


Prevention of Workplace Harassment and Discrimination


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March 13, 2007

Pre-Quiz



DISCRIMINATION



Discrimination

- Federal and State Law Prohibit Discrimination Based on Protected Classifications.

Without reading ahead, how many classifications can you name?

Discrimination (Cont.)

Protected Classifications Include:

- | | |
|--------------------|------------------------|
| Age | Ancestry |
| Color | Creed |
| Disability | Marital Status |
| Medical Condition | National Origin |
| Race | Religion |
| Sexual Orientation | Sex/Gender/Transgender |

Pregnancy and related medical conditions

Discrimination (Cont.)

Discrimination Laws Prohibit the Wrongful Denial of Employment Opportunities Including the opportunity to:

- Be hired
- Receive Benefits
- Keep a Job
- Receive Training
- Receive a Promotion/Job Assignment
- Receive Compensation
- Receive the Same Conditions/Opportunities as Others

Discrimination (Cont.)

Discrimination Can Include:

- Harassment on the Basis of a Protected Classification
- Intentional Conduct that Adversely Impacts Protected Individuals or Classes
- Conduct that Appears Neutral or Unintentional but has an Adverse Impact
- Retaliation
- Failure to Accommodate Disabilities/Religious Beliefs

The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a protected characteristic
- Unwelcome
- Sufficiently severe or pervasive to alter the conditions of employment

What if I . . .

- Speak in a fake foreign accent?
- Feign being an "emotional woman" when I speak?
- Feign being a "thoughtless man" when I speak?
- What if I tell a really funny joke that is only a little "off color"?

What if I say it or do it . . .

- When "they" are not around?
- But do not mean anything by it?
- And nobody objects?
- And I tell them they can reciprocate?

Video Training

You Are The Jury
Is this a hostile work environment?

Elements of Hostile Work Environment

1. Offensive conduct to a reasonable person
2. Based on a protected characteristic
3. Unwelcome
4. Sufficiently severe or pervasive to alter the conditions of employment

What do I do if someone offends me?

- Talk to them.
- Talk to your supervisor.
- Talk to HR/Personnel.

Talk to The Offender

- I am not sure what you meant when you _____ [said/did/wrote], but it offended me and I thought you should know.
- I know we have been coworkers for a while and I have never said anything before, but it really bothers me when . . .
- Please stop because I find that offensive.

Some people like my advice so much that they frame it upon the wall instead of using it.

-- Gordon R. Dickson

What is Workplace Retaliation?

When an employee suffers an adverse employment action as a result of having engaged in some protected activity.

What types of protected activity are we talking about?

Protected Activities May Include:

- Reporting safety violations
- Reporting illegal activity
 - Discrimination
 - Sexual harassment
 - Theft
 - Civil Rights violations
- Engaging in free speech
- Requesting leave (FMLA, CFRA, PDL, etc.)
- Making a Worker's Comp claim

Retaliatory Measures May Include:

- Retaliatory measures can include termination, demotion, reduction in pay or work hours, loss of benefits, or denial of other employment opportunities.

- Things done with good intentions can be viewed as retaliatory. An unannounced visit to an injured employee may be considered badgering.


Retaliation (Cont.)

- Workers' Compensation Retaliation
 - Retaliation against injured employees create several types of liability risks:
 - Liability under Labor Code § 132a
 - Employee Turnover
 - Division and discord in the workplace
 - Increased litigation exposure

Things to Consider

- Proximity of protected activity to adverse employment action
- Basis of the adverse employment action
- Whether or not the adverse employment action is necessary

SEXUAL HARASSMENT



Sexual Harassment (Cont.)

- Both federal and California law prohibit sexual harassment in the workplace.
- Sexual harassment is commonly categorized into one of the following:
 - Hostile work environment
 - Quid Pro Quo

The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a sex
- Unwelcome
- Sufficiently severe or pervasive to alter the conditions of employment

Sexual Harassment (Cont.)

Quid pro quo. When submission to sexual advances or conduct is made a condition of employment.

