

# Sexual Harassment, Prevention, and California Law

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## Sexual Harassment in the Workplace

Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances,

and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

## Prevention of Sexual Harassment

The most effective weapon against sexual harassment is prevention. Harassment does not disappear on its own. In fact, it is more likely that when the problem is not addressed, the harassment will worsen and become more difficult to remedy as time goes on.

### **Employer Responsibilities**

The burden of preventing sexual harassment rests on the employer. In the United States, Canada and in some European Union Member States, employers are responsible for providing their employees with a work environment that does not discriminate and is free of harassment. Employers are, therefore, required by law to take steps to prevent and deal with harassment in the workplace. If the employer has not taken all reasonable steps to prevent and deal with harassment in the workplace, the employer may be liable for any harassment which does occur, even if unaware that the harassment was taking place. The United States, in particular, has a well-articulated standard of employer liability for sexual harassment committed by an employee.

Most successful preventive strategies and plans on sexual harassment require the involvement of all those concerned and a clear statement of intent. The statement of intent should reflect a real commitment from all parties concerned to recognize the importance of the fight against sexual harassment in the workplace. This is usually accompanied by the establishment of a written policy.

Anti-harassment laws explain what harassment is, tell all employees that harassment will not be tolerated, and set out how employers and employees should respond to incidents of harassment. Anti-harassment policies should also set forth a detailed mechanism by which employees can make complaints when sexual harassment occurs.

Having an anti-harassment policy does not mean that there will be no harassment complaints. However, having an effective policy and procedures, coupled with anti-harassment training for all staff, will assist in preventing harassment and support individuals who are being harassed to come forward and ensure that the problem is addressed quickly and effectively. In the United States, courts have held that an employer who responds quickly and effectively to a complaint by taking steps to remedy the situation and prevent future harassment will not be liable to the same extent, if at all, as an employer who fails to adopt such steps.

Below are some measures that employers can take in order to create a harassment-free workplace.

- Make it clear that this is a workplace where harassment will not be tolerated.
- Provide education and information about harassment to all staff on a regular basis. The circulation of information, open communication and guidance is of particular importance in removing the taboo of silence which often surrounds cases of sexual harassment. Information sessions, personnel meetings, office meetings, group discussion and problem-solving groups can prove very effective in this respect. Staff should also be informed of the best way of coping with aggression by means of guidelines and staff development programs on sexual harassment at work.
- Develop an anti-harassment policy together with employees, managers, and union representatives.
- Communicate the policy to all employees
- Make sure that all managers and supervisors understand their responsibility to provide a harassment-free work environment.
- Ensure that all employees understand the policy and procedures for dealing with harassment - new and long-term employees alike - this involves training, information and education.
- Show you mean it - make sure the policy applies to everyone, including managers and supervisors.
- Promptly investigate and deal with all complaints of harassment.
- Appropriately discipline employees who harass other employees.
- Provide protection and support for the employees who feel they are being harassed.
- Take action to eliminate discriminatory jokes, posters, graffiti, e-mails and photos at the work site.
- Monitor and revise the policy and education/information programs on a regular basis to ensure that it is still effective for your workplace.

Employers should provide a mechanism for addressing sexual harassment in a confidential and sensitive manner after a grievance has been filed. A well-constructed and well-

implemented plan within an organization may stop inappropriate conduct before it creates a problem for individual employees or the company.

Many non-anti-harassment policies from the United States and Canada, can be used as sample frameworks for creating systems to prevent workplace harassment in other countries.

## **Employee Responsibilities**

In addition to the employer's responsibility to provide a non-discriminatory and non-violent workplace atmosphere, employees must also assume an active role in the prevention of sexual harassment. Employees should commit to do the following:

### **Understand**

- Obtain and become familiar with the organization's policy on sexual harassment;
- Examine one's feelings, attitudes, and behaviors in relation to sexual harassment;
- See that behavior corresponds with the expectations and behavioral requirements of the organization's sexual harassment policy.

### **Observe**

- Be aware and conscious of engaging in potential sexual-harassment behaviors or incidents at work;
- Be sensitive to individuals who may be offended by the verbal and non-verbal behavior of others;
- Be aware of subtle forms of sexual harassment;
- Watch for and discourage sexual behaviors that negatively affect work.

