bar of any state for at least two years and whose practice includes employment law under the Fair Employment and Housing Act or Title VII of the federal Civil Rights Act of 1964.
- Human resource professionals or harassment prevention consultants with at least two years of practical experience in: Designing or conducting training on discrimination, retaliation, and sexual harassment prevention; responding to sexual harassment or other discrimination complaints; investigating sexual harassment complaints; or advising employers or employees about discrimination, retaliation, and sexual harassment prevention;
- Law school, college, or university instructors with a post-graduate degree or California teaching credential and either 20 hours of instruction about employment law under the Fair Employment and Housing Act or Title VII of the federal Civil Rights Act of 1964.

Neither the Department of Fair Employment and Housing nor any other state agency issues licenses or certificates validating a person's qualifications to teach sexual harassment prevention training classes.

### ***Recordkeeping***

- Employers must maintain training documentation for a minimum of two years.
- Documentation must include names of the supervisors trained, training date, sign-in sheet, certificates of attendance or completion, type of training, copies of written or recorded training materials, and the name of the training provider.
- For webinar training, employers must also retain a copy of the webinar, written materials used by the trainer, written questions submitted during the program, and written responses or guidance that the trainer provided during the webinar.
- For e-learning training, employers must retain written questions received and written responses or guidance provided.

Required (or equivalent) DFEH Brochure:

[English Brochure](#)

[Spanish Brochure](#)

Required DFEH Posters:

[DFEH English Poster](#)

[DFEH Spanish Poster](#)

Helpful Links:

[California Department of Fair Employment and Housing](#)

[U.S. Equal Employment Opportunity Commission](#)