EMPLOYMENT
LABOR &
WORKERS'
COMPENSATION

ADVICE
SOLUTIONS
LITIGATION

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Presents

"I WAS JUST SEXUALLY HARASSED!"

WHAT TO DO WHEN ONE OF YOUR EMPLOYEES MAKES A COMPLAINT

Employment Law Workshop

By

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The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies to avoid potential liability.

TABLE OF CONTENTS

"I WAS JUST SEXUALLY HARASSED!"

WHAT TO DO WHEN ONE OF YOUR EMPLOYEES MAKES A COMPLAINT

EEOC Charge Statistics 1

EEOC Sex-Based Charges 4

EEOC Sexual Harassment Charges 8

Employee Relations Policy (English and Spanish) 12

Sexual Harassment (DFEH Pamphlet) 16

Acoso Sexual (DFEH Pamphlet) 18

Sample Case Study 20

Discrimination Allegation/Event Reporting Form 21

Sexual Harassment & Discrimination: Rules, Investigation & Avoidance 25

Charge Statistics
FY 1997 Through FY 2012

The number for total charges reflects the number of individual charge filings. Because individuals often file charges claiming multiple types of discrimination, the number of total charges for any given fiscal year will be less than the total of the ten types of discrimination listed.

The data are compiled by the Office of Research, Information and Planning from data reported via the quarterly reconciled Data Summary Reports and compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Total Charges	80,680	79,591	77,444	79,896	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402	93,277	99,922	99,947	99,412
Race	29,199	28,820	28,819	28,945	28,912	29,910	28,526	27,696	26,740	27,238	30,510	33,937	33,579	35,890	35,395	33,512
	36.2%	36.2%	37.3%	36.2%	35.8%	35.4%	35.1%	34.9%	35.5%	35.9%	37.0%	35.6%	36.0%	35.9%	35.4%	33.7%
Sex	24,728	24,454	23,907	25,194	25,140	25,536	24,362	24,249	23,094	23,247	24,826	28,372	28,028	29,029	28,534	30,356
	30.7%	30.7%	30.9%	31.5%	31.1%	30.2%	30.0%	30.5%	30.6%	30.7%	30.1%	29.7%	30.0%	29.1%	28.5%	30.5%

	6,712	6,778	7,108	7,792	8,025	9,046	8,450	8,361	8,035	8,327	9,396	10,601	11,134	11,304	11,833	10,883
National Origin	8.3%	8.5%	9.2%	9.8%	9.9%	10.7%	10.4%	10.5%	10.7%	11.0%	11.4%	11.1%	11.9%	11.3%	11.8%	10.9%
	1,709	1,786	1,811	1,939	2,127	2,572	2,532	2,466	2,340	2,541	2,880	3,273	3,386	3,790	4,151	3,811
Religion	2.1%	2.2%	2.3%	2.4%	2.6%	3.0%	3.1%	3.1%	3.1%	3.4%	3.5%	3.4%	3.6%	3.8%	4.2%	3.8%
	762	965	1,303	1,290	1,135	1,381	1,550	930	1,069	1,241	1,735	2,698	2,943	2,780	2,832	2,662
Color	0.9%	1.2%	1.7%	1.6%	1.4%	1.6%	1.9%	1.2%	1.4%	1.6%	2.1%	2.8%	3.2%	2.8%	2.8%	2.7%
	18,198	19,114	19,694	21,613	22,257	22,768	22,690	22,740	22,278	22,555	26,663	32,690	33,613	36,258	37,334	37,836
Retaliation - All Statutes	22.6%	24.0%	25.4%	27.1%	27.5%	27.0%	27.9%	28.6%	29.5%	29.8%	32.3%	34.3%	36.0%	36.3%	37.4%	38.1%
	16,394	17,246	17,883	19,753	20,407	20,814	20,615	20,240	19,429	19,560	23,371	28,698	28,948	30,948	31,429	31,208
Retaliation - Title VII only	20.3%	21.7%	23.1%	24.7%	25.2%	24.6%	25.4%	25.5%	25.8%	25.8%	28.3%	30.1%	31.0%	31.0%	31.4%	31.4%

	15,785	15,191	14,141	16,008	17,405	19,921	19,124	17,837	16,585	16,548	19,103	24,582	22,778	23,264	23,465	22,857
Age	19.6%	19.1%	18.3%	20.0%	21.5%	23.6%	23.5%	22.5%	22.0%	21.8%	23.2%	25.8%	24.4%	23.3%	23.5%	23.0%
	18,108	17,806	17,007	15,864	16,470	15,964	15,377	15,376	14,893	15,575	17,734	19,453	21,451	25,165	25,742	26,379
Disability	22.4%	22.4%	22.0%	19.9%	20.4%	18.9%	18.9%	19.4%	19.7%	20.6%	21.4%	20.4%	23.0%	25.2%	25.8%	26.5%
	1,134	1,071	1,044	1,270	1,251	1,256	1,167	1,011	970	861	818	954	942	1,044	919	1,082
Equal Pay Act	1.4%	1.3%	1.3%	1.6%	1.5%	1.5%	1.4%	1.3%	1.3%	1.1%	1.0%	1.0%	1.0%	1.0%	0.9%	1.1%
														201	245	280
GINA														0.2%	0.2%	0.3%

Historical Data

Sex-Based Charges
FY 1997 - FY 2012

The following chart represents the total number of charges filed and resolved under Title VII alleging sex-based discrimination.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Receipts	24,728	24,454	23,907	25,194	25,140	25,536	24,362	24,249	23,094	23,247	24,826	28,372	28,028	29,029	28,534	30,356
Resolutions	32,836	31,818	30,643	29,631	28,602	29,088	27,146	26,598	23,743	23,364	21,982	24,018	26,618	30,914	32,789	32,149
Resolutions By Type																

