

# SEXUAL HARASSMENT PREVENTION TRAINING

January 23, 2019

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## Course Goal

- The goal of this training is to help you learn how to create and maintain a healthy, harassment-free work environment. After completing this course you will be able to:
  - Define sexual harassment and its two primary types
  - Identify sexual harassment behaviors and issues
  - Recognize proper and improper behaviors
  - Distinguish between the work and social environments, and identify boundaries
  - Learn about other forms of harassment and prevention

## Objectives of Sexual Harassment Training:

- The learning objectives of the training mandated by Government Code section 12950.1 shall be:
  - to assist California employers in changing or modifying workplace behaviors that create or contribute to "sexual harassment," as that term is defined in California and federal law;
  - to provide trainees with information related to the negative effects of abusive conduct (as defined in Government Code section 12950.1(g)(2)) in the workplace; and
  - to develop, foster, and encourage a set of values in supervisory employees who complete mandated training that will assist them in preventing, and effectively responding to incidents of sexual harassment, and implementing mechanisms to promptly address and correct wrongful behavior." (§11024(b))

## Why Is This Training Important?

- Not only is sexual harassment against the law, it interferes with getting your work done. As a supervisor, you are responsible for fostering a productive work environment. Employees cannot be at their best if they have to worry about sexual harassment.
- Consider the statistics:
  - In fiscal year 2017, 6,696 sexual harassment charges were filed with the Equal Employment Opportunity Commission (EEOC) with about 16.5 percent filed by men.
  - The EEOC recovered nearly \$70 million for sexual harassment victims through litigation and administrative enforcement in fiscal year 2018, up from \$47.5 million in fiscal year 2017.
  - During the calendar year of 2017, a total of 3,698 sexual harassment cases were filed with the California Department of Fair Employment and Housing (DFEH), totaling 7 percent of all cases filed.

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## Purpose of Sexual Harassment Training

- **Let's talk about the single most important reason.**
  - Who has a daughter, mother, sister, niece?
  - Would you want someone sexually harassing them?
    - Hey, cute ass; If you go out with me, maybe I can get you that promotion you wanted.

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## What is Harassment?

- Sexual harassment is a form of unlawful sex discrimination and is the most common type of workplace harassment. Sexual harassment is any unwelcome sexual advance, either verbal or physical, in the workplace.
- Both California and federal laws address sexual harassment and clearly state that sexual harassment will not be tolerated and that employers must take steps to prevent sexual harassment from occurring.

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## Sexual Harassment Training

### Federal and California Definitions of “Sexual Harassment”

- The EEOC defines sexual harassment as “unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature.”
- The California Fair Employment and Housing Commission (DFEH), which enforces state laws on this subject, further defines sexual harassment to include:
  - Verbal harassment, such as epithets, derogatory comments, or slurs;
  - Physical harassment, such as casual or physical interference with movement at work;
  - Visual harassment, such as derogatory cartoons, drawing, or posters;
  - Both unwanted sexual advances of an employer toward an employee of the same sex and harassment on the basis of pregnancy disability; and
  - Childbirth/medical conditions relating thereto and breastfeeding/medical conditions relating thereto are included in definition of “sex.”

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## California Law: FEHA

- The California Fair Employment and Housing Act (FEHA) also:
  - Prohibits harassment based on an individual's sex, which includes harassment based on gender, gender identity and gender expression, and harassment based on pregnancy, childbirth or related medical conditions
  - Protects the right to appear or dress consistently with his or her "gender identity" or gender expression subject to reasonable workplace appearance, grooming and dress standards
  - Requires employers to use an employee's preferred gender, name and/or pronoun, including gender-neutral pronouns (unless a legal name is required to meet a legally mandated obligation)
  - Provides applicants, independent contractors, unpaid interns, and volunteers with the same protections against sexual harassment as employees

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## Purpose of Sexual Harassment Training

- To PREVENT harassment.
- Reasons to prevent Harassment:
  - Against the law.
  - Costs to Company:
    - » Monetary: \$1 million in fees; \$500,000 settlement  
Insurance doesn't usually cover it.
    - » Nonmonetary: Disruption / morale; depositions will be taken, documents requested, and entire business culture will be on display for the world to see.
      - People talk!
  - It is not good for business! How are other companies going to view you?

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## Who is Protected?

- All workers in any size company are legally protected from unlawful harassment. Harassment laws cover all workplace relationships, including:
  - Employee harassing an independent contractor, and vice versa
  - Vendor harassing an employee, and vice versa
  - Employee harassing a co-worker
  - Supervisor harassing a subordinate employee
  - Employee harassing an unpaid intern or a volunteer
  - Hiring manager harassing an applicant
  - All other work-related relationships including customers

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## Retaliation

- Retaliation occurs when an employee suffers a negative consequence after he or she reports sexual harassment, files a complaint, assists someone else with a complaint or participates in discrimination prevention activities.
- Negative consequences include adverse employment decisions or treatment that would be likely to dissuade someone from making or supporting a charge of discrimination, such as termination, demotion, suspension, denial of a promotion, a poor evaluation or an unfavorable job reassignment.
- Both federal and California state laws protect employees and job applicants from employer retaliation for engaging in activity protected by anti-discrimination laws.

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## Select the Best Answer

Which of the following are common retaliation tactics?

- a. Being excluded from decisions and work activity by supervisors or management.
- b. Being passed over for a raise or promotion.
- c. Having hours or pay cut.
- d. All of the above.

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## Liability

- Employees can be personally liable for sexual harassment; places your personal assets at risk, regardless of whether it is reported to the employer.
- The employer may be required to pay the costs of defending the accused employee in a lawsuit.
- Employers may be liable for sexual harassment of subordinates by management. (This is why we are conducting this training!)
- Under State law, an employer may be held strictly liable for an employee's conduct.



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## Liability for Harassment

- Employers who fail to take action to prevent or stop harassment in the workplace and employees who engage in harassing conduct can be financially liable for their actions.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct and create a workplace environment that is free from harassing and abusive conduct.

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## Employer Liability

- Under state law, employers are strictly liable for harassment by a supervisor or manager, even if the employer had no knowledge of the harassment.
- Employers are liable for harassment by non-supervisory employees if the employer knows or should have known of the harassment and failed to take steps to stop the harassment.
- Employers are liable if employees, any nonemployees, applicants or independent contractors engage in harassment and the employer or supervisor(s) knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

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## Employee Liability

- If you, as an employee, are found to have engaged in sexual harassment, you may be personally liable for monetary damages.
- Employees at all levels who sexually harass a co-worker can be sued individually.
- If your employer concludes that you engaged in sexual harassment, it will most likely not defend you nor pay any damages.

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## Select the Best Answer

Under California state law, an employer can be required to:

- a. Pay all litigation costs and expert witness fees if an employee sues and wins
- b. Fire all employees involved in the alleged conduct
- c. Take out television and radio ads apologizing for the incident
- d. Pay for actual damages or injuries, including back pay and front pay.
- e. Both a and d.

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## Select the Best Answer

My employer can eliminate or reduce liability and damages by:

- a. Failing to take all reasonable steps to prevent and correct harassment in the workplace
- b. Discouraging employees from using the company's complaint process
- c. Telling employees to seek legal counsel
- d. None of the above

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## Definition of a Supervisor

Who is a Supervisor?

