



Study Guide • California Manager Version

# SEXUAL HARASSMENT TRAINING FOR A HARASSMENT-FREE WORKPLACE

KANTOLA  Productions



Name.....

Date.....

# Sexual Harassment: Training for a Harassment-Free Workplace

## California Manager Version Pre-Test

- 1. One of your female employees routinely compliments all of her coworkers, male or female, young or old, by commenting on how “hot” they look. Could these comments be taken as “sexual harassment”?
  - a. Yes—These comments could offend and may be inappropriate at work.
  - b. No—Since she says them to everyone equally, they do no harm.
  
- 2. True or False (T or F): Third party observers can be the victims of harassment even if the behavior is not intended for them to see or overhear.
  
- 3. Federal law prohibits discrimination, and therefore harassment, based on:
  - a. Gender
  - b. Race, religion, or national origin
  - c. Age and disability
  - d. All of the above
  
- 4. True or False (T or F): If one or two employees are offended by online videos being viewed in the break room, they should take their break somewhere else, or at another time, since people on their breaks aren’t officially “at work” and they have a right to free speech.

5. Managers need to be aware of inappropriate workplace behavior. What are the risks you could face if you choose to ignore harassing behavior?
- a. A judge or jury might conclude that you allowed the behavior.
  - b. A judge or jury might conclude that you encouraged the behavior.
  - c. The victim of the behavior could suffer needlessly.
  - d. All of the above.
6. Who decides if a particular behavior qualifies as “unwelcome”?
- a. The recipient or target of the behavior.
  - b. A person who observes the behavior and doesn’t like it.
  - c. Neither of the above.
  - d. Both (a) and (b) above.
7. True or False (T or F): It is a good idea to observe your employees’ screen-savers, mugs, and other displayed items in their work area and ask them to remove any potentially offensive materials.
8. “Sexual harassment is \_\_\_\_\_ behavior of a sexual nature.”
- a. unexpected
  - b. unusual
  - c. unwelcome
  - d. physical
9. Which of the following qualifies as “Retaliation”?
- a. Turning a cold shoulder or ignoring someone who complains.
  - b. Spreading rumors about who talked to HR.
  - c. Creating additional work for someone who refuses to tolerate harassment.
  - d. All of the above.
10. “Quid pro quo” is a phrase used to describe:
- a. Workplace hostility, based on sex.
  - b. A sexually charged atmosphere.
  - c. Sex as a condition of employment.
  - d. Wrongful accusation.

# Sexual Harassment: Training for a Harassment-Free Workplace

California Manager Version  
Study Guide

Presented by



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# California Manager Study Guide

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# Preface

This study guide is intended to supplement the California Manager version of the video, *Sexual Harassment: Training for a Harassment-Free Workplace*. Along with the video, this guide provides a review of the definition of illegal harassment and various examples of inappropriate behavior. It also offers discussion questions and exercises to enhance your understanding of what is or is not considered “harassment.”

Our purpose is to offer information that will help you fulfill your responsibilities as a supervisor or manager who oversees employees based in California to:

- Take reasonable measures to prevent discriminatory behavior and harassment in your workgroup.
- Comply with company policy.
- Conduct workplace audits.
- Take appropriate action in response to employee concerns or complaints.

This guide offers basic guidelines for conducting prompt, fair and thorough investigations to resolve complaints if doing so falls within your job duties. If investigations are handled in your organization by your human resources or legal department, an outside investigator, or other appropriate person, this guide will help you understand the process and improve your ability to contribute relevant information, as requested by the investigator.

We recommend that you take the pre-test before viewing the video, and the post-test at the end of the training session. Your trainer may ask that you remove the completed post-test from your workbook, sign it, and turn it in for record-keeping purposes.





# Introduction

This study guide accompanies the California manager version of the video training program, *Sexual Harassment: Training for a Harassment-Free Workplace*.

This program reviews federal, state and local laws. But it also emphasizes civility and common decency rather than limiting the focus purely to legal issues. Dealing with bad behavior before it becomes severe or persistent can in many cases allow you to facilitate a resolution that does not involve more serious disciplinary or legal measures.

The opening scene of the video brings us to a workplace where certain individuals don't seem to realize that their behavior is making their coworkers uncomfortable. Even when not directed in a mean-spirited way, unwelcome conduct like this can affect third-party observers—whether they are meant to see and overhear the interaction, or the effect on them is unintentional. As we will discuss in a later chapter, this behavior could qualify as hostile environment harassment. While it may not be considered “severe” behavior, it is apparently ongoing, and certainly offensive to some in the workgroup.

## Introduction

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The manager in the video notices that something is wrong and takes action to find out exactly what is going on. When her subordinate requests the opportunity to speak to his offending coworkers before the manager steps in, she indicates this would be acceptable as a first step but that she needs to be informed whether the situation actually improves. It will be her responsibility to follow up on a regular basis to make sure the offensive behavior actually has stopped and that it does not later reappear.

Your employer's policies are intended to provide you and your subordinates with a workplace that is comfortable for everyone—free from unlawful conduct like discrimination and harassment. And you play an important part in making sure these policies are followed in your workgroup. While you should encourage employees to say something if they personally experience or witness inappropriate conduct, you can't rely on this alone since they might not feel comfortable with speaking up. As a manager, it's your responsibility to prevent inappropriate or abusive behavior and ensure that your employees treat coworkers, clients and the public with respect.

The bottom line: if you and your employees treat each other with respect, your workplace will be more pleasant and less stressful — which will make all of your jobs easier, every day!



# Discrimination and the Law

Even as recently as fifty years ago, it was not uncommon for employers to explicitly discriminate against, or in favor of, certain groups when hiring, promoting or providing job benefits.

Many jobs were simply not an option for women, and other jobs were seen as not suitable for a man. Those with disabilities could not access many workplaces. And applicants were often hired or rejected partially or solely on the basis of their national origin or race.

The good news is that things are different now.

A landmark piece of legislation, the Civil Rights Act was passed by the United States Congress in 1964. Title VII of that Act prohibited discrimination in the workplace based upon five “protected characteristics”: race, color, religion, national origin and sex.

Congress then strengthened this earlier law by passing the Equal Employment Opportunity Act in 1972, which created the Equal Employment Opportunity Commission (or EEOC) to respond to complaints about discrimination in the workplace.

That same year, Congress passed Title IX of the Education Act Amendments prohibiting discrimination in education and vocational training. This provided additional qualified applicants from more diverse groups with a broader range of opportunities.

Since then, other “protected characteristics” have been added by federal, state and local laws. These laws include the Americans with Disabilities Act (and Amendments), the Age Discrimination Act (covering those aged 40 or older), and recent federal legislation that protects individuals from discrimination based on their genetic information.

