

# Sexual Harassment Avoidance Training for Supervisors

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# Presenter



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Cynthia is a partner in Best Best & Krieger LLP's Labor & Employment practice group, the managing partner of the firm's Riverside office and a former member of the firm's Executive Committee. She works hand-in-hand with her clients to manage every aspect of employee relations. She provides daily advice to human resource personnel on issues such as discipline and terminations, responding to employee grievances and complaints (including harassment, discrimination and retaliation complaints), managing leave requests, interactive process meetings and accommodation issues, and wage and hour questions.

# Why Am I Here and Why Is This Training Important?



# FIRST

California law requires it.



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# SECOND



To know what constitutes harassment so you can recognize it and avoid it and to help maintain a civil and respectful workplace

# THIRD



To know what procedures to follow if you witness harassment, receive a complaint of harassment, or are harassed yourself

# FINALLY



To know the potential consequences – including discipline in the workplace and potential civil liability



# Disclaimer

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- This presentation/webinar is not legal advice
- Not intended to offend
- Examples are intended to reflect real-world scenarios
- Anyone can be a harasser or victim

# What We Will Cover Today

- ❖ Harassment
- ❖ Bullying & abusive conduct
- ❖ Discrimination
- ❖ Retaliation
- ❖ Complaint procedure
- ❖ Investigation process
- ❖ Consequences and liability
- ❖ Test questions
- ❖ Certificate



# Civility



- Demonstrate respect
- Communicate meaningfully
- Engage in simple civilities

# Harassment in Employment



UNDER CALIFORNIA AND FEDERAL LAW

# Why are Sexual Harassment Claims So Prevalent?



# Who Does the Law Cover?

The law prohibits harassment of :

- Employees
- Applicants
- Unpaid Interns or Volunteers and
- Independent Contractors

By:

- Supervisors
- Co-workers
- Public officials
- Third-parties



# What Is Harassment?



# What Is Harassment?



Sexual harassment is a form of sex discrimination

There are two kinds of sexual harassment:

- ❖ Quid pro quo
- ❖ Hostile work environment

\*Sexual harassment need not be motivated by sexual desire



# Quid Pro Quo “This for That”

- **QUID PRO QUO:**  
A tangible employment action in exchange for participation in a sexual activity



# Scenario

Carla is a new clerk in the Accounting Department. She thinks she would benefit from a sit/stand desk. She approaches her supervisor, Mark, towards the end of a workday and makes the request.

He moves very close to her and responds with:

*“I may be able to arrange that. How important is it to you? Why don’t we discuss it over dinner?”*



# What Are The “Terms And Conditions” of Employment?

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Can include:

- ❖ Hours of employment
- ❖ Pay
- ❖ Physical setting
- ❖ Work assignments
- ❖ Geographic location
- ❖ Benefits
- ❖ Work environment

# Scenario

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A new engineer (Michelle) is excited about her first job in the City's engineering department after graduating from college. On her first day, she meets the City Engineer (David). He welcomes her onboard. He says, "*you look really fit – do you run?*" She says she does.

He shares that he often runs during the lunch hour and asks her to join him. "*Bring your gear tomorrow – we'll go together. I need to continue with your onboarding process, but I have another appointment right now and I can't attend your welcome lunch. How about happy hour after work?*"

# Perception Matters!

- ✓ Intent of the person making the comment or engaging in the behavior isn't what matters.
- ✓ The law views it from the perspective of the recipient
  - How did the recipient view it?
  - How would a reasonable person in those shoes view it?



# Summary

Quid pro quo harassment occurs when people with **power** in the workplace make sexual demands on those with less power

Employees have the right to object to sexual behavior at work

- Obvious
- Subtle
- Even if the employees don't speak up at the time



# Quiz Time!

## Question #1

All employees have responsibility for maintaining respect and civility in the workplace.

- Yes
- No

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously.

# Hostile Work Environment

- Unwelcome behavior
- Ongoing and severe or pervasive
- Unreasonably interferes with an individual's ability to do their job
- Related to a legally protected characteristic





# Hostile Work Environment

- Unwelcome behavior
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# Unwelcome



The challenged conduct must be unwelcome “in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive.”

*Henson v. City of Dundee, 682 F.2d. 897 (11th Cir. 1982)*

# Does an Employee have to Communicate To the Potential Harasser That Conduct is “Unwelcome?”

**NO** ... an employee is not required to tell them that conduct is unwelcome.



# Scenario

## Wait...it's "funny"...right?

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For the past few years, Michael likes to make “*that’s what she said*” jokes every day, creating a sexual innuendo any time the opportunity presents itself. He thinks everyone loves his jokes. His subordinate, Pam, files a complaint against Michael after she gets written up for excessive tardiness. She never told him that she found his jokes offensive.



