

WHAT IS WORKPLACE SEXUAL HARASSMENT?

There are two types of sexual harassment:

“Quid pro quo” sexual harassment is when someone conditions a job, promotion or other work benefit on your submission to sexual advances.

“Hostile Work Environment” sexual harassment occurs when unwelcome conduct based on sex or gender is so serious or happens so often that it interferes with your ability to do your job or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the conduct was not aimed at you.

WHAT IS CONDUCT BASED ON SEX?

Conduct that is based on sex or gender can be verbal or written, physical, or visual conduct. It can include things like sex-based jokes and requests for sexual favors or dates; staring, leering or gestures of a sexual nature; blocking someone’s movement, inappropriate touching, kissing, hugging, or, assault; vulgar pictures, pornographic material, or emails or text messages of a sexual nature.

The conduct does not have to be sexual in nature—it can also include comments based on about gender identity, sexual orientation, or gender roles (for example comments about women doing “men’s” work.)

HOW FREQUENTLY DOES THE CONDUCT HAVE TO HAPPEN FOR IT TO BE CONSIDERED HARASSMENT?

There is no magic number of how frequently some behavior has to occur for it to rise to the level of unlawful harassment. *In general, if the conduct is pervasive—that is, it happens very frequently—and it affects your ability to do your job, it may be harassment.*

For example, if someone repeatedly makes comments that make you so uncomfortable that you start changing your schedule to avoid him/her, or you are not able to do your work, at that point, it might be harassment. Some conduct is so severe (such as sexual assault or rape), that a single or isolated incident generally meets the standard to establish sexual harassment.

ONE OF MY COWORKERS IS ALWAYS MAKING SEXUAL JOKES. THEY MAKE ME UNCOMFORTABLE, BUT I LAUGH ALONG JUST TO MAKE IT STOP. DOES THIS MEAN I’M WELCOMING IT AND IT’S NOT HARASSMENT?

No. While sexual harassment has to be unwelcome, joking along does not necessarily mean that the conduct was welcome. However, if you feel comfortable telling the person that the behavior makes you uncomfortable, it is always a good idea to do so as it may be harder to show that it was sexual harassment if you do not make it clear that it is unwelcome.

I TOLD MY BOSS/HUMAN RESOURCES ABOUT A COWORKER HARASSING ME, BUT NOTHING HAS BEEN DONE. CAN THEY IGNORE ME LIKE THAT?

All employers in California are covered by the harassment provisions of state law. If your employer knows, or should know, that you are being harassed by a coworker or a third party (such as a customer), they are required to take immediate and appropriate action to try to stop the behavior. If you have complained and your employer has failed to make the situation better, you should consider taking legal action.

I AM BEING HARASSED BY A SUPERVISOR. WHAT SHOULD I DO?

Your employer is responsible for providing a safe working environment. If you are being harassed by a supervisor, your employer is responsible for that supervisor's behavior. If they have not taken action to stop it, you should consider filing a legal complaint.

CAN MY EMPLOYER FIRE OR OTHERWISE RETALIATE AGAINST ME FOR REPORTING HARASSMENT?

It is illegal for your employer to retaliate or take any kind of negative action against you because you complained about or reported sexual harassment. Negative actions can include firing you, demoting you, cutting your pay or hours, changing your schedule, taking away any benefits you previously had, giving you a negative performance report, or disciplining you.

WHAT ARE SOME WAYS THAT I CAN TAKE ACTION TO STOP HARASSMENT?

Say “no” clearly and ask the person who is harassing you to stop.

Write down what happened—keep a record of all the conversations and incidents of harassment. Include as much detail as you can, including who was present, what happened, when it happened and how you responded. If you have coworkers who are experiencing the same problem, encourage them to write it down as well. Keep your notes in a safe place outside of work where your employer cannot access them.

Complain to HR, your supervisor, or someone else at work who has the power to make the harassment stop. You should complain in writing and include what solution you would like. Keep a copy of your complaint and any communications that you have with HR/your employer about the harassment.

If you are a member of a union, contact your union representative for help. You should also consider filing a grievance through your union.

I HAVE ALREADY COMPLAINED TO HR AND NOTHING HAS HAPPENED. WHAT IS MY NEXT STEP?

If your employer has not stopped the harassment, **you can file a legal complaint with an administrative agency.** In California, that agency is the Department of Fair Employment and Housing (DFEH). You can also file with the federal agency that handles these claims, the Equal Employment Opportunity Commission (EEOC).

I DON'T THINK I AM READY TO FILE A FORMAL LEGAL COMPLAINT YET. HOW LONG CAN I WAIT TO DO SO?

It is important to **be aware of the “statute of limitations” or deadline** for filing a legal complaint. If you want to file with the DFEH (www.dfeh.ca.gov), **you have one year** from the last act of harassment or retaliation to do so. If you want to file with the EEOC (www.eeoc.gov) and you live in California, **you have 300 days** to do so.

I DO NOT WANT TO FILE WITH THE DFEH OR EEOC—I JUST WANT TO SUE MY EMPLOYER! CAN I GO STRAIGHT TO COURT AND SUE THEM?

No. Before you can file a lawsuit, you have to file with an administrative agency (the DFEH or EEOC) first.

HOW WILL FILING A COMPLAINT WITH AN AGENCY HELP ME? WHAT CAN I GET FOR DOING SO?

If you have been fired/retaliated against for complaining about harassment, you could get your job back (reinstatement), the amount of money you would have earned had you not been fired or retaliated against (back pay) and/or other monetary damages for emotional distress. A court could also force your employer to make changes to its policies about sexual harassment.

**MORE QUESTIONS?
CONTACT US**

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