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Sexual Harassment Prevention

CA Commission on Disability Access

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Introduction

The State of California enjoys remarkable diversity. From the snow-capped heights of Mount Whitney to the salt flats of Death Valley, it is the most geographically diverse region on the North American continent. From humpback whales to the tiny Pacific pocket mouse, from giant redwoods to the California golden poppy, California is a state of many differences.

It is only fitting, therefore, that California should enjoy a diverse population as well. California stands as the second most diverse state in the nation, second only to Hawaii. It has the highest percentage of foreign-born residents in the United States, and ranks fifth for the percentage of its residents that are nonwhite. Approximately 43% of Californians speak a language other than English as their primary language. This high level of cultural diversity can present challenges in the workplace. The purpose of this training module is to provide you with tools that will help you to work successfully in our culturally diverse environment.

The fundamental idea of antidiscrimination law is that employees and job applicants should be treated as individuals, and not on the basis of stereotypes. This concept holds that an employer's decisions about hiring, pay, working conditions, terms of employment, and employee discipline should be made on the basis of factors that are relevant to the work environment, such as education, training, and on-the-job performance.

Although this course addresses only one particular form of workplace discrimination – sexual harassment – everything that is said with regard to sexual harassment applies with equal force to discriminatory harassment and intimidation on the basis of race, religion, disability, or any other status that is protected by law.

Course Description and Objectives

This course is for employees and supervisors who need information on sexual harassment prevention in the workplace by focusing on what constitutes sexual harassment and what steps can be taken to prevent it. This training provides tools for identifying these behaviors and preventing them from escalating into a hostile environment.

Learning Objectives

- How the law defines sexual harassment
- Determining when sexual conduct is unwelcome
- Determining whether a work environment is hostile
- Conduct that affects the job
- Other special issues (e.g., same-gender harassment, third-party harassment, sexual orientation, retaliation)
- What preventive actions employers can take
- Employee responsibilities
- Supervisor responsibilities

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Federal and State Laws

<p>Title VII</p>	<p>Title VII of the Civil Rights Act of 1964 (Title VII) makes it unlawful for an employer –</p> <p>(a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or</p> <p>(b) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.</p>
<p>FEHA</p>	<p>The California Fair Employment and Housing Act of 1959 (FEHA) makes it unlawful for an employer –</p> <p>because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person . . . or to bar or to discharge the person from employment . . . or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.</p> <p>FEHA also makes it unlawful for an employer or any other person –</p> <p>because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee.</p>

Type of Discrimination

Both Federal and California State law recognize two types of unlawful discrimination: Job Status Discrimination and Hostile Environment Discrimination.

Job Status Discrimination is discrimination with regard to hiring, firing, compensation, promotions, and other terms and conditions of employment.

Harassment is unwelcome conduct that is based on an employee's race, color, religion, sex, national origin, age, disability, ancestry, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, or military and veteran status. Harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

