



Department of Fair Employment and Housing



Discrimination and Harassment in Employment are Prohibited by Law

Laws enforced by the Department of Fair Employment and Housing (DFEH) protect you from illegal **discrimination** and **harassment** in employment based on

- **Race**
- **Color**
- **Religion**
- **Sex** (pregnancy or gender)
- **Sexual orientation**
- **Marital status**
- **National origin** (including language use restrictions)
- **Ancestry**
- **Disability** (mental and physical, including HIV and AIDS)
- **Medical condition** (cancer/genetic characteristics)
- **Age** (40 and above)
- **Denial of family and medical care leave**
- **Denial of pregnancy disability leave or reasonable accommodation**

The California Fair Employment and Housing Act (Part 2.8 commencing with Section 12900 of Division 3 of Title 2 of the Government Code) and the Regulations of the Fair Employment and Housing Commission (California Code of Regulations, Title 2, Division 4, Sections 7285.0 through 8504):

- **Prohibit harassment** of employees, applicants, and independent contractors by any persons and require employers to take all reasonable steps to prevent harassment. This includes a prohibition against sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.
- **Prohibit employers from limiting or prohibiting the use of any language** in any workplace unless justified by business necessity. The employer must notify employees of the language restriction and consequences for violation.
- **Require that all employers provide information** to each of their employees on the nature, illegality, and legal remedies that apply to sexual harassment. Employers may either develop their own publications, which must meet standards as set forth in California Government Code Section 12950, or use a brochure from the DFEH.
- **Require employers with 50 or more employees and all public entities to provide sexual harassment prevention training** for all supervisors.
- **Require employers to reasonably accommodate an employee or job applicant's religious beliefs and practices.**

- **Require employers to reasonably accommodate employees or job applicants with a disability** in order to enable them to perform the essential functions of a job.
- **Permit job applicants and employees to file complaints** with the DFEH against an employer, employment agency, or labor union that fails to grant equal employment as required by law.
- **Prohibit discrimination** against any job applicant or employee in hiring, promotions, assignments, termination, or any term, condition, or privilege of employment.
- **Require employers, employment agencies, and unions** to preserve applications, personnel records, and employment referral records for a minimum of **two years**.
- **Require employers to provide leaves** of up to four months to employees disabled because of pregnancy, childbirth, or a related medical condition.
- **Require an employer to provide reasonable accommodations** requested by an employee, on the advice of her health care provider, related to her pregnancy, childbirth, or related medical conditions.
- **Require employers of 50 or more persons to allow eligible employees to take up to 12 weeks leave** in a 12-month period for the birth of a child; the placement of a child for adoption or foster care; for an employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition. (Employers are required to post a notice informing employees of their family and medical leave rights.)
- **Require employment agencies to serve all applicants equally**, refuse discriminatory job orders, and prohibit employers and employment agencies from making discriminatory pre-hiring inquiries or publishing help-wanted advertising that expresses a discriminatory hiring preference.
- **Require unions not to discriminate** in member admissions or dispatching to jobs.
- **Prohibit retaliation** against a person who opposes, reports, or assists another person in opposing unlawful discrimination.

The law provides for administrative fines and remedies for individuals, including the following: hiring, front pay, back pay, promotion, reinstatement, cease-and-desist order, expert witness fees, reasonable attorney's fees and costs, punitive damages, and damages for emotional distress.

Job applicants and employees: If you believe you have experienced discrimination, you may file a complaint with DFEH.

Independent contractors: If you believe you have been harassed, you may file a complaint with DFEH.

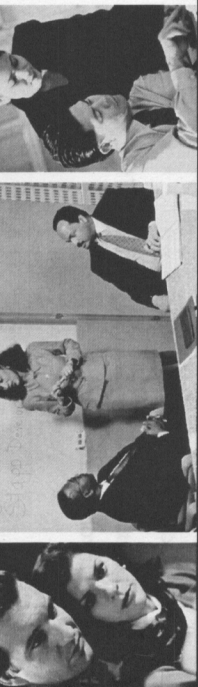
Complaints must be filed within **one year** of the last act of discrimination/harassment, or, for victims who are under the age of 18, not later than one year of that person's eighteenth birthday.

For more information, contact DFEH toll free at (800) 884-1684, Sacramento area & out-of-state at (916) 478-7200, TTY number at (800) 700-2320, or visit our web site at www.dfeh.ca.gov.

Government Code Section 12950 and California Code of Regulations, Title 2, Section 7287 require all employers to post this document. It must be conspicuously posted in hiring offices, on employee bulletin boards, in employment agency waiting rooms, union halls, and other places employees gather.

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact the DFEH at the numbers above.

State of California
Department of Fair Employment & Housing



The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

Employers' Obligations

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
 - Fully inform the complainant of his/her rights and any obligations to secure those rights.
 - Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to all others directly concerned.
 - Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the com-

plaintain that action has been taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.

- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace (available through the DFEH publications line [916] 478-7201 or Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- Employers who do business in California and employ 50 or more part-time or full-time employees must provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.

- A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way for an employer to avoid or limit liability if harassment should occur despite preventive efforts.

Employer Liability

All employers, regardless of the number of employees, are covered by the harassment section of the FEHA.

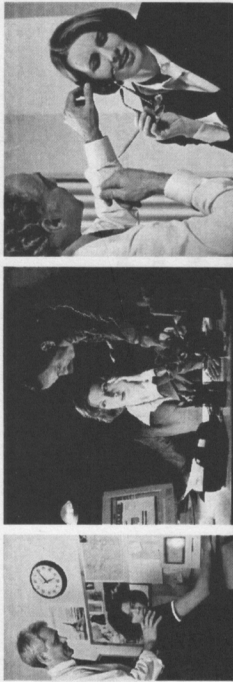
Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.

Additionally, the law requires employers to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a **non-employee** (e.g. client or customer) has sexually harassed an employee, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

An employer might avoid liability if

- the harasser is not in a position of authority,



The definition of sexual harassment includes many forms of offensive behavior.



Department of Fair Employment and Housing

- such as a lead, supervisor, manager or agent;
- the employer had no knowledge of the harassment;
- there was a program to prevent harassment; and
- once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

Filing a Complaint

Employees or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes.

If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a formal accusation. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission finds that discrimination has occurred, it can order remedies including:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see publication DFEH-159 "Guide for Complainants and Respondents."

Sexual Harassment

The Facts About Sexual Harassment

The *Fair Employment and Housing Act* (FEHA) defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements

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State of California

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Reasonable Steps Can Be Taken to Prevent Sexual Harassment Complaints

The Department of Fair Employment and Housing reports that employment discrimination complaints filed alleging sexual harassment have more than doubled since 1984. Filings increased from fewer than 700 in fiscal year 1984-85 to 1,390 in fiscal year 1987-88.

In addition to violating state law, harassment of this nature can result in expensive damage findings against employers. Employers would be helped by having a better understanding of the definition of sexual harassment, their liability and ways to prevent sexual harassment.

DEFINITION OF SEXUAL HARASSMENT

State regulations define sexual harassment as unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior, such as:

- unwanted sexual advances
- offering employment benefits in exchange for sexual advances
- making or threatening reprisals after a negative response to sexual advances
- visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters
- verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- verbal sexual advances or propositions
- verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations
- physical conduct: touching, assault, impeding or blocking movement

EMPLOYER LIABILITY

Every California employer is covered by the state regulations regarding sexual harassment. Because an act of harassment, by itself, is unlawful, a victim may be entitled to damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

If harassment does occur, the employer may be liable even if management was not aware of the harassment. If, however, the employer has a program to prevent harassment, the employer might avoid liability when the harasser is a rank and file employee.

Personal liability for damages could be assessed against the harasser, as well as any management representative who knew about the harassment and condoned or ratified it.

"All reasonable steps to prevent harassment from occurring" is the requirement for every employer, according to state law. When those preventive measures are not taken, the employer could be held liable for the employee's harassment.

PREVENTING SEXUAL HARASSMENT

A program to prevent or eliminate sexual harassment from the workplace is, therefore, not only good business, it is the most practical way to avoid or limit damages in the event harassment occurs without the knowledge of the employer. Such a program would include a complaint process and a training program.

Complaint Procedure

Immediate and appropriate action is required by the employer when it knows, or should have known, that sexual harassment has occurred. An employer must take effective action to stop any further harassment and to

ameliorate any effects of the harassment. The employer's policy needs to include provisions to:

1. Fully inform a complainant of his/her rights and any obligations to secure those rights.
2. Fully and effectively investigate. This investigation must be immediate, thorough, objective and complete. All those with information on the matter should be interviewed. A determination must be made and the results made known to the complainant, to the alleged harasser, and, as appropriate, to all others directly concerned.
3. Promptly and effectively remedy proven harassment. Firstly, appropriate action must be taken against the harasser and communicated to the complainant. Secondly, steps need to be taken to prevent any further harassment. Thirdly, appropriate action must be taken to remedy the complainant's loss, if any.

Training of all individuals in the workplace

All employees should be made aware of the seriousness of violations of the employer's sexual harassment policy. Supervisory personnel should be educated about their specific responsibilities. Rank and file employees should be cautioned against using peer pressure to discourage harassment victims from using the employer's internal grievance procedure.

If you would like additional information about sexual harassment regulations, you may contact the District Administrator of the nearest Department of Fair Employment and Housing office, listed in the white pages of the telephone book, under "State of California — Department of Fair Employment and Housing."