- A supervisor is anyone having the authority, in the interest of an employer, to exercise independent judgment to:



- ✓ Hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees
- ✓ Direct the work of other employees or address their grievances
- ✓ Recommend any of the above actions

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## Supervisor Liability

- Supervisors who sexually harass employees can be held personally liable.
- Although the employer is legally responsible for the conduct, the supervisor's personal assets can also be used as part of an award.

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## Supervisor Responsibilities

- As representatives of the company, supervisors have special responsibilities to foster and maintain a working environment free of sexual harassment. In this portion of your training, we will focus specifically on supervisory responsibilities, expanding on the basics all company employees learned in the Employee course.
- Supervisors need to know about sexual harassment so they can:
  - Avoid behavior that could be interpreted as sexual harassment — that is, lead by example
  - Identify and stop workplace conduct that could lead to a hostile environment
  - Respond immediately and appropriately to individuals who complain of harassing conduct. This may include reporting the conduct to your supervisor, Human Resources or to another official in your organization.

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## Select the Best Answer

Supervisors who engage in sexual harassment will:

- a. Always create a hostile work environment
- b. Always be fired
- c. Create liability for their employer
- d. None of the above

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## Two Categories of Sexual Harassment

- “Quid Pro Quo” sexual harassment occurs when a supervisor/manager conditions an employment benefit or continuing employment on the employee’s acquiescence in the form of sexual behavior.



- “Hostile” or “Offensive” work environment sexual harassment is defined as sexual jokes, suggestive remarks, cartoons, physical interference with movement, and sexual derogatory comments.



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## Select the Correct Answer

Which statement below is true about quid pro quo:

- a. Job benefits (employment, promotion, a salary increase, shift or work assignments, performance expectations, and other conditions of employment) are made contingent on the provision of sexual favors.
- b. The rejection of a sexual advance or request for sexual favors results in the loss of a job benefit.
- c. Employers are generally held strictly liable for quid pro quo sexual harassment because supervisors, managers and agents who commit quid pro quo harassment are considered to be acting directly on behalf of their employer.
- d. All of the above.

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## Third Party Harassment

- Employers may also be responsible for any harassing conduct of non-employees with whom employees have a work-related relationship.
- Third party harassment can include the employer's customers, clients, contractors, or vendors.
- Employers can be liable if they:
  - Knew or should have known of the harassment
  - Failed to take immediate and appropriate actions to stop the harassment

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## Select the Best Answer

If Rachel, the waitress at the diner, complains about the comments and conduct directed to her by customers, the employer will have to investigate because:

- a. The customers are making derogatory comments, which is a form of harassment under state law, and engaging in conduct that mimics conduct of a sexual nature
- b. Employers are required to take action to protect employees even if the conduct is by a third party, such as a customer
- c. Other customers might be offended
- d. All of the above

## Create An Environment

- It's up to Employers to create an environment where there is never any cause for any complaints of sexual harassment.
- Posters, employee handbooks and pamphlets:
  - DFEH poster must be posted in workplace.
  - Handbook policy on harassment.
  - Pamphlet handed out to every employee. If you never did it, do it now. Do it for every new hire.
- Implementing and properly following reporting procedure and investigation procedures.

## Recognizing Harassment

- While the focus of this training is on the prevention of sexual harassment, there are several other types of illegal discrimination.
- State and federal laws protect employees from harassment on the basis of:
  - Race and color
  - Religion
  - Sex (pregnancy or gender) and sexual orientation
  - National origin and ancestry
  - Marital status
  - Disability (mental and physical, including pregnancy, HIV and AIDS)
  - Age (40 and older)
  - Medical condition (including cancer and genetic characteristics)
  - Denial of family and medical leave, pregnancy disability leave or reasonable accommodation
  - Gender identity, gender expression, transgender status, or status as an individual in transition or who has transitioned.
  - Genetic information
  - Veteran status

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## Recognizing Harassment

- Reasonable Person Standard
  - A "reasonable person" with the same characteristics as the subject of the harassment is the standard used for determining whether a workplace is hostile. That is, from the perspective of the victim, was the offensive behavior sufficiently severe or pervasive enough to call it "sexual harassment" in the eyes of the law?
- Was the Conduct Unwelcome?
- To be unwelcome, the conduct:
  - Must not be invited
  - Must be regarded as undesirable or offensive by the victim

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## Select the Best Answer

A male manager only gives preferable assignments and promotions to women. He ignores information requests from men, and excludes men from essential meetings. The manager claims that women are "much easier to deal with because they don't argue every little detail." This is an example of which type of harassment?

- a. Sexual orientation harassment
- b. Same sex harassment
- c. Gender discrimination
- d. Religious discrimination

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## Select the Best Answer

On a daily basis, an employee loudly expresses his discomfort working with a lesbian working across the hall. He hangs religious quotes, condemning gay and lesbian lifestyles, on her office walls. When she asks him to stop with the distraction, he tells her, "I'm trying to help you. What you do is evil and vile." This is an example of which type of harassment or discrimination?

- a. Sexual orientation harassment
- b. Same sex harassment
- c. Gender discrimination
- d. Religious discrimination

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**Read the statement and type True or False.**

- **If a supervisor harasses an employee because he thinks the employee is gay, but the employee is not gay, the company is still liable for harassment.**

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### **Sexual Harassment or Abusive Conduct?**

- If a supervisor is verbally abusive, is too demanding, and is generally caustic and unreasonable, is this harassment?
  - The answer: probably not. While this is most certainly unpleasant, it is not against the law to be a bad manager. An abrasive style does not constitute illegal harassment unless it is directed at a protected class of employees (such as only women or men, those over 40 or workers of a particular national origin), or is in the form of unwelcome comments or conduct.
- But abusive conduct may lead to illegal harassment or other legal violations. Abusive conduct creates many negative consequences for the victim and the workplace, including reduced productivity and poor morale.

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## Abusive Conduct

- Abusive conduct means:
  - Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests.
- Abusive conduct may include:
  - Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets;
  - Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or
  - Gratuitous sabotage or undermining of a person's work performance.
- A single act does not constitute abusive conduct, unless especially severe and egregious. (Govt. Code 12950.1(g)(2))

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## Severe or Pervasive

- In order for conduct to reach the level of a hostile work environment, a plaintiff must be able to show that:
  - He or she was subjected to verbal or physical conduct sexual in nature,
  - The conduct was unwelcome, and
  - The conduct was sufficiently severe or pervasive enough to create an abusive working environment and alter the conditions of the plaintiff's employment.

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## What is Severe or Pervasive?

- The conduct must be more pervasive than an isolated incident, such as a joke or teasing.
- But it does not have to be extreme conduct, such as threats of physical violence.
- Keep in mind that even a single incident – if severe enough – can violate the law.
- The analysis may depend on the effect on the employee's work environment.

