



Harassment, Discrimination & Workplace Violence

Policy, Investigation Guidelines & Interview Best Practices



BASIC is a Technology Driven HR Compliance Company

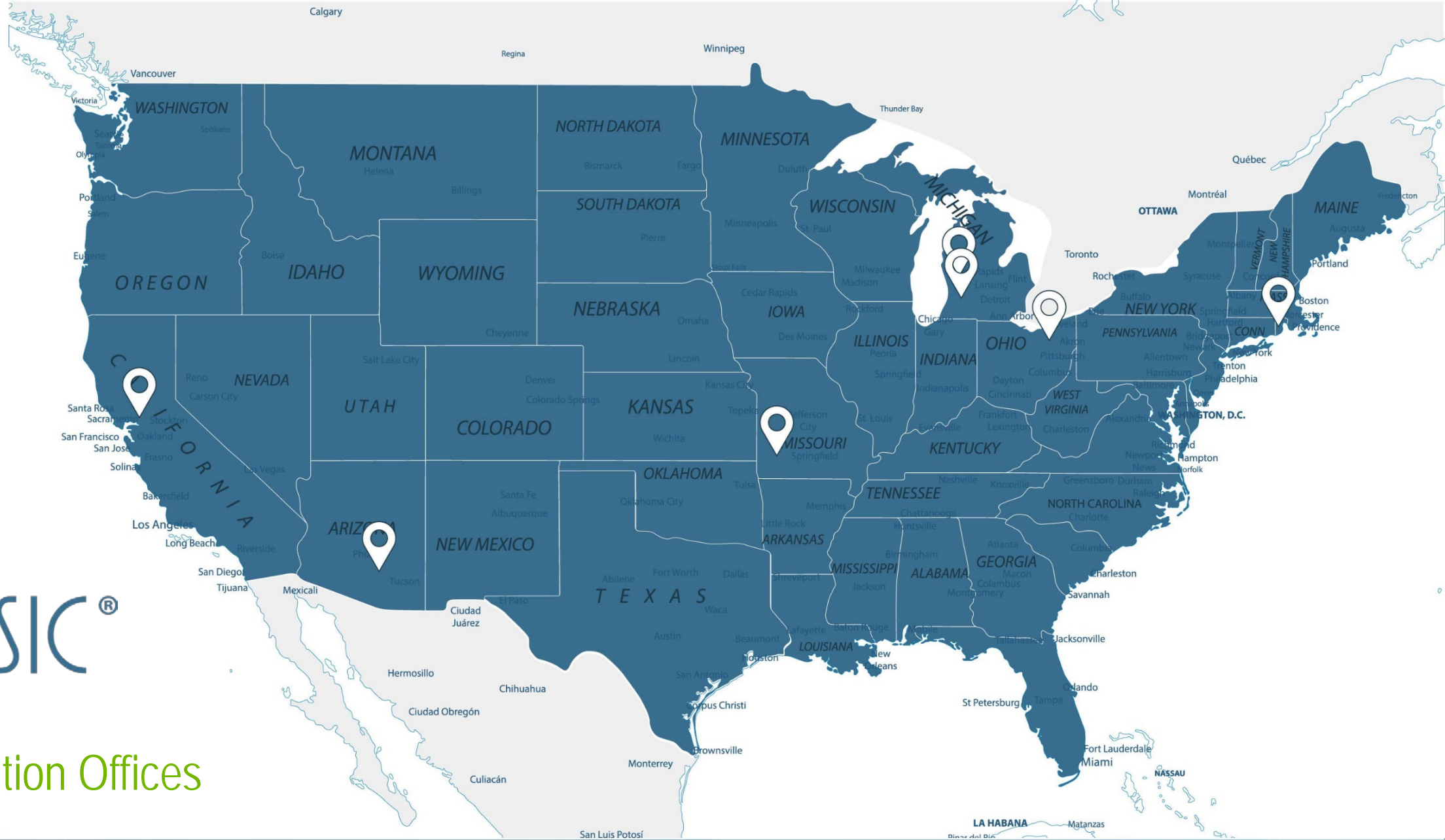
➤ Presenter

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Joe provides Business & HR client advisory services and HR out-source services nationally. He is a Human Resource professional with over twenty five years business management and HR consulting experience. He has worked with multi plant International Tier I Automotive Manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison serves on several for profit and not for profit boards.





Administration Offices



BASIC family of companies includes;

- BASIC pacific
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Technology Driven HR Solutions to Take Your Company Further

Suite of HR Benefits, Payroll and Leave Management, and Compliance solutions offered individually or bundled.



HR Solutions should be simple. **Keep it BASIC.**



Why BASIC?