# What are the Ways of Communicating Unwelcome?

- Outright rejection
- Non-verbal communication
- Verbal cues
- Body language
- Consistent refusal to participate



# Does it matter if...

- What if they laughed at my jokes?
- What if someone is hypersensitive?
- What if we're just trying to have fun?
- What if no one ever told me they were offended?
- What if someone only complained after a bad review?
- What if I just directed my comments to my friends?



# Examples of Types of Sexual Harassment

**Verbal:** Making or using sexual, derogatory, or other offensive comments, epithets, slurs, and jokes, sexual advances or propositions.

**Written:** Suggestive or obscene letters, notes, e-mails, text messages, or invitations.

**Physical:** Unwelcome touching, massaging, or interfering with or blocking movement.

**Visual:** Leering, gestures, displays of sexually suggestive objects or pictures, cartoons, posters, or e-mail.

# Is This Sexual Harassment?

Can staring become sexual harassment?

**Yes**...A court has found that leering at another employee can be sexual harassment.





# Can it be “Welcome” and Still Inappropriate?

**YES.**

## **Scenario:**

In the break room, two co-workers, Brad and Steve, discuss a new employee. Brad mentions that “Susan” is “easy on the eyes,” has “nice back pockets,” and “fills out her tight-fitting sweaters nicely.” Steve laughs and agrees. You’re the department director and overhear this part of the conversation.



# Recap

**Unwelcome** conduct is behavior that is

- Not wanted
- Not requested
- Not willingly reciprocated



**Remember:** Observers can be offended, even if they are not targeted or directly involved in the unwelcome activities and even if they've never told you they're offended.

# Hostile Work Environment

- Unwelcome behavior
- Ongoing and severe or pervasive
- Unreasonably interferes with an individual's ability to do their job
- Related to a legally protected characteristic



# What is “Hostile” Anyway?

Must be ongoing and “severe” or “pervasive.”

How do you know???



# Scenario

Harry the accounting manager has daily briefings with his staff. He is a hugger and greets each of his employees with a hug. Linda does not appreciate these hugs.



# Hostile Environment Sexual Harassment

Factors considered by the courts:

- ❖ Whether conduct was verbal or **physical**
- ❖ Frequency of conduct – sporadic/rare or **often/repeated**
- ❖ Whether the harasser was a co-worker or **supervisor**
- ❖ Who participated – was it reciprocated or **not**
- ❖ Whether conduct was directed at a group or an **individual**



# What if There's No "Target"?

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Does conduct have to be directed to a particular person to constitute harassment?

Not necessarily...



# Scenario

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In a busy sales office, several male employees rate female candidates who are coming to the office for interviews. Their conversations include comments about physical appearance, nicknames they've given candidates, and scores from 1-10. This conduct occurs over a period of a few months.

Anna, who also works in the office, hears all of this. She never participates in the conversations or says anything.

During her performance review some months later, Anna is given critical marks on teamwork and her interpersonal relationships. She then reports that she feels harassed.



# Environment

- It's not about intent.
- An employee's environment can be "hostile" without being a direct target.

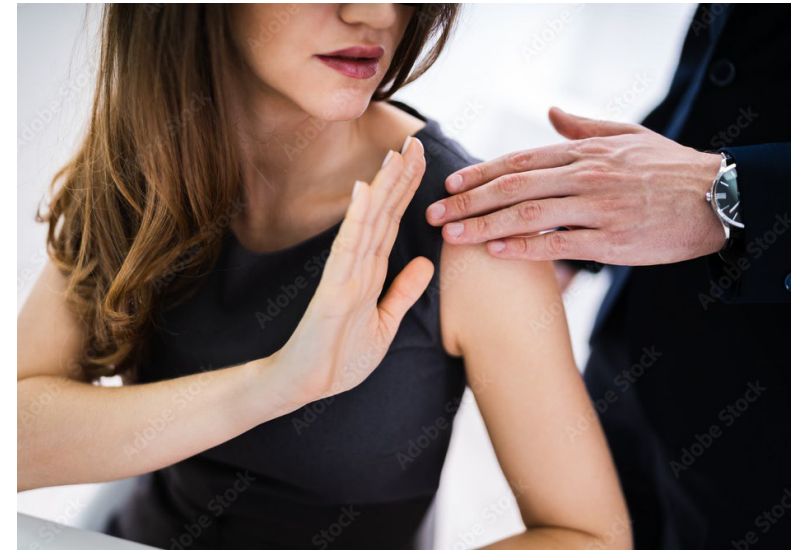


# Hostile Work Environment

- Unwelcome behavior
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# Scenario

Manager Joseph routinely meets with new employee Katrina in his office with the door closed. He “friends” her on Facebook and shares posts he finds interesting. He calls her after hours to discuss work projects. He shares details of his personal life. He does not treat the male members of his team this same way.



