

EMPLOYMENT LAW SUMMARY

California: Fair Employment – Sexual Harassment Prevention and Training



Because You're Different

California workers are protected against workplace sexual harassment under both federal and state law. While Title VII of the Civil Rights Act (Title VII) applies only to employers with 15 or more employees, California's prohibitions against sexual harassment in the workplace, under the **California Fair Employment and Housing Act (FEHA)**, apply to all employers with **one or more employees** in the state.

The FEHA's protections extend to employees, job applicants, independent contractors, unpaid interns, volunteers and participants in other limited-duration training programs that provide unpaid work experience.

DEFINITION OF SEXUAL HARASSMENT

The FEHA defines "sexual harassment" as harassment that is **based on sex** or that is **of a sexual nature**. The term includes gender harassment and harassment based on pregnancy, childbirth or related medical conditions.

Regulations issued by the [California Civil Rights Department \(CRD\)](#), which enforces the FEHA, further define sexual harassment as unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature. This definition encompasses a broad range of behaviors, including (but not limited to):

- Offering employment benefits in exchange for sexual favors;
- Making or threatening reprisals after a negative response to sexual advances;
- Leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters;
- Making or using derogatory comments, epithets, slurs or jokes;
- Graphic verbal commentaries about an individual's body;
- Using sexually degrading words used to describe an individual;
- Sending suggestive or obscene letters, notes or invitations; and
- Physical touching or assault, including impeding or blocking movements.

EMPLOYER LIABILITY

The FEHA's anti-harassment provisions impose an affirmative duty on **all employers** in California, regardless of their size, to take all reasonable actions to prevent, stop and correct workplace harassment. Under the law, an employer may be held liable for:

- Any harassment committed by its supervisors or agents; and
- Any harassment that occurs in its workplace.

Both supervisory and nonsupervisory individuals may also be held **personally** liable if they harass employees or co-workers or if they assist other people in carrying out harassing actions. Even if an individual is personally liable, however, an employer may **not** avoid liability for workplace sexual harassment **unless**:

- The harasser is either not an employee or is a non-supervisory employee;

- The employer had no knowledge of the harassment;
- The employer had a harassment prevention program in place; and
- Once made aware of the harassment, the employer took immediate and appropriate corrective action to stop it.

Individuals who believe they have been sexually harassed may file a complaint with CRD **within three years** of the alleged harassment. Once a complaint is filed, CRD evaluates the facts and decides whether to accept the complaint for investigation. If it accepts, CRD will investigate the complaint and attempt to resolve the dispute. If CRD finds evidence of sexual harassment and settlement efforts fail, CRD may file a formal accusation or lawsuit against the employer and harasser.

Employers found liable for sexual harassment may face a variety of penalties. Specifically, the CRD may:

- Require payment of emotional distress damages;
- Demand back pay be issued;
- Require the hiring, promotion or reinstatement of an employee or job applicant;
- Order changes in the policies or practices of the involved employer;
- Mandate additional sexual harassment training; and
- Impose other obligations.

In addition, civil courts may order unlimited monetary damages against an employer that is found liable for sexual harassment.

EMPLOYER OBLIGATIONS

The FEHA requires every employer to develop and implement a **written** policy regarding workplace harassment, discrimination and retaliation.

An employer's policy should include, among other provisions, information about:

- The rights, and any obligations necessary to secure them, of a person who experiences or reports harassment;
- The employer's process for investigating harassment complaints; and
- Corrective actions the employer will take if harassment allegations are proven.

When an individual reports workplace sexual harassment, the employer must:

- Take appropriate action to stop the harassment and to ensure it will not continue;
- Communicate to the complainant that action has been taken to stop the harassment from recurring;
- Conduct a thorough, objective and complete investigation;
- Communicate the results of the investigation to the complainant, to the alleged harasser, and as appropriate, to all others directly concerned; and
- Take appropriate steps to remedy any damages resulting from the harassment.