Additionally, the California Government Code broadly defines “harassment” because of sex to include sexual harassment, gender harassment, or harassment based on pregnancy, childbirth, or related medical conditions. California SB 292 further clarifies the definition of harassment by specifying that “sexually harassing conduct need not be motivated by sexual desire.”

Harassment of individuals based on a protected characteristic is considered discriminatory because it tends to discourage them from applying for a particular job, or once hired, it makes their jobs more difficult for them to do. This is considered a denial of equal opportunity.

**DISCUSSION QUESTION:**

- Q: This sounds like a lot to memorize. How am I supposed to know which individual characteristics are—or are not—covered? Especially since laws continue to change?
- A: Admittedly, the legal environment can get complicated. In addition to federal laws, there are state and local laws that vary by location. And additional restrictions may apply in your particular workplace, for example employment terms specified in a contract or conditions that apply to federal government employees and contractors. It's tough to know the ins and outs of every single law.

Instead of trying to memorize every restriction, here's a general guideline that should help: Avoid any discriminatory comments or actions at work based on characteristics that have nothing to do with the job. It's not only prudent but also more polite to avoid bringing up irrelevant topics that might cause controversy or hurt feelings with coworkers, even if you feel that you know them very well. For example, you can do your job just fine without focusing on your coworkers' heritage, age, or religious beliefs.

As a manager, you shouldn't discriminate. And it's important to prevent discrimination among the people you supervise, as well. Treat everyone equally, as you would hope to be treated by others. By concentrating on what you have in common rather than on what makes you different, you can build relationships on the basis of courtesy and respect rather than based on some kind of stereotypical characteristic that does not recognize each person as an individual.

Be aware that any illegal discriminatory practices that impact hiring and firing, compensation, assignment or classification, transfer, promotion, layoff or recall, advertisement for positions, recruitment, and testing are prohibited.

Additionally, any privileges or benefits provided to employees could be subject to scrutiny, for example, use of facilities, training and apprenticeship programs, fringe benefits (or "perks"), pay, retirement plans, and disability leave, or any other terms and conditions of employment.

**WHAT WOULD YOU DO?**

*Mary is older than your other subordinates. She has been a productive worker with your organization for years, but you know that she can be cold and a bit abrupt in conversation. A new employee—a bubbly young woman who likes to chat—has complained to you that the icy stares and cold shoulder treatment she’s been receiving from Mary have made her feel uncomfortable in the office. You arrange to meet with Mary to discuss her attitude, but halfway through the meeting, she interrupts with: “I knew you would take her side. I am tired of your constant badgering. You know I work harder than anyone else around here, and this feels like harassment.”*

1. What issues do you need to consider?

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2. In what ways might this give rise to a discrimination or harassment claim and what would be your defense?

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3. What needs to be documented for your files?

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## Manager Responsibilities



# Manager Responsibilities

Employers based in California are required to develop a program to eliminate harassment from the workplace. This means:

- Implementing a policy
- Having procedures in place for handling and investigating complaints
- Following through on those procedures

As a supervisor or manager, there is a lot you can do to prevent discrimination and harassment in your workgroup. In fact, it's your responsibility! Your specific duties may vary, depending on the policies in your organization. You may work closely with your human resources and legal departments, or you may be more or less on your own. Either way, many of the items in the following checklist are likely to apply.

**Checklist for Managers:**

- Post your organization’s policy.
- Train all staff at time of hire and regularly thereafter.
- Post or distribute additional materials as required by state or local law.
- Perform workplace inspections/audits.
- Promptly respond to complaints.
- Conduct full and fair investigations.
- Prepare clear and complete written documentation.
- Take reasonable measures to resolve problems.
- Apply appropriate discipline, if necessary.

Start by distributing your organization’s policy, and make sure that all of your employees are trained and fully understand the content. Demonstrate that you take the subject seriously, and provide a strong model of good behavior.

Also, display the employment poster developed by the California Department of Fair Employment and Housing (or DFEH) and the accompanying pamphlet, which offers examples of various types of sexual harassment. The pamphlet also describes an employer’s obligations under the law, employer liability, and the steps that employees can follow in order to file a complaint. The brochure and poster can be obtained by phone or from the DFEH website: [www.dfeh.ca.gov](http://www.dfeh.ca.gov). California law requires that this brochure (or an equivalent) be distributed to all employees, no matter how large or small the workforce.

As a supervisor in California, make sure that you are educated about your specific responsibilities. If your employer has 50 or more employees, you are required to receive at least two hours of training every two years.

Regularly perform an “audit” of your workplace, looking for artwork, personal items, or behavior that might be objectionable. Walk around your jobsite or work area and make a visual inspection. Be aware of what your employees set as their screensavers. Look at the bumper stickers on their cars in company parking lots. Read the slogans on their T-shirts, mugs, calendars and greeting cards. If employees bring in something that isn’t appropriate for the workplace, tell them to remove it or take it home.

Respond promptly to all complaints. Your people need to know that they can come to you if they experience unwelcome behavior. Let them know that you “keep an

## Manager Responsibilities

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open door” and want to hear about any issues that may come up. Be aware that, despite your best efforts, targets and observers of harassment don’t always complain right away. By the time someone comes to you, whether as a victim or a witness, it may well be an indication of a long-running problem. Employees may see coming to you as a last resort. They may have already attempted to deal with the problem themselves and now feel they “can’t take it anymore. “

So, once a complaint has been brought to you, act quickly. Each day that the harassment continues is another day of potential harm to the victim. The complaint may not seem serious to you at first, or the behavior being described may seem minor to you. Even so, do not delay. Whether or not behavior is “unwelcome” is determined by the victim. It is crucial that you respond promptly and appropriately. Take the time to ask questions and get accurate details. If it falls within your duties to do so, conduct a full and fair investigation. Otherwise, alert the appropriate individuals within your organization, such as human resources or your legal department. During this process, be sure to prepare clear and complete written documentation. Once the investigation is complete, apply discipline, if appropriate.

Remember that you, as a supervisor or manager, can be held liable if you fail to stop harassing behavior, and your company or organization can be liable as well. Good managers will take steps to protect employees from offensive behavior—and to stop it immediately if it occurs.

### **DISCUSSION QUESTION:**

- Q: Does this mean I have to be on the lookout for ANY behavior that just MIGHT someday be considered illegal harassment? That seems like a difficult standard to uphold.
- A: The law recognizes that some mild behavior does not create a violation. The U.S. Supreme Court in one case even noted that sexual harassment law is not meant to set a “civility code” for the nation. One test is: “Could this conduct offend a reasonable person in this person’s situation, taking into account the setting and context of the behavior?” If a reasonable person COULD find the conduct offensive, and the complainant DID find it offensive, then it has crossed the line and should stop.