# Perception of the Recipient Matters!

- ✓ Intent of the person making the comment or engaging in the behavior isn't what matters.
- ✓ How did the recipient view it?
- ✓ How would a reasonable person in those shoes view it?



# Hostile Work Environment

## What it Isn't

- Boss is “mean” to me/yells at me
- My co-workers don't invite me to lunch with them
- I got written up for being late
- I got a bad performance review
- I find my supervisor very annoying



# Technology and Harassment

- ❖ Internet
- ❖ E-mail
- ❖ Voice mail
- ❖ Text messages
- ❖ Instant messages
- ❖ Blogs / networks
- ❖ Social media



# Electronic Communications

- Blurs lines between work and personal
- Tests the boundaries
- Nature of communication more informal
- Tolerate more



# Scenario

Boss:

Just a quick note to thank you for your help today! It's much appreciated.

Worker:

No problem – happy to help.

Boss:

Really, I wouldn't know what to do without you.

Worker:



Boss:

Sooo happy you're on my team. Don't you go transferring on me now! I look forward to seeing you every day!

Boss:





# What Just Happened?



Boss' perspective: Thank you e-mail with appreciation and kind words to the worker.

Worker's perspective: Boss is coming on to me.

It's confusing... Whose perspective governs?

# Lesson

- Social media and electronic communications impact the work environment.
- Agency/employer policies.
- All methods of interaction must be compliant with the harassment policy.



# Quiz Time!

## Question #2

Which of the following is not a factor considered by the court in determining whether harassment occurred?

- the frequency of the conduct
- the harasser's intent in engaging in the conduct
- the relationship between the parties
- the severity of the conduct

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the "Submit" button to submit all answers simultaneously.

# Who Does the Law Cover?

The law prohibits harassment of :

- Employees
- Applicants
- Unpaid Interns or Volunteers and
- Independent Contractors

By:

- Supervisors
- Co-workers
- Public officials
- Third-parties



# Is an Employer Obligated to Address Harassment by Third Parties?

YES...



Third parties can impact the work environment, and employers are required to reasonably address it.

# Harassment by Third Parties

Employers are required to protect workers from harassment by third parties:

- ❖ Customers
- ❖ Members of the public
- ❖ Vendors, contractors
- ❖ Other third parties



If employer knew or should have known of the harassment and failed to take immediate corrective action to stop the harassment.

# Scenario

You outsource your office supply machines. A vendor comes in every week to perform maintenance and re-stock supplies. He keeps complimenting your front office accounting employee, Jenny, and has repeatedly asked her out. Jenny was amused at first, but has told you that she is now very uncomfortable with these advances. The vendor is scheduled to arrive later. What should you do?



# Additional Examples

The mime at the casino



The Costco employee





# Working with the Public

- Exert reasonable control
- Cannot always be regulated
- Attempt to address issues



# Compliments in the Workplace



# Scenario

A co-worker greets a co-worker with a compliment each day, routinely commenting on her appearance, her hairstyle, her clothing, and her physique. Is this problematic?



# Circumstances and Context Matters

- Example: “You look *really* nice today.”
  - Kindness
  - Seduction/Love
  - Disrespect
  - Sarcasm
  - Which is it?
- Be aware of differences in perception



# Takeaways

- Be tactful
- Be appropriate
- Don't be too personal
- Don't be too physical
- Focus on work-related compliments



# Workplace Romance

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So, what about workplace romance...

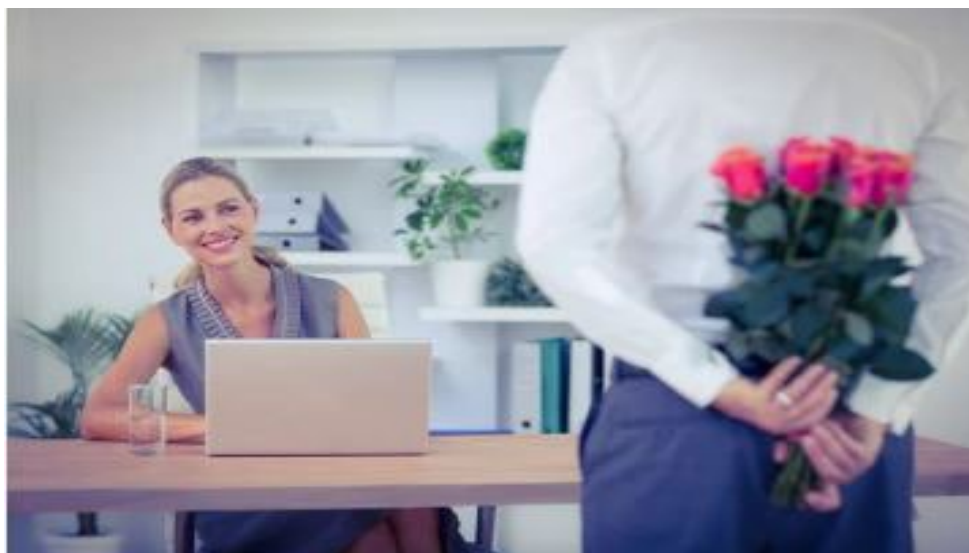
Statistics show...