## Other Types of Harassment

- Other examples of illegal discrimination and harassment include Employers who:
  - Refuse to hire a Muslim employee for jobs dealing w/the public
  - Only hire African-American employees with a lighter skin color
  - Refuse to hire anyone from an Arab country
  - Refuse to hire unmarried women, saying, “they are too unstable”
  - Exclude candidates with a disability, deeming it too expensive to provide reasonable accommodation
  - Advertise for “young, energetic sales personnel”
  - Deny time off for employees eligible for family and medical leave

## **Sexual Orientation Harassment**

- Sexual orientation harassment is verbal or physical conduct that is directed at an individual because of his or her sexual orientation or perceived sexual orientation (heterosexual, gay, lesbian or bisexual).
- Again, the harassment must be severe, pervasive or persistent enough to create a hostile work environment.

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## **Same Sex Harassment**

- Same sex harassment is where men sexually harass other men or women sexually harass other women.
- The sexual orientation of the individual is not relevant. In fact, the parties do not even need to be sexually interested in each other for sexual harassment to occur.
- The key ingredients that constitute sexual harassment are that the harassing conduct occurs in the workplace and is based on the sex of the victim of the conduct.

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## Gender Discrimination

- Gender discrimination includes treating an employee differently based on the employee's actual or perceived sex, gender, gender identity and gender expression, or status as transgender or as an individual who is transitioning or has transitioned.

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## Gender Discrimination

- “Gender expression” means a person’s gender-related appearance or behavior, whether or not stereotypically associated with the person’s sex at birth.
- “Gender identity” is defined as a person’s identification as male, female, a gender different from the person’s sex at birth, or transgender.
- “Transgender” is a general term that refers to a person whose gender identity differs from the person’s sex 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.

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## Gender Discrimination

- “Transitioning” is defined as 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 may or may not include changes in name and pronoun, bathroom facility usage, and participation in employer-sponsored activities such as sports teams and volunteering.
  - The process may also include undergoing hormone therapy, sex reassignment surgery, or other medical procedures.

## Select the Best Answer

Marty is a bookkeeper in an office. Marty is transitioning from male to female, but has not yet told anyone at work. She shares a workplace with Debra, a receptionist. Debra frequently brings in brochures and literature published by anti-LGBT groups and places them on her bulletin board near Marty's desk. Marty has told Debra she finds them offensive. But Debra refuses to take them down, telling Marty that they aren't directed at her so she shouldn't care. Marty has not complained formally to Human Resources, but Marty's supervisor has seen the brochures in the shared workspace.

- a. No harassment exists because Debra does not know that Marty is transitioning.
- b. The company cannot be liable for Debra's actions unless Marty makes a formal complaint.
- c. Marty has a right to object to a hostile environment (In this case, visual harassment).
- d. Both a and b.

**Read the statement and type True or False.**

- It is okay to tell a co-worker to dress and act more like a woman, especially if you are just trying to help the co-worker get ahead.

**Read the statement and type True or False.**

- An employee whose assigned sex at birth is male identifies as a female. The employee uses the women's restroom. A few of the employee's coworkers are not happy about this. For several weeks the co-workers stand outside the women's restroom and refuse to let the employee in until the restroom is empty, saying that they are protecting everyone's privacy. The employee complains, and the supervisor tells the employee to use the single-user bathroom down the hall. The single user bathroom is, in fact, nicer than the women's restroom.
- This is not discrimination or harassment because the supervisor has offered the employee a reasonable alternative to using the women's restroom.

## What Are Some Important Related Issues?

- What are the practical implications of the rights of transgender employees in the workplace?
  - Employers must call employees by their preferred name and identify them based on their preferred gender identity.
  - Employees are permitted to use a restroom that corresponds with their gender identity.
  - Employees are permitted to dress consistently with their gender expression. Note, however, that there are exceptions where employees are required to wear a uniform and where restrictions on dress are imposed for health and safety purposes.

## Disability Discrimination

- Disability discrimination is treating workers or job applicants differently because you suspect they won't be able to do the job as well as "the able-bodied," or that it will be too difficult or expensive to accommodate them. The law is very strict about prohibiting this type of discrimination and employers must take steps to avoid it.
- The Department of Fair Employment and Housing (DFEH) may bring a claim on behalf of an employee who believes he or she has been discriminated against on the basis of a disability. Failing to provide reasonable accommodation for a disabled employee can have serious financial consequences for the employer.



## Religious Discrimination

- Religious discrimination is discrimination against individuals because of their religion when hiring or firing or in other terms and conditions of employment.
- Employers must also reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer.
- Flexible scheduling, voluntary shift substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

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## Religious Discrimination

- Employers cannot:
  - Schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs
  - Inquire about an applicant's future availability at certain times
  - Maintain a restrictive dress code
  - Refuse to allow observance of a Sabbath or religious holiday

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## **Forms of Sexual Harassment**

- Sexual harassment can come in a variety of forms:
  - Verbal
  - Non-verbal
  - Physical
  - Visual

## **Verbal Harassment**

- Verbal harassment consists of verbal comments that are sexual in nature, including:
  - Speech/Conversation
  - Compliments
  - Innuendo
  - Jokes
  - Personal Inquiries

## Verbal Harassment Examples

- Examples of sexually harassing speech or conversation include:
  - Name calling, belittling or sexually explicit or degrading words to describe an individual
  - Comments about an employee's anatomy and/or dress
  - Sexually-oriented noises or remarks
  - Questions about a person's sexual practices
  - Use of patronizing terms or remarks

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## Verbal Harassment: Compliments

- It's important to remember two things about compliments:
  - It's best to keep compliments at work, work-related — that is, about work performance. As in, "Excellent idea," "Wow, your presentation was really great," or "Nice way to handle that customer."
  - If you are going to compliment someone on appearance, make absolutely sure you are not crossing the line between a compliment and a come-on. Most people are not offended by compliments like "You look nice today" or "I like your outfit," as long as you use an appropriate tone of voice.

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**Read the statement and type True or False.**

Telling a co-worker that you like the way he or she looks or is dressed is never sexual harassment.

**Read the statement and type True or False.**

Diego, who overheard an ethnic joke, was not the intended recipient, and therefore has no claim for harassment or discrimination.

## “Hostile Work Environment”

- Sexual harassment applies to both sexes and can include situations of “quid pro quo” or “hostile work environment” by women towards men.
- Discrimination on the basis of sexual orientation is unlawful under California law. Our state protects employees from employment discrimination based on their actual or perceived sexual orientation which includes:
  - Heterosexuality
  - Homosexuality
  - Transgender
  - Bisexual

## Select the Correct Answer

Under state law, which of the following are examples of sexual harassment?

- a. Giving someone flowers for their birthday
- b. Asking someone a personal question about his/her sex life
- c. Comments such as "That's a pretty dress you're wearing" or "I like your tie"
- d. None of the above

## “Hostile Work Environment”

- A hostile environment arises from inattentive management allowing a pattern of sexual conduct in the workplace so severe that it creates an intimidating, hostile, or offensive work environment.
- A hostile environment can exist even if there are no sexual advances or romantic overtures.
- Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s gender. For example, it is illegal to harass a woman by making offensive comments about women in general.



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## “Hostile Work Environment” Examples

- Leering.
- Sexual jokes.
- Discussion and/or description of sexual topics.
- Display of sexual images on computers or posters.
- Derogatory comments to and/or about women:  
“Honey, Dear, Sweetheart.”



**Key Point:** A hostile environment can exist even if there are no sexual advances or romantic overtures.

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## Hostile Work Environment Examples

- Sexual advances or propositions
  - Repeatedly asking someone on a date
  - Romantic relationships
  - Former romantic relationships



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## Read the statement and type True or False.