### **Examine**

- Pay attention to the response of others in order to avoid unintentional offense;
- Do not assume that employees or co-workers enjoy or want to hear risqué jokes or sexually oriented comments about their appearance, or be touched, stared at, flirted with, or propositioned for dates or sexual favors;
- Ask yourself if your verbal or non-verbal behaviors might have a negative impact on other co-workers' attitudes toward work;
- Examine your behaviors, gestures, and comments. Ask yourself, "Could I unknowingly be encouraging sexual interplay by the way I interact or communicate?"
- Do not take sexual harassment lightly. If you think you are being sexually harassed by an individual or a group, do not accept it as a joke. Do not encourage the harasser by

smiling, laughing at his/her jokes, or flirting back. Let the harasser know that you do not enjoy and do not want this type of attention.

### Confront

- If possible, confront the sexual harasser immediately. Tell him/her that you find that type of attention offensive;
- If possible, tell the harasser that the behavior affects you negatively and has the potential of negatively affecting your job;
- If possible, tell the harasser what behaviors (gestures, physical or verbal) behaviors you find offensive.

### Resolve

- Seek confidential advice to develop your personal resolution strategy;
- Consider writing a letter to the harasser and keep a copy for yourself;
- Document all the incidents of sexual harassment. Be detailed, precise about date, time, location, and person/persons involved.

### Support

- If you know someone who is being harassed, give him or her your support. Encourage the recipient to talk about it and to take immediate action to stop it;
- If you actually see or hear an incident of sexual harassment or are subjected to an offensive environment, you can also take the appropriate steps to resolve the harassment or co-file with the complainant;
- When a recipient files a complaint, if possible, support him or her throughout the complaint process.

## Are there different types of sexual harassment claims?

Yes. Generally, there are two forms of sexual harassment:

1. **Quid pro quo: an employment decision — like a promotion, an assignment, or even keeping your job — is based on your submission to the sexual harassment**

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes quid pro quo sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment or (2) submission to or rejection of such conduct is used as the basis for employment decisions.

2. **Hostile work environment: the sexual harassment makes your workplace environment intimidating, hostile, or offensive**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute hostile-environment sexual harassment when the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or of creating an intimidating, hostile, or offensive working

environment. Courts consider several factors to determine whether an environment is hostile, including (1) whether the conduct was verbal, physical, or both; (2) how frequently it was repeated; (3) whether the conduct was hostile or patently offensive; (4) whether the alleged harasser was a co-worker or supervisor; (5) whether others joined in perpetrating the harassment; and (6) whether the harassment was directed at more than one individual.

## What kinds of behavior could be considered sexual harassment?

What constitutes sexual harassment can vary depending on the situation and people involved. It might include behaviors like unwelcome sexual advances, requests for sexual favors, direct or indirect threats or bribes for sexual activity, sexual innuendos and comments, sexually suggestive jokes, unwelcome touching or brushing against a person, pervasive displays of materials with sexually illicit or graphic content, and attempted or completed sexual assault.

## Does Title VII protect men from sexual harassment? What about same-sex harassment?

Anyone, male or female, can be a victim of sexual harassment. Sexual harassment is not limited by gender. The victim or the harasser may be a woman or a man, and her or his victim does not have to be of the opposite sex — a man might harass another man, and a woman might harass another woman.

Additionally, harassers are not always direct supervisors. Behavior may still constitute sexual harassment even if the harasser is a co-worker, a supervisor in another area, or even a person not employed in the victim's workplace. In fact, a victim of sexual harassment does not necessarily have to be the person directly being harassed; the victim could be an employee who is indirectly but negatively affected by the offensive conduct.

## Can one incident of harassment or offensive behavior constitute sexual harassment?

It depends. In quid pro quo cases, a single sexual advance may constitute harassment if it is linked to the granting or denial of employment or employment benefits. In contrast, unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally are not sufficient evidence of a hostile environment. A hostile-environment claim usually requires proof of a pattern of offensive conduct. Nevertheless, a single, unusually severe incident of harassment may be sufficient to constitute a Title VII violation; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical.

