

California Sexual Harassment Laws

MODULE 1



Who is Protected?

- ▶ Employees
- ▶ Applicants
- ▶ Contractors
- ▶ Volunteers
- ▶ Unpaid Interns

Who is Liable?

- ▶ Every employer or prospective employer
- ▶ Every person in the workplace: supervisor, subordinate, or co-worker found liable for sexual harassment
- ▶ The original harasser is personally liable for damages caused by his or her unlawful actions.
- ▶ An employer is strictly liable for the unlawful harassment by its supervisors and agents.





Who is Liable ?

Supervisor Defined

A person qualifies as a supervisor for purposes of the California Fair Employment and Housing Act (FEHA) if they had the discretion and authority to

- ▶ (a) hire, transfer, promote, assign, reward, discipline, or discharge other employees, or effectively recommend any of these actions;
- ▶ (b) act on the grievances of other employees or to effectively recommend action on grievances; or
- ▶ (c) 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.

Who is Liable ?

Sexual Harassment Can Occur Between Individuals of the Same Sex

- ▶ It has been settled law for some time that "same sex" sexual harassment is actionable under the Fair Employment and Housing Act.

Adverse Employment Action is NOT Required

- ▶ The complainant does not have to have a tangible economic loss or other adverse employment action.
- ▶ The crux of a harassment claim is the assault on the complainant's personal sense of dignity and well-being

Sexual Desire is NOT Required

- ▶ Recent legislation clarified existing law by expressly stating that "Sexually harassing conduct need not be motivated by sexual desire." The legislation, SB 292 (Corbett) was passed to repudiate the contrary decision in *Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191.

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- ▶ Race
 - ▶ Color
 - ▶ National Origin
 - ▶ Sex
 - ▶ Sexual Orientation
 - ▶ Gender
 - ▶ Gender Identity
 - ▶ Gender Expression
 - ▶ Religious Creed
 - ▶ Mental Disability
 - ▶ Physical Disability
 - ▶ Medical Condition
 - ▶ Military/Veteran Status
 - ▶ Marital Status
 - ▶ Age
 - ▶ Genetic Characteristics
 - ▶ Ancestry
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Harassment Based
on Any of These
Characteristics is
Illegal

