



**Anti- Harassment Training for All Employees-  
California**

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## Course Overview

### Introduction

Welcome to your annual training on harassment prevention.

In recent years, the topic of harassment in the workplace has been brought into the national spotlight, bringing with it renewed awareness about the serious and unacceptable nature of these actions and the severe consequences that follow.

The term “harassment” may mean different things to different people, depending on your life experience.

Certain conduct may seem acceptable or have seemed acceptable in the past. That does not mean it is acceptable to the people we work with.

The purpose of this training is to set forth a common understanding about what is and what is not acceptable in our workplace.

By the end of this course, you will be able to:

- Identify workplace behavior that might be considered harassment
- Explain the legal and other consequences of harassment
- Describe your role and responsibility in creating a work environment free from harassment
- Describe sound policies and procedures on harassment

## Sexual Harassment in the Workplace

### EEOC’s Definition of Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a

hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

### Quid Pro Quo

Quid pro quo is Latin for "this for that" or "something for something." It refers to an exchange. In this case, the exchange is between a person in authority and his or her subordinates.

One party is asked to provide sexual favors in exchange for something else, such as grades, favorable treatment in work assignments, recommendations, pay, or promotion. Examples of quid pro quo: "Have sex with me and you'll get a raise," or "Have sex with me or you won't get a raise." Quid pro quo is usually more severe and occurs less frequently than hostile work environment sexual harassment.

Quid pro quo occurs when employment decisions and conditions are based upon whether an employee is willing to grant sexual favors. Some of the working benefits that can be made conditional on sexual favors are: hiring, promotions, salary increases, shift or work assignments, and performance expectations.

For example, Marissa's boss asks her to work late with him to complete a project. While they are alone after hours, her boss repeatedly tries to rub his hand against her thigh, and attempts to kiss her. She resists his advances and tells him she is not interested. The boss eventually stops the behavior and leaves, telling her to finish the project herself. Neither person mentions the incident again. However, the following week, Marissa's boss gives her an undeserved poor review, and denies her an expected pay raise.

Other examples are:

- When Ryan refuses the advances of his department chair, she assigns someone else to the summer course he has been teaching for years.
- The Operations Manager tells the summer intern that she will be hired on as a regular employee if she would agree to go out with him.
- A week after Matt ends his relationship with Chad — who is also his supervisor — Chad tells Matt his position has been cut and fires him.
- When April requests time off from work, her supervisor tells her that she can "earn" time off by granting him sexual favors.

A person does not have to prove that they suffered an economic loss — such as being denied a promotion or a raise — to prove quid pro quo sexual harassment. It's enough to show a threat was made or reasonably implied. According to federal guidelines, a single sexual advance may constitute harassment if it is linked to the granting or denial of employment benefits.

## Hostile Work Environment

A hostile work environment is one in which unwelcome conduct of a sexual nature creates an intimidating, offensive, or disruptive work environment for one or more members of the company. Examples of this conduct may include: sexually explicit talk, text or emails, sexually provocative images, comments on physical attributes, or inappropriate touching. Harassment can take many forms, including sexual harassment, threats of violence, name calling, or other harassing conduct. Harassment creates a hostile environment and can violate anti discrimination protections. The following example could be construed as hostile work environment sexual harassment.

Tripp and Angela are coworkers in adjacent cubicles. Tripp frequently enters Angela's area, sits down, and begins describing details of his sex life. He also tries to encourage her to participate in the discussions. She tells him that she would rather not hear these stories. And he takes the opportunity to tell her that he could "help her release all of her prudish sexual inhibitions." He will not stop these unwelcome conversations, regardless of how often Angela asks. She is hesitant to file a complaint because, other than this behavior, Tripp is pleasant and helpful.

Angela and Tripp are coworkers, and Tripp is not asking Angela to exchange sexual favors for better working conditions. So, his behavior is not quid pro quo sexual harassment. It could, however, be considered hostile work environment sexual harassment.

A hostile environment situation may also be created by conduct that is gender specific, but not necessarily sexual in nature. When Hadi informs her supervisor she is pregnant, he becomes angry. He tells her that, if she cared at all about the department or her colleagues, she would just resign rather than disrupt everything by going on maternity leave. The supervisor often points out in meetings that Hadi won't be able to do certain projects because "she will be on her little vacation." He takes assignments away from her, citing her inability to follow through because of her coming leave. As she progresses in her pregnancy, he mocks her by imitating how she walks, and how she sits or rises from a chair. Hadi's work environment has become abusive based on her pregnancy, and both her work and her health are affected. The supervisor's behavior is unacceptable and very likely a case of hostile work environment sexual harassment.