# How About a Date?

Can an employee ask another employee on a date?

**Yes** . . . But once the employee says no, continuing to express interest can constitute sexual harassment.



# Workplace Romance

- Right to privacy  
vs.  
Need for harassment-free environment
- Boundaries may change over course of relationship
- Area sometimes governed by employer policy





# Workplace Relationships and Consent

Scenario:

After a long day, supervisor Sherry says to her associate, Adam: “Thanks for hanging in there with me. We should go next door and get something to eat. On the company.” Adam declines and says he needs to get home. Sherry persists and says, “just one beer.” When Adam hesitates, Sherry adds: “We can talk about your upcoming review.”

Adam agrees to go.

Was it consensual???



# Importance of Power

What is consent?



Defined: To agree or give permission



# Scenario

Marcia and Daniel are talking in the hallway. Marcia is a senior account executive for an accounting firm. Daniel is a junior account rep on Marcia's team. Marcia and Daniel are dating. Marcia asks Daniel if he wants to go to a fundraising dinner with her this weekend. She says to him, "You'll brighten it up." And she adds, "you'll get to meet some of our biggest clients. It will be a step up."

Daniel says that sounds awesome.

Daniel's co-workers overhear this conversation and are frustrated that they cannot attend the fundraising dinner.



# Can A Consensual Relationship Result in Harassment Claims?

**YES**

Other employees who feel harmed by preferential treatment in the workplace can file a claim.



# Scenario



Two women at work (Bessie and Cassie) work in cubicles. One is trying to get pregnant and shares lots of details. These are ongoing conversations.



Charles, who works in a neighboring cubicle, has finally had enough. He says: *“would you mind changing the subject? I’m trying to get some work done over here.”*

Bessie responds: “Oh, don’t be such a prude. We’re not talking to you anyway.”

# Reasonable Person Standard

## Scenario:

Charlotte and Tony are both long-time employees. They previously worked in the same department, but after Charlotte transferred, they haven't seen each other in awhile. They both attend some off-site training and greet each other with a hug.

Is this harassment?



# Reasonable Person Standard



## Scenario:

This same employee would not welcome a hug from her supervisor any time or any place.

What if Charlotte's boss is at the training and says, "I'm happy to see you too," and then envelopes her in a bear hug?

# Paramour Preference

Hostile work environment can exist even if the complainant is not the “official” target and even if no unwelcome harassing conduct has occurred.





# Risks of Relationships

- ❖ Ending the relationship could prove awkward.
- ❖ What started as consensual may change.
- ❖ Additional issues with manager/subordinate relationships:
  - Other employees can claim favoritism.
  - The subordinate could later claim harassment.
  - Consent is difficult to establish.



# Quiz Time!

## Question #3

A group of employees attend a conference together, and some inappropriate conduct occurs between a manager and a subordinate. Does the employer need to address this situation even though it occurred off-duty?

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously.

# Quiz Time!

## Can an Employer Be Responsible for Conduct that Occurs Off-Duty

**Yes . . .**

If the conduct impacts the work environment, the employer must consider what happens off-duty



# Off-Duty Conduct

## Is the employer liable for situations that occur off-premises?

- A few friends who work together meet for happy hour after work
- A manager invites all department employees to meet for a drink after work
- The employer participates in a charitable event which several employees attend
- A few employees travel to a seminar



# Scenario

Co-workers (Diane and Carl) run into each other at the dog park on the weekend. They talked and shared stories about their dogs. They took some pictures of their dogs playing and then exchanged cell numbers so they could share their pictures.

Diane texted Carl later that day.  
“Thanks for a fun time today!”



Diane texted Carl the next day – asking if Carl wanted to meet up again. He said he was busy. Diane then suggested coffee. Carl did not respond. Diane called Carl later that night. He didn’t answer her call.



## Scenario (cont'd)

You are Carl's supervisor.  
He mentions to you, almost  
in passing and in an almost  
joking way, that Diane has  
stalker tendencies.

He tells you the story.

What do you do?



# What are the responsibilities of supervisors when off-duty conduct occurs?

- ✓ Be aware of the work environment
- ✓ Be sensitive to your employees
- ✓ Don't ignore issues
- ✓ Be proactive
- ✓ Involve your own manager early and often...