Employees appreciate working in an environment where everyone is treated with dignity and respect. In fact, most employers have policies that are more strict than the law, and a “zero tolerance” policy means stopping offensive behavior right when it starts—BEFORE it qualifies as illegal behavior.

The fact is that any disruptive or unprofessional behavior, when left unchecked in the workplace, can eventually cause problems. It makes more sense to put a stop to the behavior as soon as it is brought to your attention, and before it causes real harm.

A discreet reminder from you as their manager is usually enough to encourage employees to put a stop to any mildly inappropriate behavior.

**WHAT WOULD YOU DO?**

*One of your subordinates approaches you in private—she feels that several of her coworkers’ comments have “crossed the line” when they talk about religion in the break room. She accuses them of putting pressure on coworkers to join their worship services and claims they say things that are critical of other religions. She adds that she’s noticed several other coworkers who seem uncomfortable with these discussions but haven’t objected out loud. No one else has complained to you directly, and this is the first time you’ve heard this topic is being discussed.*

1. Should you do anything? Why or why not?

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**Manager Responsibilities**

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2. Does it make any difference that these discussions are taking place during breaks?

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3. If you do take action, what steps should you take?

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## Technology and Social Media

Technology and social media are blurring the boundaries between the workplace and life outside of it. Many of us now find ourselves answering work-related emails at home on the couch, or responding to a text from a friend while standing at the copy machine.

While this new technology brings great opportunities for flexibility and collaboration, it can also allow issues from the workplace to spill over into our personal lives and let our personal life intrude into the work environment. This is also true of online harassment.

Inappropriate behavior and harassment that occurs online can impact your workplace whether it happens during work time on company equipment or off-hours with personal devices. If it becomes known or talked about on the job and affects your subordinates, then it can cause real trouble.

Sometimes coworkers vent frustrations with each other online—an especially bad idea. Rather than fixing a workplace conflict, posting their anger or frustration

generally makes the situation much worse. Abusive posts can have a bullying effect even if they don't cross the line into illegal harassment. Problems can grow and other members of the workgroup may feel they have to take sides. If such an online conflict affects your workgroup, it is an issue you need to address.

Even if you are not aware of any problems online, it's important to discuss social media use with your employees. Hold a training session or bring up the subject in a meeting. If your organization has a policy on social media, make sure your team knows about it. Caution your subordinates to be careful what they put online. Remind them to make sure each item they post is something they won't regret if they change their mind later or find out that it has caused offense.

Also be cautious about your own use of email or other electronic communications, especially on sensitive issues. Due to the potentially "viral" nature of online communications, what were once personal interactions that only affected a few people have the potential to explode from something private to something that is very public. A message meant for one recipient is often sent or forwarded by mistake to the wrong person or group, with embarrassing or harmful results. And it's impossible to know if an item is really gone once it is deleted—or how widely it might be distributed.



**DISCUSSION QUESTION:**

Q: One of my subordinates was having a bad day at the office, and after work posted something mean about a coworker. The two aren't directly connected on social media, but word got around and everyone was talking about it the next day. I still don't know what the post said, as I try to stay out of that kind of stuff. I think the fuss will eventually die down—should I step in or just ignore it?

A: This is where the social media landscape gets complicated—events, words, and actions that used to stay outside of the workplace have a way of finding new life online.

If what was posted referred to a legally protected characteristic, it still might not yet qualify as a pattern of harassment if this was a single incident and the comment itself was not outrageous. But even if not illegal, this kind of activity certainly undermines the positive atmosphere you want in your workgroup. You can't ignore it.

Meet separately with the two employees involved. Find out what was said online. Ask the target of the comments what he or she would like to see happen to settle the issue. You don't necessarily have to take the steps requested, but it may be helpful to know.

Remind the individual who posted the comments that, though the words weren't spoken out loud or at work, the fact is that enough coworkers are seeing it that it is seeping into the workplace. If the comments were discriminatory or harassing, remind the employee of your organization's harassment policies. Indicate strongly that continuing this behavior could lead to a hostile work environment complaint and in any case is not appropriate. Suggest an apology to the other individual and ask both parties to give you feedback on their working relationship going forward.

**WHAT WOULD YOU DO?**

*You have a particularly good working relationship with one of your colleagues. Today this colleague asked to connect with you on a social network. You don't want to offend your colleague, but you have been posting on this site for years, and much of the content is highly personal. You are now a little more reserved about what you post, but in the past you have shared casual photos from beach parties, details of past relationships, and comments about your generation and age. What are your options?*

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# Hostile Environment Harassment

Hostile work environment harassment is defined as “ongoing, pervasive or severe behavior that unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile or offensive work environment.”

Hostile work environment harassment includes unwelcome verbal behavior, such as derogatory slurs or comments concerning a person’s sex, race, national origin, or other protected characteristic. Visual forms of harassment include such things as gestures, photos, posters, cartoons, or T-shirts. Physical behavior can include assault or interference with a person’s work or movement.

## Hostile Environment Harassment

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<b>Verbal</b> <ul style="list-style-type: none"><li>• Slurs</li><li>• Comments</li></ul>	<b>Visual</b> <ul style="list-style-type: none"><li>• Gestures</li><li>• Photos</li><li>• Posters</li><li>• Cartoons</li><li>• T-shirts</li></ul>	<b>Physical</b> <ul style="list-style-type: none"><li>• Assault</li><li>• Interference</li></ul>
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Note that the behavior must be ongoing, pervasive or severe and it must apply to a protected characteristic in order to be “illegal.” Therefore, a single inappropriate joke or comment is not likely to be considered illegal by the courts. But it still might violate your company policy—and contribute to an atmosphere at work that is not comfortable for everyone. It’s better for you to step in right away and ask everyone to “keep it professional.” Why wait until the behavior causes someone to become hurt, embarrassed, distracted or otherwise less able do their job? It’s much easier to fix before such conduct becomes routine and widespread.

As we see in the video scene involving the lunch break at the medical center, your responsibility does not end with the internal behavior of your direct reports. You also need to protect your subordinates from harassment that might come from outsiders. If a person who is not an employee of your organization acts in an inappropriate manner, there are several steps you can take, including talking to offending individuals or their superiors, or if necessary, substituting different vendors.

**DISCUSSION QUESTION:**

Q: What if I slip and say something that offends? Or unthinkingly tell a questionable joke, not realizing my mistake until it's too late?