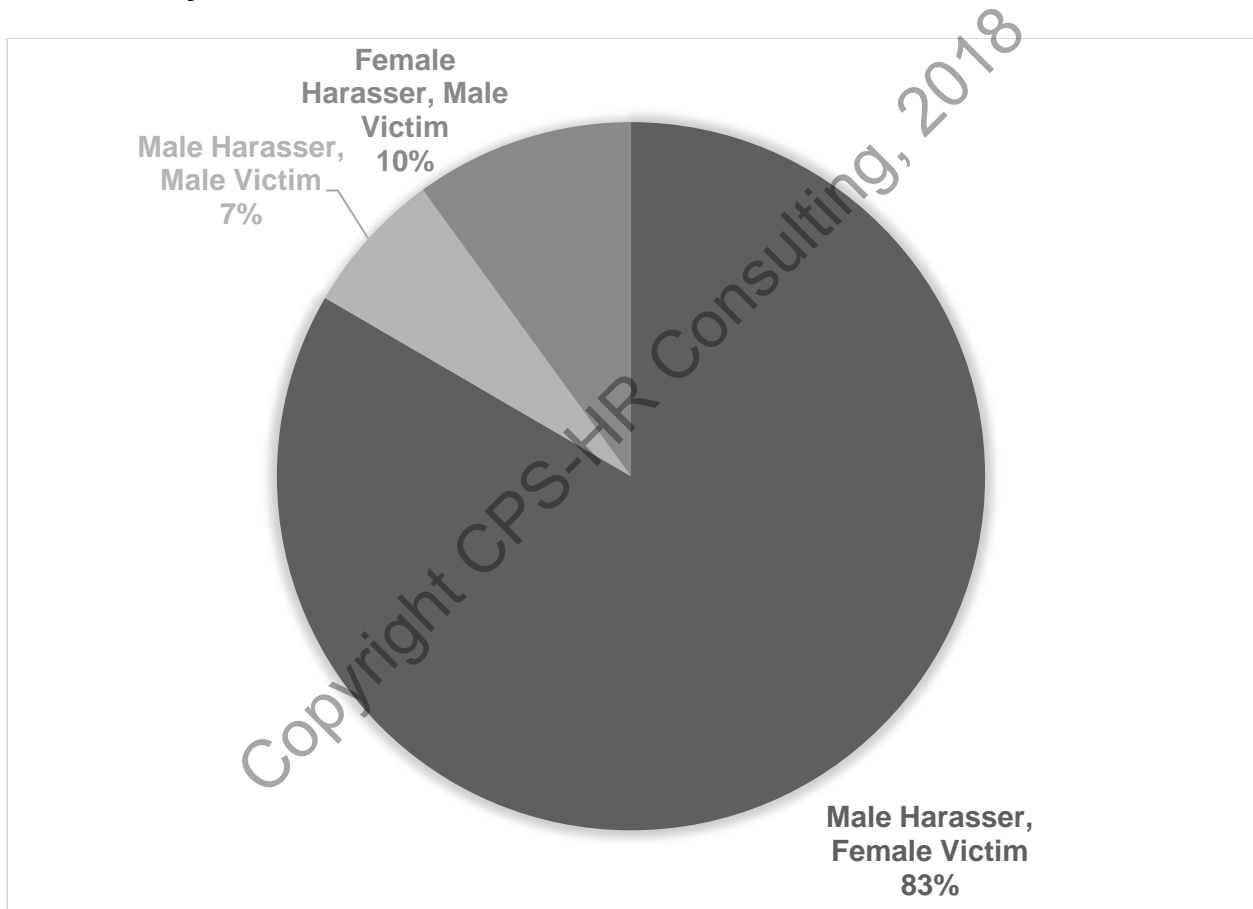
Job Status Discrimination	Hostile Environment Discrimination
<ul style="list-style-type: none">• Hiring and Recruitment• Pay and Benefits• Working Conditions• Terms of Employment• Job Assignments and Promotions• Discipline and Discharge	<ul style="list-style-type: none">• Physical Harassment and Threats• Verbal Harassment• Nonverbal Harassment and Gestures• Inappropriate Visual Displays

Stereotype vs. Reality

The Stereotype:

- Male harasser
- Female victim
- Supervisor against subordinate
- Motivated by sexual desire
- Has sexual content

The Reality:



Who is Protected?

Every worker has a right to be free from unlawful harassment.

- Employees
- Independent contractors
- Job applicants
- Unpaid interns
- Vendors

Test your knowledge:

1. Albert is a man. Albert's coworkers harass him on the basis of his sex. Is Albert protected?
2. Bonita is a woman. Bonita's coworker, who is also female, harasses her on a regular basis, using sexual slurs. Is Bonita protected?
 - Does it matter that both Bonita and the harasser are female?
3. Charles is a heterosexual man. Charles's coworker, who is also a straight male, regularly makes kissy faces at him and calls him "Precious." Is Charles protected?
 - Does it matter that the harasser is not motivated by sexual desire?
4. Darlene is a pregnant woman. Darlene's coworkers regularly make comments about Darlene's sex life, because she is pregnant. They never harassed her before she got pregnant. Is Darlene protected?
5. Edward is a preoperative transgender man who customarily appears at work in a dress and makeup, although he continues to self-identify as male. Edward's coworkers regularly make derogatory comments about his appearance. Is Edward protected?
 - Does it matter that Edward has not yet undergone gender reassignment surgery?

Who can be a Harasser?

Anybody can be a harasser.

- Supervisors
- Coworkers
- Customers

Sometimes employees mistakenly believe that they have to tolerate harassment committed by customers and clients. That is not true. Every employee has the right to a harassment-free workplace.

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Who can be Liable?

Employer's Liability:

The employer is legally required to take all reasonable steps to prevent harassment from occurring.

The employer is legally responsible for any harassment committed by one employee against another employee if the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

The employer may be legally responsible for any sexual harassment committed by a non-employee against an employee if the employer knew or should have known of the sexual harassment and failed to take immediate and appropriate corrective action.

Supervisor's Liability:

The supervisor is legally required to take all reasonable steps to prevent harassment from occurring.

The supervisor is personally liable for any unlawful harassment that the supervisor personally commits, regardless of whether the employer knew or should have known of the employee's conduct.

The supervisor is personally liable for any harassment committed by a subordinate employee against another employee if the supervisor failed to stop the harassment.

Employee's Liability:

An employee is personally liable for any harassment that the employee personally commits, regardless of whether the employer knew or should have known of the employee's conduct.

California state employees who commit acts of harassment also subject themselves to disciplinary action up to and including dismissal from state service.

Who can be Liable?

