WORKPLACE JUSTICE

10 WAYS YOUR COMPANY CAN HELP PREVENT HARASSMENT IN THE WORKPLACE

1. **Start from the top:** Have your top leadership report annually on the steps your company is taking to prevent and address harassment. Workplace culture starts at the top and this will send a company-wide message about expectations and ramifications.
2. **Track and monitor:** Conduct an annual survey that allows your employees to anonymously disclose workplace harassment. The survey can also ask if employees feel comfortable intervening or reporting harassment, and lastly, whether they understand the company's policies and complaint process. Use the results to inform internal processes and training.
3. **Prioritize effective training:** Conduct regular, in-person, interactive training for all employees on preventing and responding to harassment. The training should help employees and supervisors a) recognize sexual harassment in the context of their specific workplace; b) understand their rights and responsibilities; c) provide tips on how bystanders can speak out and intervene; d) explain how to report harassment as a victim or a witness; e) explain the company's reporting and investigation process; and f) make clear the consequences for harassing others.
4. **Create a one-stop shop:** Make it easy for your employees to find and access your company's resources on harassment. For example, post on your intranet, internal website, or your employee handbook all relevant information including anti-harassment and anti-retaliation policies, avenues for reporting or making a complaint, who to contact for complaints, an explanation of the complaint and investigation process, training materials, and company resources and external resources. This page should be easy to understand and find.
5. **Don't impose mandatory arbitration requirements:** Do not require employees to sign employment agreements that require arbitration of harassment and other discrimination claims and prevent your employees from bringing these claims in court.
6. **Don't require non-disclosure agreements:** Do not require your employees to sign nondisclosure and non-disparagement agreements as a condition of employment, with terms that prevent employees from discussing harassment that they experience, or reporting harassment or assault to enforcement authorities or others outside the workplace.
7. **Provide multiple ways to report harassment:** Ensure your company has several avenues for reporting harassment. Include at least one option for anonymous reports, including by witnesses or bystanders.
8. **Be transparent:** Ensure that your employees understand the process triggered by a report or complaint, including what an HR investigation entails, how long it will take and the time it will take for HR to follow up and advise the employee of the final resolution. When your employees understand the process and have clear expectations for how it will proceed, they are more likely to trust the process and the result.
9. **Be accountable:** Create a mechanism for holding HR accountable for addressing harassment. For example, use performance reviews to assess HR employee's handling of reports/complaints in a timely, fair and satisfactory manner. If you don't have an HR department, ensure supervisors and managers are held accountable for responding to and following up on complaints.
10. **Be Prepared:** Make sure the company's Employee Assistance Program (EAP) providers are trained to provide assistance to victims of sexual harassment and assault, and have a list of referrals to trauma-informed service providers. If you don't have an EAP, reach out to experts in your community to help you develop a referral list of appropriate service providers.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
WORKPLACE HARASSMENT GUIDE FOR CALIFORNIA EMPLOYERS

California law (called the Fair Employment and Housing Act or FEHA) prohibits discrimination, harassment and retaliation. The law also requires that employers "take reasonable steps to prevent and correct wrongful (harassing, discriminatory, retaliatory) behavior in the workplace (Cal. Govt. Code §12940(k)). The Department of Fair Employment and Housing (DFEH) is the state's enforcement agency related to the obligations under the FEHA.

California's Fair Employment and Housing Council (FEHC) enacted regulations in 2016 to clarify this obligation to prevent and correct wrongful behavior. This document was produced by the DFEH to provide further guidance to California employers.

WHAT DOES AN EFFECTIVE ANTI-HARASSMENT PROGRAM INCLUDE?

- A clear and easy to understand written policy that is distributed to employees and discussed at meetings on a regular basis (for example, every six months). The regulations list the required components of an anti-harassment policy at 2 CCR §11023.

- Buy in from the top. This means that management is a role model of appropriate workplace behavior, understands the policies, walks the walk and talks the talk.

- Training for supervisors and managers (two-hour training is mandated under two laws commonly referred to as AB 1825 and AB 2053, for more information on this see DFEH training FAQs).

- Specialized training for complaint handlers (more information on this below).

- Policies and procedures for responding to and investigating complaints (more information on this below).

- Prompt, thorough and fair investigations of complaints (see below).

- Prompt and fair remedial action (see below).