Settlements	1,355	1,460	1,988	2,644	2,404	2,720	2,877	3,008	2,601	2,828	2,900	2,842	2,748	3,138	3,200	3,073
	4.1%	4.6%	6.5%	8.9%	8.4%	9.4%	10.6%	11.3%	11.0%	12.1%	13.2%	11.8%	10.3%	10.2%	9.8%	9.6%
Withdrawals w/Benefits	1,205	1,148	1,269	1,332	1,321	1,304	1,329	1,347	1,418	1,460	1,443	1,646	1,701	1,774	1,780	1,768
	3.7%	3.6%	4.1%	4.5%	4.6%	4.5%	4.9%	5.1%	6.0%	6.2%	6.6%	6.9%	6.4%	5.7%	5.4%	5.5%
Administrative Closures	11,127	10,056	8,747	6,897	6,391	5,819	5,484	5,052	4,188	4,409	4,304	4,563	5,701	5,727	5,728	5,433
	33.9%	31.6%	28.5%	23.3%	22.3%	20.0%	20.2%	19.0%	17.6%	18.9%	19.6%	19.0%	21.4%	18.5%	17.5%	16.9%
No Reasonable Cause	17,832	17,493	16,689	15,980	15,654	16,752	15,506	15,481	13,853	13,191	12,036	13,670	15,139	18,709	20,660	20,454
	54.3%	55.0%	54.5%	53.9%	54.7%	57.6%	57.1%	58.2%	58.3%	56.5%	54.8%	56.9%	56.9%	60.5%	63.0%	63.6%

Reasonable Cause	1,317	1,661	1,950	2,778	2,832	2,493	1,950	1,710	1,683	1,476	1,299	1,297	1,329	1,566	1,421	1,421
	4.0%	5.2%	6.4%	9.4%	9.9%	8.6%	7.2%	6.4%	7.1%	6.3%	5.9%	5.4%	5.0%	5.1%	4.3%	4.4%
Successful Conciliations	332	454	535	707	739	686	520	491	454	437	439	382	407	475	510	500
	1.0%	1.4%	1.7%	2.4%	2.6%	2.4%	1.9%	1.8%	1.9%	1.9%	2.0%	1.6%	1.5%	1.5%	1.6%	1.6%
Unsuccessful Conciliations	985	1,207	1,415	2,071	2,093	1,807	1,430	1,219	1,229	1,039	860	915	922	1,091	911	921
	3.0%	3.8%	4.6%	7.0%	7.3%	6.2%	5.3%	4.6%	5.2%	4.4%	3.9%	3.8%	3.5%	3.5%	2.8%	2.9%
Merit Resolutions	3,877	4,269	5,207	6,754	6,557	6,517	6,156	6,065	5,702	5,764	5,642	5,785	5,778	6,478	6,401	6,262
	11.8%	13.4%	17.0%	22.8%	22.9%	22.4%	22.7%	22.8%	24.0%	24.7%	25.7%	24.1%	21.7%	21.0%	19.5%	19.5%
Monetary Benefits (Millions)*	$72.5	$58.7	$81.7	$109.0	$94.4	$94.7	$98.4	$100.8	$91.3	$99.1	$135.4	$109.3	$121.5	$129.3	$145.7	$138.7

** Does not include monetary benefits obtained through litigation.*

The total of individual percentages may not always sum to 100% due to rounding.

EEOC total workload includes charges carried over from previous fiscal years, new charge receipts and charges transferred to EEOC from Fair Employment Practice Agencies (FEPAs). Resolution of charges each year may therefore exceed receipts for that year because workload being resolved is drawn from a combination of pending, new receipts and FEPA transfer charges rather than from new charges only.

Sexual Harassment Charges
FY 2010 - FY 2012

This table shows charge data for sexual harassment. Because allegations of sexual harassment are a subset of other types of discrimination under Title VII of the Civil Rights Act of 1964, these tables have been harmonized with other data on this site and only show charges filed with the EEOC. For tables from earlier fiscal years showing charges filed both with the EEOC and also with Fair Employment Practice Agency partners, go to Sexual Harassment Charges (EEOC & FEPAs Combined).

	FY 2010	FY 2011	FY 2012
Receipts	7,944	7,809	7,571
% of Charges Filed By Males	16.2%	16.1%	17.8%
Resolutions	8,959	9,195	8,924

Resolutions By Type			
Settlements	995	1,039	977
	11.1%	11.3%	10.9%
Withdrawals w/Benefits	548	523	537
	6.1%	5.7%	6.0%
Administrative Closures	2,086	1,962	1,892
	23.3%	21.3%	21.2%
No Reasonable Cause	4,551	4,975	4,842
	50.8%	54.1%	54.3%

Reasonable Cause	779	696	676
	8.7%	7.6%	7.6%
Successful Conciliations	242	238	243
	2.7%	2.6%	2.7%
Unsuccessful Conciliations	537	458	433
	6.0%	5.0%	4.9%
Merit Resolutions	2,322	2,258	2,190
	25.9%	24.6%	24.5%
Monetary Benefits (Millions)*	$41.2	$45.1	$43.0

** Does not include monetary benefits obtained through litigation.*

The total of individual percentages may not always sum to 100% due to rounding.

EEOC total workload includes charges carried over from previous fiscal years, new charge receipts and charges transferred to EEOC from Fair Employment Practice Agencies (FEPAs). Resolution of charges each year may therefore exceed receipts for that year because workload being resolved is drawn from a combination of pending, new receipts and FEPA transfer charges rather than from new charges only.

EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT

A. POLICY AGAINST DISCRIMINATION.

_____ (the "Company") is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also, applies to non-employees of the Company including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religion, national origin, marital status, sex (including sexual harassment and gender identity), sexual orientation, disability (physical or mental including HIV/AIDS diagnosis), pregnancy, medical condition (cancer and genetic characteristics), age or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT.

