

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."