IF I RECEIVE A REPORT OF HARASSMENT OR OTHER WRONGFUL BEHAVIOR, WHAT SHOULD I DO?

You should give it top priority and determine whether the report involves behavior that is serious enough that you need to conduct a formal investigation. If it is not so serious (for example, an employee's discomfort with an offhand compliment), then you might be able to resolve the issue by counseling the individual. However, if there are allegations of conduct that, if true, would violate your rules or expectations, you will need to investigate the matter to make a factual determination about what happened. Once your investigation is complete, you should act based on your factual findings.

An investigation involves several steps and you need to consider a variety of issues before you begin your work. The following section will address many of those issues.

WHAT ARE THE BASIC STEPS REQUIRED TO CONDUCT A FAIR INVESTIGATION?

A phrase that you might see related to investigations is "due process." Due process is simply a formal way of saying "fairness" – employers should be fair to all parties during an investigation. From a practical perspective, this means:

- Conduct a thorough interview with the complaining party, preferably in person. Whenever possible, the investigation should start with this step.

- Give the accused party a chance to tell his/her side of the story, preferably in person. The accused party is entitled to know the allegations being made against him/her, however it is good investigatory process to reveal the allegations during the interview rather than before the interview takes place. It may not be necessary to disclose the identity of the complaining party in some cases. Due process does not require showing the accused party a written complaint. Rather, it means making the allegations clear and getting a clear response.

- Relevant witnesses should be interviewed and relevant documents should be reviewed. This does not mean an investigator must interview every witness or document suggested by the complainant or accused party. Rather, the investigator should exercise discretion but interview any witness whose information could impact the findings of the investigation and attempt to gather any documents that could reasonably confirm or undermine the allegations or the response to the allegations.

- Do other work that might be necessary for you to get all the facts (perhaps you need to visit the work site, view videotapes, take pictures, etc.).

- You should reach a reasonable and fair conclusion based on the information you collected, reviewed and analyzed during the investigation.

DO I HAVE TO KEEP ALL INFORMATION FROM AN INVESTIGATION CONFIDENTIAL?

You need to look at confidentiality from two sides – the investigator's and the employees'. The first question is how confidential the investigator (internal or external) will keep the information obtained; the second is whether an employer can require that employees keep information confidential.

- **Can the investigator keep the complaint confidential?**

The short answer is no. Employers can only promise *limited* confidentiality – that the information will be limited to those who "need to know." An investigator cannot promise complete confidentiality because it may be necessary to disclose information obtained during the investigation in order to complete the investigation and take appropriate action. It is not possible to promise that a complaint can be kept entirely "confidential" for several reasons:

1. If the complaint is of potential violation of law or policy, the employer will need to investigate, and in the process of investigating it is likely that people will know or assume details about the allegations, including the identity of the person who complained. This is true even when the name of the complainant is kept confidential since allegations are often clear enough for people to figure out who complained about what.
2. The individual receiving the complaint will usually have to consult with someone else at the company about what steps to take and to collect information about whether there have been past complaints involving the same employee, etc. That means the complaint will be discussed with others within the organization.
3. The company may need to take disciplinary action. Again, while the identity of the person who brought the complaint may in some cases be kept confidential, the complaint itself cannot be.

- **Can I tell employees not to talk about the investigation?**

This is a complicated issue. Managers can, and should, be told to keep the investigation confidential. However there have been court rulings that say it is inappropriate for an employer to require that employees keep the information secret, since employees have the right to talk about their work conditions. There are exceptions to this. If you want to require confidentiality, you might want to check with an attorney about when it is appropriate and how to do so.

HOW QUICKLY DO I NEED TO BEGIN AND FINISH MY INVESTIGATION?

The investigation should be started and conducted promptly, as soon as is feasible. Once begun, it should proceed and conclude quickly. However, investigators also must take the time to make sure the investigation is fair to all parties and is thorough. Some companies set up specific timelines for responding to complaints depending on how serious the allegations are (for example, if they involve claims of physical harassment or a threat of violence, act the same day as the complaint is received). If the allegation is not urgent, many companies make it a point to contact the complaining party within a day or two and strive to finish the investigation in a few weeks (although that depends on several factors, including the availability of witnesses).

A prompt investigation assists in stopping harassing behavior, sends a message that the employer takes the complaint seriously, helps ensure the preservation of evidence (including physical evidence such as emails and videos, and witnesses' memories), and allows the employer to fairly address the issues in a manner that will minimize disruption to the workplace and individuals involved.