# Hostile Work Environment



- Unwelcome behavior
- Ongoing and severe or pervasive
- Unreasonably interferes with an individual's ability to do their job
- Related to a legally protected characteristic



# Other Protected Characteristics

## Scenario:

In the parking lot, two younger employees see a gray-haired co-worker getting out of his car. They know he's recently undergone cataract surgery. They say to him, "how's the old, blind guy? Come on, Pops, let's head in together."



# Other Protected Characteristics

## Scenario:

In a correctional facility, one of the officers has a speech impediment – a significant stutter. His co-workers tease him routinely. They mock him over the intercom and during staff meetings.



# It's Not Always About Sex...

- Harassment may be based on sex or other protected characteristics
- Many characteristics are protected under both state and federal law
- Harassment on any of these bases is prohibited if it creates a hostile work environment

# Protected Characteristics Under Federal Law

An employer may not discriminate against an employee based upon the employee's:

- Age (ADEA) 29 U.S.C. § 621
- Race (Title VII) 42 U.S.C. § 2000e, et seq.
- Color (Title VII)
- National Origin (Title VII)
- Gender (Equal Pay Act 29 U.S.C. § 206(d), Title VII)
- Interpreted to include transgender status
- Religion (Title VII)
- Mental or physical disability (ADA) 42 U.S.C. § 12101 et seq.



# Protected Characteristics Under California Law

- Race\*
- National Origin
- Color
- Ancestry
- Sex
- Sexual Orientation
- Gender Identity/ Expression



FEHA Cal. Govt. Code

- Age
- Genetic Information
- Physical and Mental Disability
- Religious Creed
- Medical Condition
- Marital Status
- Veteran

\* Includes hairstyles, such as braids, locks, and twists.

# Scenario

A customer service representative (Tina) working in the a utility department concludes a phone call with a local resident. Tina then says to her co-worker, Stephanie:

“There was another one. Couldn’t understand a single thing she was saying. That call took three times longer than it should have. Why do people even come here if they don’t want to learn the language? The problem is just going to get worse. We keep hiring people whose names I can’t even pronounce. And don’t even get me started on the religions.”

Stephanie is of Iranian descent. She explains to Tina that her family immigrated and that her parents still struggle with the language. Tina’s supervisor walks by, having observed this exchange.



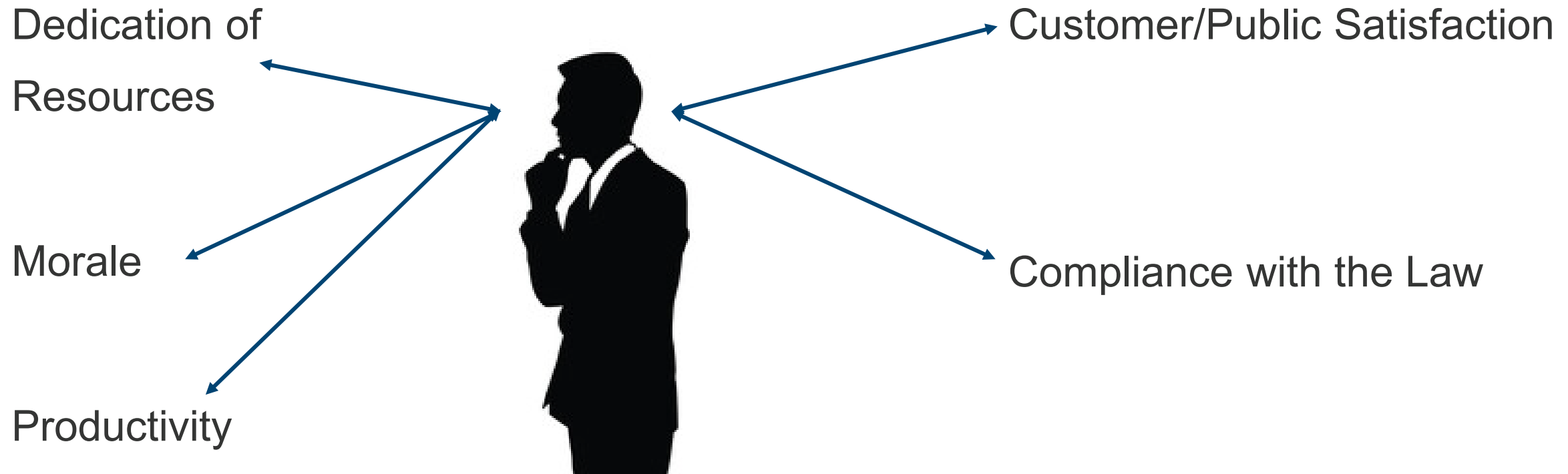
# Abusive Conduct and Bullying

Jane works for Brutus. Brutus is loud, yells, and insults everyone. He chides Jane, Joe, Steve, and Martha. Everyone is afraid of him.