A: One joke or remark does not usually mean that you are a harasser, and does not usually meet the threshold of “ongoing, pervasive or severe” conduct that would make the behavior unlawful. But if you make a mistake and a colleague or subordinate is offended by something you do or say, it is best to acknowledge the accidental slip and apologize right away. This makes for a better atmosphere for everyone, and avoids hard feelings.

Going forward, take care to behave consistently in a manner that repairs your image and rebuilds trust. Always keep in mind that others may feel very differently about a comment that seems fine by your own personal standards. Watch the reactions of the people around you. If they show signs of discomfort, either change the subject or genuinely ask whether something you are saying is bothering them. By keeping communication open, you can learn about others' personal boundaries and create stronger relationships based on mutual respect.

**WHAT WOULD YOU DO?**

*Richard loves to kid around and most of his coworkers enjoy working with him even though he is a bit of a “loudmouth.” You have recently learned that he has been bragging to everyone who will listen about how well his son’s Little League team is doing. In fact, the team is dominating its division this season. Several other coworkers also have kids in Little League, but their teams are not doing so well and Richard’s bragging is starting to get on their nerves. Then, yesterday, Richard went out of his way to make fun of a coworker’s child’s team, calling them “a bunch of pudgy little sissies.” The coworker is furious and has come to you insisting that you “make sure there are consequences” for this. Is this hostile work environment harassment? What would you do?*

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## Quid Pro Quo Harassment

When Congress initially included “sex” as a protected characteristic, the focus was on discrimination against a person based on their gender. Over time, sexual harassment as a legal issue gradually came to be more prominent in many peoples’ minds, largely due to a number of sensational cases involving what is known as “quid pro quo” harassment.

“Quid pro quo” literally means “this for that” or “this in exchange for that.” Quid pro quo harassment involves individuals with authority using their position to gain sexual favors. An example would be a supervisor or manager offering to reward subordinates with good performance reviews, promotions and raises—or threatening to punish them with bad performance reviews, demotions, or even termination if they don’t go along with sexual demands. Because of the power differential, victims of quid pro quo harassment may feel pressured to comply with the demands, “or else.”

### **Quid pro Quo Harassment**

- Someone in a position of power or authority
- Workplace or work-related environment
- Sexual demands in exchange for job benefits
- Threatened loss of job benefits if refused

Quid pro quo harassment can take place in a person's actual place of employment or in any work-related environment.

Quid pro quo harassment is considered to be so serious that even one occurrence is illegal. And the consequences can be costly for both the harasser and the employer. Managers and supervisors should take great care to avoid any behavior that could be considered by a reasonable person to be quid pro quo harassment. Not only can their employers be held responsible, but they themselves could be liable to pay significant penalties, as well.



**DISCUSSION QUESTION:**

- Q: At my last job, I had a manager who insisted that I join him for socializing at the bar after work. It was never really clear if he was asking me out on a date or not. Several times I explained I wasn't interested. But he kept asking, so I eventually went along with it because I didn't want him to get offended or dislike me. It never went any further than just having a drink, but was this quid pro quo harassment? And does it still count since it happened after hours?
- A: Two key words in your question are “insisted” and “eventually.” It sounds like this supervisor persisted after you turned him down—more than once. Since your choice would have been not to socialize with this manager after work, you should have felt comfortable declining the invitation and the subject should have been dropped. If something like this were to happen to you again, speaking to HR or someone else in your chain of command should quickly put an end to this kind of unwelcome request.

Usually we think of discrimination and harassment as unlawful behavior that occurs on-site in the workplace where employees are actually doing their jobs. But it can occur outside of the workplace, too, whether at off-hours, non-sponsored private social events involving managers or coworkers, or at a company-sponsored event or training.

As a manager or supervisor, take care with your words and behavior both in the workplace and outside of it—remember that the relative power you have over your employees doesn't vanish at the end of the workday.

**WHAT WOULD YOU DO?**

*The “whisper mill” is saying that Cheryl, a manager in line to be the new Division Chief, has taken a liking to Brett, a young and impressionable marketing analyst whom you hired several weeks ago—and the two have started dating. This isn’t the first time you’ve heard rumors about Cheryl using the company as her own “private dating service.”*

1. Is this something that should be investigated? Who should investigate? Who should be interviewed?

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2. What if the parties deny any relationship, accuse you of treading on their “privacy rights,” and demand to know who “told you that they were dating”?

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# Investigating Harassment Claims

It's important to be familiar with the steps for investigating a complaint. As a manager, this may be one of your responsibilities. Or your organization may be structured in such a way that your human resources department or other designated experts handle all investigations. Even so, it is good to know the process so that you can answer questions and contribute relevant information. Following are some general principles.

Investigations should be conducted promptly. Once an issue comes to your attention, don't wait. Be fair, be thorough, come to a conclusion, and take action.

Claimants may be concerned about confidentiality and ask you not to say anything to anyone. While it's easy to understand this feeling, you need to explain that you will be discreet but you can't agree to keep secrets. You must take action to correct behavior if it violates your policy or if it is unlawful.

Being discreet means you shouldn't discuss the complaint or specific details with anyone unless they "need to know." Even if you think calling a meeting or making an announcement would be the most efficient way to resolve the problem, this is almost never the right approach. Instead, begin your investigation by meeting one-on-one to find out exactly what happened. If you feel you can't be fair or if you may be seen as having a bias (for example, if one of the parties involved is a friend of yours), get outside help or ask another individual to conduct the investigation.

### **Important guidelines:**

- Notify HR or someone else in your chain of command if the situation involves a serious issue.
- Privately interview each individual involved, and take time to hear the whole story.
- Find out if any witnesses saw or heard what happened; also, whether there is any evidence (for example, a printed copy of an offensive email or an object left on someone's desk).
- Counsel all parties involved with the investigation about confidentiality, and warn them against retaliation.
- No matter how serious you think the claim is or isn't, don't take it lightly or ever suggest that the complainant "asked for it."
- Retain clear and complete written documentation—there should be written documentation of every interview and every step taken in response.

When documenting, stick to the facts. Include all relevant information concerning the date of the alleged incident along with who, what, where, when, how, and how often the unwelcome behavior is said to have occurred. Document your conversations with witnesses, as well as other evidence such as phone records, cards, cartoons, voicemails or texts, or past problems or other complaints. Document that you warned all parties against retaliation. If the victim has suggestions for resolving the problem, document these as well. (You are not obligated to do exactly what the victim wants, but this information is often helpful.) As part of your documentation, state your intended plan for resolving the situation.

