

Sexual Harassment

YOUR LEGAL RIGHTS

1. What is Sexual Harassment?

Sexual harassment involves any unwanted sexual attention you may experience at work. It is a type of sex-based discrimination, and it is illegal. Sexual harassment can range from comments about a person's body or sexual activity, sexual jokes, requests for sexual favors, pressure for dates, touching or grabbing, to leering, gestures, posters which degrade women, and sexual assault or rape. A harasser can be an employer, supervisor, co-worker, or customer, and could be of the opposite or same sex. There are two main types of sexual harassment: 1) "quid pro quo" and 2) "hostile work environment". "Quid pro quo" refers to sexual harassment in which the employee feels pressured to give something in order to gain a work-related benefit. An employee may feel like she has to endure the harassing conduct or submit to requests for sexual favors to get or keep a job, obtain an employment benefit, or avoid getting in trouble at work. The harasser might actually state this type of threat, or it could just be implied from the harasser's conduct. A "hostile work environment" is when the harasser's unwanted sexual conduct either interferes with the employee's ability to perform her job, or creates a work atmosphere which is intimidating, offensive, or hostile.

2. Is My Employer Supposed to Prevent Sexual Harassment?

Employers have a duty to provide a harassment-free workplace and to respond to employee's complaints about alleged sexual harassment. California law requires employers to take reasonable steps to prevent workplace harassment, including posting information in the workplace about harassment and discrimination, and distributing information about sexual harassment.

3. Does the Law Protect Me Against Sexual Harassment?

Sexual harassment is prohibited by both state and federal law. The California Fair Employment and Housing Act (FEHA) prohibits sexual harassment; harassing conduct that is not sexual, but shows hostility based on gender; and harassment based on pregnancy or childbirth. All employers (except non-profit religious groups) are covered by the harassment section of FEHA. FEHA protects both actual employees and job applicants. Remedies available under FEHA include lost wages and benefits, compensatory damages for emotional distress or punitive damages to punish the wrongdoer, reinstatement or promotion, and attorney's fees. Title VII of the Civil Rights Act of 1964 is the federal law prohibiting sex-based discrimination, including sexual harassment and non-sexual harassment based on gender. All employers with more than 15 employees are covered by Title VII, and the law protects both employees and job applicants. The remedies under Title VII are similar to those under FEHA.

There are also laws that prohibit sexual battery—intentional or harmful offensive touching of any “intimate part”—as well as stalking. Some victims of sexual harassment can also file lawsuits for infliction of emotional distress, false imprisonment, invasion of privacy, defamation, or assault and battery. The person may also bring criminal charges for assault, battery, attempted rape, or rape.

4. What If I Am Also Harassed Because of My Race, National Origin, or Another Factor?

Sometimes it is hard to tell exactly why someone is harassed. For example, a woman of color may not know if she is being harassed because of her sex or her race, or she may believe it is both. Courts usually do not recognize “intersectional” harassment claims (like a supervisor who harasses only black women, but not white women or black men). In this sort of case, the individual will probably have to choose between bringing a sexual or a racial harassment claim, or to bring two separate claims, rather than bringing one claim of harassment based on both sex and race. There are a number of laws that prohibit various kinds of discrimination which may apply. Title VII prohibits discrimination based on sex, race, color, national origin, religion, or pregnancy. FEHA prohibits discrimination based on sex, race, color, national origin, ancestry, religion, disability (including HIV/AIDS), medical condition (e.g. cancer), pregnancy, marital status, sexual orientation, gender identity, and age. The Age Discrimination in Employment Act (ADEA) protects against age discrimination. The Americans with Disabilities Act (ADA) protects people with disabilities. The Family and Medical Leave Act (FMLA) allows workers to take unpaid leave to care for their own serious illness or that of a family member, or for the birth or adoption of a child.

5. What Can I Do If I Am Being Sexually Harassed?

Informal actions

Remember that you are not to blame for sexual harassment; it is unwelcome sexual attention. Ignoring harassment usually won’t make it go away; instead it often worsens. Generate a support system for yourself by talking about the harassment with friends and family. Document the harassment. Keep a journal and record dates, times, places, and details of any incidents, including whether there were any witnesses. Keep any letters, emails, voicemails, or photographs from the harasser. Documenting the harassing conduct will help ensure it is not just your word against your harasser’s. Talk to sympathetic co-workers. You may find others who are encountering the same problems, and if you complain together, the complaints may be taken more seriously. Ask co-workers to keep their eyes and ears open, because any witnesses will help strengthen your complaint.

