

## **Comparing Federal and State Sexual Harassment Laws**

### **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.
- Requires 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.

## **Preventing and Responding to Sexual Harassment**

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.

California's Department of Fair Employment and Housing (DFEH) can seek injunctive relief to compel employers to take all reasonable steps to prevent unlawful discrimination without proving an underlying violation of the Fair Employment and Housing Act (FEHA).

## **Policies and Procedures: Basic Steps in Conducting 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.
- 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.