## Can my employer punish me because I complained about sexual harassment?

No. Title VII forbids employers from retaliating against you for filing a charge of harassment or speaking out against harassment. It also protects you from retaliation if you choose to participate in an investigation, proceeding, or hearing on behalf of a co-worker who you believe has had his or her rights violated under Title VII. Don't be afraid to speak up if you think harassment has occurred in your workplace!

## Are there other laws besides Title VII that prohibit sexual harassment in the workplace?

Some states have adopted stronger protections against sexual harassment beyond Title VII. For more information, check out your state's relevant laws or contact an employment lawyer in your state.

## What should I do if I believe I am facing sexual harassment at work?

Remember that each situation is different, and you should take the steps that make sense in your case.

1. Consult your employee handbook or policies. If your employer has a sexual harassment policy in place, follow it. Put complaints in writing. Take notes on the harassment and be specific in your details — note the time and place of each incident, what was said and done, and who witnessed the actions.
2. If you feel safe speaking directly to the person harassing you, take these steps:
  1. Explain what behavior is bothering you. Name the behavior and be specific.
  2. Tell the harasser that their attention or behavior is bothering you.
  3. Ask the harasser to stop the behavior.
  3. Tell your supervisor about the behavior and the steps you have taken to address it. If you do not feel comfortable speaking directly to the person harassing you, go directly to your supervisor or human resources department.
4. File a complaint with the [Equal Employment Opportunity Commission](#). If you believe you have a Title VII claim, you have the right to file a discrimination complaint with the EEOC, the federal agency charged with enforcing many anti-discrimination laws. But don't wait to file your complaint! **In most cases you have 180 days — that's six months — from the date of the discriminatory activity to file a discrimination charge** with the EEOC in order to preserve your rights. You do not need an attorney to file a complaint with the EEOC. The EEOC's [website](#) offers instructions on filing a charge.

## What will the EEOC do after I file a complaint?

After you have filed a complaint, the EEOC will notify your employer that you have filed a charge and will begin an investigation into your complaint. The EEOC may then take a number of different paths. First, the EEOC may attempt to settle your complaint or refer you and your employer to a mediator. Second, if the EEOC is unable to reach a settlement both parties agree on, and the defendant is a private employer, the EEOC may file a lawsuit in federal court. Finally, the EEOC may also choose to simply dismiss the charge. When a charge is dismissed, or if the EEOC is unable to reach an agreement to settle the complaint, the EEOC will issue a notice to you advising you of your right to sue in court. This notice is called a "right-to-sue" letter. If you want to file a lawsuit before the EEOC completes its process, you may request a right-to-sue letter.

## I'm not sure yet if I want to file an EEOC charge or make a formal complaint to my employer. What steps can I take to protect myself?

1. Keep a record of the discriminatory practices you believe are taking place.
2. Check your company's employee handbook. Your company may have an Equal Employment Opportunity Officer or another way for you to file an internal complaint. For instance, some companies offer mediation or other tools to resolve problems.
3. Keep doing a good job and keep a record of your work. Keep copies at home of your job evaluations and any letters or memos that show that you do a good job at work.
4. Seek support from friends and family. Harassment at work is a difficult thing to face alone, and the process of fighting harassment can be very stressful.
5. You can contact the EEOC to speak with a counselor about your legal rights whether you choose to file a claim or not. The EEOC may investigate and/or offer mediation services to help resolve the complaint.

6. Keep timing in mind. **In most cases you have 180 days — six months — from the date of the discriminatory activity to file a discrimination charge** with the EEOC in order to preserve your rights.

# Sexual Harassment - State of California

## DEFINITION OF SEXUAL HARASSMENT

The Fair Employment and Housing Act defines harassment because of sex as including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

The Fair Employment and Housing Commission regulations define sexual harassment as unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of violations:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct: leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters
- Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
- Physical conduct: touching, assault, impeding or blocking movements

## EMPLOYER LIABILITY

All employers are prohibited from harassing employees in the workplace. If harassment occurs, an employer may be liable even if management was not aware of the harassment. An employer might avoid liability if the harasser is a non-management employee, the employer had no knowledge of the harassment, and there was a program to prevent harassment. If the harasser is a non-management employee, the employer may avoid liability if the employer takes immediate and appropriate corrective action to stop the harassment once the employer learns about it. Employers are strictly liable for harassment by their supervisors or agents. The harasser can be held personally liable for damages. Additionally, Government Code section 12940, subdivision (k), requires an entity to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventative measures, that employer can be held liable for the harassment. A victim may be entitled to monetary damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

## EMPLOYER OBLIGATIONS

All employers have a legal obligation to prevent sexual harassment.