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;
6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and
8. Physical conduct: touching, assault, impeding or blocking movement.

C. COMPLAINT AND INVESTIGATION PROCEDURE.

Any form of discrimination or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination or harassment should be brought immediately to the attention of the Human Resources Department of the Company which will thoroughly investigate the matter in confidence. After reviewing all the evidence, the Company will make a determination concerning whether reasonable grounds exist to believe that harassment has occurred.

Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in harassment.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith.

HARASSMENT BY NON-EMPLOYEES.

In addition, the Company will take all reasonable steps to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT
EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT

I have read and received a copy of the Company's Employee Relations Policy, including the policies against discrimination and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: _____ Date: _____

Signed: _____ Date: _____

Witness: _____ Date: _____

POLÍTICA DE RELACIONES DE EMPLEADOS CON RECONOCIMIENTO

A. POLÍTICA CONTRA LA DISCRIMINACIÓN

_____ (la (Compañía") está comprometida a proveer un ambiente libre de discriminación. Para cumplir con este compromiso, la Compañía mantiene una política estricta prohibiendo la discriminación ilegal. Esta política se aplica a todos los empleados de la Compañía, incluyendo supervisores y empleados que no son de supervisión. La política también se aplica a personas que no son empleadas por la Compañía, incluyendo clientes, suministradores y cualquier otra persona que tenga contacto de trabajo con la Compañía.

Todo aspecto de empleo con la Compañía será gobernado a base de mérito, aptitud y capacidades y no será influenciado de ningún modo por raza, ascendencia, color, religión, origen nacional, estado civil, sexo (incluyendo acoso sexual e identidad de género), embarazo, orientación sexual, incapacidad (física o mental incluyendo diagnóstico de HIV/SIDA), condición medica (cáncer y características genéticas), edad o por ejercer el derecho a cualquier ausencia legal en la aplicación de cualquier política, práctica, regla o regulación.

Todas las decisiones hechas acerca de reclutamiento y empleo, evaluaciones y promociones para todas las clasificaciones de trabajo serán basadas solamente en las capacidades individuales relacionadas a los requisitos de la posición. Igualmente, todos los demás asuntos del personal como compensación, beneficios, transferencias, despido temporal, entrenamiento, oportunidades y programas educativos serán administrados libre de cualquier práctica discriminatoria ilegal.

B. POLÍTICA CONTRA EL HOSTIGAMIENTO, INCLUYENDO ACOSO SEXUAL

La Compañía también esta comprometida a proveer un ambiente de trabajo libre de hostigamiento, incluyendo acoso sexual.

Acoso sexual incluye:

1. Avances sexuales no deseados;
2. Ofrecer beneficios de empleo a cambio de favores sexuales;
3. Hacer o amenazar de represalias después de recibir una respuesta negativa a un avance sexual;
4. Conducta visual: mirada de reojo lasciva; hacer gestos sexuales; desplegar objetos o retratos, caricaturas o carteles sexualmente sugestivos;
5. Conducta verbal: hacer o usar comentarios, epítetos, calumnias o chistes derogatorios;
6. Avances o proposiciones sexuales verbales;
7. Abuso verbal de una manera sexual, comentarios gráficos verbales acerca del cuerpo de un individuo, palabras sexualmente degradantes usadas para describir a un individuo, cartas, notas o invitaciones obscenas o sugestivas; y
8. Conducta física: tocar, asaltar, impedir u obstruir el movimiento.

C. PROCEDIMIENTO DE QUEJA E INVESTIGACIÓN

Cualquier tipo de discriminación o hostigamiento, incluyendo el acoso sexual, es absolutamente prohibido. Cualquier incidente de posible discriminación o hostigamiento debe ser llevado de inmediato a la atención del Director de Recursos Humanos, o cualquier otro miembro de la administración, quién investigará completamente el asunto en confianza. Después de revisar toda la evidencia, la Compañía determinará si existen motivos razonables que indiquen que el hostigamiento o acoso sexual ha ocurrido.

Acción disciplinaria, hasta e incluyendo despido del trabajo, será tomada en contra de cualquier empleado que se determine ha participado en hostigamiento o acoso sexual.

Ningún empleado será sujeto a alguna forma de represalia por reportar honestamente y en buena fe cualquier violación de esta política.

HOSTIGAMIENTO O ACOSO DE PARTE DE NO-EMPLEADOS

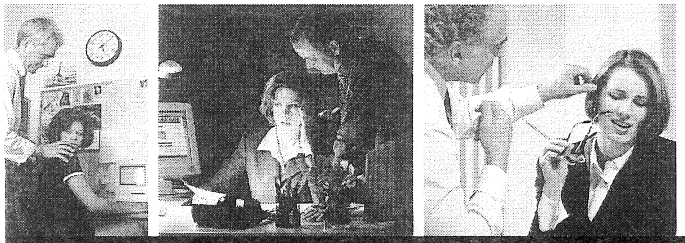
Adicionalmente, la Compañía tomará todos los pasos razonables para prevenir o eliminar el hostigamiento o acoso sexual de parte de personas que no son empleadas por la Compañía, incluyendo clientes y suministradores quienes tengan contacto de trabajo con nuestros empleados.

RECONOCIMIENTO DE LA POLÍTICA DE RELACIONES DE EMPLEADOS

Yo he recibido y leído una copia de la Política de Relaciones de Empleados de la Compañía, incluyendo la política en contra de la discriminación y el hostigamiento, incluyendo el acoso sexual, y entiendo completamente mis obligaciones y responsabilidades bajo esta política.

Firma: _____ Fecha: _____

Testigo: _____ Fecha: _____



The definition of sexual harassment includes many forms of offensive behavior.

