

# SEXUAL HARASSMENT IN THE WORKPLACE RESOURCES FOR EMPLOYERS

These resources are intended to provide information, resources and best practices to all employers, from small employers who may lack a formal human resources department (or training) to large employers which employ human resources professionals. Many of these policies are aspirational; some (where noted) are legally mandated.

## 1. The Law Mandates the Adoption of a Policy

- California's Fair Employment and Housing Act ("FEHA") mandates that employers of five or more employees take steps to prevent and address harassment in the workplace. As part of these legal obligations, FEHA mandates employers to adopt a policy prohibiting sexual harassment in the workplace and providing for avenues of reports. The Department of Fair Employment and Housing has published regulations outlining the components of a model policy and program, which can be found here: <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf>.
- Employer organizations should undertake annual sexual harassment prevention and reporting policy compliance reviews. Is the policy up to date? Are all legally required postings accessible to employees? A list of mandated postings is available from the State Department of Industrial Relations through this link: <https://www.dir.ca.gov/wpnodb.html>
- Policies should be published publicly and easily accessible within the employer organization. They should be circulated on a regular basis, together with a message from the organization's leadership expressing the organization's adherence to the principles set forth in the policy.
- Policies should be simple and clear and prohibit retaliation for making good faith reports. Policies should likewise make it clear that individuals are entitled to participate in any investigation into sexual harassment and that retaliation for such participation is strictly prohibited.

## 2. Real World Reporting Mechanisms

- Who is the individual designated to take reports at the employer organization? Someone must be assigned this responsibility, and be trained to take the reports.
- Recipients of reports should be trained in listening skills and non-judgmental responses. They should be fully familiar with the employer's process to investigate complaints.
- Multiple avenues of reporting should be provided (not just through human resources or legal). Individuals should be trained to recognize that a "report" may be a verbal concern and need not be a formal, written complaint.
- Supervisors and managers should be required to report all suspected incidents and complaints to their managers and, if applicable, to the legal and human resources departments.
- Consider providing an ombudsman (person not beholden to management) or a third party reporting service or both. A live service is preferred.

## 3. Training and Leadership

- Employer organizations of 50 or more are required to provide sexual harassment prevention and anti-bullying training to supervisors on a biannual basis. Information regarding training requirements and resources may be found here: <https://www.dfeh.ca.gov/additionaltraininginfo>.
- If possible, employer organizations – even those not subject to the mandatory training requirements – should nonetheless devote resources to training their managers and supervisors. Managers should, if possible, make their presence known to the employees they manage: they should regularly "walk the floor" and personally interact with all levels of the organization.
- Even small employers should, if at all possible, regularly train their entire workforce regarding what is appropriate/ acceptable behavior in the workplace, as well as what is inappropriate/unacceptable behavior in the workplace.
- Trainings should be mandatory and ideally should be live (not web-based). Trainings should not only include education regarding the legal definitions of sexual harassment, but also should include real world (gray area) examples and should include clear instructions on the methods of reporting and an anti-retaliation pledge.
- Employers should ensure that their HR/legal professionals are trained regarding adequate, appropriate and bias-free investigations. Training should include instructing managers regarding the difference between formal and informal complaints.

- Supervisors and managers should be trained to report up the chain anything they see or hear that indicates improper harassment may be occurring even if the “target” does not complain or asks that the report be kept confidential.
- Employers should also train their employees regarding how to be an upstander (“if you see something, say something”).
- Words should not be the focus; the focus should be on actions. Leaders (managers, owners and supervisors) should not only actively participate in training; they should educate themselves regarding the prevention of harassment, gender and pay equity and other social justice issues that impact the workplace.

#### 4. Pay for Policy Compliance

- Modeling appropriate behavior in the workplace and compliance with employer practices and procedures should be mandatory and should be an essential function of every position. A best compensation practice would include pay for performance based on compliance with and adherence to important company policies (including, without limitation, policies prohibiting sexual harassment in the workplace).
- Each employees’ progress/training/compliance with employer policies should be part of the regular evaluation process.

#### 5. Perform a Self-Critical Analysis on a Regular Basis

- What is the gender makeup of your organization and its leadership? Is your organization approaching hiring and recruiting in the most inclusive manner possible? Are you evaluating your progress toward gender equity and inclusion goals?
- Employers should consider implementing blind resume review and diverse panels of interviewers to ensure the hiring process is fair and provides access to all candidates.
- Conduct regular surveys of your organization – is there a sense of collective community responsibility? Does your employment community care about its workplace? Do your employees treat each other respectfully? Do you monitor the locus and frequency of complaints and reports?
- Employers should examine whether to permit supervisor/subordinate relationships and how, if at all, to require disclosures of such relationships. Are spouses/significant others permitted to supervise subordinate spouses/significant others? Is there a nepotism policy or love contract (document acknowledging the relationship and disclosing applicable facts to the employer in writing) in place?
- Employers should consider conducting exit interviews and be prepared to address any information learned during those interviews.

## 6. Seek Guidance on Appropriate Action

- If warranted, individuals who, after investigation, are deemed to have committed violations of employer policies should be disciplined appropriately based on the circumstances up to and including termination.
- There may, however, be circumstances where organizations should be prepared (appropriately) to rehabilitate offenders.
- Consistency in meting out punishment is key; it is also critical that a process be in plce and followed before imposing punishment.

## 7. Resources for Employers and Human Resources Professionals

- Society for Human Resource Management (SHRM) (<https://www.shrm.org>)
- California Chamber of Commerce (<https://www.calchamber.com/hrcalifornia/Pages/hrcalifornia.aspx>)
- San Diego County Bar Association (<https://www.sdcba.org>)
- Human Rights Campaign (<https://www.hrc.org>)
- San Diego Regional Chamber of Commerce (<https://sdchamber.org>)
- National Employment Law Institute (<https://www.neli.org>)
- Organizations with Employer Practices Liability Insurance (“EPLI”) may have access to help lines operated by their insurer (check with your insurance broker).