

Preventing Harassment, Discrimination and Retaliation

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Guide for Supervisors on Preventing Harassment, Discrimination & Retaliation Pre-test

True False

- 1) Harassment occurs when a supervisor repeatedly directs a subordinate to do his or her job.
- 2) Employees can be personally liable for harassment.
- 3) An employee should be disciplined for reporting harassment if the investigation shows that the agency's policy was not violated.
- 4) If the alleged harasser had no bad intent, it cannot be harassment.
- 5) If people laugh, the joke cannot be harassment.

Pre-test (continued)

True False

- 6) According to the most recent statistics by DFEH, sexual harassment claims are the most common.
- 7) Jokes about an individual's own ethnic or religious group are not harassment.
- 8) Employees who report harassment can remain anonymous.
- 9) Employees can be disciplined even if the investigation shows that the harassment was not severe or pervasive enough to violate state or federal law.
- 10) A hostile work environment can exist when a supervisor has consensual relationships with subordinates.

Three Key Takeaways

- Identify (not ignore) issues and contact the experts
- Document Document Document
- Recognize and address “Two Sets of Facts” issues

Purpose of the Training

- Not to make you a legal expert in what is harassment
 - Encourage you (while at work) not to engage in harassing behavior
 - If such behavior does occur, to help you:
 - (1) identify it,
 - (2) suggest appropriate steps to take, and
 - (3) know who to contact.

Two Laws, a Policy, and a Rule

- Federal
(Title VII, CRA)
- State (FEHA)
- County of Sonoma Policy
- CSR 10

Who Is Protected?

- Applicants and employees
- Protected from:
 - Employees
 - Independent contractors
 - Clients
- Complainant and alleged perpetrator could be same gender
 - Sexual desire/Orientation does not matter
 - Could be two heterosexual men

Discrimination

- Conduct taken because of a protected classification
- Conduct taken because of the perception that an individual is in a protected class

Legally Protected Classifications

- Race
- Creed
- Color
- Ancestry
- National Origin
- Religion
- Sex
- Sexual Orientation

Legally Protected Classifications (Cont'd)

- Gender Identity
- Gender Expression
- Marital Status
- Age
- Medical Condition
- Genetic Information
- Physical/Mental Disability
- Pregnancy

ELEMENTS OF A RETALIATION CASE:

1. Was the Employee Engaged in a "Protected Activity?"
2. Did the Employer take any "Adverse Action" Against the Employee?
3. Was the "Adverse Action" Taken Because of the "Protected Activity?"

Retaliation (Continued)

- Protected activity
 - Reporting discrimination or harassment
 - Participating in an investigation
 - Association with accused or victim
 - Yanowitz v. L'Oreal

Retaliation (Continued)

- Adverse Employment Action
 - Broadly Defined
 - Need Not Result in Pay Loss
(Transfer/Negative Performance Evaluation)
- Negative Action Taken Against the Employee Because of the Protected Activity?

County's Nondiscrimination Policy and Procedure

- Policy
 - Defines what is prohibited
- Procedure
 - Defines what the process is when there is a complaint
- Fact Sheet

Two Sets of Facts

- Initial facts leading to the complaint
- What action the department takes in response
 - Contact EEO
 - Ensure no more contact pending the investigation
 - Determine what happens to the parties pending the investigation
 - Provide options to complainant

Types of Harassment

- Quid Pro Quo
- Hostile Work Environment

Quid Pro Quo Sexual Harassment

- Job benefits promised in exchange for sexual favors or denied if sexual favors are not given.

Hostile Environment Harassment

A hostile working environment exists when an employee can show that:



- He/she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature;
- Conduct was unwelcome; and
- Sufficiently severe or pervasive... create an abusive working environment.
- Objectively and subjectively offensive (reasonable person standard)

Hostile Work Environment

- “Legal test”
- Physical, verbal or visual behavior of a sexual nature
- Objectively and Subjectively Offensive (Unwelcome)
- Severe or Pervasive

Hostile Environment – Severe and Pervasive

- Frequency of conduct
- Severity of conduct
- Physically threatening or humiliating
- Unreasonably interfered with work performance
- Mokler v. County of Orange

Favoritism

- Supervisor promotes girlfriend to position you were qualified for.
- Pattern – Sex is prerequisite to getting promoted.
- Miller v. Department of Corrections

Hostile Work Environment

- Disciplinary Test
- Inappropriate conduct of a sexual nature
- May be welcome
- Need not be severe/pervasive
- Would a member of the protected class consider the harassment hostile and offensive, i.e., the “reasonable victim” standard.

Visual Harassment

Derogatory or Offensive:

- Posters
- Cartoons
- Bulletins
- Calendars
- Staring/Leering
- E-mails
- Internet

Physical Harassment

- Massage
- Hugs
- Touching

Verbal Harassment

- Sexual comments
- Ethnic jokes
- Mocking accent
- Teasing
- Posters, Calendars

“Gray” (Borderline) Areas

- “Consensual” relationships between supervisors and subordinates?
- Solicitation of dates, or invitations to lunch, drinks or dinner
- References to appearance or dress
- “Casual” touching of non-intimate parts of the body

If Sexual Harassment Occurs



- Confront the harasser and tell him/her to stop.
- Report it (supervisor, appointing authority, and to the EEO Manager)
- An investigation may be conducted and appropriate action taken.
- County policy and state law forbid retaliation against any employee who is involved in a sexual harassment complaint or investigation.