- A manager who promotes a subordinate employee with whom he/she is having an affair need only worry about a claim of hostile work environment.

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## Sexual Innuendo

- Sexual innuendo is a remark or question put in another context in order to hint at something pertaining to sex or sex organs.
- Most people are very uncomfortable with sexual innuendo in the workplace. Don't bring it to work because someone is bound to be offended.

## Select the Best Answer

Rachel, a waitress at a diner, is subjected to comments from both her supervisor and male co-workers such as, "If you bend over in front of me again, Sweetheart, I won't be responsible for my actions, and "I'm thinking those breasts rival even Dolly Parton's." Or, they get behind Rachel while she is leaning over wiping a table and gesture as though they are caressing her rear-end. Rachel is potentially a victim of what form of harassment?

- a. No form. The guys were just complimenting her and didn't mean anything by it.
- b. Verbal harassment
- c. Non-verbal harassment
- d. Both b and c



## Personal Inquiries

- Asking someone about his or her sex life, fantasies, preferences or history is also off limits.
- It's none of your business.

## Sexual Jokes are ALWAYS Inappropriate

- “Can’t you take a joke?” The ultimate defensive comeback when someone is offended by a joke. The thing about jokes that we all know is that what’s funny to some is not at all funny to others — especially jokes of a sexual nature. When it comes to jokes in the workplace, do not make jokes about:
  - Your own or your co-workers’ sexuality
  - People’s appearance
  - Religion, ethnic background or nationality
  - Sexual orientation
  - Bodily functions
  - Body language/wordless communications.
  - Demeaning comments about women: "That's man's work," "Honey," "Dear," "Sweetheart," "Doll," "Babe," "The Girls."

## **Sexual Jokes are ALWAYS Inappropriate**

- The excuse that it isn't your viewpoint, it's just a joke. They are always inappropriate and if you see it taking place, you must do something about it.
- Jokes that are overheard by others may be offensive to unintended listeners. Intent is not a defense to comments or jokes that are inappropriate in the workplace.

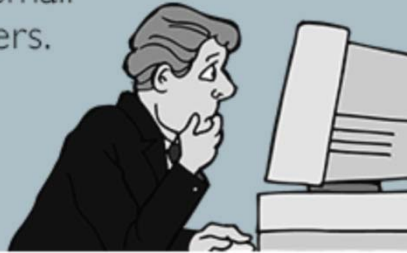
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## **Sexual Jokes are ALWAYS Inappropriate**

- *Lyle v. Warner Brothers* (2006) 28 Cal.4th 264:
  - A female writer's assistant filed a sexual harassment claim against three male comedy writers on the "Friends" show and the production company. A part of the writer's process was to use "sexually coarse and vulgar language and conduct," including when describing their own sexual encounters during writers meetings. The Court essentially threw out her sexual harassment claims because they drew a distinction between conduct and language directed at her or other women in the workplace and conduct and language that is not.

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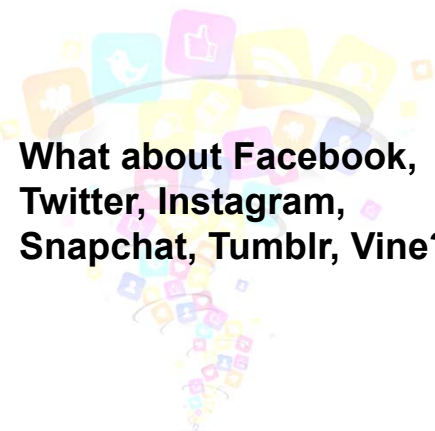
Spam isn't any more manipulative,  
irritating, or uncomfortably  
sexual than most email  
I get from coworkers.



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## “Hostile Work Environment” – The Age of Technology:



What about Facebook,  
Twitter, Instagram,  
Snapchat, Tumblr, Vine?

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## E-Mails and the Internet

- Amazing what people send and receive via their work e-mail. It is not private.
  - e.g., affairs, racial jokes, sexually explicit jokes, demeaning jokes, etc.
- Common examples are construction companies.
  - One part owner leaves company and in identifying what projects he worked on, all of project manager emails were requested and produced.

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## E-Mails and the Internet

- Employee included others on a mass distribution list and send inappropriate jokes.
- Included subordinates.
  - You don't know who is walking by your desk.
  - "But I only sent it to my buddy across the office; no one else was copied."
  - As the attorney for the company, I don't want to see it. It simply suggests a corporate culture of tolerance.
  - Once you have accessed the information or created the e-mail with inappropriate content, even before sending it on to someone else, I can guarantee you someone will see it and/or find out.

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## **E-Mails and the Internet**

- Viewing porno at work, sending and/or viewing e-mails from work computers that have inappropriate materials in them, sharing inappropriate e-mails/porno.
- Receiving e-mails counts! Tell people not to send inappropriate material to your work e-mail.

## **Sexual Favoritism**

- Sexual favoritism is defined as “opportunities and benefits granted to an employee in exchange for sexual favors” and the denial of or discrimination against other qualified employees for those same opportunities.
- These opportunities include job assignments, promotions, evaluation and compensation, or unequal discipline.
- Those who engage in the conduct have a claim as well as those who don't.

## Non-Verbal Harassment

- Non-verbal forms of harassment include:
  - Staring at a co-worker's anatomy
  - Leering
  - Sexually-oriented gestures with hands or body movements
  - Invading a person's body space, standing closer than appropriate or necessary
  - Making facial expressions, such as winking, throwing kisses, or licking lips
  - Giving personal gifts of a sexual nature

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## Physical Harassment

- Physical harassment includes unsolicited or unwelcome physical contact of a sexual nature and includes:
  - Assault
  - Impeding or blocking movement
  - Pinching, patting, grabbing, brushing against or poking another employee's body
  - Touching a person's clothing, hair or body (including giving a massage around the neck and shoulders)
  - Hazing or initiation that involves a sexual component
  - Exposing one's self

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## Visual Harassment

- Visual forms of harassment include:
  - Derogatory posters, signs, cartoons or drawings
  - Displaying sexual pictures, writings or objects
  - Obscene letters or invitations
  - Unwanted love letters or notes
  - Sexually-oriented e-mail and text messages

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## Is it Flirting or Harassment?

- Flirting is interaction that, subtly or not so subtly, expresses a sexual or romantic interest in another person. It can consist of conversation, body language or brief physical contact. Ideally, flirting is mutual fun between two consenting adults.
- How do you tell the difference between flirtation and harassment?
  - Flirting is reciprocal, is based on equality, and is wanted and welcome.
  - Sexual harassment is one-sided, makes you feel powerless and is unwanted, demeaning and invading.

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**Read the statement and type True or False.**

- **While flirting at work should be avoided, it is inevitable and nothing can ever be done.**

### **Common Sense and Life Experiences**

- Employ some common sense and you will likely never have a problem.
- Remember: You Don't Know Your Audience — EVER.
  - For example: I drop a file on the floor at work and bend to pick it up. A male co-worker standing behind me says, "Do that again. I like the view from here."
  - Would that offend me?
  - Who has a female receptionist in their office? Would that comment offend her?
  - Female journeyman or apprentice? Would that comment offend her?