Department of Fair Employment and Housing

Sexual Harassment

The Facts About Sexual Harassment

The *Fair Employment and Housing Act* (FEHA) defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements

such as a lead, supervisor, manager or agent;

- the employer had no knowledge of the harassment;
- there was a program to prevent harassment; and
- once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

Filing a Complaint

Employees or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a formal accusation. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission finds that discrimination has occurred, it can order remedies including:

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

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

For more information, see publication DFEH-159 "Guide for Complainants and Respondents."

For more information, contact DFEH toll free at
(800) 884-1684
Sacramento area & out-of-state at **(916) 478-7200**
TTY number at **(800) 700-2320**
or visit our Web site at ***www.dfeh.ca.gov***

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.

State of California
Department of Fair Employment & Housing

DFEH-185 (11/07)

The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

Employers' Obligations

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
- Fully inform the complainant of his/her rights and any obligations to secure those rights.
- Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to all others directly concerned.
- Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the complainant that action has been taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.
- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace (available through the DFEH publications line [916] 478-7201 or Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- Employers who do business in California and employ 50 or more part-time or full-time employees *must* provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.
- A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way for an employer to avoid or limit liability if harassment should occur despite preventive efforts.

Employer Liability

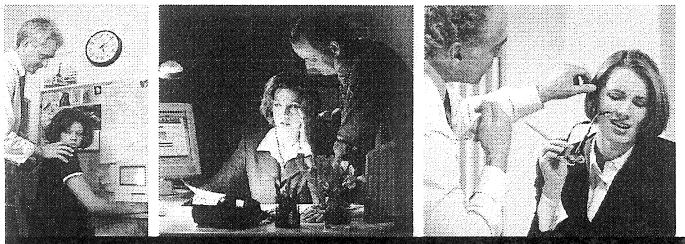
All employers, regardless of the number of employees, are covered by the harassment section of the FEHA. Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.

Additionally, the law requires employers to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a **non-employee** (e.g. client or customer) has sexually harassed an employee, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

An employer might avoid liability if

- the harasser is not in a position of authority,



La definición de acoso sexual incluye muchas maneras de conducta ofensiva.

Departamento de Igualdad en el Empleo y la Vivienda

Acoso Sexual

La Realidad Acerca del Acoso Sexual

La *Ley de Igualdad en el Empleo y la Vivienda* (FEHA) define el acoso sexual como un acto que se basa en el sexo, o de índole sexual; acoso debido al sexo del individuo; y acoso debido a embarazo, nacimiento, o estado de salud relacionados con los mismos. La definición de acoso sexual incluye muchas formas de conducta ofensiva, incluyendo el acoso a una persona del mismo sexo que el del acosador. Lo que se indica a continuación es una lista parcial de las distintas clases de acoso sexual:

- Insinuaciones de índole sexual indeseadas
- Ofrecimiento de beneficios de empleo a cambio de favores sexuales
- Represalia o amenaza de represalias
- Miradas lascivas, gestos de tipo sexual, o mostrar objetos insinuantes, como fotografías, caricaturas, o posters
- Hacer comentarios que menosprecian a una persona, usar palabras soeces, comentarios insinuantes o bromas del mismo tipo
- Comentarios de índole sexual, incluyendo comentarios gráficos acerca del cuerpo de una persona, usando palabras degradantes para describir a un individuo, cartas insinuantes u obscenas, mensajes o invitaciones.
- Manoseo o agresión física, como también el bloquear o impedir el movimiento de una persona

- El acosador no tenía un puesto de autoridad, como por ejemplo supervisor, jefe, gerente o agente;
- El empleador desconocía el acto de acoso;
- En su empresa existía un programa de prevención de acoso; y
- Una vez que tuvo conocimiento del acto de acoso, el empleador tomó medidas inmediatas para eliminarlo.

Interposición de una Queja

Los trabajadores o los postulantes a un empleo que crean haber sido víctimas de acoso sexual, pueden presentar una queja por discriminación ante DFEH dentro de **un año** a partir de la fecha en que ocurrió dicho acto.

La función de DFEH es ser un investigador neutral de los hechos ocurridos y trata de asesorar a las partes a que resuelvan su disputa en forma voluntaria. Si no se puede llegar a un acuerdo voluntario, y existen pruebas que señalan que se ha quebrantado la ley, DFEH puede emitir una acusación y litigar el caso ante la Comisión de Igualdad en el Empleo y la Vivienda, o en un tribunal civil.

Si la Comisión falla que la discriminación ha ocurrido, puede ordenar soluciones que pueden incluir:

- De cada empleador o persona que violó la ley, multas o pago de compensaciones por el sufrimiento emocional causado;
- El emplear o restituir al puesto a la persona contra quien se discriminó;
- El pago de sueldos perdidos o el ascenso;
- Cambios en las políticas o reglamentos de la empresa.

Los empleados también pueden entablar una demanda de propia cuenta en una corte civil después de haber interpuesto una queja con DFEH y de haber recibido la Notificación del Derecho a Querellarse.

Para más información, vea la publicación de DFEH 159, "Guia para los Denunciantes y los Demandados."

Para recibir información adicional, comuníquese con DFEH al número sin cargo **(800) 884-1684**
área de Sacramento y fuera del Estado al
(916) 478-7200
número TTY **(800) 700-2320**
o visite nuestro sitio en la red: ***www.dfeh.ca.gov***

De acuerdo con el Código de Gobierno de California y los requisitos de la Ley de Americanos con Discapacidades, esta información está disponible en Braille, letra grande, disco de computadora y cassette como una acomodación razonable para personas con discapacidades. Para informarse de como puede recibir una copia de esta información en un formato alternativo, por favor comuníquese con el departamento a los números que se indican anteriormente.

State of California
Department of Fair Employment & Housing

DFEH-185S (11/07)

La misión del Departamento de Igualdad en el Empleo y la Vivienda es proteger a los habitantes de California de actos ilícitos de discriminación en el lugar de trabajo, en las viviendas y servicios públicos, como también de la perpetración de actos de violencia.