WHAT ARE SOME RECOMMENDED PRACTICES FOR CONDUCTING WORKPLACE INVESTIGATIONS?

IMPARTIALITY

The investigation should be impartial. Findings should be based on objective weighing of the evidence collected. It is important for the person conducting the investigation to assess whether they have any biases that would interfere with coming to a fair and impartial finding and, if the investigator cannot be neutral, to find someone else to conduct the investigation.

Even if investigators determine they can be neutral and impartial, they must evaluate whether their involvement will create the perception of bias. A perception of bias by the investigator will discourage open dialogue with all involved parties. For example, in a case in which the investigator has a personal friendship with the complainant or accused, either actual or perceived, the investigator may need to recuse him- or herself to avoid the appearance of impropriety. It is generally a bad idea to have someone investigate a situation where either the complainant or accused party has more authority in the organization than the investigator.

INVESTIGATOR QUALIFICATIONS AND TRAINING

Qualifications:

The investigator should be knowledgeable about standard investigatory practices. This includes knowledge of laws and policies relating to harassment, investigative technique relating to questioning witnesses, documenting interviews and analyzing information. He or she should have sufficient communication skills to conduct the interviews and deliver the findings in the written or verbal form. For more complex and serious allegations it is also important for the investigator to have prior experience conducting such investigations.

For workplace investigations, employers may utilize an employee as an investigator or hire an external investigator. In instances of harassment allegations, the employee investigator is often someone from human resources. In California, external investigators (those who are not employed by the employer) must be licensed private investigators or attorneys acting in their capacity as an attorney (See Business and Professions Code Section 7520 et seq.)

Training:

There is no one standard training program for workplace investigators. Internal investigators usually obtain training by professional organizations for HR professionals (such as The Society for Human Resource Management (SHRM), Northern California Human Resource Association (NCHRA), Professionals in Human Resource Association (PIHRA), professional

organizations for workplace investigators (such as the Association of Workplace Investigators - AWI) and enforcement agencies (such as DFEH or EEOC). Many law offices and vendors that provide harassment prevention training also provide training for investigators. At a minimum, training should cover information about the law shaping investigation recommended practices, how to determine scope (what to investigate), effective interviewing of witnesses, weighing credibility, analyzing information and writing a report. An introductory training program typically lasts a full day (some training is longer) and includes skill-building exercises.

TYPE OF QUESTIONING

Investigations should not be interrogations. Neither the complainant nor the accused party should feel they are being cross-examined. Studies have shown that open-ended questions are better at eliciting information while not causing people to feel attacked. Investigators should ask open-ended questions on all areas relevant to the complaint to get complete information from the parties and witnesses.

MAKING CREDIBILITY DETERMINATIONS

Making a determination:

If there is no substantial disagreement about the factual allegations it may not be necessary to make a credibility determination. However, many investigations require a credibility determination, including the classic "he said/she said" situation, and it is up to the investigator to make this determination. An investigator can still reach a reasonable conclusion even if there is no independent witness to an event. In most cases, if the investigator gathers and analyzes all relevant information, it is possible to come to a sensible conclusion.

He said/she said situations:

It is not uncommon for there to be no direct witnesses to harassment. Yet there may be other evidence that would tend to support or detract from the claim. For example, a complainant who complains about harassment may have been seen to be upset shortly after the event, or may have told someone right after the event. This would tend to bolster his or her credibility. On the other hand, it would tend to bolster the accused party's credibility if the investigator learned that the complainant complained many months after sexual joking with a supervisor, was just given a negative performance review, and told a co-worker that he or she could use the joking against the supervisor in the future. In other cases documents such as emails or texts might bolster or reduce a witness's credibility.

Even if there is no evidence other than the complainant's and accused party's respective statements, the investigator should weigh the credibility of those statements and make a finding as to who is more credible. The investigator can utilize the credibility factors stated below.