Once you've had time to complete your investigation, you need to come to a conclusion based on the evidence you've gathered. You don't necessarily have to have proof beyond a reasonable doubt—you can rely on your judgment, including the credibility of your witnesses, when making your findings.

In your conclusion, you must determine the following:

- Did offensive behavior actually occur?
- Did it offend others or just the victim?
- Was it mildly offensive or quite severe?
- How often did it happen?
- Did the victim complain before?
- If not, why did victim wait?
- Could it have been a misunderstanding?

It is possible your conclusion may be that no harassment occurred. The complaint of perceived unwelcome conduct may have been based on behavior that was very mild and not offensive to a “reasonable” person under the circumstances. Or it may have been the result of a misunderstanding. In any case, the complainant would still need to be protected from retaliation even if there was no violation of your policy or the law.

In other cases, it may not be possible to figure out exactly what happened—there may not be enough evidence, or you may be left with a “he said, she said” situation. If so, be up front with the complainant and alleged harasser that the investigation is complete but your finding is inconclusive. Don't leave the investigation “open ended” while waiting or hoping for more evidence to present itself. Going forward, make sure that you and all of your employees pay closer attention to complying with company behavior standards, and ask your employees to tell you if the situation has or has not improved. Follow up with the victim over time to ensure the alleged offensive behavior has not resumed.

## Investigating Harassment Claims

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Once the investigation has been completed, determine what actions you can take to prevent the incident or others like it from occurring in the future. If there has been a violation of the company policy or the law, look for appropriate ways to correct any harm that resulted.

Serious violations may require the harasser to be disciplined, and due to confidentiality, you should not divulge to the victim the details of any disciplinary action. You can, however, give assurances that “appropriate action is being taken.”

Whenever contemplating discipline for harassers, it is important to respect their rights as well, so always involve your human resources department if you have one, or someone else up the chain of command to support your efforts for fairness and a suitable response.

This cannot be overstated: A full and fair investigation is key for all parties—both the victim and the alleged perpetrator have rights, and each deserves your best effort in resolving the conflict.

**DISCUSSION QUESTION:**

Q: I've started conducting an investigation, but the alleged harasser and the victim are giving me very different stories about what happened. Without hard evidence, how am I supposed to know whether the harasser, the victim or the witnesses I talk to are telling the truth?

A: Here are a few suggestions for judging the reliability of those you question during your investigation:

- Does the story make sense?
- Is there any hard evidence? Email, texts, cards, gifts, phone logs? If there normally would be evidence, but there isn't any, why not?
- Did the witnesses see it firsthand, or are they only telling you what they heard from someone else?
- Is the witness a friend of either party? Would that provide a reason to "see" or report things differently?
- Is there "bad blood" between the parties? Anger, resentment or retaliation could be a factor.
- Does the complainant or witness have any motivation not to tell the truth?
- Does the victim or alleged harasser have a "reputation" that makes witnesses assume certain behavior "must have happened"?
- Does the alleged harasser excuse the behavior by saying it was a joke or that the victim welcomed it?
- Does the alleged harasser claim not to remember? In other words, he or she doesn't deny it, but just doesn't recall it happening?

**WHAT WOULD YOU DO?**

*As a department head, you just learned that several of your employees recently complained about gender harassment, but when you talk to their supervisor she tells you, “Unless they put their complaint in writing, I’m not going to do anything about it because I’m not going to waste my time listening to their griping about everything little thing unless they are serious!”*

1. Is it a good idea to insist that complaints be formally submitted in writing before any action is taken? Why or why not?

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2. What steps, if any, are you going to take now?

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## Retaliation

In the video, we see the early stages of an investigation that is opened in response to a complaint of quid pro quo harassment. The HR manager in the video counsels the individual accused of harassment that he must not take any actions that may appear to be retaliatory against the employee who reported his treatment of her.

Employees who make complaints of harassment are protected from any repercussions for coming forward. Complainants are protected and so are witnesses and anyone who participates in an investigation.

The law is clear about retaliation. It is illegal. Even if the initial harassment complaint is eventually dismissed, any retaliation stemming from the complaint brings consequences of its own. Here's why: If it were not prohibited, retaliation would have a chilling effect on subsequent or future complaints, thus discouraging the lawful exercise of an employee's rights. And seeing retaliation go unpunished could influence witnesses who might otherwise speak up.

## Retaliation

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Forms of retaliation in the workplace can include shunning, avoiding or ostracizing those who complain or refuse to participate in harassing behavior; spreading rumors; giving subordinates or colleagues extra work or refusing to help them out; denying benefits or hours; and more. Whether subtle or not-so-subtle, any form of retaliation is a very serious matter.

### DISCUSSION QUESTION:

Q: What if someone accuses ME of acting inappropriately? I can't imagine continuing to work with someone who has complained about me.

A: First of all, stop the inappropriate behavior immediately! Even if a formal complaint has not been filed, don't wait for a chat with your boss or a call from HR. Stopping right away prevents further damage from being done. And once you've stopped, there are additional steps you can take that should improve the situation:

- If there has been an honest misunderstanding, consider making an apology. It makes moving forward a lot easier in most cases. Even if you did not mean to offend, apologize for causing offense.
- If you didn't know the behavior was unwelcome, now you do! You might want to thank the person for being brave enough to say something to you so you could avoid causing further offense.
- Don't retaliate, shun, avoid or start gossip about the person who complained about you. You don't have to be "best friends," but you do need to be cordial and professional.
- Follow your company's procedures, involve HR, and cooperate with any investigation.

**WHAT WOULD YOU DO?**

*There has been an incident in your workgroup. A formal complaint was filed and your HR department is investigating. Even though everyone involved has been advised to be discreet, there is a lot of talk around the office and rumors are flying. A few of your subordinates have come to you and asked for details of the investigation. They are worried about who might get disciplined and what will happen to them. They seem to be trying to get you involved and make you take sides. Will it look like you are retaliating if you don't say anything to one side or the other? What should you do?*

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## Victim's Remedies/Employer's Liability and Defenses

Discrimination and harassment claims can have significant impacts on all parties involved. Employers can be liable for the actions of their employees, supervisors, and managers. Employees can be liable for their own behavior. Supervisors and managers can be liable for their own behavior and for failing to stop the harassing behavior of others.

When your policies are well-known, well-defined and fair, employees will most likely utilize your organization's own internal procedures for handling issues related to harassment or discrimination. But keep in mind that complainants or job applicants in California who feel that they have been harassed may also file a complaint of discrimination with the DFEH within one year of the harassment. They can also file a civil lawsuit.

