

Preventing Harassment in the Workplace





Why Train in Harassment Prevention?

- Because it's the law
- Understand the liabilities supervisors and employers face with claims of harassment
- Create a healthy work environment
- Because it's the right thing to do

Harassment & the Law



Federal and State Laws Prohibit Harassment

- Federal Law defines Sexual harassment under Title VII of the Civil Rights Acts of 1964
 - Equal Employment Opportunity Commission (EEOC) is a federal agency that enforces laws against workplace discrimination
- California defines Sexual Harassment under CA gov't code 12900
- The California Department of Fair Employment and Housing (DFEH) accepts complaints, investigates, and brings them to the EEOC or to the courts

What is Sexual Harassment?



1. Quid Pro Quo

2. Hostile Work Environment

- Unwelcome
- Based on sex
- Alters the condition of employment

What is Sexual Harassment?

The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an individual; or
- Such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Hostile or Unprofessional?



- Unprofessional behavior is not illegal, but it can lead to many workplace problems, including loss of morale, employee turnover, and a hostile work environment.
- If unprofessional behavior is ignored or allowed to exist, it can easily turn into more.
- An employee can be discipline for inappropriate conduct even if the conduct doesn't rise to the level of unlawful harassment.

What Is Not Harassment...



- Reasonable action taken by an employer to transfer, demote, discipline, counsel, or dismiss an employee;
- A decision by an employer, based on reasonable grounds, not to provide a promotion, transfer, or benefit in connection with an employee's employment;
- Employer setting timelines; changing deadlines; setting tasks; or providing constructive criticism

Tangible Employment Actions

When an employee suffers a change in employment status as a result of refusing to submit to sexual demands, employers are held strictly liable. Such actions include:

- Not being hired or being fired
- No promotion or a demotion
- Undesirable reassignment
- Significant change in benefits

Anti-Harassment Policy

Every company should have a well-written harassment policy that includes:

- A statement that harassment of any kind will not be tolerated
- A statement that harassment claims will be taken seriously
- A process for employees to use to report incidents
- A statement that the company will take appropriate disciplinary action if warranted, up to and including termination
- A statement that there will be no retaliation for bringing a claim of harassment or for providing information

Types of Conduct or Behavior which Constitutes Harassment

● Verbal

● Physical

● Visual



Verbal Harassment



- Unwelcome teasing, insults, innuendos, jokes, comments, questions or stories of a sexual nature
- Pressure for dates or sexual favors
- Promises of career advancement in return for sexual favors
- Whistling at someone; kissing sounds
- Conversations that are too personal

Visual Harassment

- Making obscene gestures
- Posters
- Calendars
- Cartoons
- Internet
- Screen Savers
- Magazines



Where Can Harassment Occur?

- In the office
- Out of the office
- Meetings
- Conferences
- Business trips
- Over the phone
- Work-related activities
- Social functions held during or outside regular working hours



Preventing Harassment



As a supervisor, you must be vigilant for anything that may be harassment

- If you overhear sexually explicit conversations or language, express that it is inappropriate and document the action you take
- Remove/take down offensive jokes and cartoons and explain the reason
- If you hear discriminatory language, verbalize disapproval and document your actions
- Do not laugh at inappropriate jokes

Supervisor Liability



- Some supervisors genuinely may not perceive their behavior as harassment. However, if the supervisor's employees view it as harassment, both the supervisor and the company could be held liable for creating a harassing environment, regardless of any intent by the supervisor to harass.
- If the company discovers that you, as a supervisor, have engaged in harassing behavior, you will be subject to discipline, just as any other employee, which may include termination of your employment.

Liability Review

- When a supervisor engages in harassment of an employee, the company is liable
- A supervisor who commits harassment is also personally liable
- A supervisor who does not actually commit harassment, but who knows about the harassment & fails to act, cannot be held personally liable but the company is still liable

Liability Review

- Federal and state laws require employers to promptly investigate all claims of harassment and to take reasonable steps to prevent the harassment from continuing or recurring.
- As someone who supervises others, you are responsible for helping the organization achieve a high level of productivity. This, in part, means providing a work environment that is free from all forms of discrimination and harassment



Reasonable Care

When there is no tangible employment action, an employer is still held liable for the actions of its supervisors unless it can demonstrate that:

- It exercised “reasonable care” to prevent and promptly correct any harassing behavior
- The employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm

Retaliation



- Federal and state laws protect employees from retaliation as a result of reporting suspected or actual cases of workplace harassment.
- Be sure that any action you take regarding the victim is free of any element of retaliation whether or not the complaint actually qualifies as harassment.
- Employers may not disguise retaliation; such as changing shift hours or changing job responsibilities, or isolating the accuser by leaving him or her out of meetings or other office events.

Who Can be Harassed?



- Men as well as women are entitled under Title VII to protection from a sexually abusive work environment.
- Other employees who are impacted by the harassment (by hearing or viewing it) are also considered victims of harassment.
- An employer may be held liable for harassment of their employees by clients or customers.
- Offensive verbal or physical conduct by an employee regarding a coworker's sexual orientation.

Who is responsible for the Prevention of Harassment?





Employee Responsibilities

- Every employee must share in the prevention of harassment.
- Employees must be responsible for their own conduct.
- They must know and support the company's policy on harassment prevention.
- Become familiar with their rights and responsibilities in preventing and reporting harassment.