Credibility factors:

Credibility factors include the following (these are also referred to in statutes and enforcement agency guidance):

1. Inherent plausibility – this refers to whether the facts put forward by the party are reasonable: whether the story holds together. In other words, ask yourself whether it is plausible that events occurred in the manner alleged.
2. Motive to lie (based on the existence of a bias, interest or other motive) – this refers to whether a party has a motive to be untruthful.
3. Corroboration – this refers to whether a direct or indirect witness corroborates some or all of the allegations or response to allegations.
4. Extent a witness was able to perceive, recollect or communicate about the matter – this refers to whether the witness could reasonably perceive the information reported (in terms of where they were, what else was happening, etc.)
5. History of honesty/dishonesty. Although investigations are not meant to make character judgments about the parties (whether they are a "good person"), if an individual is known to have been dishonest, this can weigh against his/her credibility.
6. Habit/consistency – this refers to allegations of a behavior that someone is known to do on a regular basis (such as hugging all female employees in greeting).
7. Inconsistent statements – this refers to one individual giving statements that are inconsistent in a way that is not easily explained.
8. Manner of testimony – such as hesitations of speech and indirect answers (especially when the witness has given direct answers to foundational questions.)
9. Demeanor – experts caution against using demeanor evidence as most people cannot effectively evaluate truthfulness from an individual's demeanor. Demeanor can be used as a credibility factor, but investigators should apply it with caution and understand the pitfalls of relying on demeanor when making a finding. To the extent possible, your conclusions should be based on an analysis of the objective evidence.

BURDEN OF PROOF

Investigators should make findings based on a "preponderance of the evidence" standard. This is the standard that civil courts use in discrimination and harassment cases. This standard is also called "more likely than not" – the investigator is making a finding that it more likely than not that the conduct alleged occurred, or more likely than not that it did not occur. Some workplace investigators make the mistake of applying a higher burden of proof, such as a "clear and convincing" standard or a "beyond a reasonable doubt" standard. Beyond a reasonable doubt is the standard used in criminal law, where a defendant is considered innocent until proven guilty and the consequence of guilt is a loss of freedom. Applying such a standard in a workplace investigation creates an unrealistic expectation about the level of proof needed to make a decision. Even a "clear and convincing" standard is a higher standard than should be expected since it is a higher standard than a civil court would use to determine liability. Some people describe a preponderance of the evidence standard as "fifty percent plus a feather."

DO NOT REACH LEGAL CONCLUSIONS

It is considered a recommended practice for investigators to reach factual conclusions, ***not*** legal conclusions. Sometimes, internal investigators will also reach a conclusion regarding whether behavior did or did not violate a company policy. Note that violating a workplace policy is a different standard than violating the law, which is one reason that investigators should not make legal findings. This means that even if the allegation includes concerns about, for example, unwanted touching, an investigator should only reach findings about the facts and should not reach a conclusion about whether there was unlawful (or lawful) conduct.

Conclusions should state, for example:

> *Mr. Jones says his boss (Mr. Foster) made numerous sexually explicit jokes during meetings, which Mr. Foster denied. Witness interviews confirm Mr. Jones's allegations. Three witnesses recall hearing the jokes at meetings on several occasions. Therefore, a preponderance of the evidence supports a conclusion that Mr. Foster did tell sexually explicit jokes at meetings.*

Some investigators (typically internal investigators) are also expected to decide whether a policy was violated. External investigators are usually not asked to make this determination since the employer is often in a better position to interpret its own rules. In the above example, if the investigator were to make a policy violation determination the findings would also include:

> *It is further found that Mr. Foster violated the company's anti-harassment policy which prohibits telling sexually-explicit jokes in the workplace.*

In the event the investigation does not uncover evidence to support the allegations, the conclusion should state that fact, such as:

> *Mr. Jones's allegations against Mr. Foster are not supported by a preponderance of the evidence. This is because no witness recalls hearing the jokes described by Mr. Jones, even though they were present for the meetings in question. These witnesses appeared credible. They provided consistent information and appeared to have no bias for or against either party.*

DOCUMENTATION

Investigators should carefully and objectively document witness interviews, the findings made and the steps taken to investigate the matter. Investigators have different methods of documenting interviews, including taking notes (handwritten or on a computer), drafting statements for witnesses to sign, obtaining witness statements (written by the witness), or audio recording. There are pros and cons to each method and any can be acceptable so long as the information gathered is reliable and thoroughly documented and the documentation is not altered. It is also advisable to be consistent in the way you decide to document your interviews (unless there is a good reason to change your usual practice). It is considered a recommended

practice to retain all documentation. Some investigators type up handwritten notes so they are legible. However, the handwritten notes should also be retained.

