

The 10,000 Ft. View of Workplace Sexual Harassment for CA Employers

WHAT CALIFORNIA EMPLOYERS NEED TO KNOW

Agenda

- Sexual Harassment Defined
- Common Examples of Sexual Harassment in the Workplace
- Statistics
- Liability
- Mandatory Sexual Harassment Prevention Training for Supervisors
- Employer Obligations

Your Presenter Today...

Dr. Carlyle Rogers

- Over 24 years of HR experience
- Expert in labor & employment law
- Doctorates in jurisprudence (JD, Law) and psychology (PsyD)
- Certified interviewer and interrogator
- Extensive experience investigating and defending against sexual harassment claims

Sexual Harassment in a Nutshell

- It is unwanted and unwelcome
- It includes sexual advances, requests for sexual favors, and other verbal and physical actions
- It doesn't have to be of a sexual nature
 - Offensive remarks about the person's gender
- Perception trumps intent
- It is unlawful
- It is always wrong

Sexual Harassment in a Nutshell

It includes:

- Employees
- Customers/clients
- Independent contractors/consultants
- Vendors

It crosses all gender lines:

- Opposite Gender
 - Male to Female and Female to Male
- Same Gender
 - Male to Male and Female to Female

Hostile Work Environment

- Hostile Work Environment harassment occurs when an employee's work environment becomes abusive, intimidating, or hostile as a result of severe or pervasive sexual misconduct by a co-worker(s).
- In this case, a manager, supervisor, co-worker, peer, or even a non-employee such as a customer can create the hostile environment.

Quid Pro Quo

- “Quid pro quo” (this for that) harassment occurs when a supervisor offers to provide certain employee benefits in exchange for sexual favors.
- Or conversely, withholds specific benefits for refusal of sexual advances.
- Examples of benefits could include a raise or promotion and sometimes, continued employment itself.

Common Examples of Workplace Sexual Harassment

Jokes

Teasing

Repeated date requests

Sexual advances

General comments about body or attire
that are of a sexual nature

Suggestive comments

Spoken innuendo

Coerced acts

Staring

Whistling

Vulgar sounds or gestures

Offensive visuals

Obscene email

Gifts of a sexual nature

Blocking movement

Inappropriate hugging, pinching or
touching

CA EEOC Sexual Harassment Statistics

In 2013

- 7,256 claims filed with EEOC
- \$44.6M awarded (doesn't include monetary benefits obtained through litigation)
- 17.6% filed by men

Liability

Company

- Responsible for sexual harassment in the workplace
- Strictly liable for harassment by their supervisors or agents
- May also be on the hook even if management wasn't aware of the harassment unless:
 - Harasser is non-management
 - No knowledge of harassment
 - Program to prevent sexual harassment in place

Harasser

- Can be held personally liable for damages

Enforcement

If filed with DFEH:

- 1 year to file
- Up to \$150K in fines and/or damages for emotional distress from each employer or harasser charged
- Reinstatement or hiring
- Back pay
- Promotion

COURTS MAY ORDER UNLIMITED DAMAGES

Examples of Litigation

2007 Former team executive for New York Knicks

- Alleged Knicks coach (Isiah Thomas) harassed her over 2 years
- She was fired 12 month after she formally complained
- \$11.6M

2011 51 year old UBS sales assistant

- Supervisor made repeated comments about her breasts and his penis size
- UBS fired her when she complained about the supervisor
- \$10.6M

2012 Physician's assistant

- Constantly asked for sex by hospital doctors
- When being harassed supervisor ignored her request to stop it and laughed
- \$168M

Mandatory Training for Supervisors

AB 1825 (2007)

- Employers with 50+ employees
- Anyone who supervises at least 1 employee
- 2 hour interactive training
- Every 2 years
- Within 6 months of becoming a supervisor
- Qualified trainer/training program
- Now must include the anti-bullying (abusive conduct) training

Employer Obligations

What you must do:

- Must take reasonable steps to prevent
- Must have required posters and brochures made available
- Must handle complaints in a professional and appropriate manner
- If 50+ employees, ensure training per AB 1825

What you should do:

- Have a thorough anti-sexual harassment, discrimination, bullying, and retaliation policy
- If less than 50 employees:
 - Still have a policy
 - Educate your supervisors and managers

Summary

- Preventing sexual harassment in the workplace is critical.
- Having a well defined policy for preventing, reporting, investigating and outcomes is highly recommended.
- Sexual harassment lawsuits are costly, time consuming, and exhausting...and can damage your company's reputation.
- Educate your management team (if over 50 employees, ensure compliance with AB 1825).
- Don't wait until you are sued to take it seriously.



Thanks for joining us today for our free webinar!

For more information about the training or to schedule the AB 1825
Mandatory Sexual Harassment Prevention Training, please contact Carlyle
at:

661-312-7737 or crogers@gohigherup.com