Example:

Scott Matthews, a heterosexual man, was employed as a principal admitting clerk at the UCLA Medical Center emergency room. Matthews had several homosexual coworkers, including both of his immediate supervisors, A.J. Gonzalez and Jorge Benitez.

Matthews' homosexual coworkers, including Gonzalez and Benitez, made a number of sexual advances towards Matthews. The sexual advances involved both physical and verbal conduct.

Matthews arranged a meeting with the Medical Center's medical director, Dr. Marshall Morgan. Morgan told Matthews that he had been aware of the sexual harassment for some time, since long before Matthews complained. However, Morgan informed Matthews that he was going on vacation and Matthews would have to meet with the Medical Center's administrative director. Morgan took no corrective action.

Matthews then met with the Medical Center's administrative director, Linda DaPar. At the meeting, DaPar did not take Matthews' complaints seriously and refused to take any corrective action.

Immediately after her meeting with Matthews, DaPar telephoned Gonzalez and told him about the meeting, despite the fact that she had assured Matthews that the conversation would remain confidential. Both Gonzalez and Benitez retaliated against Matthews.

Matthews brought a discrimination suit against the UCLA Medical Center, Medical Director Marshall Morgan, Administrative Director Linda DaPar, Supervisor A.J. Gonzalez, and Supervisor Jorge Benitez.

The California Court of Appeal held that all five defendants could be liable to Matthews.

- The UCLA Medical Center was liable because it knew of the harassment and failed to take immediate and appropriate corrective action.
- Director DaPar was liable because she had failed to act on Matthews's complaints and had actively encouraged the harassers to retaliate against Matthews.
- Director Morgan was liable because he had tacitly approved of the harassment by failing to act on Matthews's complaints.
- Supervisors Gonzalez and Benitez were liable because they had personally engaged in acts of harassment.

Hostile Work Environment

Most unlawful harassment committed by coworkers falls into the category of Hostile Work Environment harassment. A hostile work environment is created when the workplace is filled with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions or the victim's employment and create an abusive working environment.

The conduct must be both objectively offensive – offensive to a reasonable person in the victim's shoes, and subjectively offensive – the victim must actually be offended. In determining whether the harassment is severe enough to meet this standard, courts consider factors such as:

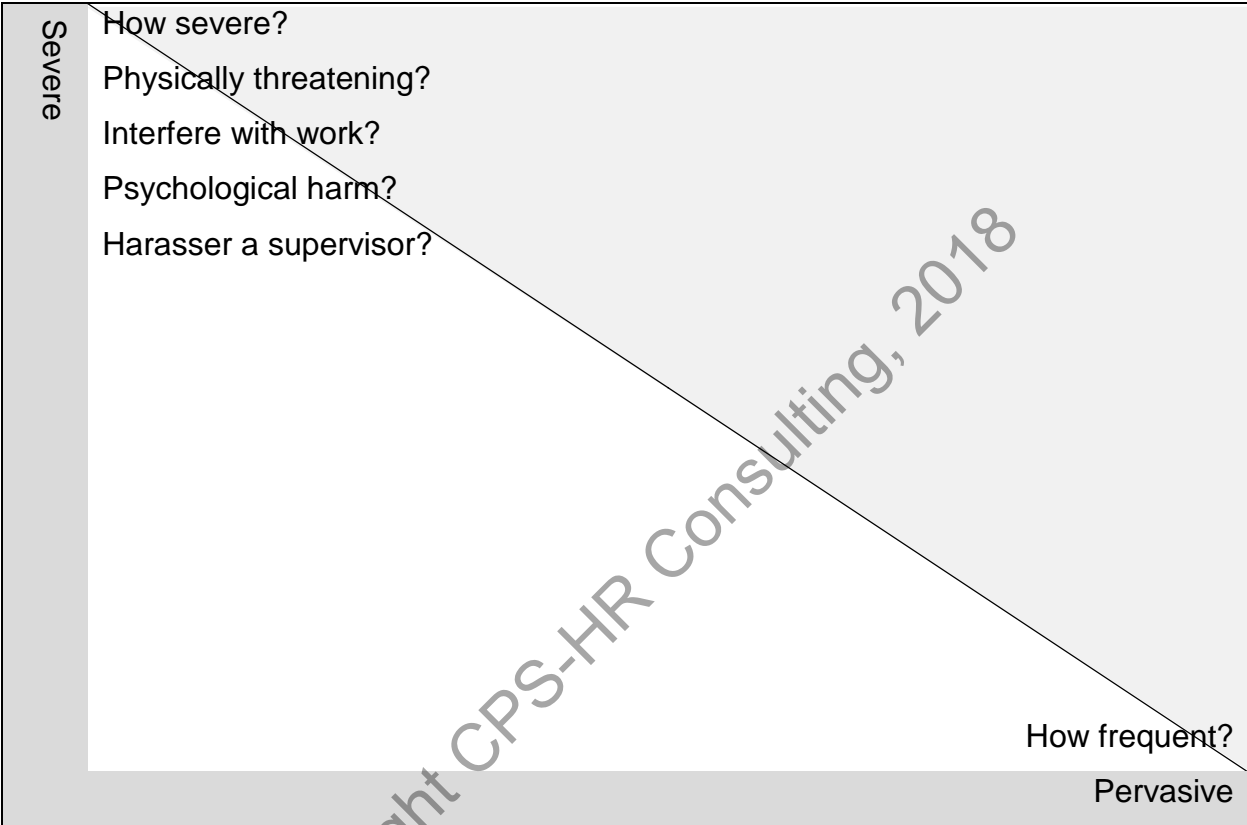
- The frequency of the unwelcome discriminatory conduct;
- The severity of the conduct;
- Whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
- Whether the conduct unreasonably interfered with work performance;
- The effect on the employee's psychological well-being; and
- Whether the alleged harasser was a coworker or a supervisor.