Here is another example: Deena works in the office of the maintenance department. She keeps her hair cut very short, dresses in men's clothing and does not wear makeup or jewelry. Mr. Ellis, one of the managers in the department, calls her "Dean." He frequently comments that she should dress in a more "feminine" manner and that the men prefer to have "pretty girls" in the office. Mr. Ellis has also called Deena a derogatory term for "lesbian" on several occasions.

Although Mr. Ellis's comments are not sexual in nature, they may nonetheless constitute harassment on the basis of sex. His comments deride Deena for her failure to conform to stereotypes about how women should dress and appear. Discrimination on this basis is prohibited by federal and most state laws.

A hostile environment can result from many different types of abusive acts, if they are based on any protected category.

Paul is an employee with a disability who works for the housekeeping department. Some of the employees, and even some of his coworkers, think it is funny to tease him about his disability. They call him insulting names and interfere with his work by intentionally spilling liquids or emptying trash cans in areas Paul has just cleaned. These behaviors make Paul's environment abusive and hostile and are a violation of the law.

### **Other Forms of Sexual Harassment**

Sexual harassment does not occur just between a male boss and a female subordinate. Sexual harassment may occur in a variety of circumstances: between peers; by a subordinate toward a supervisor; by women against men; between members of the same sex — men harassing men, women harassing women; and by a third party, such as a vendor, customer, or contractor, against an employee.

Sexual harassment often involves people of unequal authority, but it can occur between employees of equal rank and among other peers. Peer To Peer harassment is often not difficult to stop. A direct and clear request to the offender to stop the behavior is generally effective. If the request to the offender does not stop the behavior, the next step is to ask a supervisor to intervene. Once asked, the official is obligated to take appropriate action.

It is possible for a subordinate to harass a supervisor, although this is not very common. It may occur when the offender is particularly intimidating or if the victim is unable to exert the authority of his or her position. This type of harassment must be taken just as seriously as any other. If the behavior continues after requesting the offender to stop, the target of the harassment must seek help from a higher level of management.

Unwelcome behavior does not have to involve people of the opposite sex to qualify as sexual harassment. In a unanimous ruling in March 1998, the U.S. Supreme Court ruled that same-sex sexual harassment is illegal.

Under federal and state law, harassing behavior toward someone of the same sex can be sexual harassment if the behavior is unwelcome, sexual in nature, based on the person's gender, or on his or her failure to conform to gender stereotypes. The criteria are the same as with sexual harassment between people of the opposite sex.

People offended by a hostile work environment need not be direct participants or targets of the hostile behavior. They can be third parties.

The most critical factor in determining if behavior is sexual harassment is whether it is unwelcome. In an office environment, people are not free to completely remove themselves from unpleasant situations. In these circumstances, behavior that is comfortable between direct participants may be unwelcome to third parties who cannot avoid observing it. An example of

third-party harassment may include direct conversations about sex in the hearing range of those to whom it is unwelcome. Such behavior is unacceptable. Another type of harassment that may be referred to as "third-party harassment" is harassment of an employee by someone who is not an employee. This may include harassment toward an employee by a contractor, vendor, visitor, or customer. The company may be held liable for harassment by third parties, especially if management is made aware of it. In this case, the company is expected to take action to stop the harassment and prevent its recurrence.

### Intent vs. Impact

When dealing with behaviors and choices that could lead to a sexual harassment complaint, your intent is irrelevant. It is only the impact of your choice that has relevance. This could be the impact on the work or school environment, or the offended individual. Regardless of intent, behavior will be judged on its impact.

Remember, the statement "I didn't mean anything by it" is not a valid defense of harassing behavior.

For example, Joey loves to tell funny stories and keep the spirit of good cheer alive in the lab. One morning, he spies Jessica looking a little tired and depressed. To cheer her up, he tells her a silly story with sexual innuendo. Jessica looks offended and moves away hurriedly. Joey didn't mean any harm, but what one person may intend as genuine friendship — even if in a clumsy way — can be perceived quite differently by another. Does this mean that an unintentional slight can contribute to hostile environment sexual harassment? Yes, it does. It is the impact of the behavior, not the intent, that matters with regard to sexual harassment.

The following is an example of intent versus impact. In this example, the way the behavior is taken by the recipient is very different from how it is intended. The impact of the behavior has an unintended negative effect, which makes the action at risk for being sexual harassment.

*Jorge walks over to Sue's desk, carrying flowers.*

*Jorge, leaning against her desk: Good morning, Sue! You look pretty today. Good thing I bought these, they match your shirt perfectly.*

*Sue, sighing: Jorge, I told you to stop bringing me things. The poetry, the cards, the gifts . . . it's getting out of control.*

*Jorge: Ah, come on, I just want to show you what a great guy I am so you'll give me a chance.*

*Sue, getting frustrated: I've told you, I don't date people I work with!*

*Jorge, straightens and puts the flowers down, smiling: I'm not going to give up on you yet. I'll break you down someday!*



*He winks, then leaves. Sue takes the flowers and throws them in the trash. Another coworker, Lucy, walks by.*

*Lucy: Are those from Jorge?*

*Sue: Yeah. I keep telling him I don't want them, but he brings them anyway. He's asked me out eight times, even though I keep saying no.*

*Lucy: What are you going to do?*

*Sue, shrugs: I don't know, but it's actually starting to scare me how persistent he is.*

Let's look at another example:

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

When Ralph first asked Li Yan for a date, was this sexual harassment?

Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

Is Li Yan able to complain of sexual harassment because she went on a date with Ralph?

Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

Is Ralph's subsequent behavior with gifts and love notes sexual harassment since he has stopped asking Li Yan for dates as instructed?

Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

### Considering the “Reasonable Person Standard”, Severity, and Duration

If unwelcome behavior of a sexual nature causes someone to take offense, it will be judged based on whether a "reasonable person" would find it offensive. This standard of a reasonable person has arisen from court attempts to interpret what behaviors should reasonably be considered sexual harassment. Since not everyone interprets behaviors in the same way, the courts find that, in order to be illegal, the conduct must be severe or pervasive, and offensive to a reasonable person in similar circumstances. Under this standard, onetime unwelcome behavior will seldom qualify as sexual harassment, unless it is sufficiently severe as judged by a reasonable person.

Remember that since there are no clear-cut rules defining a "hostile and threatening environment," courts generally look at the severity or pervasiveness of the behavior, as judged by a "reasonable person." Each situation must be judged on its own factors, including severity and duration, and viewed from the paradigm of “what would a reasonable person think?”

For the past three months, Jennie, the Computer Help Desk Specialist, has received unwanted, personal instant messages from the IT Director on a daily basis. These IMs often contain details of his sexual fantasies, including those related to having sex with her in his office. Since IM is a required means of communication within the organization, Jennie cannot turn it off. But when these offensive IMs appear, she does not respond. Her boss does not persist, nor does he mention them when he and Jennie are face-to-face.

Is this behavior severe, mild, or somewhere in between? Is it frequent, a rare occurrence, or somewhere in between? Would a reasonable person judge this behavior as sexual harassment?

Everyday Jennie is experiencing offensive behavior. It is pervasive in that it has continued over several months and on a regular basis. In the absence of physical contact or actual demands for sex, the behavior may rank as only moderately severe. Jennie makes the mistake of ignoring the behavior instead of protesting it, so there is not the added severity of the behavior continuing following a complaint. It is likely that a reasonable person would judge this behavior as sexual harassment.

A young employee in a new job was kissed and fondled by her boss, when he cornered her after hours. The employee only submitted out of fear of being fired or demoted if the boss's advances were refused. Afterwards, the employee made sure she was never alone with her boss and vowed she would not let it happen again.

Is this behavior severe, mild, or somewhere in between? Is it frequent, a rare occurrence, or somewhere in between? Would a reasonable person judge this behavior as sexual harassment?

The sexual conduct is not pervasive if it occurred only once. However, it is fairly high on the severity scale. It is probable that a reasonable person would judge this behavior as sexual harassment.

Allan, a chemical supply salesman, manages distribution of an extremely limited solvent used in upper level biochemical labs. Cindy is a purchasing agent responsible for securing this product for her lab. Cindy has repeatedly been the target of Allan's insistence on unwanted lunch dates, where he engages in offensive sexual language and innuendo. Cindy has complained to her boss about Allan's behavior, but was only told how important it is to the lab that this supply of solvent not be interrupted.

Is this behavior severe, mild, or somewhere in between? Is it frequent, a rare occurrence, or somewhere in between? Would a reasonable person judge this behavior as sexual harassment?

This unwelcome behavior is frequently repeated, so it is pervasive. The salesman's behavior is verbally offensive but does not involve physical contact or requests for sex. Cindy is uncomfortable enough to complain to her employer, so the behavior may be considered medium on the severity scale. It is likely that a reasonable person may judge this behavior as sexual harassment.

Recently, Mason had his work station relocated from an office he shared with two like minded coworkers, to an open area on the maintenance shop floor. Since he was hired a year ago, Mason's work station had been covered in printed materials showing nude or near nude women in sexually explicit poses. Mason's new work location is in full view of anyone entering the shop floor. Several of his coworkers, both male and female, have found Mason's materials offensive. As a result, Mason replaced the offensive materials with photos of popular actresses and supermodels more fully clothed.

Is this behavior severe, mild, or somewhere in between? Is it frequent, a rare occurrence, or somewhere in between? Would a reasonable person judge this behavior as sexual harassment?

Mason's sexually explicit materials are likely to be considered low on the sexual conduct meter. They are not a pervasive form of sexual conduct as he removed them immediately when asked and replaced them with acceptable materials. It is highly likely that a reasonable person would not judge this behavior as sexual harassment.