Sexual Harassment

- Verbal, physical, or visual conduct of a sexual nature

- To violate the law, conduct must be unwelcome, offensive, and severe or pervasive

Examples of Inappropriate Verbal Conduct

- Inappropriate verbal conduct may consist of (but is not limited to):
 - Demands for sexual favors
 - Sexually-graphic statements
 - Demeaning jokes of a sexual nature
 - The description of an employee's anatomy or body in direct sexual or sexually-suggestive terms
 - Dirty jokes

Examples of Inappropriate Physical Conduct

- Inappropriate physical conduct may consist of (but is not limited to):
 - Touching
 - Grabbing, patting, or touching a body part, particularly in an area that cannot be explained as inadvertent
 - Kissing/hugging
 - Encroaching upon an individual's physical space
 - Blocking an individual's movement so he or she must brush up against someone else to pass

Examples of Inappropriate Visual Conduct

- Inappropriate visual conduct may consist of (but is not limited to):
 - Pornography
 - Sexually-suggestive screen savers on computers
 - Cartoons or pictures that depict either sex in a demeaning way
 - Other individuals engaged in sexual behavior, even of a non-graphic nature

The Four Elements of Hostile Work Environment



- Offensive conduct to a reasonable person
- Based on a sex *Gender*
- Unwelcome *Unwelcome*
- Sufficiently severe or pervasive to alter the conditions of employment *Severe*

Who can create sexual harassment?

- Co-workers
- Managers/Supervisors
- City Council/Board Members
- Temporary Workers
- Vendors
- Members of the Public

What does it look like?

- Sexual harassment most commonly occurs by way of a Man Harassing a Woman. However, it is also unlawful for:
 - Men to harass other men
 - Women to harass men
 - Women to harass other women

What Types of Conduct Can Create Sexual Harassment?

- Sexual conduct that is welcome is not sexual harassment.

- To constitute sexual harassment, the conduct must be unwelcome.

What is Unwelcome?

- Sexual conduct could be considered unwelcome if:
 - It was rejected initially

 - It was initially accepted but later rejected

 - It was accepted after coercion

What types of conduct are we talking about?

- Jokes
- Cartoons
- Flirting
- Gestures
- Leering
- Propositions
- Conversation
- Email Messages

Severe v. Pervasive

- Severe** enough to alter an employee's workplace experience even though the conduct occurred once or rarely (ex., a sexual assault).

- Pervasive** enough to be more than merely an accidental or isolated event, and thus becoming a defining condition of the workplace, even if no single act viewed by itself would be harassment. Therefore, typically, a single offensive joke would not be sexual harassment.

Video Training Clips

Sexual Harassment (Cont.)

- **Sexual Harassment Warning Signs:**
 - Refusing to work with, or asking not to work with, another employee.
 - Asking for a transfer or leaving employment for no apparent reason.
 - Missing work or having a drop in productivity for no apparent reason.
 - Personal arguments between employees.

Sexual Harassment (Cont.)

- An employee suddenly, for no apparent reason, becomes uncommunicative or hard to work with.
- A dating or sexual relationship, or the appearance of such a relationship, between employees, whether consensual or not.
- Signs of hostility between employees who were once, or who now are, partners in a sexual or dating relationship.

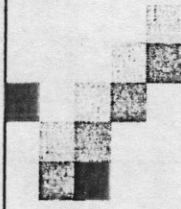
Sexual Harassment (Cont.)

- **LIABILITY.** In California, employers are strictly liable for sexual harassment by supervisors.
- **LIABILITY.** Under federal law, employers are strictly liable if an employee suffered adverse tangible employment action because of a supervisor's sexual harassing conduct.

Can I be personally liable as a manager supervisor?

Take Aways

- Be a leader regardless of your title
 - Do the right thing when the right thing is called for on a consistent basis!
- Toying with the hazards carries risk—so step on solid places and you will be fine
- What one person does can dramatically affect the workplace
- A little bit of effort on a daily basis will make a difference



You have been
fabulous!

Thank you



Bickmore Risk Services

TRAINING PRE-QUIZ

This pre-quiz will assess your current knowledge of harassment, discrimination, and sexual harassment as they pertain to the workplace environment. The pre-quiz is also designed to introduce you to terms and concepts to be used during the training session.

Select the single "best" answer to each question below.

1. A very thin employee who is offended when she hears a coworker telling "skinny jokes" about her:
 - A. Is the victim of workplace discrimination.
 - B. Has no rights because the law only protects overweight employees.
 - C. Should talk to the employee and ask him/her to stop.
 - D. Should remain silent so as to not "rock the boat" and disrupt workplace harmony.

