

California Sexual Harassment Laws

MODULE 3



The background of the slide features a faded, reddish-orange image of the Golden Gate Bridge spanning a body of water, with hills visible in the distance.

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



Provide training as required by the law.



Provide training even if it is not required by the law.

- *Implicit bias training

- *Interaction with certain groups

- *Bystander intervention



Keep training records.



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.

Abusive Conduct

Abusive conduct is conduct in the workplace that a reasonable person would find hostile, offensive and unrelated to an employer's legitimate business interests, including:

- ▶ Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets.
- ▶ Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating.
- ▶ The gratuitous sabotage or undermining of a person's work performance.
- ▶ A single act shall not constitute abusive conduct, unless especially severe and egregious

Abusive Conduct: No Independent Cause of Action



Abusive conduct: “bullying” in and of itself is not a violation of the Fair Employment and Housing Act unless it can be shown to have been substantially motivated by a **protected characteristic**.

Possible Ralph Act claim if violence or the threat of violence is involved. The Ralph Act states that it is a civil right for a person to be free of violence or its threat against the person or property based on a wide range of personal characteristics, including sexual orientation or the perception of sexual orientation. The Ralph Act (and the Unruh Act) is enforced by the Department of Fair Employment and Housing. As such, DFEH does have jurisdiction to investigate and litigate.

The Ralph Act provides for civil penalties up to \$25,000 in fines for perpetrators of a hate crime and remedies for the victims of hate crimes of three times the actual damages, but no less than \$1,000, plus punitive damages and attorney’s fees.

Possible non-FEHA claims (civil claims): assault, battery, or intentional infliction of emotional distress.