The "severe or pervasive" test operates on a sliding scale: the more severe the harassing conduct is, the less pervasive it has to be, and vice versa. A single incident of severe harassment can give rise to a legal claim for hostile environment discrimination. And relatively minor conduct can give rise to a legal claim for hostile environment discrimination, if it is pervasive enough.



Hostile Work Environment

It is important to remember that the “severe or pervasive” test represents a minimum threshold that sexual harassment must cross before the victim has a viable lawsuit. It does not describe the entire universe of possible harassment. With this in mind, it may be more useful to picture the “severe or pervasive” test in a two-dimensional space, with “severe” along one axis and “pervasive” along the other.



Any conduct that falls into the shaded area can become a lawsuit. The conduct can be severe without being pervasive; pervasive without being severe; or both severe and pervasive.

It is also important to note that even conduct that does not give rise to a lawsuit – conduct that is neither severe nor pervasive – may still violate an employer’s zero-tolerance policy.

Severe or Pervasive

What Do You Think?

The following examples are taken from actual harassment cases that have been litigated in recent years. Discuss them with your table groups. For each fact pattern determine whether you think the conduct was severe, pervasive, both, or neither.

Some of the material you are about to read is offensive.

1. A male employee at an air-conditioner factory punched a female coworker in the face and pushed her onto a conveyor belt, where she was hit and injured by an air conditioner coming down the line.
2. A supervisor regularly required male subordinates to accompany him to a gay strip club while they were on duty.
3. A male prison chaplain followed a female social worker home from work, and banged on her front door at 1:30 in the morning.
4. A male supervisor photographed his genitalia, and then emailed the selfie to everyone in his department.
5. An employee placed a carrot and two potatoes, arranged in a way that suggested certain male body parts, in his female coworker's mailbox.

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Sexual Nature / Based on Sex

Federal definition of sexual harassment:

The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as: "Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature . . . when . . . such conduct has the purpose of interfering with an individual's work performance or creating an intimidating or offensive work environment."

California definition of sexual harassment:

Under California law, sexual harassment is defined to include:

- Harassment based on sex
- Harassment of a sexual nature
- Gender harassment
- Harassment based on pregnancy, childbirth, or related medical conditions
- Harassment of a person of the same gender as the harasser

Harassment based on the victim's sex is unlawful even if there is no conduct of an identifiable sexual nature.

Harassment that contains conduct of a sexual nature is unlawful even if it is not based on the victim's sex.

The legal test is satisfied if either condition is met.

Based on Sex

Example:

Neal Chisholm liked to talk dirty to women. Every day at work, Chisholm would approach women in the lunch room for the purpose of sexually harassing them. Chisholm's only problem was, he wasn't very good at it.

Chisholm had developed an unusual slang, apparently unique to himself, in which he used everyday words and phrases in an attempt to talk about sex. One of Chisholm's favorite phrases was "cheese on your sandwich," which he used as a synonym for sexual climax. Chisholm regularly spent his lunch hours walking around the employee break room, asking one woman after another if she had cheese on her sandwich.

The case wound up in litigation. Chisholm argued to the court that he could not be liable for sexual harassment because his speech had no identifiable sexual content.

The court disagreed. Despite the fact that none of Chisholm's intended victims had understood Chisholm to be asking about their sex lives, liability was proper under the "based on sex" prong of the legal test. Chisholm had been annoying the women on a sex-specific basis.

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Conduct of a Sexual Nature

Example:

A male firefighter informed a colleague that he was sexually attracted to her teenage daughter.

The victim filed a sexual harassment lawsuit, and won.

Although the victim happened to be female in the actual case, it would not have mattered. This is deeply offensive conduct of a sexual nature.

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Same-Sex Harassment

A victim of sexual harassment can be either male or female.

Some people mistakenly believe that only women can be victims of sexual harassment. This is not correct. Both men and women can be victims of sexual harassment.