When someone has been the victim of unlawful discrimination or harassment, remedies can include: fines or damages from each employer or person found to have violated the law, hiring or reinstatement, back pay or promotion if previously denied, and changes in the policies or practices of the involved employer. Employees can also pursue the matter through private lawsuits in civil courts.

There are some defenses available to employers when employees harass one another. If the employer took reasonable steps to prevent harassment and discrimination, such as training everyone and having policies and procedures in place, then there might be a defense where a rogue employee acted in violation of the policy and the victim chose not to seek help under the policy, leaving the employer unaware of the problem.

### **DISCUSSION QUESTION:**

Q: Since we have a harassment policy in place and we've done training on the subject, wouldn't it be better to let the employees sort things out rather than drawing attention to a problem by getting involved?

A: If you know about a problem, it's important to take action. The trouble with waiting for employees to resolve a situation is this: every day that passes with unwelcome behavior is another day that one or more of your subordinates could be suffering. In general, problems involving discrimination and harassment do not get better when ignored, and rarely improve over time with no intervention. And it is always better to try to deal with a problem "in house" than to leave it to outside agencies, or the Courts, to resolve. Even if the situation eventually is reported to government agencies, or a lawsuit is filed, your role as a manager who promptly tried to resolve the situation is always going to result in a better outcome for you and for your employer than if you did nothing.

**WHAT WOULD YOU DO?**

*You have investigated a complaint of harassment from one of your employees and determined that in fact unwelcome behavior occurred on several occasions in violation of your policy. You have dealt with the matter in accordance with the progressive discipline steps laid out by your human resources department. Now the original complainant has told you that unless the harasser is demoted and transferred to another department (located in your satellite building thirty miles away) she will file a complaint with the EEOC. Do you have to comply with her request? What if you believe your disciplinary measures were fair and appropriate?*

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# Protected Characteristics and Harassment

As mentioned earlier in this guide, workplace harassment of certain individuals based on a protected characteristic is considered discriminatory because it tends to discourage them from applying for a particular job, or once hired, it makes it more difficult for them to do their job.

In the interests of workplace fairness and equal opportunity, federal laws prohibit discrimination, and therefore harassment, based upon an increasing number of protected characteristics.

### Protected Characteristics

- Race
- Color
- Religion
- National origin
- Sex
- Disabilities
- Age (40 and older)
- Genetic information
- And more...

Other examples of protected characteristics include veteran status and pregnancy. Depending on your location, state and local laws may cover additional protected characteristics.

It would be difficult for most of us to know every detail of every law and regulation in our area, so here's a general guideline that bears repeating:

**It's best to discourage any discriminatory comments or actions in your workgroup based on characteristics that have nothing to do with the job.**

Remember that any form of unwelcome behavior, whether or not it is aimed at a protected characteristic, can damage morale and teamwork. If you observe unwelcome behavior in your workgroup, it's important to take action rather than let it continue. If the behavior is mild and infrequent, a good first step is to take the individuals aside and tell them directly what you have seen or heard. It's often the case that they do not realize their behavior is unwelcome. Most will appreciate hearing about it so that they can stop causing offense.

However, if the behavior is more severe, or if the individuals do not listen and change their ways, you may need to take disciplinary steps. Consult human resources or others in your chain of command if you are not sure that you can effectively stop the unwelcome conduct.



Effective January 1, 2018 California Senate Bill SB 396 mandates that supervisors receive specific training that covers harassment based on gender identity, gender expression, and sexual orientation.

The following definitions are taken directly out of California's Code of Regulations:

(a) "Gender expression" means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.

(b) "Gender identity" means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.

(c) "Sex" has the same definition as provided in Government Code section 12926, which includes, but is not limited to, pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breast feeding; gender; gender identity; and gender expression, or perception by a third party of any of the aforementioned.

(d) "Sex Stereotype" includes, but is not limited to, an assumption about a person's appearance or behavior, gender roles, gender expression, or gender identity, or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

(e) "Transgender" is a general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual."

(f) "Transitioning" is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

How does all this apply in the California workplace? Here are some practical examples.

### HIRING

Can you not hire someone because they don't act the way you expect them to act? This is a bit of a trick question. Of course candidates can disqualify themselves if their behavior during an interview shows they are not qualified for the job. But they cannot be rejected just because their gender expression is not what you expected. And you cannot ask questions designed to detect an applicant's sexual orientation or gender identity.

### DRESS CODE

Can you deny an employee the right to dress in a manner suitable for that employee's gender identity? No. While employers in California can have dress codes and enforce grooming standards, California law requires that this be done in a non-discriminatory manner. This means, for instance, that a transgender woman may not be held to any different standard of dress or grooming than any other woman in the workplace. And the same for a transgender man.

Unless the employer can establish a business necessity, you may not impose any dress or grooming standard that is inconsistent with an individual's gender identity or gender expression.

### RESTROOMS

Can you decide for particular employees which restroom they should use? No. All employees have a right to safe and appropriate restroom and locker room facilities. This may include using a restroom or locker room that corresponds to the employee's gender identity rather than the employee's assigned sex at birth.

California law now requires all single-user restrooms to be "gender neutral." This makes things much less complicated for transgender individuals. But what about multiple-occupant restrooms that are gender-specific? Standards are changing on this nationwide. The best thing would be to allow employees to determine the most appropriate and safest options for themselves.

Employers are responsible to make sure everyone in the workplace knows that gender-based discrimination and harassment will not be tolerated. So do your part to show respect to all employees, no matter their sex or gender. Use the pronoun they ask you to use when describing them. Be polite, behave professionally, and set an example for others.

**DISCUSSION QUESTION:**

- Q: What if someone overhears ME saying something inappropriate about a protected characteristic, but I didn't even know they were listening?
- A: When we talk about who can be the victim of harassment in the workplace, we have to remember that employers have an obligation to all employees to provide a workplace free from discrimination and harassment. And this means that third parties who were not directly targeted have a right to object to something they overhear or see, or even learn about later. So, if two people are making racist remarks about a coworker who is not present but he or she hears about it later, there could be a claim based on that conduct. Similarly, repeated unkind remarks about individuals with disabilities behind their backs could result in a hostile work environment claim, even if they learned about it indirectly after the fact. Words can hurt—and words can bring disciplinary consequences if they are out of line.

Keep in mind: the workplace is not a social club. As a manager or supervisor, you are a role model and you set the standard. Your behavior and conversations at work should be civil and respectful regardless of who is present and how comfortable you might feel with any particular group of colleagues or subordinates. If someone overhears you saying something inappropriate, a quick apology and avoiding such topics in the future are both important responses.