Obligaciones de los Empleadores

Todos los empleadores deben adoptar las siguientes medidas contra el acoso sexual:

- Aplicar todas las medidas necesarias en la prevención de la discriminación y acoso. En el caso que se cometa un acto de acoso: tomar acción efectiva para impedir cualquier otro acto de acoso en el futuro, como también corregir cualquier consecuencia derivada del mismo.
- Desarrollar e implementar una política de prevención de acoso sexual proporcionando un mecanismo para que los trabajadores puedan presentar los reclamos y para que el empleador pueda investigar las quejas. Estas políticas deberían incluir disposiciones para:
- Informar al reclamante de sus derechos y de cualquier otra medida a adoptar para preservar aquellos derechos.
- Realizar una investigación completa y efectiva. Se deberá realizar las indagaciones correspondientes con todas las personas que posean información al respecto. Se debe llegar a una determinación y comunicar los resultados de las misma al reclamante, al presunto acosador, y si es apropiado, a todos aquéllos involucrados directamente en el asunto.
- Si el acoso sexual es comprobado, se debe adoptar de inmediato y sin demora una medida correctiva. El empleador debe tomar medidas apropiadas para parar el acoso y asegurase de que no continúe. El empleador también le debe informar al denunciante sobre las acciones que se han tomado para que el acoso no vuelva a ocurrir. Finalmente, se deben tomar medidas para remediar las pérdidas o daños incurridos por el denunciante, si los hubiera.
- Colocar el poster (DFEH 162) del Departamento de Igualdad en el Empleo y la Vivienda (Department of Fair Employment and Housing [DFEH]) en el lugar de trabajo (disponible a través del número de publicaciones de DFEH [916] 478-7201 o el sitio en la red).
- Distribuir entre todos los trabajadores un folleto informativo acerca del acoso sexual. El empleador puede distribuir este panfleto (DFEH 185) o imprimir un documento equivalente que cumpla con los requisitos dispuestos por el artículo 12950(b) del Código del Gobierno. **Este folleto puede ser duplicado tantas veces como sea necesario. Sin embargo, este panfleto no puede ser utilizado en reemplazo de la política de prevención del acoso sexual, que todos los empleadores deben tener.**
- Se deberá informar a todos los trabajadores acerca de la gravedad del incumplimiento de la política de acoso sexual. Se deberá educar al personal de supervisores acerca de sus responsabilidades específicas en esta materia. Se debe advertir a todos los trabajadores de las consecuencias a que se exponen si presionan a sus compañeros para disuadirlos de presentar una queja.
- La ley no sólo dispone que se implemente un programa para eliminar el acoso sexual en el lugar de empleo, sino que es la vía más práctica del empleador para así evitar o limitar la responsabilidad civil si el acoso sexual ocurre a pesar de las medidas de prevención implementadas.

Responsabilidad Civil del Empleador

Todos los empleadores, sin tomar en cuenta el número de trabajadores en sus empresas, están incluidos en la sección de acoso sexual dispuesta por FEHA. En general, los empleadores son responsables por los actos de acoso cometidos por sus supervisores o agentes. Los acosadores, incluyendo el personal de supervisión o personal sin responsabilidades de supervisión, pueden exponerse a que se les haga responsables por el acoso a un trabajador(a) o compañero(a) de trabajo o por ayudar e incitar en un acto de acoso sexual.

Además, la ley dispone que los empleadores adopten "todas las medidas necesarias para prevenir que ocurra el acoso sexual." Si un empleador no ha cumplido con aplicar estas medidas preventivas, se le puede hacer responsable por el acto de acoso. Asimismo, una víctima podría tener el derecho de que se le compense por los daños contra su persona, aunque no se le haya negado una oportunidad de trabajo y aunque la víctima no haya sufrido ninguna pérdida en sus ingresos o beneficios.

Además, si un empleador sabe o debería haber sabido que una persona que no pertenece al personal de su empresa ha acosado sexualmente a un trabajador, un postulante a un empleo, o a un individuo que proporciona servicios a su empresa, y dicho empleador no cumple con tomar una medida correctiva adecuada e inmediata, se le podría hacer responsable por el acto de acoso sexual.

Un empleador podría evitar la responsabilidad civil en el caso que:

SAMPLE CASE STUDY

ABC Company has a female employee who has worked for the Company for more than ten (10) years. This Company employee dresses very professionally but has a tendency to wear short skirts and low cut blouses. One day, a fellow employee approaches her and says, "Suzie, you look really sexy today." This comment is overheard by a third employee who immediately runs to the Operations Officer and reports, "Suzie was just sexually harassed." The Operations Officers asks no questions, and bolts out of the office and confronts the fellow employee by stating, "You just sexually harassed Suzie."

Was there sexual harassment?

Who was sexually harassed?

Was the situation handled properly?

What would you have done differently?

PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

DISCRIMINATION ALLEGATION/EVENT REPORTING FORM

TO: _____

COMPANY: _____

FAX NO. _____

FROM: _____

DATE: _____

CC: Director of Human Resources

This form must be completed by the Supervisor or by the corporate Human Resources Department no later than the next business day after any allegation of harassment or discrimination in the workplace.

1. Please complete the attached First Report of Event or Circumstance. When interviewing the employee, do not feel compelled to ask the questions in the same order. Feel free to ask additional questions. Always be a good listener and take accurate notes. Never label the behavior, statement or allegation as "sexual harassment" or "discrimination." Document the words used by employee. No further investigation is to take place until instructed to do so by _____ and _____;

2. Attach a copy of the personnel file of the employee making the allegation of harassment or discrimination; and

3. Attach the personnel file of the employee(s) against whom the allegation of harassment or discrimination has been made.

If you have any questions concerning this Discrimination Allegation/Event Reporting Form, or the attached First Report of Event or Circumstance, please contact _____ at _____ or _____.

