

Sexual Harassment **YOUR LEGAL RIGHTS**

1.

[What is Sexual Harassment?](#)

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

2.

[Is My Employer Supposed to Prevent Sexual Harassment?](#)

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

3.

[Does the Law Protect Me Against Sexual Harassment?](#)

Sexual harassment is prohibited by both state and federal law. The California Fair Employment and Housing Act (FEHA) prohibits sexual harassment. Harassing conduct that is not sexual, but shows hostility based on gender, and harassment based on pregnancy or childbirth also are prohibited. All employers (except non-profit religious groups) are covered by the harassment section of FEHA. FEHA protects both employees and job applicants. Title VII of the Civil Rights Act of 1964 is the federal law prohibiting sex-based discrimination, including sexual harassment. All employers with 15 or more employees are covered by Title VII, and the law protects both employees and job applicants.

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

4.

[What If I Am Also Harassed Because of My Race, National Origin, or Another Factor?](#)

Sometimes it is hard to tell exactly why someone is harassed. For example, a woman of color may not know if she is being harassed because of her sex or her race, or she may believe it is both. In this type of case, the individual will probably have to bring two separate claims, rather than bringing one claim of harassment based on both sex and race. There are a number of laws that prohibit various kinds of discrimination which may apply (see our Fact Sheets on [discrimination in employment](#)). Title VII prohibits discrimination based on sex, race, color, national origin, religion, or pregnancy. FEHA prohibits discrimination based on sex, race, color, national origin, ancestry, religion, disability (including HIV/AIDS), medical condition (cancer), pregnancy, marital status, sexual orientation, gender identity, and age. The Age Discrimination in Employment Act (ADEA) protects against age discrimination. The Americans with Disabilities Act (ADA) protects people

with disabilities. The Family and Medical Leave Act (FMLA) allows workers to take unpaid leave to care for their own serious illness or that of a family member, or for the birth or adoption of a child (see our Fact Sheets on [leaves from work](#)).

5.

What Can I Do If I Am Being Sexually Harassed?

Informal actions

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

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

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

Company grievance procedures

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

Formal sexual harassment claims and lawsuits

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

You can file a FEHA sexual harassment complaint with the California Department of Fair Employment and Housing (DFEH). You must file a complaint within one year of the harassment. You can file a Title VII sexual harassment complaint with the Equal Employment Opportunity Commission (EEOC). You must file your charge within 300 days of the harassment. If you have exhausted all the administrative procedures of the DFEH or EEOC, then you may be able to file a sexual harassment lawsuit in state or federal court. There may also be other legal remedies available to you.

6.

What If I Get Fired for Complaining?

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

7.

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

Both documented and undocumented immigrants are protected by FEHA and Title VII and have the right to file sexual harassment claims. However, if the person is undocumented, he or she should consult with an attorney before filing a sexual harassment claim in order to be

informed of all the possible consequences, particularly with respect to retaliation.

8.

Where Can I Get Help?

You can call the Worker's Rights Clinic at 415-864-8208 for free legal information and advice about sexual harassment and other workplace issues. You can also get information about filing sexual harassment and sex discrimination claims from the [California Department of Fair Employment and Housing](#) by calling 800-884-1684 (TTY 800-700-2320), or from the federal [Equal Employment Opportunity Commission](#) by calling 800-669-4000 (TTY 800-669-6820) or going to www.eeoc.gov. If you belong to a union, you may be able to get information and assistance by talking to your union representative.

For further information about your employment rights, contact the [Workers' Rights Clinic](#).

Disclaimer

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