## Common Sense and Life Experiences

- What do you know about your audience?
  - Do you know if a female co-worker has an abusive husband at home? Do you know if that female co-worker was sexually abuse as a child?
  - Nothing. Regardless of what you think you may know about what is offensive and what isn't to someone else, you really don't know.
  - What is offensive and/or harassment to you is not the standard.

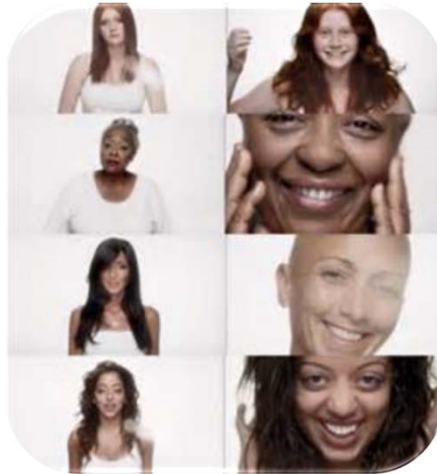
## Common Sense and Life Experiences

- DO THEY REALLY KNOW YOU'RE JOKING AND/OR WHAT YOU MEAN?
  - e.g. An officer of a corporation is talking to a female subordinate. They are having a long discussion about how poorly the recent administrative hires have done in the Project Management Department. All of the recent hires are women and all of the existing administrative Project Management employees are men. He then says to her, "Maybe we should just get rid of all the women; we'd be better off with just men."
  - What did he mean? Did he mean that the company should get rid of women in general because men are better at the job? Or was his comment limited to the recent hires and his reference to the fact that they are all women and it was intended on his part to be nothing more than a factual reference to the sex of the new hires? How did the female subordinate take it?

## Common Sense and Life Experiences

- A discussion ensues among some co-workers about the problem of sexual assaults in the military. One of the male participants says,
  - "Well, you know what they say, "If it's a legitimate rape, the female body has ways to try to shut that whole thing down." Was he joking? Saying it tongue in cheek?
  - Rep. Todd Akin (R-Mo.) in 2012, in a television interview in his campaign for the Senate. Cost him the race and his congressional career.





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## Other Forms of Harassment

- Conduct or actions based on race, religion, gender, national origin, age, disability, military membership or veteran status severe or pervasive enough to create a hostile abusive or intimidating work environment for a reasonable person.
- Including: sexual orientation, marital status, transsexualism or cross-dressing, political affiliation, criminal record, prior psychiatric treatment, occupation, citizenship status, personal appearance, matriculations, tobacco use outside work, Appalachian origin, receipt of public assistance, or dishonorable discharge from the military.
- “Religious grooming practice” includes all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.
- New for 2015: Driver’s Licenses for Undocumented Persons, Name, SSN or federal employment authorization document changes, and Medi-Cal recipients.

**Key Point:** Know the definition and types of sexual harassment.

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## What If?

- Workplace romance is fairly common these days since work is where we spend a third or more of our lives. Romantic involvement between employees is loaded with potential risks. What if the relationship sours and ends up in a nasty break up?
- Only unwelcome conduct can be sexual harassment. Consensual dating, joking and touching are not harassment if they are welcomed by the persons involved.
- Conduct is unwelcome if the recipient did not initiate it and regards it as offensive. Some sexual advances are so crude and blatant that the advance itself show that is not welcome. In a more typical case, however, whether the conduct is welcomed or not will depend on the recipient's reaction to it, such as:
  - Outright Rejection – "NO"
  - Ambiguous Rejection – "Not tonight, I have another commitment"
  - Willing participation in and encouragement of the conduct

**Key Point:** Beware! A relationship gone bad can create a harassment situation.

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## Relationships Gone Bad

- Stories about work relationships gone bad are commonplace:
  - A spurned lover files a sexual harassment claim against her employer, saying that she was "pressured" into an unwanted relationship by her supervisor.
  - An employee complains to management about adverse treatment by her supervisor following the breakup of their relationship.
  - Other employees file claims of harassment because they believe they are treated unfairly because of a relationship between a manager and a subordinate.
- The bottom line is that affairs can create the potential for a hostile work environment for those employees who are not engaging in sexual relations.

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## Precautionary Measures

- Some companies, taking precautionary measures, require employees to sign "consensual relationship agreements." These agreements demonstrate a commitment to follow all company policies, including anti-harassment and employee conduct policies; to behave professionally and appropriately at work; and not to engage in favoritism.
- Most importantly, the employees make it clear that the relationship is consensual. Many companies prohibit relationships between supervisors and subordinates.
- Before starting a relationship with a co-worker, you should:
  - Know your company policy regarding interoffice dating
  - Talk to your HR staff or manager if you have any questions

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## Let's Go Back to our Common Sense

- **Accadi v. Superior Court (1993) 17 Cal. App. 4th 341**
  - Female police officer sued the City of Simi Valley and individual officers alleging that the officers spread untrue rumors about her abilities, deliberately singled her out for unfavorable work assignments and work shifts, made unsubstantiated complaints about her performance, made statements that her baton was only useful to perform sex acts, stuffed her shotgun barrels with paper so that the weapon would explode if fired, spread rumors that she had slept with superior officers in order to receive favorable assignments, threatened to disrupt her wedding, deliberately overburdened her with double work assignments; denied assistance when she requested it; deliberately circumvented established procedures when she was assigned to duty as a court officer in order to make her work more difficult; excluded her from group activities; mimicked and made fun of her before her peers in the unit; admitted to her that there were double standards and told her she must live with them; allowed threats of bodily harm to be made to her in front of a room filled with officers; allowed derogatory and condescending remarks to be made about her, and women in general; and made sexual advances to her.

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## 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 responsible. This could include:
  - Not hiring an otherwise qualified candidate or firing someone who doesn't go along with the harassment
  - Not promoting or demoting an otherwise qualified employee
  - Reassigning someone to a less desirable position
  - Significantly changing employee benefits
- This change of employment status is called “tangible employment action.” A tangible employment action, in most instances, can only be caused by a supervisor or other person acting with the authority of the company.
- And the employer is responsible regardless of whether it had a sexual harassment policy or whether the employer knew or should have known about the harassing conduct.

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## Select the Best Answer

An adverse tangible employment action occurs when:

- a. The employer or supervisor promotes an employee for outstanding performance.
- b. The employer hires, fires, fails to promote or reassigns an employee with significantly different responsibilities.
- c. The employer changes an employee's benefits significantly — such as a major reduction in pay or loss of health benefits.
- d. Both b and c.

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## Let's Go Back to our Common Sense

- Her supervisors told her to accept the double standard and not complain, permitted the filing of false reports about her, assigned duties to her only because she was a woman, caused false medical reports to be filed saying she was not fit to serve as the result of an injury; excluded her from work details to which all other partially disabled officers were assigned; ordered her to either declare herself 100 percent fit, or file for early retirement; and told her incorrectly that she would be eligible for early retirement only if she were 30 percent disabled.
- Officer Accardi joined the force in 1980 and left in 1991.