Is there a problem???



# Reasons Employers Are Concerned About Bullying/Abusive Conduct In the Workplace





# Abusive Conduct Defined

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- Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests
  
- Examples:
  - Repeated verbal abuse (including teasing, name calling)
  - Verbal or physical conduct that a person would find threatening, intimidating, or humiliating (including pranks)
  - Sabotage or undermining of a person's work performance (including spreading rumors)

# Workplace Bullying Defined

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- Verbal abuse or offensive conduct/behavior in the workplace that is threatening, humiliating or intimidating to a co-worker or other employee or which prevents the co-worker or employee from doing their job

# Scenario



The Finance Manager has a conversation with the Accounting Specialist in the hallway at City Hall. She says to him, “your e-mail doesn’t even make sense. I’ve never seen anything like this. Do you think this is a joke? When you give me garbage, I can’t do anything with it.”

Her tone is elevated and short. Other employees as well as City residents witness this exchange.

# Compare “Harassment” with “Abusive Conduct/Bullying”

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- Abusive conduct and bullying doesn't have to be based on a “protected characteristic”
- Abusive conduct and bullying are not unlawful like “harassment”
- Abusive conduct and bullying likely violate a code of conduct policy (even if the harassment policy is not violated)
- “Equal opportunity” harassers can be bullies
- Importance of employer/agency policy

## Behavior Patterns to Personally Avoid:

- Yelling at employees
- Making insulting comments or statements
- Publicly admonishing anyone
- Sending an abrasive email, especially with a reply all or copying others unnecessarily
- Making passive aggressive comments with an underlying message loaded with anger or sarcasm

# Quiz Time!

## Question #4

Illegal harassment under the Fair Employment and Housing Act only means sexual harassment.

- True
- False

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously

# WHAT IS DISCRIMINATION IN EMPLOYMENT?

# Discrimination in Employment



UNDER CALIFORNIA AND FEDERAL LAW



# Scenario

Two managers, Cindy and Joe, have a conversation about hiring someone for a Parks Maintenance position. Cindy feels the best candidate is Donna. Joe says:

“We’ve never had a woman in the job before. It’s a pretty physical job, and I wouldn’t want her to get hurt. Plus, what if she gets pregnant? I’m just trying to be responsible here.”



# Is That Discriminatory?

Should employers consider gender differences to protect employees?

- No, gender should not be a factor if the applicants otherwise have the experience, qualifications, and skills needed for the job.



# Protected Categories in California

- Race\*
- National Origin
- Color
- Ancestry
- Sex
- Sexual Orientation
- Gender Identity/ Expression



FEHA Cal. Govt. Code

- Age
- Genetic Information
- Physical and Mental Disability
- Religious Creed
- Medical Condition
- Marital Status
- Veteran

\* Includes hairstyles, such as braids, locks, and twists.

An employer **MAY NOT** treat  
an employee differently

- Based upon “protected characteristics”  
of the employee
- In a way that affects the employee’s  
“terms and conditions of employment”

# Quiz Time!

## Question #5

A pregnant employee wants to attend management training that has been offered to others in similar positions, but her supervisor is concerned that she may not come back after her maternity leave. Can that be taken into consideration?

- True
- False

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously

# How to Avoid Discrimination in the Workplace

Do not take protected categories into consideration when making job related decisions

Do not base job-related decisions on stereotypes about gender, race or other protected categories

Make decisions based on merit



# What is Discrimination Based on Gender Identity/Expression?

Treating an employee differently because of their:

- **Gender Identity**: A person's internal understanding of their gender, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.
- **Gender Expression**: A person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth. This can include how a person dresses, acts, speaks or interacts with others.

# Scenario



An openly gay couple comes in to City Hall to obtain a building permit for a new residence. Michael, who works for the City at the public counter, tells his co-worker Ally:

“You have to handle this one. I’m not good with ‘that kind.’ It just doesn’t seem right to me. Can you just go help them with what they need? I’m sure you’ll do a much better job than I will.”

You overhear this exchange. What do you think should happen?



# Harassment or Discrimination Occurs... Now What???

# What if You've Been the Problem?

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What if one of your employees or co-workers accuses you of harassment?



# What if You've Been the Problem?

## Scenario:

Let's imagine you were welcoming an employee back to work after a pregnancy leave of absence. On her first day back, you give her a hug. You ask about how she's feeling. You ask if she's getting much sleep. You ask if she's still breastfeeding. You ask if she's still able to work the same hours.

The employee, on the spot, tells you that you're being too personal and that your questions are bordering on harassment.



# What if She Never Said Anything to You?

## Scenario:

What if, instead of telling you directly, the employee went straight to human resources or your manager because of this exchange.

