

Creating a Harassment-free Workplace

What Is Sexual Harassment?

Sexual harassment is illegal. The California Fair Employment and Housing Act (FEHA) defines sexual harassment as harassment based upon sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

“Unwelcome” is the critical word. Sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. It depends on the circumstances: one person might in fact welcome a request for a date, sex-oriented comment, or joke while another may not. And even though victims may feel pressured to accept certain conduct and actively participate in it, they may still find it offensive and objectionable.

Sexual harassment can be verbal, visual or physical and does not require sexual desire on the part of the harasser. It may be expressed in a variety of ways, some of which may be subtle, but all of them are a violation of employee rights, including:

- Dirty jokes and lewd language
- Sexual content posted on walls and computer screens

- Quid pro quo sexual harassment, such as a request for sexual favors in exchange for an employment benefit
- Sexual favoritism
- Leering, suggestive looks
- Inappropriate touching, unwelcome physical proximity, or blocking or impeding someone's movement
- Denied promotions or pay raises because of gender or sexual orientation
- Unwelcome phone calls, emails and text messaging



What Are Its Impacts?

According to the *Journal of Personnel Psychology*, sexual harassment experiences are associated with negative outcomes such as decreased job satisfaction, lower organizational commitment, withdrawing from work, ill physical and mental health, and even symptoms of post-traumatic stress disorder. Historically, sexual harassment has been identified as one of the most damaging barriers to career success and satisfaction, especially for women. In fact, women are nine times more likely than men to quit their jobs, five times more likely to transfer, and three times more likely to lose jobs because of harassment. (National Council for Research on Women; 2014)

The effect on the morale of all employees can be serious. Both men and women in a workplace can find their work disrupted by sexual harassment even if they are not directly involved. Sexual harassment can have a demoralizing effect on everyone within range of it, and it often negatively impacts company productivity on the whole. (Equal Rights Advocates)

The costs of sexual harassment are borne not only by the victims of harassment; they create financial havoc for employers as well. Sexual harassment costs a typical Fortune 500 company \$6.7 million per year in absenteeism, low productivity and employee turnover. That does not include

additional costs for litigation expenses, executive time and tarnished public image should a case wind up in court. (*Cleveland State Law Review*)

Protected Characteristics

The following characteristics are protected by California law from discrimination and harassment: religion or religious creed, race, color, ethnic group identification, age (40 or over), national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, military and veteran status, and sex, gender, gender identity, gender expression, or sexual orientation.

Employers' Obligations

Under law, all employers are required to take the following actions against harassment:

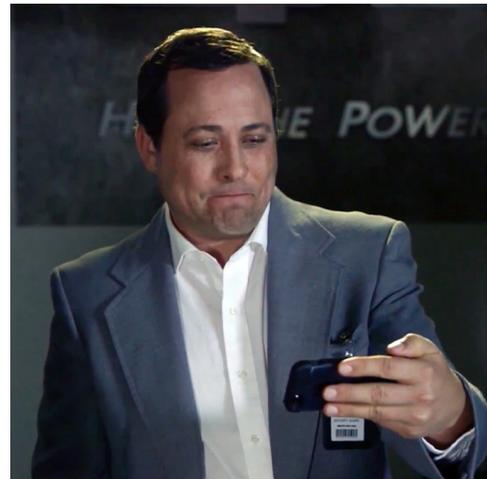
- Take all reasonable steps to prevent discrimination and harassment from occurring.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
 - Fully inform the complainant of his/her rights, including the right to be free from retaliation, and any obligations to secure those rights.
 - Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to others directly concerned. (Download Kantola's free document "*EEOC Sexual Harassment Investigation Interview Questions*")
 - Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the complainant that action has been

taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.

- Distribute the DFEH-185 brochure or this information sheet on sexual harassment to all employees. The DFEH-185 publication is available in alternative format for employees who need the brochure in Braille, large print, computer disk or tape cassette as a disability-related accommodation for an individual with a disability, by contacting DFEH at (800) 884-1684 or at www.dfeh.ca.gov.
- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace, available through the DFEH publications line (916) 478-7201 or online <http://www.dfeh.ca.gov/res/docs/Publications/DFEH-162-2015.pdf> [English] and <http://www.dfeh.ca.gov/res/docs/Publications/DFEH-162%20Spanish%202015.pdf> [Spanish].
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment. (Download Kantola's free document "*Your First Sexual Harassment Complaint: Ten Keys to Success*")
- Employers who do business in California and employ 50 or more part-time or full-time employees must provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position. (See Kantola's two-hour interactive eLearning course, *Sexual Harassment: Training for a Harassment-Free Workplace –California Manager Version*)
- A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way for an employer to avoid or limit liability if harassment should occur despite preventive efforts.

Employer Liability

All employers, regardless of the number of employees, are covered by the harassment section of the California Fair Employment and Housing Act (FEHA). Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.



Additionally, the law requires employers to take “all reasonable steps to prevent harassment from occurring.” If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a non-employee (e.g., client or customer) has sexually harassed an employee, intern, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

How to Avoid Liability

An employer might avoid liability if the harasser is a non-management employee, the employer had no knowledge of the harassment, there was a program to prevent harassment, and once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

Filing a Complaint

Employees may file a complaint with their supervisor or with appropriate representatives of their employer such as a designated ombudsperson or individuals in their human resources department. In addition, employees or job applicants who believe that they have been sexually harassed may

file a complaint of discrimination with California Department of Fair Employment and Housing (DFEH) within one year of the harassment. The DFEH can be contacted online at dfeh.ca.gov or by phone at 800-884-1684. A complaint form may be mailed to any DFEH office location or emailed to contact.center@dfeh.ca.gov.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court on behalf of the complaining party. The DFEH may seek punitive damages and is entitled to attorney's fees and costs if it prevails in litigation.

Remedies include:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued. For more information, see Publication DFEH-159 (<http://www.dfeh.ca.gov/res/docs/publications/dfeh-159.pdf>).

You Are Protected from Retaliation

If you oppose prohibited behaviors, support a co-worker in filing a complaint or file one yourself, or participate in an investigation, proceeding or hearing, you are protected from retaliation by employers, coworkers, and anyone else associated with the workplace.

The Best Prevention Is Prevention

Your employer wants you to have a safe and productive work environment for all employees. The best way to prevent having any sexual harassment incidents is by training managers and employees before they occur. *Ignorantia juris non excusat* ("Ignorance of law excuses no one").

NOTE: This document may be used as an equivalent to the DFEH-185 brochure that all employees should receive.

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