Most importantly, you should talk to your harasser about his or her conduct. Make it very clear that these actions are unwelcome and you want them to stop. If you are uncomfortable or afraid to be alone with your harasser, writing a letter may be a good idea (and also creates more documentation of the harassment). The letter should describe what happened in as much detail as possible, including dates (or approximate dates), places, and descriptions of the incidents.

Describe how these events made you feel (angry, disgusted, afraid, embarrassed, etc.) and your thoughts about what happened. State what you want to happen next. (“I want our relationship to be purely professional.” “I would like to work for another supervisor.” “I don’t want you to touch me or make remarks about my body.”) Keep a copy of the letter.

Company grievance procedures

Talk to your supervisor (if that is not the person harassing you) or another manager about the harassment. You can also talk to someone in human resources or personnel, or if it has one, your company’s equal employment opportunity officer. Talk to your union representative if you have one. Find out whether your employer has a sexual harassment policy and if so, request a copy. Follow your employer’s grievance procedure. Your employer should objectively investigate any complaints of sexual harassment, and take prompt and effective action to remedy the situation.

Formal sexual harassment claims and lawsuits

If none of these actions work, you may want to file a formal sexual harassment claim. You can file your claim against the individual harasser, and also against the employer in some cases.

You can file a FEHA sexual harassment complaint with the California Department of Fair Employment and Housing (DFEH). You must file a complaint within one year of the harassment. The DFEH investigates and tries to help resolve the dispute. If the DFEH finds evidence of sexual harassment and settlement attempts fail, then DFEH may file a formal accusation against the employer and harasser, leading to a hearing before the Fair Employment and Housing Commission or to a lawsuit filed on your behalf. You can file a Title VII sexual harassment complaint with the Equal Employment Opportunity Commission (EEOC). You must file your charge within 300 days of the harassment. Like the DFEH, the EEOC investigates your charge of harassment and tries to settle the dispute. If they find evidence of sexual harassment, there may be a hearing or a lawsuit filed. If you have exhausted all the administrative procedures of the DFEH or EEOC, then you may be able to file a sexual harassment lawsuit on your own in state or federal court. There may also be other legal remedies available to you. (See the previous section called “What If I Am Also Harassed Because of My Race, National Origin, or Another Factor?”)

6. What If I Get Fired for Complaining?

It is illegal under both FEHA and Title VII for an employer to retaliate or take negative employment action against a person who complains about sexual harassment either about her own harassment or about another co-worker. Retaliation may include firing, escalation of harassment, poor work assignments, negative performance evaluations, and denial of promotions or benefits. If an employer retaliates against someone for complaining about sexual harassment, the employer can file a claim under FEHA or Title VII. This claim must be filed within one year of any retaliation. If the employee quits instead of being fired, she may be able to claim that she was “constructively discharged” if the work environment was so hostile that any reasonable person would have felt forced to quit.

7. Does My Immigration Status Affect My Right To Complain About Sexual Harassment?

Both documented and undocumented immigrants are protected by FEHA and Title VII and have the right to file sexual harassment claims. However, if the person is undocumented, she should consult with an attorney before filing a sexual harassment claim in order to be informed of all the possible consequences, particularly with respect to retaliation.

8. Where Can I Get Help?

You can call the Worker's Rights Clinic at 415-864-8208 for free legal information and advice about sexual harassment and other workplace issues. You can also get information about filing sexual harassment and sex discrimination claims from the California Department of Fair Employment and Housing by calling 800-884-1684 (TDD 916-324- 1678) or www.dfeh.ca.gov, or from the federal Equal Employment Opportunity Commission by calling 800-669-3362 (TDD 800-800-3302) or www.eeoc.gov. If you belong to a union, you may be able to get information and assistance by talking to your union representative. You can also call women's groups for support, such as your local YWCA, rape crisis center, or a women's advocacy organization for your particular racial or ethnic group.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or 866-864-8208 (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.