SPECIAL ISSUES

What to do if the target of harassment asks the employer not to do anything.

It is rarely appropriate for an employer to fail to take steps to look into a complaint simply because an employee asks the employer to keep the complaint confidential or says that he/she will "solve the problem" with no involvement by the company. Indeed, this is one of the primary reasons why employers should not promise "complete" confidentiality. If the complaint involves relatively minor allegations and the complainant wants to handle the situation him/herself, the complainant can be coached as to how to do so, however the employer should follow up and assure this has occurred and the harassment has stopped. If the allegations are more serious the employer will need to know if they occurred so that appropriate action can be taken. In those cases it is not acceptable to have the complainant handle the matter alone.

Investigating Anonymous Complaints

Anonymous complaints should be investigated in the same manner as those with a complainant who identifies him/herself. The method will depend on the details provided in the anonymous complaint. If the complaint is sufficiently detailed the investigation may be able to proceed in the same manner as any other complaint. If the information is more general, the employer may need to do an environmental assessment* or survey to try to determine where there may be issues. However, the fact that the complaint is anonymous is not a reason to ignore the complaint.

* An environmental assessment is a process of finding out what is taking place in the workplace without focusing on a specific complaint or individual. For example, it might mean interviewing all the employees in a work group about how they interact, if they have experienced or witnessed any behavior that has made them uncomfortable, etc.

Retaliation

Complainants and/or those who cooperate in an investigation must be protected from retaliation. Employers should tell complainants and witnesses that retaliation violates the law and their policies, should counsel all parties and witnesses not to retaliate, and should be alert to signs of retaliation. Retaliation can take many forms. In addition to the obvious, such as terminations or demotions, retaliation could take the form of changes in assignments, failing to communicate, being ostracized or the subject of gossip, etc.

Retaliation can occur at any time, not only right after an incident is reported or an investigation is started. It is good practice to check back with a complainant after an investigation is completed to ensure that the employee is not experiencing retaliation, no matter whether the allegations were determined to be correct.

IMPLEMENTING EFFECTIVE REMEDIAL MEASURES

The FEHC regulations make it clear that an employer must take appropriate remedial steps when there is proof of *misconduct* – the behavior does not need to rise to the level of a policy violation or the law to warrant a remedy. Remember, an employer's legal obligation is to take reasonable steps to **prevent and correct** unlawful behavior. In order to meet this obligation, an employer should:

- Stop behavior before it rises to the level of unlawful conduct, which is why steps should be taken even when the behavior is not yet serious enough to violate the law;
- Impose remedial action commensurate with the level of misconduct and that discourages or eliminates recurrence; and
- Look at what the company has done in the past in similar situations, to avoid claims of unfair (possibly discriminatory) remedial measures.

Remedial measures can include training, verbal counseling, one-on-one counseling/executive training, "last chance" agreements, demotions, salary reductions, rescinding of a bonus, terminations, or anything else that will put a stop to wrongful behavior.

California Legislation Tackling Sexual Harassment and Violence

Sexual harassment is prohibited in most workplaces under state and federal laws. However, survivor stories have revealed glaring policy gaps that leave too many people vulnerable to harassment and violence. In response, California legislators and advocates have partnered to introduce bills that directly target these gaps and offer the nation's strongest protections against sexual harassment and discrimination, including at the intersection of sex, race, sexual orientation, and gender identity. Here are four highlights:

Senate Bill 224 (Senator Jackson)

California law not only prohibits sexual harassment in the workplace, but also in certain business, service, and professional relationships.

Senate Bill 224 clarifies that sexual harassment by investors, elected officials, lobbyists, directors, and producers is prohibited. This bill addresses the unique relationship that exists between investors and entrepreneurs, directors or producers and actors, and elected officials and staff, in which power imbalances leave women and others particularly vulnerable to sexual harassment and violence.

Senate Bill 1300 (Senator Jackson)

This one piece of legislation includes several important reforms to protect workers' rights. Senate Bill 1300 strengthens sexual harassment training requirements and other employer obligations to prevent harassment; requires employers to provide employees with information on how to file complaints about harassment; removes barriers for workers to speak out by prohibiting non-disparagement agreements; and prohibits employers from requiring employees to waive their right to file sexual harassment and other discrimination claims as a condition of employment or for an employment benefit such as a raise or bonus.