**WHAT WOULD YOU DO?**

*In the video program, one scene shows resentment over a parking spot that takes on harassing overtones when one of the coworkers begins to make remarks about another's religion and national origin. This issue is resolved when a third coworker decides to take action. What would you do if you were the manager of these three individuals? Since the issue is apparently resolved, are there any further steps you would need to take? Please explain.*

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## Abusive Conduct

We'd like to think that "bullying" is associated with the schoolyard, and that once we all grow up and become adults we leave this kind of abusive conduct behind us. Unfortunately some of us refuse to grow up, and as a result, the same kind of mean-spirited and aggressive behavior can be carried along with us as we enter the workforce.

In California, AB 2053 requires employers with 50 or more employees to include training and education on prevention of abusive conduct as a component of supervisor sexual harassment training. Abusive conduct is defined as behavior "in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." Such conduct has no place in the workplace. It creates a toxic work environment that damages morale and teamwork.

Bullying may not qualify as illegal harassment if it is not based upon or directed at a protected characteristic. But that does not mean it can't cause serious harm or distress. Like harassment, it should be stopped for the good of the workgroup.

## Abusive Conduct

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As a manager or supervisor, you are responsible for supporting your employer's policies and providing a safe and productive environment for your subordinates. Managers or supervisors are generally expected to prevent any bullying or harassing behavior before it becomes ongoing, pervasive or severe. It's not good for your workgroup and should be stopped well before it crosses the line into illegal behavior. For example, if individuals are being teased or harassed because they are vegetarians, or fans of an unpopular sports team, this may not be technically against the law—but it could still cause hurt feelings and make work more difficult for the targets of this teasing. As their manager or supervisor, you should ask your subordinates to stop such negative behavior, leave the subject alone, and maintain a cordial atmosphere.

### Examples of bullying behavior:

- Abusive language or conduct that is unreasonable and unwelcome
- Use of profanity, shouting, or name-calling
- Persistent teasing or making someone the object of jokes or ridicule
- Ostracism, isolation or exclusion from group or team activities
- Public humiliation or threats through technology or social media
- Intimidation, physical threats or abuse (may be a police matter)
- Malicious rumors, gossip and lies
- Destruction of dignity and trust

There are obvious ethical reasons for maintaining a safe and respectful environment. But there are practical reasons as well. Bullying and harassment carry significant hidden costs, both to individuals and to their organizations:

**Bullying damages morale and teamwork. Multiple studies have demonstrated that employees do their best work when they feel respected and cared about as individuals. They are more committed to their jobs, work more collaboratively, and get more done.**

**Bullying interferes with productivity. Working under the threat of disrespectful or disruptive behavior reduces employee engagement and generates stress. It's hard to get absorbed in a project when you're afraid of a certain coworker coming around the corner. Stress damages health and leads to increased absenteeism, creating an added burden on the workgroup.**

**Bullying tends to escalate over time. Whether bullies are managers or coworkers, once they discover they can get away with aggression and disrespect, the behavior often gets even worse.**

As a supervisor of others, it's your responsibility to be aware of your subordinates' reactions to your communication style and watch what is going on between your employees. If you sense that there are unacceptable levels of stress, conflict or disruption, step in early rather than late. It's easier to stop negative attitudes and habits when they are just getting started—and much more difficult after they have become entrenched.

#### **DISCUSSION QUESTION:**

- Q: What should I do if I feel I am being bullied—or worse, if I am personally accused of being a bully?
- A: If you feel that you are being bullied, keep in mind that standing up to the bully is usually the best solution. Speak respectfully but firmly. Describe the abusive comments or actions and ask for them to stop. If that doesn't work, consider getting help from HR or other appropriate individuals in your chain of command.

If you are accused of bullying, examine the facts carefully and stop immediately if there is any truth to the claim. Work on finding more courteous ways to communicate going forward. Even if you find a coworker or subordinate to be annoying or incompetent, that is no excuse to mistreat them. Bullying never solves problems—it only makes things worse.

**WHAT WOULD YOU DO?**

*In the video, we see a convention center scene that shows two colleagues treating a third disrespectfully and unkindly. According to the dialogue, this is an ongoing problem. What if these three individuals were your direct reports? What steps would you take to repair the damage done and reintroduce real teamwork for Doug and his two colleagues?*

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# Workplace Standards

Harassment is caused by unwelcome conduct. This has been defined as “conduct that is not requested, not appreciated, and not reciprocated.” Whether something is unwelcome or not is viewed from the perspective of the “victim.”

While some things are clearly inappropriate at work—such as crude posters or sexual cartoons—other things are not as obvious. At times it can be difficult to know when behavior is unwelcome because it depends on the individuals involved.

Behavior that feels pleasant and welcome from one person may seem too intimate when received from another. For example, a positive comment to a colleague on the success of his or her recent diet may be “welcome” coming from a close friend. But this same comment may seem much too personal if announced in front of others by someone who just happens to work in the same building. In fact, both the setting and the individuals need to be taken into account.

## Workplace Standards

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As we see in the video, the provocative dress and flirtatious demeanor of some members of the kitchen staff are making at least one other employee feel very uncomfortable. Even though two coworkers clearly enjoy touching and paying compliments to each other, they don't seem to notice the effect it is having on others. Fortunately, their manager notices and gathers everyone together so he can get them all back on track.

It's a mistake to overlook inappropriate behavior in your workgroup. You might think the behavior is welcome, but you can't always be sure. The unwelcome cues from coworkers aren't always very clear. Another complication is that individuals can change their minds about what they find acceptable. Over time, even willing participants may come to find the behavior unwelcome—or that it attracts attention from others who are not friends.

So you need to pay close attention to how people are reacting. Are they smiling and returning the remarks in kind? Or are they looking serious and pulling away? Remember that there are many forms of mild behavior that might not qualify as “harassment,” but still need to stop if they are not really appropriate for your workplace.

**DISCUSSION QUESTION:**

Q: What if someone misinterprets a friendly gesture as something more, either from me or from a coworker? Do we have to eliminate humor, compliments, and all socializing from the workplace entirely? Do my employees have to change their behavior just because one person says something? Doesn't the majority rule?

A: Harassment and discrimination laws protect everyone in the workplace. If employees behave in a way that violates your policy or the law, then yes, they will have to stop, regardless of how few or how many people are offended.

The idea is not to “sterilize” the workplace into a dull, drab environment where people can't be themselves and everyone has to be on their toes, afraid of offending someone else. However, gestures and words can be misinterpreted, and it's almost inevitable at some point that a comment or action will accidentally cause offense. That's why it is critically important to encourage your employees to speak up if coworkers say or do something that bothers them. This allows the coworkers to clarify their intentions or change their behavior. And it's also the reason employees need to remember their behavior at work is not the same as their behavior at home or with friends outside of the work environment. Since individuals don't usually have much of a choice about people they have to work with, they need to rely on standards of behavior at a level of politeness that protects them from hurt or discomfort while they're just trying to make a living and get their jobs done.

