

Sexual Harassment Prevention for Supervisors

2021-2022



Course Objectives

- Define “Supervisor” and “Sexual Harassment”
- Identify potential harassing and discriminatory behaviors
- Describe the “Duties of the Supervisor”
- Discuss the laws related to the prevention of Sexual Harassment

Sexual Harassment Prevention

Why?

Sexual harassment
is **illegal**

Mandatory Training

- California Government Code 12940
 - Sexual Harassment Training and Education
 - Newly promoted supervisory personnel shall complete training within 6 months of appointment
 - All supervisory personnel must complete this training every two years
 - 2-Hour State Mandated Training

Definition of “Supervisor”

Based on the Department of Fair Employment and Housing Government Code, Section 12926 (r)

“Supervisor”

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or **the responsibility to direct them**, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

** To include Training Officers and Corporals.

Federal Law

- **Authority**

- Title VII of the Civil Rights Act of 1964

- **Enforcement**

- Equal Employment Opportunity Commission
Department of Justice

Federal Definition of Sexual Harassment

- Unwelcome sexual advances,
- Requests for sexual favors, and
- Other verbal or physical conduct of a sexual nature; constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly...
 - Affects an individual's employment
 - Unreasonably interferes with an individual's work performance, or...
 - Creates an intimidating, hostile or offensive work environment.

Two Major Concepts

Quid Pro Quo:

- “This for that” or “Something for something”
- When a supervisor or one in an authority position makes unwelcome sexual advances.
- Submission to these advances is an expressed or implied condition for receiving job benefits; refusal to submit results in loss of benefit.

Two Major Concepts

Hostile Work Environment:

Created by a pattern of unwanted sexual behavior that is offensive, hostile or intimidating. This behavior adversely affects an employee's ability to do his or her job.

California Law

- **Authority**

- Fair Employment and Housing Act (FEHA) Govt. Code section 12900.et. seq.

- **Enforcement Agency**

- Department of Fair Employment & Housing (DFEH)

California Definition of Sexual Harassment

In summary

- Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.
- This applies to an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.

California Definition of Sexual Harassment

- Sexually harassing conduct need not be motivated by sexual desire.
- AB 2053 [1] (2014) states: expands the scope of the 2004 AB 1825 sexual harassment training to include “abusive conduct.”

California Definition of Sexual Harassment

Under AB 2053 [2] (2014)

“Abusive conduct” means 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. A single act shall not constitute abusive conduct, unless especially severe or egregious.

Harassing Behaviors



Verbal
Harassment



Physical
Harassment



Visual
Harassment



Non-Verbal
Harassment



Sexual Favors

Harassing Behaviors

Verbal Harassment



- Epithets
- Derogatory comments
- Slurs
- Rumors
- Jokes
- Sexually degrading words
- Graphic comments

Harassing Behaviors



Physical Harassment

- Physical touching
- Assault
- Impeding or blocking movements
- Any physical interference with normal work or movement, when directed at an individual.

Harassing Behaviors



Visual/Written Harassment

- Visible items that are sexual or derogatory
- Obscene messages or invitations
- Displaying sexual pictures

Harassing Behaviors



Non-Verbal Harassment

- Sexual or derogatory gestures
- Facial expressions
- Leering
- Displaying sexual suggestive objects
- Pictures, cartoons, or posters

Harassing Behaviors



Sexual Harassment

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors

Reasonable Person Standard

- The situation must be viewed from the perspective of a reasonable, third party
- Would a reasonable person find the behavior hostile, offensive, or intimidating?
- Perception vs Intent

Retaliation

- Definition –*to return like for like; especially : to get revenge.*
- It is illegal to fire, demote, harass, or otherwise “retaliate” against people because they filed a charge or complained to their employer or other covered entity.
- **It’s against the law!**
- Do not be afraid to report inappropriate conduct out of fear of retaliation.

Key Factors of Harassment - what the courts look at

- Frequency
- Pervasive and Severe
- Physical threat or intimidation
- Work performance impact
- Unwelcome (sexual/gender in nature)
- Reasonable person standards
- Retaliation

Court Rulings - Supervisors

- Employers can be held responsible for sexual misconduct by supervisors, even if the supervisor's manager is unaware of the harassment.
- Employers are more likely to be liable in court for sexual harassment if there was a tangible/concrete employment action involved.
- More responsibility has been placed on employers and managers to prevent and correct sexual harassment.
- More responsibility has been placed on employees to promptly report sexual harassment.
- Sexual harassment can occur between members of the opposite sex or the same sex.



Court Cases

Identifying Potential Harassing/Discriminatory Behavior

Scenarios

- Is the behavior/conduct potentially harassing?
- If so, what type of harassment is it?
 - Quid pro quo?
 - Hostile work environment?
- What would you do?
- What Departmental Policy, if any, applies?