FIRST REPORT OF EVENT OR CIRCUMSTANCE

Date:_____

1. Name of Employee Being Interviewed:_____

2. Name of Interviewer:_____

3. Name Facility or Location:_____

4. Who was involved?:_____

5. Tell me what happened?_____

_____

6. When did the incident(s) happen?_____

_____

7. Where did the incident(s) happen?_____

_____

8. Were there any other incident(s)?_____

_____

9. How did this incident make you feel?_____

_____

10. Was your work affected?_____

_____

11. Was this the first time this had happened?_____

_____

12. Were there any previous incidents of inappropriate behavior?_____

_____

(NOTE: Attach additional documentation as necessary.)

13. Have you kept any records, such as written notes, tape recordings or anything else?_____

_____

(If so, please attach.)

14. Do you know of any other employee(s) who had similar experiences? _____

Who:_____

When:_____

15. Have you discussed this with anyone at work?_____

Who:_____

When:_____

16. Have you discussed this with anyone outside of work?_____

Who:_____

When:_____

17. Did you participate in the incident?_____

18. If yes, tell me how you participated: _____

_____

19. How would you describe your relationship with the employee about whom you are complaining?_____

_____

20. Are there any other issues we should discuss?_____

_____

21. Were any other facts or other information that you think I should know?_____

_____

(NOTE: Attach additional documentation as necessary.)

22. Who do you think I should talk to?_____

_____

23. Do you have any suggestions as to how best to resolve the situation? _____

_____

_____
Type/Print Name of Person Conducting Interview

_____
Signature of Person Conducting Interview

Date:_____

(NOTE: Attach additional documentation as necessary.)

SEXUAL HARASSMENT & DISCRIMINATION

RULES, INVESTIGATION AND AVOIDANCE

(1)

Sexual Harassment: Rules, Investigation and Avoidance

I. Rules

A. Federal Laws

1. **Civil Rights Act of 1964 (Title VII)** (42 USC §§2000e – 2000e-17)

a. Applies to employers that employ 15 or more employees on each working day in 20 or more calendar weeks of the current or preceding year in an industry affecting commerce. (42 USC §2000e(b).)

b. Prohibits discrimination and/or harassment on the basis of:
   i. race
   ii. color
   iii. religion
   iv. sex, or
   v. national origin (includes tribal membership) (42 USC §2000e-2(a)–(c))

B. California Laws

1. **Fair Employment and Housing Act ("FEHA")** (Govt. Code §§12900–12996)

a. Applies generally to any employer regularly employing 5 or more persons. (Govt. Code §12926(d).) Prohibition against harassment applies to any employer regularly employing 1 or more employees. (Govt. Code §12940(j).)

b. Prohibits employment discrimination and/or harassment on the basis of the following (actual or perceived):

   i. race
   ii. religious creed
   iii. color
   iv. national origin
   v. ancestry
   vi. physical or mental disability
   vii. medical condition
   viii. marital status
   ix. sex
   x. age
   xi. sexual orientation (Govt. Code §12940(a)), or
   xii. pregnancy, childbirth, or related medical conditions (Govt. Code §§12943, 12945)

c. Employees of any entity covered by FEHA may be personally liable for prohibited harassment perpetrated by a co-employee.

C. Training

1. Government Code §12950.1 requires the following:

a. Every employer with more than 50 employees must provide at least two hours of classroom or other interactive training and education to all supervisory employees employed as of July 1, 2005, and thereafter.

b. All new supervisory employees must receive such training with in six months of their assumption of a supervisory position.

c. Employers must provide such training and education to each supervisory employee once every two years.

d. Training and education must include both informational and practical guidance on how to comply with state and federal law, prevention and correction of sexual harassment and remedies available to victims of sexual harassment.

e. AB 2095 amends the statute to apply only to supervisory employees physically located in California (2007)

2. Government Code Section 12926(r) defines a "supervisor" as follows:

"Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

D. Significant Court Decisions

1. James Stevens v. Vons (Oct. 2008)

a. Male employee filed a lawsuit in 2004 alleging that a female supervisor taunted him daily with sexual gestures and remarks.

b. Witnesses corroborated his allegations.

c. Following its investigation, Vons determined that supervisor was using sexually offensive language and gestures, but company officials chose not to discipline her. Instead they transferred complaining employee to a less desirable store.

d. Complaining employee fired following DFEH investigation.

2. Lyle v. Warner Brothers Television Productions (April 2006)

   a. "Creative necessity" is an affirmative defense for sexual harassment that allegedly occurred on "Friends" TV show.

   b. Sexually course and vulgar language "did not involve and was not aimed at plaintiff or other women in the workplace."

   c. Plaintiff had been warned when she was hired that explicit discussions were part of developing the sexually charged comedy.

2. EEOC v. National Education Association (September 2005)

   a. A bully does not have to be motivated by lust in order to sexually discriminate against women.

   b. "This case illustrates an alternative motivational theory in which an abusive bully takes advantage of a traditionally female workplace because he is more comfortable when bullying women than when bullying men."

   c. "Harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex."

3. Miller v. Department of Corrections (July 2005)

   a. Evidence of sexual relationships between male supervisor and three female subordinates and of widespread belief on behalf of other subordinates that such involvement was a factor in promotions was sufficient to create a claim of sexual harassment where plaintiffs (two female employees) made a prima facie showing that they did not receive promotions for which they were qualified, even though plaintiffs were not themselves propositioned.

   b. An isolated instance of favoritism on the part of a supervisor toward a female employee with whom the supervisor is conducting a consensual sexual relationship ordinarily would not constitute sexual harassment.

4. Salazar v. Diversified Paratransit Inc. (March 2004)

   a. Employer may be liable under FEHA for sexual harassment committed by clients.

5. Rene v. MGM Grand Hotel, Inc. (Sept. 2002)

   a. Openly gay employee alleging sexual harassment by same-sex co-workers has stated claim under Title VII.