Other people mistakenly believe that only men can be sexual harassers. This is not correct. Both men and women can be sexual harassers.

Other people mistakenly believe that men cannot sexually harass men, or that women cannot sexually harass women, or that same-sex harassment claims can only be brought if the harasser is homosexual. This is not correct.

Male victims of sexual harassment report that the harasser is female about 60% of the time, and male about 40% of the time. Female victims almost always report that the harasser is male.

Example:

Jody Oncale, a heterosexual man, worked on an oil rig. Three of Oncale's coworkers, who were also heterosexual males, subjected Oncale to severe, physically humiliating mistreatment that was of a sexual nature. There were no allegations that any of the harassers were motivated by sexual desire.

Oncale sued. In response to Oncale's claims, the defendants described their actions as locker-room horseplay. The case went to the United States Supreme Court. The Court held unanimously that Oncale had stated a valid claim for sexual harassment. The fact that all of the parties were heterosexual and the harassers were not motivated by sexual desire did not matter.

Sexual Orientation

Sexual orientation discrimination in the workplace occurs any time an employee is treated differently based on his or her actual or perceived sexual orientation, whether heterosexual, homosexual, or bisexual. It does not matter whether the employer's perception of the employee's sexual orientation is right or wrong.

Certain types of offensive behavior are more common in sexual orientation harassment:

- Being asked not to bring a same-sex partner to a social event to which different-sex partners are invited
- Being asked to remove a same-sex partner's photograph from one's desk, when other employees are permitted to display photographs of different-sex partners
- Coworkers "outing" someone against that person's wishes
- Rumors and teasing about sex acts the employee is said to have performed
- Social pressure to stay "in the closet"
- Suggestions that homosexual individuals practice bestiality
- Suggestions that homosexual individuals are pedophiles

All of these behaviors can give rise to a claim for unlawful harassment. It is as inappropriate to tease a homosexual coworker about his or her sexual conduct as it is to tease a heterosexual coworker about his or her sexual conduct.

Gender Identity and Expression

- Everyone is born with a biological sex, either male or female.
- Everyone has a gender identity – an internal sense of being male, female, or in-between.
- Everyone has a gender expression – outward characteristics and behaviors that may be thought of as masculine or feminine.

For most people in our society, their biological sex, gender identity, and gender expression are the same. Some people, however have gender identities and/or gender expressions that do not match their biological sex.

Gender identity and expression should not be confused with sexual orientation. Transgender people can be male or female, heterosexual or homosexual.

Some transgender people seek to change their bodies to match their gender identity through medical intervention; many do not.

It is unlawful to harass a transgender employee on the basis of his or her transgender status. Treat transgender employees with the same respect you would demonstrate for any other person in the workplace.

Harassment includes intentionally referring to the employee by an incorrect name and/or pronoun. Refer to transgender coworkers by the name and pronoun that reflects their gender identity. If you are unsure of what pronoun to use, ask the person. If you cannot ask the person, use the pronoun that is consistent with the person's appearance and gender expression.

Transgender employees have the right to use the restrooms of the gender they identify with. Sometimes customers or other employees are uncomfortable sharing workplace restrooms with an employee whose sex assigned at birth differs from their own. In such cases, the transgender employee should not be asked to use a different restroom. A customer or employee who desires additional privacy for any reason may have to wait until the restroom is vacant.

Do not ask transgender coworkers questions that it would be inappropriate for you to ask any other person in the workplace. For instance, it is inappropriate and impolite to ask any coworker questions about bathroom use, intimate body parts, or their sexual conduct. It is equally inappropriate to ask transgender coworkers these questions.

Attraction vs. Animus

It is unlawful to harass any employee on the basis of that employee's race, color, religion, sex, national origin, age, disability, ancestry, medical condition, genetic information, marital status, gender, gender identity, gender expression, sexual orientation, or military and veteran status, regardless of the form that the harassment takes.

In the case of protected classes other than sex, unlawful harassment is usually based on hostility towards members of the protected group. For members of these groups, the abusive, intimidating, or offensive environment is created when coworkers engage in hostile behavior.

In the case of sexual harassment, a second possibility exists: harassment on the basis of sexual attraction. In this case, the victim may be subjected to conduct such as inappropriate touching, verbal sexual advances, catcalls, ogling, and sexually suggestive visual displays – not because the harasser has hostility towards the victim, but because the harasser is sexually attracted to the victim and exhibits that attraction in inappropriate ways.

Attraction-based sexual harassment is so common that it is easy to forget that harassment can also be based on hostility and need not have any overt sexual content at all.

Attraction vs. Animus

Example:

Ani Chopourian was employed as a surgical physician assistant in the cardiovascular surgery unit of Mercy General Hospital. Chopourian assisted cardiac surgeons while they performed open-heart surgery. During the time she was employed at Mercy, Chopourian was regularly subjected to unwelcome treatment on the basis of her sex.