Senate Bill 1038 (Senator Leyva)

Threats of retaliation are one of the biggest barriers for victims who wish to speak out or file sexual harassment complaints. Under current California law, an individual in the workplace may be held personally liable for harassment. This bill clarifies that individuals can also be held personally liable for retaliating against another for making a sexual harassment or discrimination claim or opposing such practices in the workplace. The law must be clear that a person who retaliates against another to silence or intimidate them cannot escape liability.

Assembly Bill 1870 (Assemblymembers Reyes, Friedman & Waldron)

Under current law, a worker who has experienced harassment or discrimination has just one year to file a claim with the state. This is significantly shorter than the time allowed for filing other civil claims. Many workers, particularly in low-wage industries, are not aware of their legal rights or even know that the clock has begun ticking on their legal options.

Assembly Bill 1870 would extend the filing time to three years, ensuring that workers have the necessary time to seek justice.

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SEXUAL HARRASSMENT AT WORK

What is Workplace Sexual Harassment?

Sexual harassment at work is a form of unlawful sex discrimination. The law defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or based on sex that affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

There are several key phrases in this definition that are important to understanding your rights and any potential legal claims you may have:

"UNWELCOME" - To be illegal, sexual harassment must be unwelcome. Unwelcome means unwanted. For this reason, it is important to communicate (verbally, in writing, or by your actions) to the harasser(s) that the conduct makes you uncomfortable and that you want it to stop.

CONDUCT "OF A SEXUAL NATURE" OR "BASED ON SEX" - Many different kinds of verbal, physical, nonverbal, and visual conduct of a sexual nature may be sexual harassment. **Here are some examples:**

VERBAL OR WRITTEN:	PHYSICAL:	NONVERBAL:	VISUAL:
Commenting about a person's clothing, personal behavior, personal (romantic) relationships, or body; Making sexual or sex-based jokes or innuendoes; Requesting sexual favors or dates; Spreading rumors about a person's personal or sexual life; and/or Threatening a person for rejecting or refusing sexual advances or overtures.	Impeding or blocking someone's movement; Inappropriate touching of a person's body or clothing; Kissing, hugging, patting, or stroking; and/or Assaulting (touching someone against her will or without her consent).	Looking up and down or staring at a person's body; Making derogatory gestures or facial expressions of a sexual nature; and/or Following a person around.	Displaying or sharing posters, drawings, pictures, screensavers, or emails of a sexual nature.

Sexual harassment does not have to be sexually suggestive or based on sexual desire. Harassing conduct can also be unlawful if it is based on your sex or gender. For example, if you are a woman working as a carpenter on an otherwise all-male job site, and you are singled out for severe or pervasive criticism, verbal abuse, or other hostility to which your male co-workers are not subjected, this kind of conduct may be a form of unlawful sexual harassment.

"Affects an individual's employment" or "unreasonably interferes with an individual's work performance" If you are fired, refused a promotion, demoted, given a poor performance evaluation, reassigned to a less desirable position, shift, or location, or there is another concrete negative employment action taken against you because you reject a sexual advance or other conduct based on your sex, then the sexual harassment has likely affected your employment.

"Creates an intimidating, hostile, or offensive work environment" Even if your employer does not take some action that changes the status of your employment or directly results in you losing money (which probably would happen if you lost your job, were demoted, or had your hours cut), you may still have a claim for unlawful sexual harassment if the conduct is so "severe" or "pervasive" that it unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment.

"Severe or Pervasive" To meet the legal definition of "harassment," the conduct in question must either be severe or pervasive. It does not have to be both. The law generally doesn't prohibit simple teasing, isolated offhand comments, or incidents that happen only once and are not serious. So, generally speaking, a single unwanted request for a date or one sexually suggestive comment that offends you and/or was inappropriate may not be "severe" or "pervasive." However, a single incident of very serious conduct, like rape or attempted rape, would probably meet this part of the definition of sexual harassment. (Such conduct may also violate other laws and/or constitute criminal behavior.) Harassment that is less severe but happens frequently or persists over time may be "pervasive," and therefore also meet this part of the definition. So, a number of relatively minor separate incidents may add up to sexual harassment if the incidents negatively affect your work environment. To determine whether the harassing conduct is "pervasive," you can ask yourself: How many times did the incidents occur? How long has the conduct been going on? Have other people (of my same sex or gender) also been treated this way? For example, it may be illegal sexual harassment if repeated sexual comments make you so uncomfortable at work that your performance suffers, or if you decline professional opportunities because it will put you in contact with the harasser.