## Reasonable Care

- Even if there is no tangible employment action, an employer is still responsible for the actions of its supervisors that create a hostile environment, unless the employer can show that:
  - It exercised “reasonable care” to prevent and promptly correct any sexually harassing behavior.
  - The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.
  - “Reasonable care” means the actions that a reasonably prudent person would take once he or she becomes aware that harassment might be occurring at the company.

## What Happens if Employers Allow Harassment?

- You never want to be in a situation where a jury is deciding your fate; there are too many unknowns
- *Weeks v. Baker & McKenzie*:
  - Legal secretary sued the partner she worked for individually and the law firm.
  - Individual partner had a long history of sexual harassment of female employees in Chicago office. There were at least three reports.
  - The company never investigated beyond asking the partner, who repeatedly denied the claims. Partner came to the law firm's Bay Area office in 1990.
  - Even before he moved to CA, he was working in the Palo Alto office and they immediately started getting complaints from female staff. He had asked a secretary to come to his hotel hot tub with him, commented on her appearance and after she advised him she was gay, he invited her and a partner to come to his hotel.
  - The secretary reports the conduct and nothing is done.

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## Employer Reasonable Care

- Reasonable care as it applies to sexual harassment means that the employer has actively worked to prevent workplace harassment and acted promptly to correct any sexually harassing behavior that may be occurring. Preventive steps include the following, some of which are legally required and others that are best practices.
- Legally Required
  - Creating a sexual harassment policy
  - Creating a sexual harassment complaint procedure
  - Displaying current federal and state posters
  - Distributing the California sexual harassment information sheet
  - Holding mandatory training

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## What Happens if Employers Allow Harassment?

- ***Weeks v. Baker & McKenzie:***

- There are at least 4 or 5 other reports of inappropriate behavior and the firm does nothing other than ask him if he did anything, which he consistently denies.
- Throughout, no one at the firm was keeping anyone else informed of the string of complaints and management kept changing.
- Finally, Rena Weeks is hired as the partner's secretary in 1991 and one of the famous actions our beloved partner takes is to put his hand in the breast pocket of the woman's blouse and drop M&M's in the pocket.
- The jury awarded \$50,000 in compensatory damages (likely lost wages), \$225,000 in punitive damages against him, and \$6.9 million in punitive damages against the law firm.

## Employer Reasonable Care

- **Best Practices**

- Publishing the policy and procedure widely and often
- Including the policy and procedure in the employee handbook
- Holding periodic training for all employees
- Taking any claim seriously and investigating it
- Taking prompt and appropriate action

## Let's Go Back to our Common Sense

- ***Miller v. Department of Corrections (2005) 36 Cal.4th 446:***
  - California Supreme Court determined that two former female prison guards had stated a case for sexual harassment where other female guards and junior wardens had engaged in sexual relationships with the male warden resulting in favoritism to the women involved in the affairs (getting promotions over others when not qualified, etc.) and resulting in harassment by the women in the relationships with the warden, against the plaintiffs who complained about the conduct and gave statements in an interview by internal affairs.

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## Supervisor Reasonable Care

- Supervisors must also practice reasonable care when receiving a complaint of sexual harassment conduct. Supervisors must:
  - Promptly respond, consistent with your company policy, when you learn that harassment has occurred.
  - Pay attention. The standard is whether you knew or should have known that harassment was going on. If everyone else saw it and you didn't, you are putting your company at risk.
  - Report all inappropriate conduct according to your company's complaint process.

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## Supervisor Responsibilities

- Since they are representing the company, Supervisors must make sure they have read and know the company's policies on sexual harassment and discrimination so that they can react to potential sexual harassment situations with confidence and knowledge and enforce the policies. They must:
  - Intervene and stop all inappropriate behavior.
  - Take remedial action when appropriate. The action should be appropriate to the severity of the conduct.
  - Know when you should escalate a problem to a higher-level supervisor or your HR department, consistent with your company policy.
  - Take every incident or complaint seriously. As much as you may not want to deal with it, you cannot ignore sexually harassing or improper behavior.
  - Conduct sexual harassment investigations promptly (if authorized by your company policy). And, where necessary, escalate complaints to the appropriate level.
  - Never retaliate against an employee for making a complaint (internally or to an outside agency like the EEOC) against you or another employee.

## Select the Best Answer

Supervisors should take the following action when they learn of or see conduct that is inappropriate:

- a. Stop the conduct but don't report it according to company policy — it stopped, no problem
- b. Report the inappropriate conduct to the person designated in your complaint process.
- c. Consult with your own legal counsel to determine whether or not the conduct was really sexual harassment
- d. Make sure that you are leading by example and not engaging in the same conduct
- e. Both b and d.

## Select the Best Answer

Supervisors who ignore sexual harassment can:

- a. Place the company in jeopardy
- b. Adversely affect the company's productivity and morale
- c. Both a and b
- d. None of the above

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## Let's Go Back to our Common Sense

- **Is your Collective Bargaining Agreement going to protect you?**
  - The same laws apply. The FEHA and Federal laws have the same force and effect. There are very few CBA's that are specific enough to force a claimant to pursue his or her statutory discrimination claims through the grievance process.

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## **Supervisor's Obligation to Report**

- Supervisors are personally obligated to report any harassment, discrimination or retaliation immediately on becoming aware.

## **Company-Sponsored Social Activities**

- What about showing our Caddyshack video at the Company Christmas party?
- Drinking and inappropriate conduct.
- Inappropriate conduct because it is suddenly a less professional environment when we're having a party.
- Valentine's Day Party: "Mad Hugger" case. Probably didn't have any ill intent in his inappropriate sexual behavior but was probably a tyrant to work for; had two daughters over whom he was extremely protective.

## After Hours Conduct

- Spilling over into workplace.
- Office Romances.
  - They are not recommended whether it is two co-workers of the same level or especially if it's a superior and a subordinate. The relationship sours and suddenly someone is alleging sexual harassment and my superiors did nothing about it.
  - You can lose valued employees over this situation because one employee who is a very valued employee and perfectly appropriate on the job, suddenly loses his or her mind and starts harassing the ex on the job.
  - You have no control of the situation.

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## Statute of Limitations

- An employee who wishes to file suit against an employer must file a claim with the DFEH within one year of the alleged violation. The Department of Fair Employment and Housing is the state agency charged with enforcing California's civil rights laws.
- A complaint can also be filed with the Federal Equal Employment Opportunity Commission within 180 days of the alleged violation.
- If there is a continuing pattern of conduct, the statute of limitations runs from the last "act" and the claim includes all of the prior conduct in the "pattern."

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## Standards for Evaluating Sexual Harassment

- In deciding whether harassment creates a hostile work environment, the EEOC traditionally has evaluated the harasser's conduct from the objective viewpoint of a "reasonable person." If the challenged conduct would not substantially affect the work environment of a reasonable person, then no violation existed.
- It is not necessary for the victim to suffer psychological injury. To prove a claim of harassment, it only has to be offensive to a reasonable person.
- Federal Courts have held that what a "reasonable woman" would consider sufficiently severe or pervasive to create a hostile work environment can change over time. In rejecting the reasonable "person" standard, the court held that applying this theoretically "gender-blind" standard to female employees tends to be male-biased and systematically ignores the experiences of women.