Chopourian was subjected to two forms of sexual harassment: harassment based on animus and harassment based on sexual attraction.

Doctor Z. was one of the doctors who harassed Chopourian on the basis of animus. Doctor Z. never made any sexual advances towards Chopourian, nor did he ever show any romantic interest in her. Instead, he treated her to regular verbal insults, often phrased in sexual terms, calling her “Stupid Chick,” and telling her that she “operated like a girl.” Noting Chopourian’s Middle Eastern ancestry, Doctor Z. also regularly referred to Chopourian as “Al Qaeda.”

Doctor K. was one of the doctors who was motivated by sexual attraction. His standard greeting for Chopourian was, “I’m horny!” followed by a grab at Chopourian’s buttocks. In the operating room, Doctor K. regularly propositioned Chopourian, complained about his own sex life, and talked at length about his sexual fantasies regarding Ashley Judd, Shania Twain, and Chopourian herself.

Chopourian sued. The case went to a jury trial.

Attraction vs. Animus

On their fourth day of deliberations, the Chopourian jury sent the judge a note that has become famous in the annals of employment discrimination lawsuits. The dollar figures they were considering awarding Chopourian were so large that they were having difficulty adding up the numbers. The note contained six words: “May we please have a calculator?”

Case 2:09-cv-02972-KJM-KJN Document 298 Filed 02/29/12 Page 1 of 1

FILED
FEB 29 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE KIMBERLY J. MUELLER
CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANI CHOPOURIAN, Plaintiff,
v.
CATHOLIC HEALTHCARE WEST, ET AL., Defendants.

No. 2:09-cv-02972 KJM KJN

JURY NOTE

FOR COURT USE ONLY
Date Received: 2/29/12
Time Received: 8:16 am

DATE: 2/29/12
TIME: 0805

The jury reached a unanimous verdict: YES NO

The jury requests the following:

May we please have a calculator

Jose McLeaw
Juror's Name or Foreperson

1 23

Ultimately, the jury returned a verdict of \$167,730,488.00 in Chopourian's favor. At the time, the Chopourian verdict was the largest single-plaintiff sexual harassment verdict in United States history. Today, it is the second-largest verdict in history.

The case stands for the proposition that sexual harassment can be based on either attraction or animus.

Forms Harassment can Take

Most hostile work environment harassment falls into one of four categories:

1. Physical harassment and threats;
2. Verbal harassment;
3. Nonverbal harassment and gestures; and
4. Inappropriate visual displays.

Any of these types of conduct can create unlawful harassment.

Physical Harassment and Threats	<ul style="list-style-type: none"> • Physical assault • Physical threats • Blocking movements • Hazing • Horseplay • Hugging • Inappropriate touching • Intimidation • Invading personal space • The close quarters brush • The exploratory touch
Verbal Harassment	<ul style="list-style-type: none"> • Derogatory comments • Inappropriate conversation about sex • Insulting jokes and stories • Insults • Name-calling • Personal labels • Sexual slurs
Nonverbal Harassment and Gestures	<ul style="list-style-type: none"> • Facial expressions • Gestures • Gifts • Practical jokes • Sexually suggestive conduct • Stalking • Staring
Inappropriate Visual Displays	<ul style="list-style-type: none"> • Calendars • Drawings and pictures • Magazines • Messages on clothing • Offensive objects • Screensavers

Physical Harassment

Physical harassment is usually considered to be the most serious form of unlawful sexual harassment. Most people do not expect to be touched, or to be threatened with being touched, in an inappropriate or offensive manner. Any offensive conduct, whether it is of a sexual nature or not, is sexual harassment when the harasser acts on the basis of the victim's sex.

Horseplay

Horseplay forms the basis of a significant number of workplace complaints, especially complaints of male-on-male sexual harassment. The harasser may view his conduct as being nothing more than a harmless prank or a way of playing jokes on a rookie. But the victim may see things differently. Horseplay does not belong in the workplace.

Hugging

Some people are "huggers." They may come from families or cultures where hugging is a common behavior, or it may just be a matter of personal preference. Others are less comfortable with hugging. They may come from families or cultures where hugging is less common, especially between people of different sexes, or it may just be a matter of personal preference. Regardless of their reasons, many people do not like to be hugged by their coworkers or other people with whom they are not on close terms. Unwelcome hugging can give rise to a claim of sexual harassment.

Supervisors should be particularly careful not to hug coworkers. When the hugger is a supervisor, the employee might feel uncomfortable about telling the supervisor that they do not want to be hugged.

The Close Quarters Brush

Close quarters and tight spaces create an opportunity for inappropriate physical contact. Whether the tight space is between two filing cabinets, in a narrow passage, or in a small work cubicle, employees should take care to avoid unnecessarily touching their coworkers.