Keisha has noticed that her new boss, Sarah, leans extremely close to her when they are going over the reports that she prepares. She touches her hand or shoulder frequently as they discuss

work. Keisha tries to move away from her in these situations, but she doesn't seem to get the message.

Should Keisha just ignore Sarah's behavior?

If Keisha is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please back off because her closeness and touching make her uncomfortable.

Another option is to complain directly to a person designated by her employer to receive complaints, who will speak with Sarah. Although this may not be sufficiently severe or pervasive to create an unlawful harassment situation (unless it was repeated by Sarah after she was told to stop), there is no reason for Keisha to be uncomfortable in the workplace. There is no valid reason for Sarah to engage in this behavior.

Before Keisha gets around to complaining, Sarah brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Sarah "traps" Keisha in her office after they finish discussing work by standing between her and the door of the small office. Keisha doesn't know what to do, so she moves past her to get out. As she does so, Sarah runs her hand over Keisha's breast.

Could Sarah's brushing up against Keisha in the conference room just be inadvertent and not give Keisha any additional grounds to complain about Sarah?

Sarah is now engaging in a pattern of escalating behavior. Given the pattern of her "too close" and "touching" behavior, it is unlikely that this was inadvertent. Even before being "trapped" in Sarah's office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

Sarah touching Keisha's breast is inappropriate, but is it not unlawful harassment since it only happened once?

Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Keisha should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible firing.

### **Where Can Workplace Sexual Harassment Occur?**

Harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including in the field, at any employer-sponsored event, trainings, conferences open to the public and office parties.

Employee interactions during non-work hours, such as at a hotel while traveling or at events after work can have an impact in the workplace.

Locations off site and off-hour activities can be considered extensions of the work environment.

Employees can be the target of sexual harassment through calls, texts, email and social media.

Harassing behavior that in any way affects the work environment is rightly the concern of management.

## Bullying

### The Truth About Bullying

Bullying is a hot button issue that continues to emerge in the national dialogue. While it initially focused on children and schools, advocates sought to expand the conversation to include bullying in the workplace. It can be argued that bullying in the workplace comes at a high price and employers should do more to prevent it.

Bullying is a national problem that is increasing. State and local lawmakers have acted to prevent bullying and protect victims. Through laws and model policies, each state addresses bullying differently. Bullying, cyberbullying, and related behaviors may be addressed in a single law or may be addressed in multiple laws.

Bullying is illegal when it violates federal or state laws prohibiting discrimination and harassment in the workplace. These laws protect employees from harassment based on protected characteristics. See the State Specific Harassment Policies and Laws Chapter of this course for your state's list of protected characteristics. If a workplace bully is targeting you based on a protected characteristic, that could qualify as illegal harassment.

### Identifying Bullying

Workplace bullying takes many forms. Here are a few examples:

- Molly works in sales. Her job requires her to meet particular sales goals. In group sales meetings Molly's boss, John, insults her when she fails to meet her goals. Over the course of the next month, John continues to berate her in front of her colleagues and encourages them to join in on jokes that refer to her as stupid, incompetent or ugly. When Molly speaks to John about his behavior, he states that it is simply humor and she should get a thicker skin. Molly feels humiliated and has trouble sleeping.
- Michael works in an office. For weeks, his co-worker Thomas has made it clear he does not like Michael. When it is necessary for them to speak, Thomas stands over Michael or invades his personal space. In group meetings Thomas talks over Michael or interrupts him whenever Michael attempts to speak. On their lunch break Thomas encourages his co-workers not to sit with or speak to Michael. Thomas constantly and loudly gossips about Michael in front of co-workers. Michael now suffers from severe anxiety every time he walks into work.
- Joseph is an accountant at a large accounting firm and he is experiencing difficulties with his supervisor, Patricia. She has written him up several times for non-existent performance issues and consistently insulted the quality of his work even though

colleagues insist his work is of high quality. Patricia has also assigned Joseph tasks with impossible deadlines and then berated Joseph loudly in front of his colleagues when the task is not completed. She has also repeatedly denied his requests for both training and leave. This has been going on for months. Joseph is stressed and has slipped into a depression.

- Stephanie is a nurse in a large medical office. For over a year, she has been having trouble with a co-worker named Dawn. Dawn has reported Stephanie numerous times to management falsely claiming that Stephanie made mistakes in her work. The claims were all dismissed. Stephanie has repeatedly found her tools and equipment either missing or moved around making it difficult for her to do her job. Stephanie regularly overhears Dawn talking with co-workers about how pathetic and stupid Stephanie is. Stephanie feels sick with anxiety and shame and has begun missing work.