2. Which of the following could never be considered sexual harassment?
 - A. Placing pictures of your family's Caribbean vacation on your computer screensaver.
 - B. Hanging a picture of your daughter on your cubicle wall.
 - C. Complimenting a coworker's sweater.
 - D. None of the above.

3. Which of the following would always be considered a form of sexual harassment?

- A. A female employee telling sexual jokes to her male coworkers.
- B. A male employee hugging a male coworker while pretending to be sexually attracted to him.
- C. Asking a coworker if they would like to engage in sexual relations.
- D. None of the above.

4. An employee who discusses his/her religious beliefs in the workplace:

- A. Is okay if they did not initiate the conversation.
- B. Cannot be prohibited from such conduct.
- C. Is okay so long as they exercise caution and do not inadvertently or intentionally alter the workplace environment.
- D. Should be terminated for such conduct.

5. State law recognizes the following as protected classifications, except:

- A. Age
- B. Transgender Identity
- C. Socio Economic Status
- D. Disability

6. The California Fair Employment and Housing Act (FEHA) prohibits:

- A. Discrimination on the basis of age
- B. Discrimination on the basis of marital status.
- C. Discrimination on the basis of color.
- D. All of the above.

7. Which statement is accurate?

- A. An employee who believes he/she has been sexually harassed must confront the alleged harasser.
- B. An employee who believes he/she has been sexually harassed should never confront the alleged harasser.
- C. An employee who believes he/she has been sexually harassed should talk to their manager or supervisor.
- D. An employee who believes he/she has been sexually harassed should remain silent and accept it as a hazard of today's workplace.

8. Sexual harassment in the workplace by a non-coworker:

- A. Is a good day and should only be reported in your diary.
- B. Should always be reported.
- C. Is not sexual harassment.
- D. None of the above.

9. Jokes and cartoons sent via email:

- A. May form the basis for a discrimination or harassment complaint
- B. Could never be harassment or discrimination because they are meant to be funny and not malicious.
- C. Are always considered harassment or discrimination.
- D. Should only be sent with management's approval.

10. Making a welcomed sexual advance towards a coworker:

- A. Is not sexual harassment toward the recipient of the advance.
- B. Is an excellent policy and practice in the workplace.
- C. Is prohibited by law.
- D. None of the above.