MANDATORY TRAINING FOR ALL EMPLOYEES

As of Jan. 1, 2019, every California employer with **five or more employees** must provide:

- Each **supervisory employee** with at least **two hours** of sexual harassment training; and
- Each **non-supervisory employee** with at least **one hour** of sexual harassment training.

Both types of training must be provided **within six months** of the date each employee assumes his or her position. Thereafter, each employee must receive the training again **once every two years**.

Employers must provide training to minors between the ages of 14 and 17.

The training must include:

- Information and practical guidance regarding federal and California laws prohibiting sexual harassment;
- Strategies to prevent sexual harassment in the workplace, including practical examples to instruct supervisors on preventing harassment, discrimination and retaliation;
- Supervisors' obligation to report sexual harassment, discrimination and retaliation;
- Limitations on confidentiality during the complaint process;
- Resources for victims of unlawful sexual harassment, including reporting mechanisms;
- Appropriate remedial measures to correct harassing behavior;
- Steps taken if a supervisor is personally accused of harassment;
- The employer's antiharassment policy;
- The definition of abusive conduct under California law and how to prevent it; and
- Information on harassment based on gender identity, gender expression and sexual orientation.

EXCEPTION FOR SEASONAL EMPLOYEES

Beginning Jan. 1, 2021, however, different requirements apply for seasonal employees, temporary employees and any employees who are hired to work for less than six months. For these employees, employers must provide the required training within **30 calendar days** after the employees' hire dates or before the employees have worked **100 hours**, whichever occurs first.

EXCEPTION FOR EMPLOYEES PREVIOUSLY TRAINED

An employer is not required to provide harassment training to an employee within the last two years if:

- The employee received the required training within the prior two years from a current, prior, alternate or a joint employer; or
- The employee received a valid work permit from the California Labor Commissioner that required him or her to receive the required training within the prior two years; and
- The employer must:
 - Provide the employee with a copy of its anti-harassment policy within the standard six-month period;
 - Require him or her to read and acknowledge receipt of the policy; and
 - Put him or her on a two-year tracking schedule based on his or her last training.

An employer that uses this exception must be able to prove that an employee's prior training complied with all requirements under the law.

TRAINING PROGRAM PRESENTATION

The supervisory and non-supervisory employee training may be provided in conjunction with other training an employer provides, and employees may complete it either individually or as part of a group presentation. Employees may also complete the one- or two-hour training in shorter segments as long as the applicable total requirement is met.

The training must be conducted by a trainer or educator experienced in preventing harassment, discrimination and retaliation. Trainers must be:

- Attorneys admitted at least two years and practicing employment law under FEHA or Title VII;
- HR professionals or harassment prevention consultants with at least two years of relevant experience; or
- Professors or instructors in law schools, colleges or universities with at least 20 instruction hours or two years of relevant teaching experience.

The training must be in a classroom setting with an in-person trainer or use another method that is interactive and effective. An employer may develop their own training module or direct employees to view the online training course available from the CRD's [website](#). Employers should also monitor the CRD [website](#) for additional guidance.

RECORDKEEPING

Employers may track mandatory training compliance either individually or by training year. Employers must maintain training documentation for at least two years.

NOTICE AND POSTING REQUIREMENTS

The FEHA requires all employers to post the "[Discrimination and Harassment in Employment are Prohibited by Law](#)" poster in a prominent and accessible location in the workplace. This poster includes information on prohibited forms of workplace discrimination, including sexual harassment.

In addition, all employers must distribute either a copy of the [CRD's fact sheet on sexual harassment](#) or [this CRD poster on sexual harassment](#) (both available in Spanish and other languages [here](#)) to all employees. These publications describe the forms of sexual harassment, its illegality, the internal and external complaint processes and the legal remedies under FEHA. Employers may elect to distribute their own information packets with equivalent information in place of distributing the fact sheet or poster. The law specifies that the information must be delivered "in a manner that ensures distribution to each employee, such as including it with an employee's pay."

MORE INFORMATION

Please contact Heffernan Insurance Brokers for more information on California's employment discrimination laws.

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