- Employers must take all reasonable steps to prevent discrimination and harassment from occurring.
- Employers must help ensure a workplace free from sexual harassment by posting in the workplace a poster made available by the Department of Fair Employment and Housing.
- Employers must help ensure a workplace free from sexual harassment by distributing to employees information on sexual harassment. An employer may either distribute a brochure that may be obtained from the Department of Fair Employment and Housing or develop an equivalent document, which must meet the following requirements:
  - The illegality of sexual harassment

- The definition of sexual harassment under state and federal laws
- A description of sexual harassment, utilizing examples
- The internal complaint process of the employer available to the employee
- The legal remedies and complaint process available through the Department and the Fair Employment and Housing Commission
- Directions on how to contact the Department and the Fair Employment and Housing Commission
- The protection against retaliation for opposing the practices prohibited by law or for filing a complaint with, or otherwise participating in investigative activities conducted by, the Department or the Commission
- # Employers with 50 or more employees must provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, and to all new supervisory employees within six months of assuming a supervisory position. There after, covered employers must provide sexual harassment training and education to each supervisory employee once every two years.

## ENFORCEMENT OF THE LAW

Employees or job applicants who believe that they have been sexually harassed may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing. The Department will investigate the complaint and attempt to resolve the disputes. If the Department finds evidence of sexual harassment and settlement efforts fail, the Department may file a formal accusation against the employer and the harasser. The accusation may lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed on the complainant's behalf by the Department. If the Commission finds that harassment occurred, it can order remedies, including up to \$150,000 in fines and/or damages for emotional distress from each employer or harasser charged. In addition, the Commission may order hiring or reinstatement, back pay, promotion, training, and changes in the policies or practices of the involved employer. A court may order unlimited damages.

## PREVENTING SEXUAL HARASSMENT

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way to avoid or limit damages if harassment should occur despite preventative efforts.

### Complaint Procedure

An employer should take immediate and appropriate action when he/she knows or should have known that sexual harassment has occurred. An employer must take effective action to stop any further harassment and to minimize any effects of the harassment. To those ends, the employer's policy should include provisions to:

- Fully inform complainant of his/her rights
- Fully and effectively investigate. The investigation must be immediate, thorough, objective and complete. Anyone with information on 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 all others directly concerned.
- If harassment is proven, there must be prompt and effective remedial action. First, appropriate action must be taken against the harasser and communicated to the complainant. Second, steps must be taken to prevent further harassment. Third, appropriate action must be taken to remedy the complainant's loss, if any.

### Training of all individuals in the workplace

All employees must receive from their employers a copy of the DFEH pamphlet "[Sexual Harassment is Forbidden by Law](#)" (DFEH-185) or an equivalent document.

All employees should be made aware of the seriousness of violations of the sexual harassment policy. Supervisory personnel should be educated about their specific responsibilities. Rank and file employees should be cautioned against using peer pressure to discourage harassment victims from using the internal grievance procedure.

Employers with 50 or more employees must provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, and to all new supervisory employees within six months of assuming a supervisory position. There after, covered employers must provide sexual harassment training and education to each supervisory employee once every two years.

## **TYPICAL SEXUAL HARASSMENT CASES**

The three most common types of sexual harassment complaints filed with the Department are:

- An employee is fired or denied a job or an employment benefit because he/she refused to grant sexual favors or because he/she complained about harassment. Retaliation for complaining about harassment is illegal, even if it cannot be demonstrated that the harassment actually occurred.
- An employee quits because he/she can no longer tolerate an offensive work environment, referred to as a "constructive discharge" harassment case. If it is proven that a reasonable person, under like conditions, would resign to escape the harassment, the employer may be held responsible for the resignation as if the employee had been discharged.
- An employee is exposed to an offensive work environment. Exposure to various kinds of behavior or to unwanted sexual advances alone may constitute harassment.