

California Sexual Harassment Laws

Who is Protected?

Employees
Applicants
Contractors
Volunteers
Unpaid Interns

Who is Liable?

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

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.

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.

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.

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.

Harassment Based on Any of These Characteristics is Illegal

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

Two Types of Sexual Harassment

Quid Pro Quo
Hostile Work Environment

Quid Pro Quo?

- 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.

Hostile Work Environment

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

Hostile Work Environment – Verbal

- Foul or obscene language
- Derogatory comments
- Explicit discussions about sexual activities
- Comments about other people’s physical attributes

Hostile Work Environment – Visual

- Leering
- Staring
- Making sexual gestures
- Displaying sexually explicit objects, pictures, cartoons, graffiti, or posters
- Sending graphic emails, text messages, or jokes

Hostile Work Environment – Physical

- Kissing
- Hugging
- Grabbing
- Impeding or blocking movement
- Assault

Severe or Pervasive

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.