**WHAT WOULD YOU DO?**

*A recent incident in the news is sparking vigorous debates that touch on sensitive issues. Discussion in the break room is getting heated and employees are getting upset. When you mentioned it at your weekly staff meeting this morning and asked everyone to avoid the subject, two of your subordinates accused you of violating their first amendment rights. Now, you believe that freedom of speech applies to citizens and their government but doesn't apply in the same way to employers—after all, employers can instruct receptionists how to answer the phone and give customer service reps their response to specific questions. Can you really make certain topics “off limits”? Would it be better to encourage those who are offended to take their breaks somewhere else?*

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## Summary/Conclusion

No one should have to work in an offensive, hostile environment. Even if you don't mean any harm, harassment is considered from the perspective of the victim. So pay attention to the reactions of your subordinates. Notice if they object to your behavior or that of their coworkers. Be a role model and expect everyone else to behave in a manner that is businesslike and appropriate to your workplace.

Be familiar with your organization's policies. These policies are there to protect you, too. Know the complaint procedures and where to go if you need help. If anyone complains about your behavior, stop right away and remain polite—any form of retaliation is against the law.

Remember it's not just workplace activities that can cause trouble. With the almost universal presence of cell phones, laptops and other electronic devices, you need to think carefully about how certain activities that you participate in on your own time might spill over into your workplace. If someone sends you an offensive email, don't forward it to anyone (even if you're pretty sure they'll like it). Emails, comments and photos you post online can gain a life of their own and come back to haunt

## Summary/Conclusion

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you. Make sure your subordinates treat their own online activities with the same awareness.

If harassment does occur, you need to move quickly to stop any further harassment and correct its effects. Once you become aware of an incident, conduct or instigate a full investigation both promptly and discreetly. Be fair, be thorough, come to a conclusion, and take action.

Even if a claim does not seem serious to you, absolutely do not take it lightly or ever suggest that the employee “asked for it.”

What can YOU do about harassment?

- Know what it is, and make sure your employees know what it is.
- Do everything you can to prevent it from happening in your workplace.
- Encourage your employees to speak up or let you know if someone’s behavior has “crossed the line.”
- Tell your employees that if someone complains about their behavior, they need to STOP!
- Conduct (or participate in) prompt, fair, complete investigations.
- If it is your responsibility to handle the investigation, come to a conclusion, and take action to remedy any harm and prevent any further problems.
- If serious misconduct has occurred, take disciplinary action.
- Be an example: Model the kind of professional, respectful behavior you want to see in your employees.

People are complicated and workplace relationships can be complicated, too, especially in today’s more diverse workforce. But in spite of our differences, it’s still possible to contribute to a work environment that is free from harassment, discrimination and retaliation.

Meeting these responsibilities as a manager will lead to a more enjoyable workplace for everyone, a more productive workgroup—and ultimately an easier job for yourself!



The definition of sexual harassment includes many forms of offensive behavior.



Department of Fair Employment and Housing

- such as a lead, supervisor, manager or agent;
- 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 or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

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 formal accusation. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

- If the Commission finds that discrimination has occurred, it can order remedies including:
- 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 "Guide for Complainants and Respondents."

For more information, contact DFEH toll free at

(800) 884-1684

Sacramento area & out-of-state at (916) 478-7200

TTY number at (800) 706-2320

or visit our Web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

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State of California

Department of Fair Employment & Housing

DFEH-185 (1/07)

**Sexual Harassment**

**The Facts About Sexual Harassment**

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. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- 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; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements

**The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.**



**Employers' Obligations**

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- 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 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 all others directly concerned.
  - 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 com-

plaintiff 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:

- 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 Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- 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.
- 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.

- 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 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, 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.

An employer might avoid liability if

- the harasser is not in a position of authority,



Name.....

Date.....

# Sexual Harassment: Training for a Harassment-Free Workplace

## California Manager Version Post-Test

*We are committed to providing a workplace free from unlawful discrimination, harassment and retaliation. The harassment training you received today is part of that effort. As a manager, you set the tone for behavior in the workplace, and are responsible for taking all steps necessary to prevent harassment from occurring. If a problem comes to your attention, you are expected to respond promptly and appropriately. Please take this post-training quiz, sign it and turn it in at the end of the training.*

### TRUE OR FALSE (T or F)

1. I understand that sexual harassment is prohibited by the law and is also prohibited by my employer's policy.
2. I understand that harassment or discrimination based on sex, race, color, religion, national origin, age, disability, or any other characteristic protected by federal, state or local law is unlawful and also violates my employer's policy.
3. I understand that sexual harassment includes unwelcome sexual advances or romantic interest, or other unwelcome conduct that may be verbal, visual, or physical.
4. I understand that a serious form of sexual harassment involves offering job benefits in exchange for sexual favors, or alternatively, threatening a person's job if they don't agree to the offer.

*Continued on next page.*

**Post-Test**

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- 5. I understand that it is also unlawful, and a violation of my employer's policy, to retaliate against someone who resists unwelcome behavior, files a complaint about harassment or perceived harassment, or participates in an investigation.
  
- 6. I understand that I set an example for appropriate behavior at work, and am expected to take all appropriate action to prevent sexual harassment from occurring in my workplace.
  
- 7. I understand that I am expected to act immediately and appropriately if a problem comes to my attention.
  
- 8. I understand that I may be subject to disciplinary action, up to and possibly including termination, if I engage in unlawful harassment or discrimination myself, or if I fail to meet my supervisory responsibilities to take all reasonable steps to prevent sexual harassment from occurring or if I fail to respond appropriately if a problem arises.

Signature: .....



## Notes

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# SEXUAL HARASSMENT TRAINING FOR A HARASSMENT-FREE WORKPLACE

## California Manager Version

The video *Sexual Harassment: Training for a Harassment-Free Workplace (California Manager Version)* and this accompanying study guide provide managers and supervisors who oversee employees based in California with information that will help them fulfill their responsibilities to maintain a work environment free of harassment and discrimination.

### Content for managers:

- Discrimination laws, and why harassment is a form of discrimination
- Examples of inappropriate behavior
- Guidance on how to respond promptly and appropriately

Unfortunately, behavior at work sometimes crosses the line, damaging the atmosphere and causing morale and productivity to drop. Training your managers on what to look for and how to respond will go a long way toward achieving your goal of a productive and harassment-free workplace—for everyone.

Produced by:



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