- Serving clients for over 30 years
- Over 15,000 clients nationwide
- Profitable, annual growth exceeding 15%
- 95-98% client retention
- Diversified and integrated services
- 7 administration offices nationwide

Our Team



- Experienced and expert professionals, all located within the U.S.
- Every client receives a Dedicated Account Manager per line of service
- Workforce stability with low turnover
- Ongoing training and career development
- Employees are **Bonded** (*theft coverage of \$2.5 MM*)
- Errors and Omission Insurance (*\$2 MM*)

Security



- ✓ A thorough data security assessment of the potential risks and vulnerabilities of our systems are tested annually by a third party assessment firm
- Operate a full data backup and redundancy
- 100% emergency power generator backup to enable continuation of critical business functions
- Secure FTP for data exchange
- Ongoing security and privacy awareness training program for accessing, storing, transmitting and safeguarding PHI

➤ Today's Topic ~ Sex Harassment

- ✓ Review sex harassment facts and statistics
- ✓ Define sexual harassment and offensive behaviors that could be considered harassment
- ✓ Review the elements of sexual harassment and the remedies available to victims of sexual harassment under the law – Legal Case Review
- ✓ Understand the roles/responsibilities of management when an employee feels he/she is being harassed in the workplace
- ✓ Understand that harassment of any type may be a form of discrimination, and will be vigorously investigated
- ✓ Strategies for preventing and responding to unlawful harassment
- ✓ Investigation interview best practices
- ✓ Workplace Violence causes and what to look for

➤ Sex Harassment Statistics

EEOC Statistics

Charges Alleging Sex-Based Harassment (Charges filed with EEOC) FY 2010 - FY 2018

This table shows charge data for sex-based harassment allegations, including charges alleging sexual harassment.

This does not include charges filed with state or local Fair Employment Practices Agencies.

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Receipts	12,695	12,481	12,589	12,379	12,148	12,573	12,880	12,428	13,055



Charge Filings Continue to Increase

Charges filed with the EEOC alleging sexual harassment increased by more than 12 percent from fiscal year 2017.

Overall, the EEOC recovered nearly \$70 million for the victims of sexual harassment through litigation and administrative enforcement in FY 2018, up from \$47.5 million in FY 2017.

➤ Sex Harassment Case Review

Title VII of the Civil Rights Act of 1964

Prohibits discrimination in the workplace on the basis of sex, including sexual harassment

State Laws must also be considered

Verdict

\$168 Million

Case

Chopourian v. Catholic Healthcare West

A 45-year-old surgical physician's assistant brought a lawsuit against Catholic Healthcare West claiming she was subjected to a hostile work environment, sexual harassment, harassment, and wrongful termination. Ms. Chopourian was subjected to inappropriate remarks, sexual advances, and derogatory comments. When she complained about suffering mistreatment at the hands of other male employees, the defendant retaliated against her through defamation, false accusations, and unwarranted discipline.

Charge

Fed VII

CA FEHA
Sex Harassment
Retaliation
Discrimination

\$ 40 Million

Alford v. Aaron Rents Inc.

Ms. Alford began working at Aaron's as a customer service representative. Shortly thereafter, a male employee Moore began intentionally and inappropriately touching her, calling her degrading pet names, and making uninvited advances. Moore sexually harassed and sexually assaulted her on numerous occasions including an incident in the office restrooms. She followed company policy and tried to contact a sexual harassment hotline. She also spoke to multiple managers but her complaints went unnoticed. She was persecuted at work, feared for her safety, and was not given equal opportunities when applying for a promotion.

Fed VII

NY Human Rights Law
Sex Harassment
Retaliation
Discrimination

➤ EEOC Facts About Sexual Harassment



Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII **applies to employers with 15 or more employees**, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when 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.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

➤ EEOC Facts About Sexual Harassment

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. **The victim should use any employer complaint mechanism or grievance system available.**

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace.

Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

➤ EEOC – Title VII of the Civil Rights Act

Harassment

- Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).
- **Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.** Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.
- **Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.**
- Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:
 - The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
 - The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
 - Unlawful harassment may occur without economic injury to, or discharge of, the victim.

➤ Sex Harassment & Discrimination

- Not limited to hiring and firing decisions
- Can occur as a result of actions taken by co-workers, visitors, suppliers and even customers
- Can occur when assigning tasks or making certain employment decisions

➤ Defining Sexual Harassment

Any sexual advances, request for sexual favors, and verbal or physical conduct of a sexual nature that occurs in the workplace that are not welcome.