11. Touching another employee, regardless of what part of the body you touch, can:

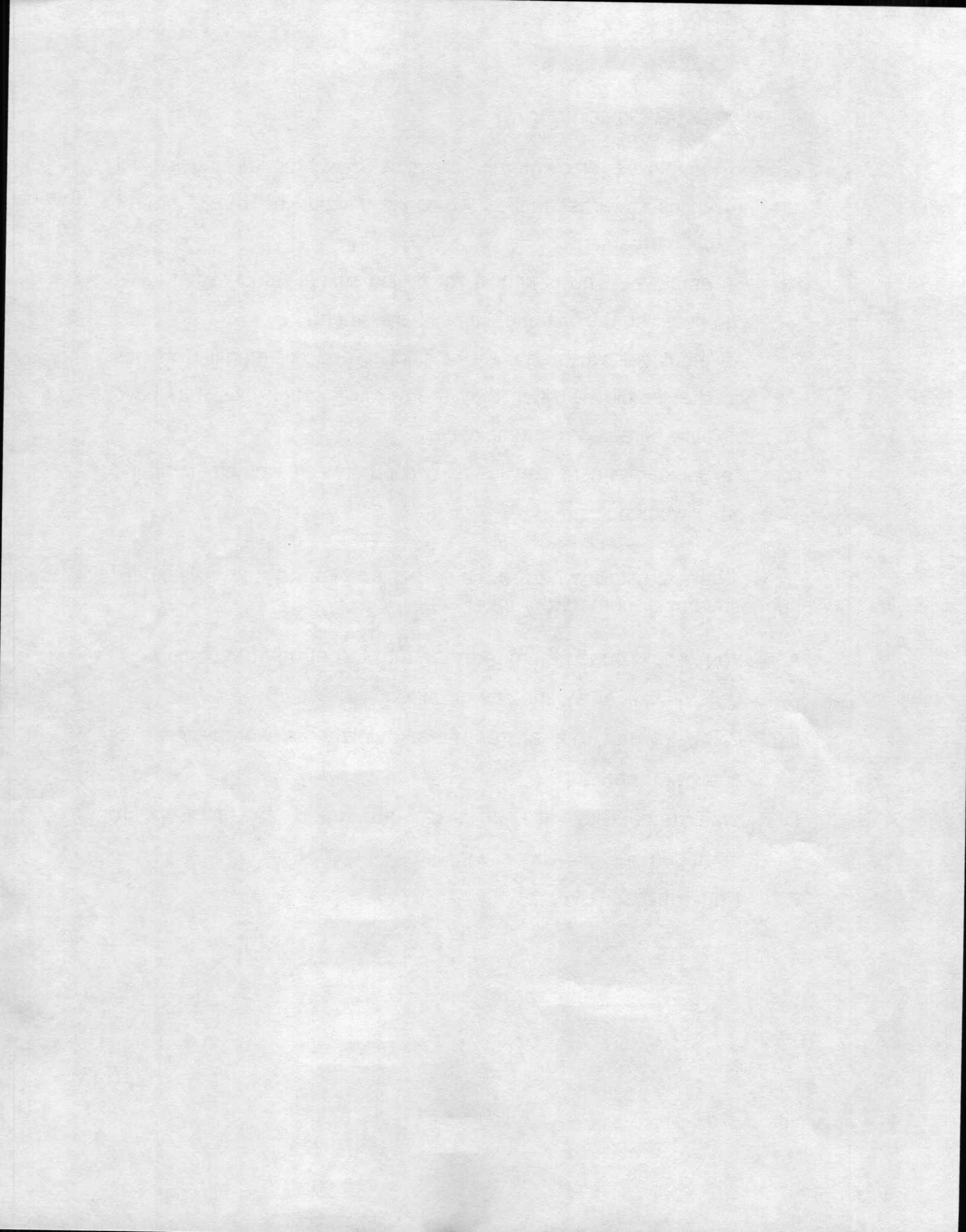
- A. Form the basis for a sexual harassment claim.
- B. Be mistaken as an unwelcome touching.
- C. Result in a sexual harassment claim, unless you are just shaking hands.
- D. Both A and B.

12. Which statement is accurate?

- A. An employee who merely hears a coworker making sexual advances towards another coworker cannot be the victim of sexual harassment.
- B. An employee who is known for telling sexually suggestive jokes can never be the victim of sexual harassment.
- C. An employee who regularly tells jokes and occasionally offends another employee when they are sexually suggestive, may have sexually harassed that employee.
- D. Sexual harassment can never occur between women harassing other women.

13. If you are present when a coworker begins to tell a sexually suggestive or discriminatory joke:

- A. You should punch them in the mouth to get them to stop.
- B. Quietly walk away and say nothing.
- C. Point out that they are potentially violating a workplace policy and ask them stop.
- D. Wait until they are finished and report the incident to management.
- E. None of the above.



Print Name	Signature
Aksland, Carol I	Carol Aksland
Anderson, Tiffany	Tiffany Anderson
Andres, Scott	Scott Andres
Azevedo, Steve	Steve Azevedo
Beard, Tom	- W.C. -
Bearden, Stacy	Stacy Bearden
Bennett, Morgan	Morgan Bennett
Black, Deanna	Deanna Black
Bridgewater, Duane	Duane Bridgewater
Capuccini, Richard	RICHARD CAPUCCINI
Devencenzi, Aaron	VACATION → MAKE-UP 3/23
Duke, Steve	STEVE DUKE
Durham, Bob	VAC. → MAKE-UP 3/23
Edwards, Greg	Greg Edwards
Finley, Janine	Janine Finley
Fraser, Larry	LARRY FRASER
Greenmyer, Ed	RESIGNED
Heine, Brian	BRIAN HEINE
Hopkins, Norman	NORMAN HOPKINS
Iverson, Mary	MARY IVERSON
Keith, Dennis	DENNIS KEITH
Leipelt, Steve	STEVE LEIPELT
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Mortenson, Fred	FRED MORTENSON
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Nienhuis, Keith	KEITH NIENHUIS
Nolin, Larry	Nolin, Larry
Pfeifer, Roy	ROY D. PFEIFER
Sheffield, James	VACATION - MAKE-UP 3/23
Smith, David	DAVID J. SMITH
Stroh, John	John Stroh
Van, Dave	Dave Van
Vignolo, John	JOHN VIGNOLO