II. Harassment

A. Sexual harassment – most common

1. The Equal Employment Opportunity Commission ("EEOC") has issued regulations and guidelines regarding sexual harassment that are published on its website at www.eeoc.gov

2. **Definition**: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

3. **Circumstances of Sexual Harassment** (*taken from EEOC guidelines*):

   a. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

   b. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

   c. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

   d. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

   e. The harasser's conduct must be unwelcome.

4. EEOC statistics from fiscal year 2009

   a. 12,696 charges filled alleging sexual harassment discrimination pursuant to Title VII (16%)

   b. 16% of the charges of sexual harassment were filed by males.

   c. $51.5 million in monetary benefits recovered for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

   d. 47.7% of sexual harassment charges filed determined to have no reasonable cause

B. Standard for Judging Sexual Harassment

1. **Quid pro Quo**: Occurs when employment decisions concerning an employee are based on that employee's acceptance or rejection of unwelcome sexual behavior.

a. Can only be committed by the employee's supervisor or some other employee with the power to affect the complaining employee's terms of employment.

b. Under both Federal and California law, an employer is strictly liable if quid pro quo harassment is found to have occurred (no affirmative defenses).

2. **Hostile Environment**: Occurs when an employee is subjected to unwelcome verbal or physical conduct of a sexual nature which is sufficiently severe or pervasive so as to alter the conditions of the victim's employment and create an abusive working environment.

a. May be caused by any employee including co-workers, supervisors, or managers.

b. The victim does not need to establish tangible or economic job consequences.

c. Both an objective and subjective standard is utilized to determine whether conduct is abusive:

i. Objective: Reasonable person standard

ii. Subjective: Reasonable person with the same fundamental characteristics as the victim

d. Factors to consider:

i. Frequency of conduct

ii. Severity

iii. Physically threatening or humiliating, or merely an offensive utterance

iv. Whether it unreasonably interferes with employee's performance

v. Whether it affects the employee's psychological well-being (employee need not establish a psychological injury to prevail)

3. Examples of conduct that can create a hostile work environment:

a. Verbal Conduct

i. Unwanted sexual advances, requests for sexual favors.

ii. Making or threatening reprisals after a negative response to sexual advances.

iii. Telling sexual stories or jokes using obscene language.

iv. Referring to other employees by names such as sweetie, doll, honey or babe.

v. Making sexual comments or innuendoes about a person's body or appearance.

vi. Questioning a person about their sexual experience or preferences.

vii. Making suggestive sounds or whistling at a person.

viii. Making quid pro quo sexual demands and threats.

b. Written or electronic harassment

i. Displaying or providing sexually explicit pictures, cartoons or other visual images (computer generated through e-mail or given to the person personally or anonymously).

ii. Sending unwanted notes, messages or other written material by any medium including e-mail.

iii. Providing unwanted personal gifts such as flowers, candy, jewelry or other items.

c. Physical

i. Physically touching a person's body, clothing or hair.

ii. Blocking movement.

iii. Making suggestive gestures or body movements.

iv. Massaging a person's neck or shoulders.

v. Invading someone's personal space by leaning over them, standing very close or rubbing against them.

vi. Kissing, caressing or pinching another person.

d. Visual Conduct

i. Leering and ogling.

ii. Making suggestive signs.

iii. Posting suggestive cartoons.

e. Not an all inclusive list

4. Guidelines for Recognizing Sexual Harassment

a. Ask yourself the following questions to help determine whether certain behavior is sexual harassment:

i. Would you want your child, parent, sibling or spouse to endure the situation?

ii. Is the behavior job-related? Is it focused on getting the job done?

iii. Is the behavior directed toward only women or only men?

iv. Can the behavior be classified as courting, flirting, or other sexual behavior?

v. Has the employee receiving the attention objected to the behavior in any way?

vi. Has the behavior happened before?

vii. Does the behavior make it more difficult for the receiving employee to do his or her job?

viii. Would a reasonable person of the same gender as the recipient feel demeaned, degraded, or embarrassed by the behavior?

ix. Is someone using a position of power to make a person of the opposite gender feel inferior, vulnerable or victimized?

x. Is a supervisor predicating job-related status on receptivity to sexual advances?

C. Sources of Liability

1. Agents and Supervisors

a. The US Supreme Court has ruled that under Title VII, an employer is strictly liable for sexual harassment committed by supervisory personnel, *even if the employer did not know or have reason to know at the time that the harassment was occurring* and was not negligent in preventing its occurrence.

i. Rejecting the distinction between quid pro quo and hostile environment claims

b. Under California law, an employer is strictly liable for harassment perpetrated by an agent or supervisor. (Govt. Code §12940(j)(1).)

i. Only in rare cases will an employer not be liable for sexual harassment by a supervisor.

c. An employee of any covered employer or entity is *personally liable* for any harassment prohibited by FEHA that is perpetrated by the employee, regardless of whether the employer or entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action. (Govt. Code §12940(j)(3).)

d. A non-harassing supervisor who is aware of harassment but does nothing to stop it is not individually liable for aiding and abetting the harassment. (Govt. Code §12940(k); Fiol v. Doellstedt (1996) 50 Cal.App.4th 1318, 1326, 58 Cal.Rptr.2d 308, 313.)

2. Employees and 3rd Parties

a. An employer is liable if it knew or should have known of the harassment and failed to take prompt remedial action to stop it. (29 CFR §1604.11(d)–(e).)

b. Remedial action must include immediate and corrective action calculated to (1) end the current harassment and (2) deter future harassment from the same offender or others.