The characteristics to look for in bullying are:

- 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
- the gratuitous sabotage or undermining of a person's work performance.

It is up to your employer as well as you and your colleagues to self-monitor and ensure that no one in the workplace is suffering at the hands of a bully and that appropriate and adequate action is always taken.

## **Gender Discrimination, Harassment, and Stereotyping**

### **Understanding Gender Harassment**

Gender stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either gender should act or look.

Harassing a person because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle is considered sexual harassment.

The following terms define characteristics in gender expression and identity.

Gender Expression is considered a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth.

Gender Identity is 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. A transgender person may or may not identify as “transsexual.”

“Social transition” involves a process of socially aligning one’s gender with the internal sense of self (e.g., changes in name and pronoun, bathroom facility usage, participation in activities like sports teams).

“Physical transition” refers to medical treatments an individual may undergo to physically align their body with internal sense of self (e.g., hormone therapies or surgical procedures).

A person does not need to complete any particular step in a gender transition in order to be protected by the law. An employer may not condition its treatment or accommodation of a transitioning employee upon completion of a particular step in a gender transition.

Gender Stereotyping is an assumption about a person’s appearance or behavior or about an individual’s ability or inability to perform certain kinds of work based on myth, social expectation, or generalization about the individual’s gender.

Sex, gender, gender identity, and gender expression are considered independent of the others. For example, the same person may have (a) the sex of male, which was assigned at birth, (b) the gender identity of female, and (c) the gender expression of masculine with variations like butch, femme, transgender, genderqueer, or nonconforming queer. A transgender person “may or may not have a gender expression that is different from the social expectations of the sex assigned at birth.”

An additional, separate aspect of the same person is sexual orientation. Staying with our example, one can have the assigned sex at birth of male; the gender identity of female; a masculine gender expression; and an orientation of gay, lesbian, or heterosexual. In addition, one may change or transition one’s gender, gender identity, gender expression, and sexual orientation throughout life.

Gender identity and gender expression are protected characteristics under the Fair Employment and Housing Act. That means that employers, housing providers, and businesses may not discriminate against someone because they identify as transgender or gender non-conforming. This includes the perception that someone is transgender or gender nonconforming.

Let’s take a look at Shayna’s situation.

Recently, Shayna’s boss, Jude, ran into her outside of work and was introduced to her girlfriend, Harriet — realizing for the first time that Shayna is gay. Since that day, Jude’s demeanor towards Shayna has changed. He is rude to her when they interact and withholds information she needs to do her job effectively. He often asks her how “Harry” is doing and refers to Shayna as “the office lesbo” to coworkers. About a week after the encounter, Jude relocates Shayna’s desk from a private cubicle to an undesirable open area — for no apparent reason — and gives her cubicle to a lower level employee. Shayna believes she is being harassed because of her

sexual orientation, but a coworker disagrees and says she is just being paranoid and overly sensitive.

It is likely that Shayna is being illegally harassed because Jude makes negative references regarding Shayna being a lesbian. And because this behavior began immediately following his introduction to Shayna's girlfriend, it's highly likely he is treating her this way because of her sexual preference. In California, under the Fair Employment and Housing Act, sexual orientation is a protected basis. Even if Shayna is unsure if she is being illegally harassed, if she is offended and uncomfortable with the way her supervisor is treating her, and if it is interfering with her ability to do her job, she should follow company policy and procedures to report the behavior. It is always better to discuss hostile working situations with the proper representative than to allow someone to convince you that you are just being overly sensitive.

## Frequently Asked Questions

### ***What is an employer allowed to ask?***

Employers may ask about an employee's employment history, and may ask for personal references, in addition to other non-discriminatory questions.

An interviewer should not ask questions designed to detect a person's gender identity, including asking about their marital status, spouse's name, or relation of household members to one another. Employers should not ask questions about a person's body or whether they plan to have surgery.

### ***How do employers implement dress codes and grooming standards?***

An employer who requires a dress code must enforce it in a non-discriminatory manner. This means that, unless an employer can demonstrate business necessity, each employee must be allowed to dress in accordance with their gender identity and gender expression. Transgender or gender non-conforming employees may not be held to any different standard of dress or grooming than any other employee.

### ***What are the obligations of employers when it comes to bathrooms, showers, and locker rooms?***

All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's assigned sex at birth. In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason.

Use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to harassment in a gender-appropriate facility.



Unless exempted by other provisions of state law, all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency must be identified as all-gender toilet facilities.

### Gender-Based Discrimination

Gender discrimination involves treating someone (an applicant or employee) unfavorably because of that person's gender. Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different gender, is also considered gender discrimination. Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is considered discrimination.

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. The law prohibits harassment of employees, applicants, and independent contractors, and requires employers to take all reasonable steps to prevent harassment from occurring.