Keep in mind that to create a "hostile work environment," the conduct has to not only make you personally feel intimidated or offended at work, but it also has to be the type of behavior that would make a reasonable person of your sex, facing similar circumstances, feel that way.

Sexual Harassment is Against the Law

The laws against sexual harassment are designed to protect you from harassment by your boss, your supervisors, your co-workers, and customers or clients that you have to deal with at work. These laws apply to both men and women, and they prohibit sexual harassment whether it is directed at someone of the same sex or the opposite sex.

Federal Law

The federal law prohibiting sexual harassment in the workplace is Title VII of the 1964 Civil Rights Act, often just called "Title VII." Title VII applies to most private and public employers, labor organizations, employment agencies, and joint employer-union apprenticeship programs with 15 or more employees.

California State Law

The California Fair Employment and Housing Act (FEHA) prohibits sexual harassment in employment. FEHA applies to private and public employers, employment agencies, labor organizations, state licensing boards, and state and local governments that have 1 or more employees.

Other State Laws

Like California, most states have a law that makes sexual harassment – and other forms of sex discrimination – illegal. Equal Rights Advocates' Advice and Counseling Service can refer you to a local attorney. 1-800-839-4ERA (4372) www.equalrights.org/legal-help/

Can my employer retaliate against me for complaining about or opposing sexual harassment?

NO. Not only is sexual harassment against the law, so is retaliating (punishing) someone for complaining about sexual harassment or for supporting or participating in an investigation (or other legal action) related to sexual harassment.

For example, if you complain about sexual harassment and are forced out on leave while the harasser continues to work, or you are reassigned to a less desirable position after you write a letter describing sexual harassment of someone else that you witnessed, these are potentially forms of unlawful retaliation. If your employer retaliates against you for reporting or opposing sexual harassment or for participating in an investigation or legal action related to sexual harassment, you may consider taking any or all of the steps suggested below (see "What You Can Do" section).

Employer Responsibilities to Employees

Employers covered by the federal or state laws prohibiting sexual harassment are required to take reasonable steps to prevent and promptly correct sexual harassment that occurs on the job.

One important factor in determining whether an employer has met the requirement to take "reasonable steps" to prevent and/or stop sexual harassment is whether it has issued and distributed to employees a policy prohibiting sexual harassment and informing employees how to make a complaint. Of course, if an employer has such a policy but doesn't tell employees about it, doesn't train managers how to follow it, or just fails to enforce it, then the employer may not be taking reasonable care. The same may be true if an employer has lawful policies and trains employees about them, but then fails to adequately investigate sexual harassment complaints once they are made.

It is important to note that before an employer can be held legally responsible for sexual harassment committed by someone who is not the complaining employee's "supervisor," the employer must be on notice that the harassment has occurred.

What You Can Do

When you are deciding what to do, remember that every situation is different. There is no one best thing to do. However, reporting the sexual harassment to your employer is usually an important first step. You then have the option to use your company's sexual harassment complaint process, file a charge with a state or federal agency, and/or go to court.

It is important to talk with a lawyer or legal services organization like Equal Rights Advocates to discuss your options (see "Resources" below). They can help you to understand your choices, their benefits and risks, and the strengths and weaknesses of your case. If you would like free legal advice and counseling, **please contact Equal Rights Advocates' Advice and Counseling Service. 1-800-839-4ERA (4372) www.equalrights.org/legal-help/**

Here are a few tips and options for you to consider if you think you are facing sexual harassment at work:

SAY "NO" CLEARLY	Tell the person that his/her behavior offends you. Firmly refuse all invitations. If the harassment doesn't end promptly, ask the harasser to stop, and put that request in writing. Keep a copy of this written communication.
WRITE DOWN WHAT HAPPENED	As soon as you experience sexual harassment, start writing it down. Write down dates, places, times, and possible witnesses to what happened. If you can, ask your co-workers to write down what they saw or heard, especially if the same thing is happening to them. Remember that others may (and probably will) read this written record at some point. It is a good idea to keep the record at home or in some other safe place. Do not keep the record at work.
REPORT THE HARASSMENT	If it is possible for you to do so, tell your supervisor, your human resources department or some other department or person within your organization who has the power to stop the harassment. If you can, it is best to put your complaint in writing.
START A PAPER TRAIL	When you report the sexual harassment to your employer, do it in writing. Describe the problem and how you want it fixed. This creates a written record of when you complained and what happened in response to it. Keep copies of everything you send and receive from your employer.
REVIEW YOUR PERSONNEL FILE	Most states give employees the right to review and/or make copies of their personnel files. In California, you also have the right to obtain a copy from your employer of any document that you signed. Both current and former employees can take advantage of these laws to get access to their own personnel and other employment records.
FIND OUT ABOUT YOUR EMPLOYER'S GRIEVANCE AND COMPLAINT PROCEDURE	Many employers have policies and procedures written down that deal with how to make and respond to sexual harassment complaints. To find out about your employer's policies, look for or ask to see a copy of your employee manual, any written personnel policies, and/or speak to someone in the human resources department, if one exists. You may be able to use these procedures to stop the harassment and resolve the problem. At the very least, following your employer's complaint procedures (if any exist) will show that you did what you could to make the employer aware of the harassment.
INVOLVE YOUR UNION	If you belong to a union, you may want to file a formal grievance through the union and try to get a shop steward or other union official to help you work through the grievance process. Get a copy of your collective bargaining agreement to see if it discusses the problems you are experiencing. Keep in mind that if you use your union's grievance

	procedure, you must still file a complaint (or "charge") of discrimination with a government agency before filing a lawsuit in federal or state court.
FILE A DISCRIMINATION COMPLAINT WITH A GOVERNMENT AGENCY	If you want to file a lawsuit in federal or state court, you must first file a formal sexual harassment complaint (or "charge") with the federal Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov or 1-800-669-4000 and/or your state's fair employment practices agency (if your state has one). In California, you can reach the state fair employment practices agency is the Department of Fair Employment and Housing (DFEH), at www.dfeh.ca.gov or toll-free at 1-800-884-1684. If you work for the federal government, you can get information about how to file a sexual harassment complaint from the EEOC by contacting them at 1-800-669-4000 and identifying yourself as a federal employee.
BE AWARE OF DEADLINES!	Do not delay in reporting the problem to your employer, if it is possible to do so. If you start to feel that your employer's process for dealing with the sexual harassment may not help you, be aware that doing nothing could mean losing your rights! This is very important! There are legal deadlines for filing a formal complaint or charge of discrimination with government agencies, and you cannot bring a lawsuit against your employer unless you have first filed a complaint with the EEOC or the agency that enforces your state's employment discrimination laws.

Under federal law, you have **180** days from the last act of sexual harassment or discrimination to file a charge with the EEOC, *unless* you live in a state (like California) that has its own fair employment practices agency, in which case you have **300** days to file your charge.

File A Lawsuit. After you file a formal complaint with the EEOC and/or your state's fair employment practices agency, you may also consider filing a lawsuit. The remedies or relief you can seek in a lawsuit will vary, but may include money damages, getting your job back (if you've been fired or transferred to another position), and/or making your employer change its practices to prevent future sexual harassment from occurring. If you are thinking about filing a lawsuit, you should contact a lawyer to assist you. For more information or referrals, **please contact Equal Rights Advocates**' Advice & Counseling service at the toll-free number listed below.

Resources

Equal Rights Advocates Can Help: ERA provides free legal information, advice, and referrals through our toll-free Advice and Counseling service, at 1-800-839-4ERA (4372). All calls are confidential. You can find more information about legal rights at work and in school on our website, at www.equalrights.org/legal-help.
Address: 1170 Market St, Suite 700, San Francisco, CA 94102
Phone: 415-621-0672

Other Resources:

U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces Title VII and other workplace anti-discrimination laws 1-800-669-4000: Toll-free phone number that automatically connects you to your local EEOC office. www.eeoc.gov

California Department of Fair Employment and Housing (DFEH) is the state agency that enforces California's workplace antidiscrimination laws. Within California, you can call DFEH's toll-free number (800) 884-1684. From outside California, call (916) 227-0551 or go online to the website, www.dfeh.ca.gov. For all other states, check your state government website to find the contact information for your local fair employment practice agency. A list of these agencies can also be found here: https://www.thelaw.com/law/list-of-state-fair-employment-practices-agencies.330/.

Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls until equality is secured for all.