Physical Harassment

Invading Personal Space

People often feel discomfort, anger, or anxiety when their personal space is invaded. Standing too close to a coworker can cause that coworker to feel threatened or intimidated.

Other examples of physical harassment include:

- Giving a massage around the neck or shoulders
- Hugging, kissing, patting, or stroking
- Blocking a person's path
- Standing close or brushing up against another person
- Deliberate touching, leaning over, cornering, or pinching
- Playing "footsie" under a table

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Verbal Harassment

Verbal harassment comes in many forms. Whenever words are used to denigrate, stereotype, or offend an individual on the basis of a protected characteristic, it is illegal harassment. Verbal harassment can take many forms:

- Derogatory comments
- Sexual slurs
- Insults
- Offensive jokes and stories
- Name-calling
- Personal labels
- Ridicule and mockery
- Threats

It is inappropriate and offensive to address a female colleague as “Honey” or “Sweetie.” It is inappropriate and offensive to describe a group of female workers as “Girls”.

It does not matter whether the person using the offensive term is a member of the protected class. It is not okay for an African-American employee to use the “N” word in the workplace. It is not okay for a female employee to call other female employees “bitches”.

Verbal Harassment

These types of harassment represent ways in which a person can display hostility towards another individual. But these are not the only sources of verbal sexual harassment. Verbal harassment on the basis of sex also exists when the harasser is attracted to the victim, and when the harasser engages in behavior that has sexual content.

Examples of inappropriate ways in which a harasser might display attraction to or romantic interest in the victim include:

- Kissing sounds, howling, and smacking lips
- Whistling and cat calls
- Pressure for sexual favors
- Repeatedly asking out a person who is not interested
- Making sexual comments about a person's clothing, anatomy, or looks
- Sexual teasing, jokes, remarks, or questions
- Asking about sexual fantasies, preferences, or history
- Letters, telephone calls, or materials of a sexual nature
- Making sexual comments, hints or suggestions

Examples of inappropriate conversation about sex include:

- Derogatory comments, name-calling, slurs, or jokes
- Referring to an adult as a girl, hunk, doll, babe, or honey
- Sexually insulting words used to describe an individual
- Telling lies or spreading rumors about a person's sex life
- Telling sexual jokes or stories
- Turning work discussions to sexual topics

Nonverbal Harassment

Nonverbal harassment is somewhat of a catch-all phrase. The term refers to a variety of behaviors that involve neither physical contact nor verbal expression. Nonverbal harassment can include:

- Facial expressions
 - grinning; licking lips; opening the mouth; winking
- Gestures
 - making sexually suggestive gestures with hands or through body movements; throwing kisses; touching or rubbing oneself sexually around another person
 - mocking a person's mannerisms or walk; "waddling" behind a pregnant employee
- Practical jokes
 - flashing or mooning (exposing private body parts)
 - placing sexually suggestive objects in the victim's desk or work area
- Stalking
 - following the victim; hanging around the victim's work space; going to the victim's home
- Staring
 - looking a person up and down ("elevator eyes"); leering; ogling
- Other sexually suggestive conduct
 - personal or sexually suggestive gifts
 - filming or photographing the victim
 - holding company functions in an inappropriate environment such as a strip club
 - inviting inappropriate guests, such as strippers and exotic dancers, to employer-sponsored functions

All of these kinds of behavior can give rise to claims of sexual harassment.

Inappropriate Visual Displays

Most employees personalize their workspaces in some way. Family photos, a favorite coffee cup, crayon drawings created by our children – all are ways in which we bring a bit of home to the workplace. As we personalize our workspaces, it is important to remember that the workplace is just that – a workplace.

The visual appearance of a workplace sets the stage for employees' work experiences and interactions. A professional, welcoming environment invites employees and customers alike to feel comfortable and respected. An environment that has inappropriate visual displays, on the other hand, can feel hostile and intimidating.

Calendars, drawings, pictures, posters, and screensavers should be professional in appearance. Pictures that have any sexual content whatsoever are inappropriate for the workplace, no matter how innocent they may seem. Another type of visual display that does not belong in the workplace is anything that plays on stereotypes or depicts either men or women in a demeaning way.

Some employees mistakenly believe that the items they personally own, such as backpacks, lunch boxes or tool boxes, can be brought to work and displayed without fear of creating a claim for sexual harassment; that is not correct. If an item is on display in the workplace, it can form the basis of a sexual harassment claim. All employees should make sure that the images on their lunch bags, cell phone covers, lock screens and home screens are suitable for the workplace.

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Abusive Conduct

California state law (AB 2053) defines abusive conduct in the workplace as:

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.

Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the gratuitous sabotage or undermining of a person's work performance.

