



Facts About Sexual Harassment and Other Types of Harassment

Title VII of the Civil Rights Act and many state fair employment laws, including California's Fair Employment and Housing Act (FEHA), define 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, emails, or invitations*
- Physical touching or assault, as well as impeding or blocking movements*
- Sexual desire is not necessary*



Other Types of Harassment

While sexual harassment is likely the most common type of harassment, there are other types of workplace harassment that can be sufficiently severe or pervasive that it creates an intimidating, hostile, or offensive work environment or interferes with the individual's work performance.

California and many other state laws specifically provide protection from harassment or discrimination in employment because of:

- Age (40 and over)*
- Ancestry*
- Color*
- Religious Creed (including religious dress and grooming practices)*
- Denial of Family and Medical Care Leave*
- Disability (mental and physical) including HIV and AIDS*
- Marital Status*
- Medical Condition (cancer and genetic characteristics)*
- Genetic Information*
- Military and Veteran Status*
- National Origin (including language use restrictions and possession of a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law)*
- Race*
- Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)*
- Gender, Gender Identity, and Gender Expression*
- Sexual Orientation*

These laws also protect a person, who has opposed any of the above practices, or because the person has filed a complaint, testified, or assisted in any proceeding.



Employers' Obligations

All employers must take the following actions:

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 complainant that action has been taken to stop the harassment from recurring.*
- Finally, appropriate steps must be taken to remedy the complainant's damages, if any.*
- 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. The content must also include training on the prevention of "abusive conduct" to reduce workplace bullying, which does not always take the form of conduct prohibited by the FEHA.*
- 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, 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

California employees or job applicants who believe they have been sexually harassed, discriminated or retaliated against may file a complaint with California's Department of Fair Employment and Housing within one year of the alleged act. California's DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court on behalf of the complaining party. The DFEH may seek punitive damages is entitled to attorney's fees and costs if it prevails in litigation.

Remedies include:

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

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

Employees working in other states may file a complaint of discrimination, harassment and or retaliation with the relevant state agency enforcing the state's fair employment laws. These complaints are usually jointly filed with the U.S. Equal Employment Opportunity Commission under federal-state workshare agreements.

Have more questions? You can find further information and/or help from the DFEH (www.dfeh.ca.gov) or the EEOC (www.eeoc.gov).