Two Types of Situations (Legal Tests) for Harassment

1. Supervisor-Subordinate
2. Co-workers

Supervisor-Subordinate

- “Supervisor” is broader than just the person who prepares someone’s evaluation
- Includes the person who directs the employee's work
- Strict liability test

Strictly Liable Unless

- Can show affirmative defense.
- Reduced damages if employer can show 3 things:

Strictly Liable Unless

- (1) No “adverse employment action”
(Loss of pay/undesirable transfer/
negative evaluation)
- (2) Employer took reasonable care to prevent
and correct bad behavior.
 - (a) Prevent: Have a discrimination policy
in place and provide training.

Strictly Liable Unless

- (b) Correct: Referral to EEO to conduct a thorough and impartial investigation. If allegations sustained, department takes timely, appropriate remedial action.
- (3) Employee unreasonably failed to timely inform department. If department knew, department would have taken appropriate action.

Co-Workers

- Knew or should have known test
- How do you “know”? Be proactive

Reports of Harassment to Supervisors

- By someone other than victim
- Verbal report
- Request that “nothing be done”
- Rumors

Responsibility of Supervisor

- Advise management
- Cooperate in investigation
- Prevent further harassment
- Assure no retaliation

Informal Employment Discrimination Complaint Process



- Lowest form of resolution
- May not need to be investigated
- Most successful with early reporting of incidents
- EEO will discuss findings and proposed resolution with complainant

Formal Employment Discrimination Complaint Process



- EEO conducts Investigation (Role of investigator)
- Formal written report with Findings, Conclusion and Recommendation
- Appeal to Civil Service Commission

Documentation Supervisors Can Gather

- Who was present? Witnesses?
- What happened? Use quotes if possible. Describe exactly what the conduct was.
- Include any contextual information.
- When did it happen?
- Where did it happen?
- Gather any evidence.

Personal Liability

- Both supervisory and non-supervisory employees who harass or retaliate can be liable to pay damages
- If the Board of Supervisors finds your conduct to be outside the course and scope of employment, the Board may decide to not defend or indemnify you

Prevention

- Report all complaints ASAP
- Take all complaints seriously
- Follow County's procedure
- Be a good role model

**What if the
actions are not
tied to a
protected basis?**

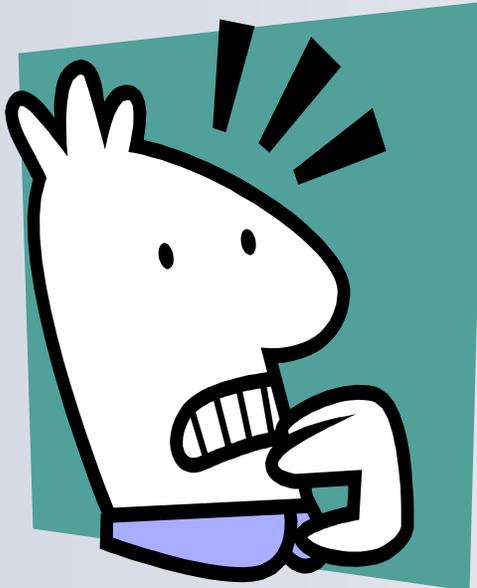
**You may need
Mediation or EAP
(Non-EEO Issues)**



REMEMBER, THREE KEY TAKEAWAYS

- Identify (not ignore) issues and contact the experts
- Document Document Document
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Equal Employment Opportunity Post-Test



- 1. What is the EEO Investigator's role?**

- 2. What do you do if you get a complaint of discrimination?**

- 3. If the alleged conduct would not violate the law, you need not be concerned about it.**
True ___ False _____

Equal Employment Opportunity Post-Test



4. **EEO Rights/ responsibilities are fully explained in the County's _____.**
5. **An individual who sexually harasses a co-worker can be held personally liable.**
True_____ False_____

Equal Employment Opportunity Post-Test



6. If the conduct occurs away from the workplace, it cannot be harassment/discrimination.

True _____ False _____

7. If a manager should have known that one of her staff was sexually harassing a co-worker, the county could be liable.

True _____ False _____

Equal Employment Opportunity Post-Test

8. **During a break at a Board Meeting, the Administrator, staff and a few Board members are chatting. One person makes an “off-color” joke. What if anything, should the Administrator do?**

Equal Employment Opportunity Post-Test

9. Don and Sharon are interviewing for a new manager at a retail store. The store is located in a “bad neighborhood” and Sharon expresses concern about hiring a woman at the new store. What if she gets mugged? Don also expresses concern that some of the customers might use rough language and that might offend a female manager. Don and Sharon’s boss intervenes, saying he doesn’t think gender should be a factor in the hiring decision. Sharon and Don’s behavior is an example of:
- appropriate workplace behavior—she’s concerned about her manager’s safety
 - inappropriate workplace behavior—she’s making assumptions based on gender
 - sexual harassment—interviewees are being harassed based on gender
 - sex discrimination—hiring decisions are based on gender

Equal Employment Opportunity Post-Test

10. The number one reason most individuals file harassment or discrimination complaints is:
- a. Money
 - b. revenge
 - c. to cover up their poor work performance
 - d. none of the above

The End