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## Determination of Harassment

- A pattern of offensive conduct is generally required, especially for a complaint of "hostile" work environment (although there have been limited cases where one egregious act was sufficient).
- Trivial or merely annoying conduct will not sufficiently alter an employee's working condition. Hypersensitive employees will not automatically be entitled to relief.
- Even if sexual conduct is not sufficiently outrageous to create a legally valid harassment claim, it can create serious employee relations problems and make an invalid claim more difficult to defend.

**Key Point: ANY sexual conduct in the workplace can cause a problem.**

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## Proper Response to a Sexual Harassment Complaint

- Listen carefully and objectively to the complaint.
- Obtain enough information to allow you to investigate. This includes interviewing the parties involved and gathering any necessary documentary and/or computer data.
- Reaffirm company policy (handbook and handout).
- Consult Human Resources.



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## Proper Response to a Sexual Harassment Complaint

- Investigate.
- Decide and implement appropriate action.
- Prevent retaliation.
- Follow up.
- Document each step along the way.

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## Confidentiality and Privacy

- All employers must investigate complaints of harassment and/or discrimination and must take reasonable steps to protect the privacy of all parties involved in the investigation. At certain points in the investigation, however, it may be necessary to share information with others involved to be able to thoroughly investigate and resolve the harassment complaint.
- Employers cannot promise complete confidentiality in the investigation process, but will ensure that only those with a business “need to know” will have access to the investigation report.
- Additionally, whether you are the individual who filed the complaint, the accused employee or a potential witness, understand that confidentiality is crucial. People have their reputations at stake and you may or may not know all the facts.

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## Hints on Documentation

### Documentation needs to include:

- Complete description of conduct in the complaint;
- Full description of the investigation;
- Complete description of objective facts discovered with specific dates, times, and full name;
- Record that the complaining employee was assured of no retaliation and all others involved in investigation were cautioned about retaliation as well; and
- Record that the Company’s harassment policy was emphasized to all persons involved.



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## Hints on Documentation

### Documentation needs to include (cont.):

- Be factual. Do not include beliefs. If you are using the words, “it appears that,” “it is assumed,” “it is believed,” etc., you are not being factual.
- Consult Human Resources.



**Key Point:** Avoid Conclusions of Law, Moral Judgments & Commentary.

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## Conducting Harassment Investigation

- It is the Manager’s job to tell the employee that they have an obligation to look into the allegation and reiterate that the company has a no-retaliation policy. They also need to reassure the person who feels victimized that their identity is going to be protected, and the report is only going to involve them and the alleged perpetrator.
- Sometimes, an employee may be so emotionally distraught that they may require taking some paid leave. This doesn’t put them in a bad light. It gets them to a safe place.
- Offering a list of counselors who can help, and also assuring them that the investigation will proceed as fast and rigorously as possible is important.
- Finally, give them updates every step of the way.

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## Documenting Harassment Investigation

- When documenting a harassment investigation:
  - Get complaints in writing, if possible. However, all complaints (verbal or written) must be investigated.
  - Have the complaining employee verify your summary of the allegations as he/she has conveyed them to you.
  - Use objective language ("while talking with Mary, she fidgeted, did not make eye contact" or "during my interview with Joel, his voice was shaky, he appeared to get teary") as opposed to "Mary was not credible" or "Joel was upset."
  - Maintain a separate, confidential folder, notepad, or electronic file for each interview. Store the notes and documentation in a file separate from personnel files and other employee information and use that information to prepare your investigation report when the investigation is completed. Be sure to consult with legal counsel regarding proper, legal storage of electronic files if you wish to go "paperless."

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## Documenting Harassment Investigation

- When documenting a harassment investigation:
  - In your notes, include the date, time, location and whether this is the first or follow up interview.
  - Review your notes after the interview is complete to be sure you included all relevant information while your memory is still fresh.
  - After reviewing your notes, prepare a list of anyone new that you may need to interview or any follow up questions you may need to ask current witnesses or subjects.

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## Cooperate with Investigation

- A manager accused of sexual harassment must cooperate with the investigator — if there are legitimate reasons for having disciplined the subordinate who accused the manager of discrimination, the manager should reveal those reasons.
- In *McGrory v Applied Signal Technology, Inc*, the manager declined to identify workers who had complained about the subordinate, citing privacy reasons. But, it is hard to imagine an outside investigator, who is an attorney, will spill the beans.
- Do not tell the investigator off color jokes in excruciating detail. You would think that would go without saying. Sure, you should cooperate and admit your missteps, but it really is not in your best interest to elaborate by telling your favorite dirty jokes.
- One manager in California did both and, as a result, gave his employer a legitimate nondiscriminatory reason to fire him.

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## Why Employees Do Not Complain & How to Respond



- Retaliation
- Ostracism
- Being Labeled
- Overreaction



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## An Ounce of Prevention Goes A Long Way

- Recognize sexual harassment as a major personnel risk.
- Set a good example.
- Take complaints seriously.
- Create an environment in which people feel safe to voice concerns or complaints.
- Contact HR for suggestions, feedback or additional training.



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## Educating Personnel

- Create a working environment that actively discourages behavior that could be viewed as risky or sexually harassing by:
  - Making sure employees are aware that any type of sexual harassment is against company policy and will not be tolerated, by reminding your staff about your company's anti-harassment policy. Conduct does not have to be unlawful to violate your anti-harassment policy.
  - Answering any questions your staff may have about what constitutes harassment or a violation of company policy. If you can't answer the question, refer the employee to the appropriate person in your organization.
  - Being a role model; don't engage in any conduct that could be perceived as discrimination or harassment.
  - Reminding supervisors that they will face disciplinary action for engaging in any form of retaliation towards employees for making a harassment complaint.

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## Legal Remedies

- A legal remedy is the means by which a court of law enforces a right or imposes a penalty for the violation of a right.
- According to federal law, if you have been discriminated against on the basis of sex, your employer may be required to:
  - Hire an applicant who was denied a job on the basis of sexual discrimination
  - Rehire an employee who was terminated
  - Pay back wages, benefits and other compensation lost by an employee or applicant
  - Pay the cost of litigation and attorney's fees (if you win your case)
  - Pay damages to compensate you for mental and emotional anguish, work-stress and inconvenience

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## Legal Remedies

- Additionally, California state law can require an employer to:
  - Pay actual damages for injuries or losses suffered, including back pay and front pay\*
  - Pay punitive damages to punish the employer for egregious conduct
  - Post notices of the employer's obligation to stop discriminatory practices
  - Conduct sexual harassment training for all employees, supervisors and management
  - Pay litigation costs and expert witness fees
  - Pay unlimited compensatory and punitive damages

\* "Front pay" is money awarded for lost compensation during the period between judgment and reinstatement, or if reinstatement is not feasible, instead of reinstatement. Like back pay, front pay is the equivalent of lost earnings.

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## Anti-Harassment Policy

- Every company must have a well-written sexual harassment policy. The policy should be given to all employees or they should be able to locate it quickly and easily.
- One of the best ways to make the policy available is to make it a part of the company's employee handbook.

