

SEXUAL HARASSMENT IS FORBIDDEN BY LAW

Sexual harassment in employment violates the provisions of the *Fair Employment and Housing Act*, specifically *Government Code sections 12940(a), (j), and (k)*.

DEFINITION OF SEXUAL HARASSMENT

The *Fair Employment and Housing Act* defines harassment because of sex as including sexual harassment, gender harassment and harassment based on pregnancy, childbirth, or related medical conditions. The Fair Employment and Housing Commission 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 and includes harassment of a person of the same sex as the harasser. The following is a partial list:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct, e.g., leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters
- Verbal conduct, e.g., 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, e.g. touching, assault, impeding or blocking movements

EMPLOYERS' OBLIGATIONS

All employers have certain obligations under the law. Employers must:

- Take all reasonable steps to prevent discrimination and harassment from occurring.
- Develop and implement a sexual harassment prevention policy.
- Post in the workplace a poster made available by the Department of Fair Employment and Housing.
- Distribute to all employees an information sheet on sexual harassment. 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.***

EMPLOYER LIABILITY

All employers are covered by the harassment section of the *Fair Employment and Housing Act*. If harassment occurs, an employer may be liable even if management was not aware of the harassment. An employer might avoid liability if the harasser is a rank and file employee and if the employer had no knowledge of the harassment and if there was a program to prevent harassment. If the harasser is a rank and file employee and the employer was aware of the harassment, liability may be avoided if the employer took immediate and appropriate corrective action to stop the harassment.

Employers are strictly 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, *Government Code section 12940(j)* requires an entity 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.

TYPICAL SEXUAL HARASSMENT CASES

The three most common types of sexual harassment complaints filed with the Department are those in which:

- An employee is fired or denied a job or an employment benefit because he/she refused to grant sexual favors or because he/she complained about harassment. Retaliation for complaining about harassment is illegal, even if it cannot be demonstrated that the harassment actually occurred.
- An employee quits because he/she can no longer tolerate an offensive work environment, referred to as a "constructive discharge." If it is proven that a reasonable person in the victim's position, under like conditions, would resign to escape the harassment, the employer may be held responsible for the resignation as if the employee had been discharged.
- An employee is exposed to an offensive work environment. Exposure to various kinds of behavior or to unwanted sexual advances alone may constitute harassment.

PREVENTING SEXUAL HARASSMENT

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

TRAINING OF ALL INDIVIDUALS IN THE WORKPLACE

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

COMPLAINT PROCEDURE

An employer should take immediate and appropriate action when he/she 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. To those ends, the employer's policy 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 immediate, thorough, objective and complete. All persons 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.
- If proven, there must be prompt and effective remedial action. First, appropriate action must be taken against the harasser and communicated to the complainant. Second, steps must be taken to prevent any further harassment. Third, appropriate action must be taken to remedy the complainant's loss, if any.

HOW THE LAW IS ENFORCED

Employees or job applicants who believe that they have been sexually harassed may, within one year of the harassment, file a complaint of discrimination with the California Department of Fair Employment and Housing.

The Department serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If the Department finds evidence of sexual harassment and settlement efforts fail, the Department may file a formal accusation against the employer and the harasser. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed on the complainant's behalf by the Department.

If the Commission finds that the harassment occurred, it can order remedies, not to exceed \$150,000 in fines or damages for emotional distress from each employer or harasser charged. In addition, the Commission may order hiring or reinstatement, back pay, promotion and changes in the policies or practices of the involved employer.

For more information, contact the Department toll free at (800) 884-1684

Sacramento area & out-of-state: (916) 227-0551

**TTY Number: (800) 700-2320
or visit our website at: www.dfeh.ca.gov**