Let's take a look at an example of gender discrimination:

Carla works as a licensed heavy equipment operator. Some of her male coworkers think it is fun to tease her. Carla often hears comments like "Watch out, here she comes—that crazy woman driver!" in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says, "Men only."

Should women in traditionally male jobs expect teasing and not take the joking comments too seriously?

Whether Carla is being harassed depends in part on Carla's opinion of the situation; that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

Carla feels that she cannot complain because the site supervisor sometimes joins in with the joking behavior, where can she go?

Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously, constitutes serious misconduct on his or her part.

Carla can also complain directly to the person designated by her employer to receive complaints, either instead of going to the supervisor, or after doing so. The employer is

responsible for assuring that all employees are aware of its anti-harassment policies and procedures.

Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.

Are these behaviors, while rude, considered sexual harassment since they are not sexual in nature?

The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is because of her sex and will create a hostile work environment if it is sufficiently severe or frequent.

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.

What should Carla do since she can't prove who vandalized her toolbox?

Carla should speak to her supervisor immediately, or contact any other person designated by her employer to receive complaints directly. Although the situation has become very difficult, it is the employer's responsibility to support Carla and seek a solution. An appropriate investigation must be promptly undertaken, and appropriate remedial action must follow.

## Retaliation

### Protected Activities

Any employee who has engaged in "protected activity" is protected by law from being retaliated against because of that "protected activity."

"Protected activities" with regard to harassment include:

- Making a complaint to a supervisor, manager or another person designated by your employer to receive complaints about harassment
- Making a report of suspected harassment, even if you are not the target of the harassment
- Filing a formal complaint about harassment
- Opposing discrimination
- Assisting another employee who is complaining of harassment

- Providing information during a workplace investigation of harassment, or testifying in connection with a complaint of harassment filed with a government agency or in court

### What is and is not Retaliation

Retaliation is any action taken to alter an employee's terms and conditions of employment (such as a demotion or harmful work schedule or location change) because that individual engaged in any of the previously mentioned protected activities. Such individuals should expect to be free from any negative actions by supervisors, managers or the employer motivated by these protected activities.

Retaliation can be any such adverse action taken by the employer against the employee, that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination.

The negative action need not be job-related or occur in the workplace, and may occur after the end of employment, such as an unwarranted negative reference.

A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity. Also, if employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity, this is not retaliation.

Leonard works as a clerk typist for a large employer. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.

Is Leonard's boss correct to tell him wearing jewelry is inappropriate for customer service positions?

Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

Is Leonard the recipient of harassment on the basis of sex and sexual orientation?

Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes. Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.

Leonard might also be considered a target of harassment on the basis of gender identity, which is a form of sex and/or disability discrimination prohibited by the Human Rights Law. Leonard should report Margaret's conduct, which is clearly a violation of the sexual harassment policy, to a person designated by his employer to receive complaints (i.e. his employer's "designee").

Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the employer's designee about Margaret's behavior. The designee does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two-year degree in customer relations from a community college.

Has Leonard likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation?

We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both. Leonard should speak further with the employer's designee, and the circumstances of the promotion should be investigated.

If it is found that Margaret had abused her supervisory authority by failing to fairly consider Leonard for the promotion, she should be subject to disciplinary action. This scenario shows that sometimes more severe action is needed in response to harassment complaints, in order to prevent discrimination in the future.

## The Supervisor's Responsibility

### Preventing Harassment

It is everybody's responsibility to prevent harassment, and it requires everyone's cooperation. A solid harassment prevention program should include: a training program that includes objectives, such as learning the definition of sexual harassment, identifying other types of harassment, the legal issues involved in harassment, behaviors that constitute harassment, and what someone should do if they are harassed.

It should also include your company's reporting and grievance procedures, as well as information on how to contact the EEOC or applicable state agencies, and what each individual can do to prevent harassment.

Harassment thrives in environments with a weak reporting structure, authoritarian management, poor morale, or a chaotic physical environment. Perhaps the single most effective strategy for preventing harassment is for all employees to be on the lookout. When you witness behaviors and language that make other people in the office uncomfortable, be willing to speak up. As a general rule, harassment is not something that just happens. Harassment occurs when each of us, as individuals, fails to take responsibility for the wellbeing of the people around us.

### **Responsibilities of Managers/Employers**

People who consider the behavior of others unwelcome need to take reasonable steps to stop that behavior. Some individuals may find it difficult, under certain circumstances, to speak up. However, everyone needs to take action against harassment at the company.

When the behavior is relatively mild, this may mean directly asking the offender to stop. Or asking someone in authority, such as the manager, or human resource representative, for help. If the behavior is severe, more immediate and assertive action is required. Individuals who deal with the public, or with personnel from other organizations, must always ensure that their own behavior is acceptable. You must report incidents of unwelcome behavior by others in accordance with company policy and procedures.