The following are examples of types of bullying that exist in the workplace:

- Physical violence or intimidation
- Abusive, insulting, or offensive language
- Public criticism or being yelled at when coworkers are present
- Practical jokes, especially if they occur repeatedly to the same employee
- Intentional exclusion from critical work meetings
- Intentional exclusion from work social circles or functions
- Displays of offensive materials in the workplace

Regardless of the form that it takes, bullying has serious negative effects on employees and on the workplace.

If You are the Victim

The first step in dealing with harassment is to deal directly with the harasser. Tell the harasser that the behavior is unwelcome, and must stop. In many harassment cases, your coworkers may not even realize that their conduct is offensive. If you let them know how you feel about the conduct, this may resolve the problem; they may stop the offensive conduct out of a genuine concern for your feelings or a desire to avoid workplace tension.

- Describe what just happened in a factual manner: “You have just done X.”
- Describe how you feel about the incident: “I am very upset with this behavior. I find it offensive.”
- Say what you want to have happen next. “I want this behavior to stop at once.” “I want to be treated in a professional manner, the way every employee has a right to be treated.”

Demand that the harassment stop.

If you are uncomfortable talking with the harasser in person, or if you want to document that you have informed the harasser that his or her conduct is unwelcome, you can write the harasser a letter or send an email.

Do not ignore the behavior. Harassers rarely stop simply because their victim does nothing, and may even increase their behavior.

Do not laugh at offensive jokes. Do not try to get even by “harassing back.” Harassers often claim that their victims welcomed and enjoyed their words and actions. If you laugh or participate in the offensive behavior, the harasser may take your participation as evidence that you were not offended. You must make it clear that the behavior is unwelcome.

If You are the Victim

Do not apologize for demanding that you be treated in a professional manner.

Let the harasser know that your next step will be to file a formal complaint with your employer.

Stick to your own agenda. Don't respond to the harasser's excuses or attempts to change the subject. The following are not excuses:

- "I didn't know it was wrong."
 - Well, you know now. I want the behavior to stop.
- "I didn't know it was offensive."
 - Well, You know now. I want the behavior to stop.
- "I was just kidding."
 - I found it offensive. I want the behavior to stop.
- "I was just being friendly."
 - I found it offensive. I want the behavior to stop.
- "I didn't mean it that way."
 - I found it offensive. I want the behavior to stop.
- "You should have a better sense of humor."
 - When it comes to sexual harassment, I don't have a sense of humor. I have the right to be treated in a professional manner. Every person in this department has the right to be treated in a professional manner. I want the behavior to stop.

Repeat as necessary.

Retaliation

Oppose	Both federal and state law prohibit an employer from discriminating against or harassing an individual: <ul style="list-style-type: none">• Because that individual has opposed any practice that violates Title VII or the FEHA;• Because that individual has filed a charge or complaint alleging violations of Title VII or the FEHA; or• Because that person has testified, assisted, or participated in an investigation, proceeding or hearing under Title VII or the FEHA.
File a Charge	
Testify	
Assist	
Participate	

Supervisors should be cautious to treat employees who raise discrimination claims with both the appearance and the reality of fairness. They are legally obligated to protect employees against retaliation.

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Deterring Harassment

Supervisors should:

- Model the type of behavior you expect
- Review sexual harassment policy with all new employees
- Ensure employees have EEO/SHP training
- Inform employees of their rights and complaint process
- Be alert and aware
- Encourage open communication
- Enforce a zero-tolerance policy

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Responding to Allegations

Supervisors should:

- Take the situation seriously
- Communicate with the employee
- Take immediate and appropriate action
- Maintain confidentiality
- Remain neutral
- Reaffirm policies
- Contact your EEO for assistance
- Report the incident to your supervisor or manager
- Document actions

Supervisors should NOT:

- Don't make judgments
- Don't ignore or delay
- Don't diminish or exaggerate
- Don't make promises
- Don't give legal advice to the complaining party
- Don't take the complaint personally
- Don't retaliate

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Conflict Resolution

Supervisors should:

- Define acceptable behavior
- Do not postpone conflict resolution
- Choose your battles
- Listen, then speak
- Remain impartial
- Promote problem-solving
- Discipline if necessary

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The Bottom Line

It's all about respect.

Federal and state laws protect all employees in California from discrimination and harassment on the basis of their membership in any of seventeen protected classes, which include race, color, religion, sex, national origin, age, and disability. Unlawful harassment can include physical, verbal, or nonverbal conduct, or inappropriate visual displays.

Sexual harassment is a form of unlawful harassment that presents special issues. Sexual harassment is defined far more broadly than many people realize. Both men and women can be victims. Sexual harassment can arise out of either attraction or hostility. Most sexual harassment has sexual content, but some does not. Whether the victim is male or female, whatever the motive, and whatever form it takes, sexual harassment is harmful both to the victim and to the work environment.

Any type of harassment demonstrates a lack of respect for one's colleagues. By treating our colleagues and customers with the respect they deserve, we can stay on the safe side of the line.

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