“Transition”

Scenario #1:

A co-worker has begun the social transition from presenting as the sex they were born with to their true identity. One co-worker refuses to use the transitioning co-workers correct name and pronouns, and occasionally makes other demeaning remarks. You witness this behavior.

What would you do?

“ I WITNESS ”

Scenario #2:

A supervisor overhears a group of their staff members making racial and gender jokes about another member of the unit. This has been going on for a few days. Although the targeted employee never tells you directly, you were an eyewitness to the action.

What would you do?

“HOT LINKS”

Scenario #3:

Two employees bring copies of e-mails that disturb them to your attention. The e-mails contain a link that displays sexually inappropriate pictures and offensive language. They accuse each other of sending out these e-mails.

What would you do?

“TALK THE TALK – WALK THE WALK”

Scenario #4:

Customers from various backgrounds and sexual orientations come to your office for services. After a customer leaves the counter, you hear a staff member telling co-workers how much they despise “those people.” The staff member goes over to a student worker and continues to criticize and mimic the customer.

The student worker, visibly upset by such actions, gets up and walks away from the employee.

What would you do?

“JOB SECURITY”

Scenario #5:

A staff member from another unit comes to you and tells you she is receiving numerous phone calls from her supervisor reminding her that her performance appraisal is coming up very soon.

The employee starts crying and shares with you that the supervisor has made comments such as: “If you play your cards right, I’ll make sure you keep your job when they discuss layoffs,” and “Stick with me if you want real job security.”

The supervisor who is being accused of these allegations is one of your closest friends.

What would you do?

“PAST PERFORMANCE APPRAISAL”

Scenario #6:

An employee files a sexual harassment complaint against you after they received a substandard performance appraisal. The employee feels you are retaliating against them because when you were dating seven years ago, the relationship did not work out and they ended it against your wishes. (You were both working in another department when you were dating.)

Since then, you have been happily married for five years and have two lovely children. You feel this complaint is unfounded, completely without merit and that the performance appraisal was fair and accurate.

What would you do?

Duties of the Supervisor

Prevention Strategies

- Have an open door policy
- Show an attitude of respect and concern
- Be objective and fair
- Model appropriate behavior
- Foster a harassment-free environment

Duties of the Supervisor

Responsibilities

- Take all complaints seriously
- Follow Department protocol.
- **Document everything!**
- Must address ALL complaints of sexual harassment, reports of inappropriate conduct, and potential sexual harassment once you become aware, EVEN if no one has made a complaint

Duties of the Supervisor

Responsibilities

- “Limited confidentiality”
- Have the responsibility to take appropriate corrective action
- Prevent retaliation

What should you do if you are personally accused of harassment?

Duties of the Supervisor

Protection Against Retaliation

State and federal law forbid retaliation against any employee who opposes sexual harassment, or files a complaint, testifies, assists or participates in any manner in an investigation, proceeding or hearing.

Retaliation is strictly prohibited!

Duties of the Supervisor

Corrective Action

In some cases, if the Organization takes prompt and appropriate corrective action when sexual harassment is reported, the Organization may not be held liable for the sexual harassment.

Regardless of whether or not an individual may be held personally liable under the law for damages, an individual will be subject to discipline or some other corrective action by the Organization if the individual has engaged in sexual harassment or other inappropriate conduct in the workplace.

Go by the C.O.D.E.!

- **C**ontact your organizations Human Resource person
- **O**n all SHP issues;
- **D**ocument
- **E**verything!

Steps Toward Resolution

- * Here are some **possible** steps:
 - * Discuss the situation with the alleged victim privately.
 - * Discuss the situation with the alleged harasser.
 - * If the issue is minor in nature and it can be resolved to everyone's satisfaction, document the incident and its impact.
 - * Initiate formal investigation for more severe, repeated, or unresolved offences.

Steps Toward Resolution

Be familiar with your organizations policies and procedures. Know who to contact.

Questions



Thank You!

**Deputies please stay seated - all others
take a break.**

County Policies and Procedures

- Sexual Harassment Policy – Board Policy C-22
- Sexual Harassment Compliant Procedure – Human Resources Policy No. 111
- Sheriff's P&P 3.47 Discrimination and Sexual Harassment

Please remove last page from the packet, complete and sign to receive credit for today's class.

Contacts/Resources

- Sheriff's Employee Relations
 - Adam Landers, Employee Relations Manager
(858) 974-2019
 - Maria Quidachay, Senior DHRO - Employee Relations
(858) 974-2041
- Sheriff's Internal Affairs
(858) 974-2065
- Sheriff's Legal Affairs
(858) 974-2255