

Set the Tone: Sexual Harassment Prevention

By CalChamber Employment Law Counsel

Sexual harassment is not a problem of the past. In fact, as remote work has ramped up over the last few years, some employers might mistakenly believe that sexual harassment in the workplace has become less of a risk. Less face-to-face interaction should reduce the chance of inappropriate conduct, right?

Unfortunately, however, data shows that's not really the case. One in four respondents in a study from Talent LMS and The Purple Campaign say they experienced unwelcome sexual behavior online following the COVID-19 pandemic's start.

But while most employers are well aware that sexual harassment is unlawful under both California and federal law, but doesn't seem to stop the problem from occurring.

An issue that often surfaces during sexual harassment investigations is workplace culture. What tone is being set at the office or even online? Is the workplace culture one where sexual jokes and banter are OK?

Employers must develop written harassment, discrimination and retaliation prevention policies ...

When harassment claims are reported, what happens? Are the claims taken seriously or brushed aside?

This is doubly important because California employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct. Plan ahead to manage your organization's sexual harassment risk.

Stats Tell a Story

Various surveys have reported that one in four women will experience sexual harassment in the workplace, and that number may be much higher. A *Harvard Business Review* study of women in industries predominated by men found that 75 percent of women interviewed were subjected to sexual harassment which, more often than not, goes unreported.

The number of sexual harassment claims filed with the federal Equal Employment Opportunity Commission (EEOC) continues to be significant: Between fiscal year 2018 and fiscal year 2021, the EEOC received a total of 98,411 charges alleging harassment under any basis and 27,291 charges alleging sexual harassment — up from 6,758 sexual harassment claims were filed in 2016.

Harassment Prevention Is Not an Option: It's the Law

Employers must take reasonable steps to prevent harassment. Organizational efforts must focus on prohibiting all harassment in the workplace because employers are strictly liable for harassing acts committed by supervisors and can also be liable for harassing acts committed by employees. Any organization should make it its business to manage this risk and find out if the work culture is allowing harassment to transpire.

A work culture that tolerates harassment not only incurs legal risks (not to mention the high legal fees and costs) but also creates other problems, including:

- An unpleasant work environment;
- Decreased productivity;
- Morale issues;
- Attendance problems; and
- Negative publicity and damage to your organization's reputation and credibility, which can extend to your ability to recruit and retain top talent.

Employers may be liable for sexual harassment committed by supervisors, coworkers or third parties ...

Your HR department can assist your company in handling the risk by developing a plan of action to prevent sexual harassment. This is equally true for a small business with the office manager fulfilling this role or a multistate company with a large HR staff.

Under California law, employers must, among other things:

- Post the required DFEH poster, which includes information on the illegality of sexual harassment and discrimination, and the required *Transgender Rights in the Workplace* poster. Employers with 15 or more employees must also post the federal Equal Employment Opportunity poster.
- Distribute a pamphlet on sexual harassment to all employees.
- Establish a discrimination, harassment and retaliation prevention policy that includes specific provisions. The mandatory policy must be distributed to all employees with acknowledgment that the employees received and understand the policy.
- Ensure that an effective complaint process is in place and that employees are aware of the process, including information on how an employee can bring a complaint, your investigatory process and supervisor reporting obligations. The complaint process must be included in your written policy.
- Conduct impartial, timely, fair and thorough investigations of sexual harassment claims. Investigations must provide all parties due process and reach reasonable conclusions based on the evidence.
- Correct and remedy any harassment in the workplace, including taking steps to prevent future harassment.
- Take steps to prevent retaliation.

Sexual Harassment Prevention Training

California companies with five or more employees are required by law to provide two hours of sexual harassment prevention training to all supervisors and one hour of training to non-supervisors within six months of hire or promotion, and every two years thereafter. Seasonal and temporary employees — or employees hired to work less than six months — must be trained within 30 calendar days after hire or within 100 hours worked, whichever is earlier.

Training is an essential component of any harassment prevention program — especially when combined with company leadership on these issues. Those at the top level of company management must not only set the proper tone, but also dedicate the necessary time and resources to meet their prevention obligation and ensure that their efforts are effective.

Harassment prevention training must provide information and practical guidance on the federal and state statutory provisions that prohibit harassment and require its prevention and correction, as well as the remedies available to victims of workplace harassment.

DFEH regulations contain very specific criteria and requirements when addressing these issues. The regulations also contain specific requirements for how the training is conducted (e.g., in-person, webinar, etc.) and who is qualified to provide the training. As such, employers must be careful to ensure that they're providing compliant training to their supervisors and employees.

Training shouldn't focus just on what is unlawful conduct. If you wait until someone does something that could be unlawful, you've waited too long! Instead, training should help identify the type of disrespectful conduct that could, if not stopped, lead to a hostile work environment.

Best Practices

- Make sure you have implemented a harassment, discrimination and retaliation prevention policy that complies with California law. A sample policy is also available as part of CalChamber's [Employee Handbook Creator](#).
- If you have five or more employees, ensure your mandatory harassment prevention training meets California requirements. CalChamber's [online supervisor and employee courses](#) meet state training requirements.
- Frequently take the pulse of your organizational culture to make sure that disrespectful conduct doesn't get a free pass.

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CalChamber Can Help ...

Did you find this white paper helpful? Sign up for a [free 7-day trial of HRCalifornia](#), which includes the website's HR library, compliance tools, and select forms and checklists that help California employers with HR compliance. Limited access with a free trial.

 *Mandatory California Harassment Prevention Training - 2-Hour Supervisor Version*

 *Mandatory California Harassment Prevention Training - 1-Hour Employee Version*

To learn more about CalChamber resources, please call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT, and on Friday from 8 a.m. to 4 p.m. PT.

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