Does it matter that the employee never told you that your statements were offensive?

**NO.**



# Steps to Take

- ✓ If you're personally accused, be proactive.
- ✓ Go to your supervisor/manager and/or HR right away.
- ✓ Share your side of the story.
- ✓ Be honest and cooperate in any inquiry.
- ✓ Follow established policy and complaint procedure.
- ✓ Be aware that in some circumstances, you may have to be separated from the person who has complained until the situation has resolved.



# What if You've Been a Victim?

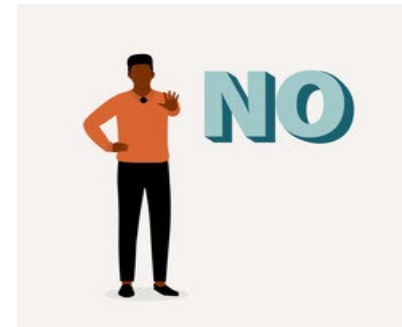
## Scenario:

You feel you're being targeted in the workplace. You've asked for accommodation for a disability, and you feel that your manager is targeting you as a result.



# Steps to Take You Experience Harassment

- ✓ Be **familiar** with applicable policies
- ✓ If comfortable, make certain the other person is aware that conduct is **not welcome**
- ✓ If you experience discrimination or harassment, **report** the conduct immediately per policy complaint procedure



# Reporting Obligation

- Follow employer policy
- Report harassment/discrimination immediately to:
  - ✓ Your Supervisor/Manager
  - ✓ Any Supervisor
  - ✓ HR





# Quiz Time!

## Question #6

A supervisor witnesses potentially harassing conduct against an employee in a wheelchair. The employee engaging in the conduct works in a different department. Does the supervisor still need to report the conduct?

- True
- False

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously

# Steps to Take if You Receive a Complaint of Harassment

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- Be familiar with the policy
- Prompt reporting of complaint
  - Mandatory report
  - Send it through appropriate channels
- Documentation
- Allow process to proceed
- Check-in with employee who reported

# Format of the Complaint

Can you insist on a written complaint?

## **COMPLAINT FORM**

Please write your  
complaint in the box  
below

Write legibly

WITTLIDES.COM

# Documentation

What does that mean, anyway?



# Supervisor's Response to Complaint Raised by Worker

A Supervisor/Manager Should Be Prepared to:

- Thank the worker
- Explain the employer's commitment against harassment
- Advise the worker of the importance of participating in the process



# Can A Worker Report Harassment And Ask That Nothing Be Done?

**NO...**

Knowledge by the Employer/Supervisor requires action.



# Can A Worker Report Harassment Anonymously?

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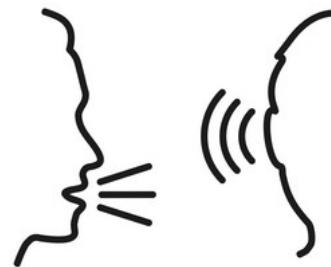
**YES** – but...

Harassment can be reported anonymously - but that may impair the ability to conduct a thorough investigation



# Does A Worker Get To Hear All The Details of the Investigation?

**NO** . . . The specific results of the investigation may contain confidential personnel information. Depending upon the impact of the harassment, the worker may only be given general information such as “An investigation was conducted, the allegations were found to be proved/not proved and appropriate action was taken.”





# Can The Worker's Identity Be Kept Secret From The Alleged Harasser?

**MAYBE** . . . but confidentiality cannot be guaranteed

- For the employer to conduct a thorough investigation, the worker's identity may need to be disclosed
- Should there be litigation concerning the report and the response, a court can order the identity disclosed



# What Does An Investigation Look Like?



- Required by law and by policy
- Must be prompt, objective, and thorough
- Breadth and scope of investigation depends upon the complaint
- Coordinated/handled by someone else

# What if You Are Interviewed In a Harassment Investigation?

- ✓ Be open, honest, and specific
- ✓ Answer the questions thoroughly
- ✓ Do not let personal relationships stop you from doing what is right



# What Can Happen To The Person About Whom A Complaint Is Made ?

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**IT DEPENDS** . . . upon the seriousness of the charges, the results of the investigation, and the personnel record of the person about whom a complaint is made

Must be **appropriate corrective action**

# Possible Outcomes

Actions taken can include:

- Nothing
- Reprimand
- Suspension
- Transfer
- Demotion
- Termination



# What if the Employee Who Complained Quits Before the Investigation is Complete? Can/should the Investigation Be Stopped?

**NO.**

If an employee who has complained resigns, the employer still has a duty to complete the investigation.



