

# Sexual Harassment and Abusive Conduct Prevention Training



# Learning Objectives

During this training we will:

1. Review the elements of sexual harassment and the remedies available to victims of sexual harassment under both California and federal laws.
2. Discuss other forms of unlawful harassment.
3. Consider strategies for preventing and responding to unlawful harassment.
4. Address concerns regarding abusive conduct in the workplace.



## Ten Core Values

Appreciation of our National Heritage

Public and Private Virtue

Emphasis on Mentors and Classics

Scholar Empowered Learning

Fostering Creativity and Entrepreneurial Spirit

High Standards of Academic Excellence

Modeling what we Teach

Abundance Mentality

Building a Culture of Greatness

Self-governance, Personal Responsibility  
and Accountability



# Who is Protected by the Law?

- Employees
- Applicants
- Contractors
- Volunteers
- Unpaid Interns

# Who is Liable Under the Law?

- Every employer or prospective employer.
- Every person in the workplace: supervisor, subordinate, or co-worker found liable for sexual harassment is personally liable for the damages caused by the unlawful harassment.

# Personal Liability of Harasser

The individual harasser is personally liable for the damages caused by his or her unlawful actions.



# Liability of Employer

An employer is strictly liable for the unlawful harassment by its supervisors and agents.



# “Supervisor” Explained

A person qualifies as a supervisor for purposes of the California Fair Employment and Housing Act (FEHA) if they had the discretion and authority (a) to hire, transfer, promote, assign, reward, discipline, or discharge other employees, or effectively recommend any of these actions; (b) to act on the grievances of other employees or to effectively recommend action on grievances; or (c) to direct the claimant’s daily work activities.



# Harassment by non-supervisory employees

Employers can be liable for harassment by non-supervisory employees if the employer **knew or should have known** about the harassing behavior and failed to take immediate and effective corrective action.



# Two Forms of Sexual Harassment

Sexual harassment is defined by case law in two ways:

## 1. Quid Pro Quo

- A. Demanding sexual favors in exchange for employment benefits
- B. Demanding sexual favors by threatening negative employment actions; OR

## 2. Hostile Work Environment

- A. Harassing behavior directed toward the complainant
- B. Harassing behavior witnessed by the complainant
- C. Widespread sexual favoritism that infects the workplace creating a hostile or abusive environment

# Quid Pro Quo Explained

- The essence of a quid pro quo sexual harassment claim is that a supervisor relies on his or her apparent or actual authority to extort sexual favors from an employee.
- The threat may be expressed or implied.

# Three Varieties of Hostile Work Environment Sexual Harassment

The courts have recognized three varieties of hostile work environment sexual harassment:

1. Hostile Work Environment – Conduct Directed at Claimant.
2. Hostile Work Environment – Conduct Directed at Others.
3. Hostile Work Environment – Widespread Sexual Favoritism.

# “Harassing Conduct” Explained

Harassing conduct includes unwanted sexual advances that can be:

- Verbal
- Visual
- Physical

# “Severe or Pervasive” Explained

To be actionable, the **unwanted behavior** must be “severe or pervasive” and **alter the conditions of employment** to the extent that it creates a hostile or abusive work environment.

# Considerations

- The nature of the conduct.
- The frequency of the conduct.
- The period of time over which it occurred.
- Whether the conduct was physically threatening or humiliating.
- The extent to which the conduct unreasonably interfered with an employee's work performance.

# VIDEO

<https://www.youtube.com/watch?v=o3FhoCz-FbA>



# Employee Handbook

- You can find the Employee Handbook on the Employee Resource Page of the JAA website
- Harassment is addressed in Section 1
- Pages 70-73 outline the policy on harassment



# Your Responsibility

- If possible, tell the person to stop.
- Example:
  - If someone keeps asking you out and you're not interested, don't say "I'm busy Friday". Tell the person you're not interested, and to please stop asking.
- Let them know you don't appreciate their behavior.

## Federal TITLE VII

- Negligence theory only [Employer not automatically liable].
- Employer not liable if:  
Employer exercised reasonable care; and  
Employee unreasonably failed to take advantage of opportunities to avoid harm.
- 15 employees or more.
- No application to independent contractors, volunteers and unpaid interns.

## California FEHA

- Strict liability [Employer automatically liable for harassment by managers and supervisors].
- Employer has no defense if manager or supervisor is harasser.
- All employers, even those employing one person or sole proprietors.
- Includes independent contractors, volunteers and unpaid interns.

# Harassment Based on Any of These Characteristics is Illegal

1. Race
2. Color
3. National Origin
4. Sex
5. Sexual Orientation
6. Gender
7. Gender Identity
8. Gender Expression
9. Religious Creed
10. Mental Disability
11. Physical Disability
12. Medical Condition
13. Military/Veteran Status
14. Marital Status
15. Age
16. Genetic Characteristics
17. Ancestry

# Employers Must Take All Reasonable Steps

It is unlawful for employers to fail to take all reasonable steps to prevent discrimination, harassment and retaliation. A determination as to whether an employer has complied with Government Code section 12940(k) includes an individualized assessment dependent upon numerous factors sometimes unique to the particular employer, including, but not limited to: workforce size, budget, nature of the business, and the facts of the case.



# Policies & Procedures: Basic Steps in an Investigation

The employer is obligated to conduct an effective workplace investigation of a harassment complaint, and should:

- Conduct a thorough interview with the complaining party.
- Give the accused party a chance to share their perspective of the events.
- Interview relevant witnesses.

# Policies & Procedures: Basic Steps in an Investigation

- Obtain all relevant documents.
- Investigate all relevant avenues applicable to the allegations.
- Reach a reasonable and fair conclusion based on the facts.

## Supervisory Note:

- Supervisors should be provided specific protocols to follow should they be accused of harassment.



# Training

1. Provide training as required by the law.
2. Provide training even if it is not required by the law.
  - Implicit bias training
  - Interaction with certain groups
  - Bystander intervention
3. Keep training records.
4. Keep materials readily available in multiple formats (e.g., paper, online).

# Leadership

Policies and training must be reinforced by leadership. The managers and supervisors must understand that their adherence to the standards of the law and internal policies is required.

Top management should model desired behavior and provide appropriate support to managers and supervisors on the front lines.



# Resources

1. California Department of Fair Employment and Housing – [www.dfeh.ca.gov](http://www.dfeh.ca.gov)
2. Federal Equal Employment Opportunity Commission – [www.eeoc.gov](http://www.eeoc.gov)

# Legal References (1 of 4)

California Government Code:

- 12940(j)(1):

Unlawful for an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.



# Legal References (2 of 4)

- 12940(j)(4)(A):

For purposes of this subdivision only, “employer” means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

# Legal References (3 of 4)

California Government Code:

- 12940(j)(4)(C):

For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

# Legal References (4 of 4)

- 12940(k):

Unlawful for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

2 CCR 11203: Harassment and Discrimination Prevention and Correction

# QUESTIONS/DISCUSSION

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Thank You  
for your participation