Supervisors & Managers Responsibilities

- Know and enforce policies
- Set a clear example of appropriate workplace behavior – in and out of the worksite
- Actively monitor for signs
- Follow up with those who have reported harassment
- Ensure that an employee reporting harassment is protected from any form of reprisal
- Take all allegations seriously
- Take swift and appropriate action against harassers

Educating Employees



Create an environment that actively discourages behavior that could be viewed as risky or harassing by:

- Clearly informing employees about the company's expectation for appropriate behavior
- Talking to your employees about the power of perception
- Ensuring that your staff is aware that harassment will not be tolerated

Should have Known



Turning a blind eye to harassment in order to maintain a fun or informal work environment is not acceptable. An employer should correct harassment that is clearly unwelcome regardless of whether a complaint is filed.

In cases where the company or a supervisor knows or has reason to know that an employee is being treated offensively or is otherwise offended by sexually explicit conduct or images in the workplace, but does nothing, both the company and supervisor can be held liable.

Intent vs. Impact



- Harassment is viewed from the perspective of the reasonable person standard.
- Different things offend different people. If the behavior offends a reasonable person it can be considered harassment, regardless of intention.
- The law does not find relevant good intentions but the impact of the conduct on the victim.

The intention of a whistle is to be complimentary, but the impact was embarrassment

Is a Formal Investigation Required?

- Many times, a formal investigation is not required. If an employee complains that a co-worker is “looking at her funny”, all that may be needed is an interview with the persons involved.
- You may determine that the alleged harasser thinks “she is pretty” but never meant to make her feel uncomfortable. You can simply dictate that the behavior stop, or even move the employee to a different location.
- You then remind both parties about retaliation and document your conversations and conclusions.

Casual Complaints

What if an employee complains of harassment in a casual comment? For example:

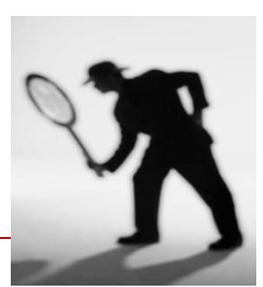
- “That guy in shipping sure creeps out all of us women – a stalker in the making...”
- “Grabby Gretchen – she can’t seem to keep her hands to herself, if you know what I mean”
- “Really you guys, the potty language and x-rated jokes are getting a bit old”

While not formal, these types of comments should be viewed as early warning signals. As a supervisor, you need to be proactive and find out as much information about the comment as possible.

Your Role in the Process

- As a supervisor, your primary responsibility is to *respond immediately and appropriately*.
- You may be the one the employee feels comfortable confiding in.
- It may be unlikely that you will be the party actually conducting the investigation, but it is important that you understand the complaint process and the how the investigation would proceed.

Conducting the Initial Interview



- Get the facts - Who, when, where, what...
- Do not interrupt the employee
- Listen and take detailed notes, including dates, times, locations and the names of those involved
- Review your notes with the interviewee to make certain they are accurate
- Ask the employee if he/she has any suggestions for the best way to resolve the matter. Stress that the company may not follow these suggestions, but will take them into consideration

Conducting the Initial Interview (cont.)

- Reassure the employee that retaliation will not be tolerated and ask the employee to report any retaliation immediately
- Instruct the employee to keep information as confidential as possible
- Thank the employee for bringing the matter to the company's attention and restate the company's policy against harassment



Demeanor and Attitude



The behavior you display to all parties involved must be non-judgmental and unbiased. Do not attempt to interpret or counter what the victim is telling you, and never:

- Trivialize the complaint - “Don’t you think you’re overreacting?”
- Discount or downplay - “Guys will be guys”
- Assign blame - “Are you sure you didn’t encourage it?”
- Ignore it - “Maybe if I stick my head in the sand, it will go away”

Treat the complainant with respect. Remember, the victim may be experiencing a wide range of emotions, including embarrassment, guilt and fear.

Confidentiality and Privacy

It must be made clear to every employee that makes a harassment complaint that:

- The company will protect the confidentiality to the extent possible.
- The company cannot guarantee complete confidentiality because an effective investigation requires certain information be revealed to the alleged harasser and potential witnesses.
- Information about the allegation will be shared only with those who need to know about it.
- After the investigation is completed, action taken against any party involved cannot be shared with other employees, including the complainant, because it is considered confidential personnel information.

False Accusations

- You must accept complaints on face value and not make any assumptions until the complaint has been fully investigated.
- If it is determined that an employee made a false accusation, do not accuse the employee of lying without undisputed evidence.
- Tell the employee that you were unable to substantiate the claim and will take no further actions unless he/she can provide more evidence.
- Failure to prove an accusation does not mean, in some cases, it did not happen.

Enforcing Policies

- ✓ Stop all inappropriate behavior
- ✓ Take every incident or complaint seriously
- ✓ Conduct investigations promptly and effectively
- ✓ Know when to escalate a problem to higher authority
- ✓ Take corrective action when appropriate



Reasonable Care

The employer has exercised reasonable care in preventing harassment, including:

- ✓ Creating and publishing harassment policy and complaint procedure
- ✓ Displaying current federal & state posters
- ✓ Distributing the California information sheet
- ✓ Holding periodic training
- ✓ Treating all claims seriously and investigating thoroughly
- ✓ Taking prompt and appropriate action

Conclusion – Preventing Harassment

As a supervisor, it is your responsibility and duty to listen, inquire and try to resolve any harassment complaints. To do this, you need to be:

- ✓ Aware of your responsibility
- ✓ Knowledgeable about harassment conduct and laws
- ✓ Sensitive to the impact that harassment has on others
- ✓ Treat all claims seriously and investigate thoroughly
- ✓ Be a role model for others

Congratulations!

You have completed the mandated
AB 1825 anti-harassment training

Thank you for your participation