D. Affirmative Defense to Harassment

1. Under Title VII, an employer has an affirmative defense to harassment in instances when the employee has not suffered a tangible employment action.

a. An employer may avoid liability by proving both of the following:

(1) it exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and

(2) the victim unreasonably failed to take advantage of any preventative and corrective opportunities provided by the employer or to otherwise avoid harm.

b. A tangible employment action is a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

2. In California, strict liability is not absolute liability.

a. The affirmative defenses available in Federal claims may be available to reduce the employer's liability in damages.

b. Avoidable consequences doctrine

i. Employer took reasonable steps to prevent and correct workplace harassment

ii. Employee unreasonably failed to use the preventative and corrective measures that the employer provided, and

iii. Reasonable use of the employer's procedures would have prevented at least some of the harm that the employee suffered.

c. No tangible employment action is required for employer liability.

E. Preventive Steps

1. Written harassment policy

a. Written in clear and understandable language

b. Emphasizes that sexual and all other forms of workplace harassment are prohibited

c. Clearly explains employees' obligation to report any conduct that may be viewed as harassing, and

d. States that no retaliatory action will be taken against persons making complaints about harassment or acting as a witness in support of complaints of harassment.

2. Employers are required to distribute an information sheet on sexual harassment provided by the DFEH, unless the employer provides equivalent information. (Govt. Code §12950(b).)

a. The text of this information sheet is available for downloading from the DFEH website at http://www.dfeh.ca.gov/Publications/DFEH-185.pdf

3. Have a well-defined procedure for bringing allegations of harassment to the attention of the appropriate employer representative, followed by a timely investigation and appropriate remedial action where harassment has been found.

a. The procedure should specifically ensure that there will not be any retaliation for having made an allegation of harassment.

b. Train employees to recognize sexual harassment when it occurs and to know their rights to have the behavior stopped.

c. Encourage your employees to file a complaint if they are subject to sexual harassment so that it can be resolved quickly, before it creates a hostile work environment.

4. Insure that the appropriate federal and state posters regarding discrimination and harassment are posted.

a. Use a poster prepared or approved by the EEOC. The EEOC has developed a poster entitled "*Equal Employment Opportunity is the Law*" that satisfies the posting requirement.

b. Post in a conspicuous place on your premises.

5. Managers and supervisors should be thoroughly trained to deal with harassment problems in the workplace.

a. Immediately advise Human Resources of the complaint and advise the employee you will get back to them.

b. Do not condone sexual harassment

c. Sexual harassment is illegal and should not be tolerated by supervisors.

d. Supervisors are a key element in preventing sexual harassment and the legal liability that flows from it.

e. Make it clear to all employees that the behaviors listed above are not tolerated in the work place, and that a person found to have engaged in sexual harassment will be subject to corrective or disciplinary measures including oral reprimand, written warning, counseling, transfer, reassignment, suspension or termination.

f. Supervisors should require all employees to acknowledge that they are aware of and understand company policy prohibiting sexual harassment.

III. Investigating and Resolving Complaints of Harassment

A. Complaints must be handled promptly, seriously, sensitively, objectively and as confidentially as possible.

1. Supervisors should report complaints of harassment to Human Resources immediately.

B. All complaints should be handled fairly giving due regard for the victim's feelings and the right of the accused to present his or her side of the story.

C. Try to get an agreement with the victim and the accused on what their story is.

D. When conducting interviews of the victim and his or her witnesses, write the facts down and ask them to sign a statement.

E. Find out what the victim wants to resolve the complaint.

F. Interview the alleged harasser and any witnesses that they have.

G. Make a decision about whether harassment has occurred, and, if so, what type of discipline is appropriate for the behavior.

1. Discipline may include, but is not limited to:

   a. Verbal warning

   b. Written warning

   c. Unpaid leave/suspension

   d. Probationary period

   e. Reassignment/demotion

   f. Transfer

   g. Termination

H. Advise the complaining party of the results of the investigation and the action that will be taken.

I. Advise the offender of the results of the investigation, the discipline imposed (if any) and that no retaliation will be permitted.

J. Work with legal counsel.

K. A complete and thorough investigation is a defense (Cotran v. Rollins Hudig Hall International (1998) 17 Cal.4th 93.)

IV. Avoidance – How To Avoid Claims of Harassment

A. Create a strongly worded policy forbidding harassment of employees or contractors by any fellow employee including supervisors and managers or by any client, vendor, contractor or any other person having contact with company employees.

B. Designate individuals responsible for implementing policies.

   1. Notify employees in writing of who is responsible for the implementation of the policies.

C. Create a procedure for employees to bring complaints of harassment to the attention of management.

   1. Be sure it allows for complaint to someone other than the employee's immediate supervisor in cases where the employee deems it necessary.

D. Publish the policy and procedure widely and frequently throughout your company and include it in your employee handbook.

   1. Have employees sign acknowledgments indicating they have received, read and understood your policies and procedures and maintain the acknowledgments in each employee's personnel file.

E. Display current federal and state anti-discrimination/harassment posters at appropriate places in company facilities and distribute the state mandated sexual harassment brochure to all new employees at time of hire.

F. Hold periodic training sessions (at least annually) for employees and supervisors restating company policy and procedures prohibiting unlawful harassment, including sexual harassment.

1. Have employees acknowledge attendance at training sessions.

G. It is incumbent upon all supervisors and managers to understand and apply the company's policy and not allow harassment to exist in the workplace.

1. Teach management employees to be sensitive to issues of harassing treatment and the ramifications of their conduct on their own personal liability and that of the company.

H. Take seriously any claim of harassment and investigate the allegations thoroughly and promptly.

1. Maintain confidentiality as much as possible during the investigation and take prompt and appropriate action that remedies justifiable claims.

I. Consider using an outside attorney to advise you and/or conduct the investigation.

J. Document the completion of all of the steps above.

V. Remedies for Violations

A. Back pay

B. Hiring

C. Promotion

D. Reinstatement

E. Out-of-pocket expenses

F. Front pay

G. Policy changes

H. Training

I. Reasonable accommodation

J. Affirmative relief

K. Actual damages, including damages for emotional distress

L. Punitive damages