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## Anti-Harassment Policy

- A written harassment, discrimination and retaliation prevention policy must include:
- A complaint process to ensure that complaints receive:
  - Confidentiality to the extent possible. Be clear that the investigation process can't maintain complete confidentiality
  - A timely response
  - Impartial and timely investigations by qualified individuals
  - Documentation and tracking of the complaint so it progresses in a timely manner
  - Appropriate remedial action and/or remedies; and
  - Investigations that are completed in a timely manner
- The complaint process must not require employees to complain directly to their immediate supervisor. Options include:
  - Direct written or oral communication with a designated company representative, such as a human resources manager, EEO officer, or other supervisor; and/or
  - A complaint hotline; and/or
  - Access to an ombudsperson; and/or
  - Information on how to contact state or federal agencies that investigate and enforce these laws

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## Anti-Harassment Policy

- A written harassment, discrimination and retaliation prevention policy must include:
  - A list of all protected categories under FEHA
  - A statement that the law prohibits supervisors, co-workers and third parties from engaging in discriminatory, harassing or retaliatory behavior prohibited by FEHA
  - Instruction to supervisors to report any and all complaints to a designated company representative so the company can try to resolve the claim internally.
  - A statement that in response to any allegation of misconduct, the company will conduct a fair, timely and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the results of the investigation.
  - If an investigation finds misconduct, appropriate remedial measures will be taken
  - A statement that there will be no retaliation for reporting or lodging a complaint or participating in an investigation

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## Anti-Harassment Policy

- It is also recommended that a written policy contain:
  - A statement that harassment, discrimination and retaliation will not be tolerated
  - A statement that all claims will be taken seriously
  - A statement that all claims will be investigated
  - A definition of harassment, discrimination and retaliation with examples

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## Anti-Harassment Policy

- State law requires that the policy be distributed to employees by one or more of the following methods:
  - Printing and providing a copy of the policy to all employees with a form for employees to sign and return acknowledging receipt
  - Sending the policy via email with an acknowledgment return form
  - Posting the current version of your policy on a company intranet with a tracking system documenting that all employees read and acknowledged receipt of the policy
  - Discussing the policy upon hire and/or during new hire orientation; and/or
  - Any other way that ensures employees receive and understand the policy
  - The policy must be translated into any language that is spoken by at least 10 percent of the workforce.

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## Prevention Strategies

- Every employer needs a strategy to help prevent harassment in the workplace. Elements of this strategy, which are mandated by state and/or federal law include:
  - Having a harassment policy
  - Establishing a complaint procedure
  - Establishing an investigation procedure
  - Providing a sexual harassment information sheet upon hire (legally required) and at least annually (recommended)
  - Posting the required Department of Fair Employment and Housing (DFEH) poster in a conspicuous location or make sure your company does (legally required)
  - Including your anti-harassment policy in the employee handbook or other policy document (legally required)

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## Prevention Strategies

- Training all company employees in what your harassment policy covers
- Having all employees sign a written acknowledgment that they received all harassment prevention documents and training
- Providing supervisors with required two-hour training (such as this course) at least every two years (as required by law) — training more often is even better
- Providing employees with training, either live or online, in recognizing and avoiding harassment
- Hanging posters in the workplace with anti-harassment messages
- Giving employees materials they can take with them and review at their leisure regarding anti-harassment and avoiding workplace harassment
- After sexual harassment investigations, following up with all involved parties to check the status of training, re-training and the effectiveness of resolution
- Making sure employees know they can express concerns/complaints to any supervisor or manager, not just their own manager

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## Why Do We Have to Be Trained?

- California's Fair Employment and Housing Act (FEHA) and the federal Title VII of the Civil Rights Act of 1964 make sexual harassment illegal in the workplace.
- In 2005, California passed AB1825 (Govt. Code § 12950.1). That law mandated that all employers with 50 or more employees train their supervisors/managers every two years. Law became effective in 2006.
- Effective Jan. 1, 2015, amendment AB 2053 requires all California employers subject to the mandatory training requirement under AB 1825 to include a component on preventing "abusive conduct."
- Effective Apr. 1, 2016, FEHA regulations were revised to clarify and expand the protections, employer actions and training requirements.

**Key Point:** Sexual harassment affects everyone in the company.

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## Why Do We Have to Be Trained?

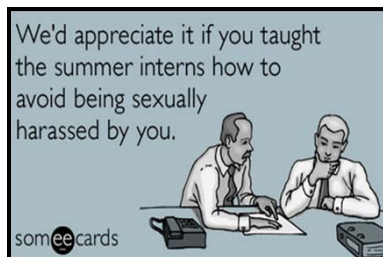
- Effective Jan. 1, 2018, SB 396 expanded required training for supervisors to prevent sexual harassment to include gender identity, gender expression and sexual orientation.
- In 2018, Governor Brown signed SB 1343, which amended the FEHA regulations and requires businesses with five or more employees provide sexual-harassment-prevention training to **all** workers by Jan. 1, 2020, and every two years thereafter.
- The reason for the requirement is that as companies grow, the employee population grows in complexity and you are more likely to have a claim.
- New supervisors must be trained within six months of their promotion/hire.
- As managers/supervisors engaged in improper conduct, you could be personally liable in a lawsuit.

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## Legislative Update

### AB 1443

- Governor Brown Signed AB 1443 in September 2014.
- Unpaid Interns and Volunteers are now covered by the Fair Employment and Housing Act (FEHA).



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## Requirement to Train Supervisors

- **Employers that do business in California and have "50 or more employees," as well as *all public employers*, 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.**

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## Requirement to Train Employees

- SB 1343 requires businesses with five or more employees to provide sexual-harassment-prevention training to all workers by Jan. 1, 2020, and every two years thereafter.
- This expands the training requirements significantly as previously employers with 50 or more employees only had to provide training to supervisory employees.
- Non-supervisory employees must receive one hour of training while supervisory employees must continue to receive two hours of training.

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## Requirement to Train Employees

- In addition, beginning Jan. 1, 2020, for seasonal and temporary employees, or any employee that is hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first.
- Temporary workers employed by a temporary agency must be trained by the temporary agency, not the client.

## Requirement to Post Employment Poster

- Employers must post the *California Law Prohibits Workplace Discrimination and Harassment and Transgender Rights in the Workplace* posters.

## Requirement to Distribute Literature

- Employers must distribute an information sheet on sexual harassment to all employees.
- An employer may either distribute *The Facts About Sexual Harassment* pamphlet or develop an equivalent document that meets the requirements of Government Code §12950(b).
- Employers may choose the manner of distribution, so long as the method chosen reaches each employee. For example, the notice may be included with an employee's pay check.

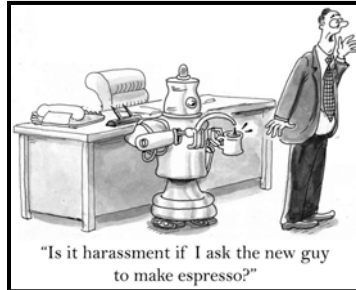
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## Additional Resources

- *California Department of Fair Employment and Housing (DFEH)*: This state agency enforces workplace unlawful discrimination laws, including sexual harassment. After a complaint is filed, the DFEH has one year to investigate the complaint.
- California Department of Fair Employment and Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
916-478-7251  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- *Equal Employment Opportunity Commission (EEOC)*: This federal agency enforces workplace anti-discrimination laws.
- U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, D.C. 20507  
202-663-4900 / (TTY) 202-663-4494  
[www.eeoc.gov](http://www.eeoc.gov)

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# QUESTIONS?



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