# What Can Happen To the Worker Who Complains?

**Nothing** – if the worker tells the truth

BUT... A worker can be disciplined, up to and including termination, for knowingly filing a false claim and/or failing to be truthful during an investigation



# Retaliation – BEWARE!

The law prohibits employers from retaliating against employees who complain of harassment, oppose prohibited conduct or participate in a harassment investigation.

Workers are expected to report any perceived retaliation.



Claims of retaliation will be investigated the same way harassment complaints are investigated.  
if the worker tells the truth

BUT... A worker can be disciplined, up to and including termination, for knowingly filing a false claim and/or failing to be truthful during an investigation



# Retaliation

## Retaliation Defined:

Retaliation has been defined as negative action taken against an employee or others after they took part in legally protected activity.



# Retaliation: Frequent Bases for the Claim

- Discipline/Separation
- Denying a promotional opportunity
- Transfers
- Changes in work schedule, conditions, or assigned tasks
- Poor performance reviews
- Unfriendly / cold shoulder treatment in the workplace



# Scenario

Victoria is on the administrative staff of the agency and reported concerns of discrimination. An outside investigation was conducted. She says all of her co-workers are ignoring her and giving her the cold shoulder since she submitted her complaint.



# Quiz Time!

## Question #7

An employee feels targeted after participating in an investigation pertaining to another individual's complaint. Is that potential retaliation?

- True
- False

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the "Submit" button to submit all answers simultaneously

# Who is Protected?

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- Who is protected?
  - The complainant
  - Anyone who participates in the investigation
- Beware of BOTH ...
  - Obvious employer retaliation
  - More subtle co-worker retaliation

# How to Prevent / Stop Co-Worker Retaliation?

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# Minimizing Retaliation Claims

- Educate workforce
- Instill a positive culture
- Model appropriate behavior
- Monitor your work group



# Can A Worker Be Disciplined After Making a Complaint?

YES – but...

An employee can be disciplined after making an harassment complaint if discipline is clearly warranted and unrelated to the complaint





# Management Post-Complaint

## DISCIPLINE AFTER A COMPLAINT

- ✓ Make sure the discipline is deserved
- ✓ Get a second opinion
- ✓ Apply discipline fairly and as allowed by policy
- ✓ Make sure it's consistent with past issues
- ✓ Work closely with management/HR
- ✓ Document the process
- ✓ An employee can be disciplined after making an harassment complaint if discipline is clearly warranted and unrelated to the complaint

## Who May Be Liable for Discrimination, Retaliation & Harassment?

### Discrimination & Retaliation:

- The employer is liable for discriminatory or retaliatory employment decisions.

### Harassment:

- The **employer** (for both supervisor and co-worker harassment) AND
- The **harasser** himself or herself



# Personal Liability of the Harasser

- Supervisors, co-employees, and public officials may be held personally liable to the victims of sexual harassment;
- Individuals who have engaged in harassing conduct may be held liable for compensatory and punitive damages;
- Sexual harassment is generally found to be outside the course and scope of employment, so an employer may not defend the harasser in a lawsuit or indemnify the harasser for an adverse judgment



# Employer Liability

## Harassment by Co-Workers and Third-Parties

An employer is liable for harassment committed by a non-supervisory employee or other individual if:

- The employer “knew or should have known” about the harassing conduct; and
- The employer failed to take immediate and appropriate corrective action.

# Employer Liability (con't)

## Harassment by Supervisors

Under California and Federal law, an employer is **STRICTLY LIABLE** to a victimized employee for a hostile work environment created by a supervisor with “immediate (or successively higher) authority over the employee.”



# Accountability

- A **supervisor** who is (or should be) aware of potential harassment must take action
- Bear in mind policy accountability is often stricter than legal accountability



# Quiz Time!

## Question #8

An employer can be held responsible for harassment caused by non-employees or third parties.

- True
- False

Please record your answer via the test widget on the right hand of the screen. At the end of the presentation, please click the “Submit” button to submit all answers simultaneously

# The 5 Biggest Mistakes Made By Employers





# #1

Mishandling of claims or concerns expressed by workers:

- Reluctance to address issue
- Failure to take action when the complaint is made
- Failure to conduct a thorough investigation
- Failure to take appropriate action against the perpetrator



# #2

Failure to document the investigation and actions taken -  
AND keep the records



# #3

## Improperly dealing with the Complainant



# #4

## Ignoring the later interactions



# #5

## Failing to keep workers informed

- Failing to keep workers up-to-date
- Failing to have and review policies
- Failing to conduct training



update

# Responsibilities of Supervisors



- Be proactive – address bullying and abusive conduct
- Document complaints
- Try to prevent retaliation
- Lead by example...

# Employee Responsibilities To Co-Workers



- Be respectful
- Set a positive example
- Take working relationships seriously
- Address issues before they evolve to harassment



Questions?

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