Managers exercise authority on behalf of the employer. This gives them important additional responsibilities regarding unlawful harassment, discrimination, or retaliation. First, all supervisors must exercise their authority to ensure that their workplace is free of any type of illegal harassment, including sexual harassment. They must take every complaint seriously and respond promptly to employees expressing concerns. Second, managers who engage in unwelcome behavior toward others, including subordinates, take a very large personal risk. A court may find them personally liable, in addition to their employer's liability.

## **Experiencing, Witnessing, and Reporting Harassment**

### **What Should I Do If I Am Harassed?**

We cannot stop harassment in the workplace unless management knows about the harassment. It is everyone's responsibility.

You are encouraged to report harassment to a supervisor, manager or another person designated by your employer to receive complaints (as outlined in the your company's harassment prevention policy) so the employer can take action.

Behavior does not need to be a violation of law in order to be in violation of the policy.

## Anti-Harassment Training for All Employees - California

Your organization should provide you with a complaint form to report harassment and file complaints, but if you are more comfortable reporting verbally or in another manner, your employer is still required to follow their sexual harassment prevention policy by investigating the claims.

If you believe that you have been subjected to sexual harassment, you are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. You should also report harassment to management at an early stage to prevent its escalation.

Your organization should have established an effective complaint or grievance process, which includes providing anti-harassment training to managers and employees and taking immediate and appropriate action when an employee complains. Your organization should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.

Once you submit your formal complaint or otherwise report harassment, your organization must follow its sexual harassment prevention policy and investigate any claims.

You should report any behavior you experience or know about that is inappropriate, as described in this training, without worrying about whether or not it is unlawful harassment.

Individuals who report or experience harassment should cooperate with management, so a full and fair investigation can be conducted, and any necessary corrective action can be taken.

Finally, if you are not sure you want to pursue a complaint at the time of potential harassment, document the incident to ensure it stays fresh in your mind.

### **What Should I Do if I Witness Sexual Harassment?**

Anyone who witnesses or becomes aware of potential instances of harassment should report it to a supervisor, manager or designee.

It can be uncomfortable and scary, but it is important to tell coworkers "that's not okay" when you are uncomfortable about harassment happening in front of you.

It is unlawful for an employer to retaliate against you for reporting suspected harassment or assisting in any investigation.

### **Investigation and Corrective Action**

Anyone who engages in harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.

Your organization will investigate all reports of harassment, whether information was reported in verbal or written form.

## Anti-Harassment Training for All Employees - California

An investigation of any complaint should be commenced immediately and completed as soon as possible.

The investigation will be kept confidential to the extent possible.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment.

It is illegal for employees who participate in any investigation to be retaliated against.

### Investigation Process

Your organization also has a duty to take appropriate steps to ensure that harassment will not occur in the future. Here is how your organization should investigate claims.

1. The designated person or office will conduct an immediate review of the allegations, and take any interim actions, as appropriate
2. Relevant documents, emails or phone records will be requested, preserved and obtained.
3. Interviews will be conducted with parties involved and witnesses
4. Investigation is documented as outlined in the harassment prevention policy
5. The individual who complained and the individual(s) accused of harassment are notified of final determination and that appropriate administrative action has been taken.

## State Specific Harassment Policies and Laws (CA)

### Department of Fair Employment and Housing (DFEH) Fact Sheet

The California Department of Fair Employment and Housing (DFEH) enforces laws that protect you from illegal discrimination and harassment in employment based on your actual or perceived:

- Ancestry
- Age (40 and above)
- Color
- Disability (physical and mental, including HIV and AIDS)
- Genetic information
- Gender identity, Gender expression
- Marital status
- Medical condition (genetic characteristics, cancer or a record or history of cancer)
- Military or veteran status
- National origin (includes language use 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
- Religion (includes religious dress and grooming practices)

## Anti-Harassment Training for All Employees - California

- Sex/Gender (includes pregnancy, childbirth, breastfeeding and/or related medical conditions)
- Sexual orientation

The California Fair Employment and Housing Act prohibits harassment of employees, applicants, unpaid interns, volunteers, and independent contractors by any persons and require employers to take all reasonable steps to prevent harassment.

This includes a prohibition against sexual harassment, gender harassment, harassment based on pregnancy, childbirth, breastfeeding and/or related medical conditions, as well as harassment based on all other characteristics previously listed.

Employers are required to provide information to each of their employees on the nature, illegality, and legal remedies that apply to sexual harassment. Employers may either develop their own publications, which must meet standards set forth in California Government Code section 12950 or use a brochure from DFEH.

Employers with 50 or more employees and all public entities must provide sexual harassment and abusive conduct prevention training for all supervisors.

The California Fair Employment and Housing Act prohibit employers from limiting or prohibiting the use of any language in any workplace unless justified by business necessity. The employer must notify employees of the language restriction and consequences for violation. Also prohibits employers from discriminating against an applicant or employee because they possess a driver's license issued to a person who is unable to prove that their presence in the United States is authorized under federal law.

Employers are required to reasonably accommodate an employee, unpaid intern, or job applicant's religious beliefs and practices, including the wearing or carrying of religious clothing, jewelry or artifacts, and hair styles, facial hair, or body hair, which are part of an individual's observance of their religious beliefs.

As well, individuals with disabilities will be accommodated to perform the essential functions of a job.

Employers must permit job applicants, unpaid interns, volunteers, and employees to file complaints with DFEH against an employer, employment agency, or labor union that fails to grant equal employment as required by law.

Discrimination against any job applicant, unpaid intern, or employee in hiring, promotions, assignments, termination, or any term, condition, or privilege of employment is prohibited.

The California Fair Employment and Housing Act requires employers, employment agencies, and unions to preserve applications, personnel records, and employment referral records for a minimum of two years.



## Anti-Harassment Training for All Employees - California

Employers must provide leaves of up to four months to employees disabled because of pregnancy, childbirth, or a related medical condition. And employers must provide reasonable accommodations requested by an employee, on the advice of their health care provider, related to their pregnancy, childbirth, or a related medical condition.

Employers with 50 or more people must allow eligible employees to take up to 12 weeks leave in a 12-month period for the birth of a child; the placement of a child for adoption or foster care; for an employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition. The law also requires employers to post a notice informing employees of their family and medical leave rights.

Employment agencies are required to serve all applicants equally, refuse discriminatory job orders, and prohibits employers and employment agencies from making discriminatory pre-hiring inquiries or publishing help wanted advertisements that express a discriminatory hiring preference.

The California Fair Employment and Housing Act prohibits unions from discriminating in member admissions or dispatching members to jobs. As well, retaliation against a person who opposes, reports, or assists another person to oppose unlawful discrimination is prohibited.

### **Filing a Complaint**

The law provides for remedies for individuals who experience prohibited discrimination or harassment in the workplace. These remedies include hiring, front pay, back pay, promotion, reinstatement, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages, and emotional distress damages.

Job applicants, unpaid interns, and employees: If you believe you have experienced discrimination or harassment you may file a complaint with DFEH.

Independent contractors and volunteers: If you believe you have been harassed, you may file a complaint with DFEH.

Complaints must be filed within one year of the last act of discrimination/harassment or, for victims who are under the age of 18, not later than one year after the victim's eighteenth birthday.

DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.

If you have a disability that prevents you from submitting a written pre-complaint form online, by mail, or email, DFEH can assist you by scribing your pre-complaint by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice).

To schedule an appointment, contact the Communication Center at (800) 884-1684 (voice or via relay operator (711) or (800) 700-2320 (TTY) or by email at [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov).

## Conclusion

### Summary & Implications

Remember harassment in the workplace is not a new issue, nor, unfortunately has the presence of it in America's workplaces diminished.

In this course you learned what harassment is, how it can occur in the workplace, current legal positions, and how management can maintain a harassment-free workplace.

We went over different behaviors that constitute sexual harassment, other types of harassment including abusive conduct, what constitutes a hostile work environment, and how to handle complaints.

As we have seen, harassment is pervasive in the American workforce. It is one of the most destructive forces for companies, offenders, and victims. Federal and state courts have both increased their enforcement of harassment laws and seen a dramatic rise in cases over the past ten years. By following the guidelines laid out in this course, you'll be able to foster a safe, productive workplace — one that's free from harassment of any kind.

## Resources

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## Subject Matter Expert

### Kimberly Foster

Kimberly Foster is the President and a principle consultant at Foster Assets, LLC. She has over 20 years of experience specializing in mid-size organizations to Fortune 50 companies providing guidance and leadership to senior managers in startup, growth and stable organizations. Her broad experience includes employment law, corporate risk management, employee relations, performance management, training and leadership development. She has experience in various industries including professional services, technology, insurance and financial services.

In her previous roles, she has developed, participated and implemented various client projects including HR compliance audits, policy development, internal investigations, employment law guidance and policy design. She has been a liaison to the DOL and EEOC. In addition, she participated in internal firm projects regarding state and federal compliance, and process improvement. Kimberly has also both developed and facilitated risk mitigation training.

Kimberly is currently the VP of Human Resources at VectorSolutions.

Kimberly has a BS in Psychology with honors from the University of Central Florida and a MA in Organizational Management from The University of Phoenix. She is a Certified through the state of NY in workplace investigations and is a certified Human Capital Strategist (HCS). She is a member of the Society for Human Resource Management (SHRM), and NY Human Resources Association (NY-HRA).