Sexual harassment is defined by case law in two ways:

Quid Pro Quo

- Demanding sexual favors in exchange for employment benefits
- Demanding sexual favors by threatening negative employment actions; OR

Hostile Work Environment

- Harassing behavior directed toward the complainant
- Harassing behavior witnessed by the complainant
- Widespread sexual favoritism that infects the workplace creating a hostile or abusive environment



➤ Quid Pro Quo

- Means “this for that” or “in exchange for”
- Generally exists between a supervisor/manager and employee
- Is often about power, not necessarily about physical interest
- Least common form of harassment complaint
- Most serious form of harassment complaint
- Offender will likely repeat behavior
- If proven, Employer is liable
- If proven, Harasser is liable (under state law / possible civil action)

Three general elements create a Quid Pro Quo situation:

- 1) The employee was subjected to a sexual advance that *was not welcomed*
- 2) A tangible aspect of the job was affected
- 3) The employer knew or should have known about the harassment but took no immediate and effective action

➤ Quid Pro Quo Harassment

1. The promise of reward or threat of punishment in exchange for sexual favors does not have to be explicit in order to constitute quid pro quo sexual harassment
2. An employee who gives in to the demand for sex in order to avoid negative consequences does not lose their rights to claim for quid pro quo sexual harassment
3. If the alleged harasser denies the charge, a claim for sexual harassment can be found true even if no witnesses or documentation exists supporting the complainant's accusations

Quid pro quo sexual harassment occurs when a supervisor relies on his or her apparent or actual authority to extort sexual favors from an employee.

- **The threat may be expressed or implied**

➤ Sex Harassment Hostile Work Environment

- 1) An employee does not have to experience or suffer an adverse employment action to have a hostile work environment sexual harassment complaint
- 2) To prove hostile work environment sexual harassment, the complainant must show that they were subjected to unwanted sexual attention that was both severe and pervasive
- 3) Can be created by anyone in the workplace
- 4) Can be created by persistent, severe and outrageous incidents
- 5) Can be created by vendors and/or customers



➤ Hostile Work Environment Harassing Behavior

Unwanted sexual advances can be:

Verbal

- Foul or obscene language
- Derogatory comments
- Explicit discussions about sexual activities
- Comments about other people's physical attributes

Visual

- Leering
- Staring
- Making sexual gestures
- Displaying sexually explicit objects, pictures, cartoons, graffiti, or posters
- Sending graphic emails, text messages, or jokes

Physical

- Kissing
- Hugging
- Grabbing
- Impeding or blocking movement
- Assault



➤ Hostile Work Environment Behavior

Severe and/or Pervasive

To be actionable, the unwanted behavior must be “severe or pervasive” and alter the conditions of employment to the extent that it creates a hostile or abusive work environment.

What to look for:

- The nature of the conduct
- The frequency of the conduct
- The period of time over which it occurred
- Whether the conduct was physically threatening or humiliating
- The extent to which the conduct unreasonably interfered with an employee’s work performance

➤ Hostile Work Environment

Sexual desire or intent does not have to occur to have a hostile work environment.

Adverse employment action does not have to occur to have a successful hostile work environment claim.

- *Yeah ... he said some stuff but nothing happened – Mary was promoted. So what's the problem?????*
- *He's not her boss so it doesn't matter... no big deal.*

Adverse employment actions include:

- Failure to hire, termination
- Demotion, loss or reduction in pay
- Other

Unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal and physical conduct of a sexual nature constitute sexual harassment when...such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

➤ Hostile Work Environment

Factors to consider when determining if Hostile Work Environment Sexual Harassment has occurred:

- Did touching take place that was inappropriate and/or not welcomed?
- Were inappropriate visual materials displayed in the workplace?
- Were inappropriate verbal comments made in the workplace?
- How often did the inappropriate behavior take place?
- Was the individual who exhibited the behavior a co-worker or manager?
- How blatant or inappropriate was the behavior?
- Would a “reasonable person” constitute the behavior as harassment?



Examples of Inappropriate Behaviors in the Workplace

- Verbal conduct can include a variety of sounds, including whistling, grunting, groaning, moaning, whistles, and catcalls
- Using inappropriate labels for individuals, such as honey, baby, hunk
- Making derogatory comments
- Inappropriate jokes, stories, remarks, references
- Hugging, touching, massaging
- Pictures of a sexual nature
- Inappropriate screen-savers
- Hand gestures (suggestive, degrading, or offensive)
- Tone of voice (suggestive, degrading)
- Eye movements (suggestive, leering)

Remember that inappropriate behavior can be subjective. What is funny or humorous to you (and perhaps others), other individuals may find it to be inappropriate.

➤ Email & the Internet

- The inappropriate use of email and/or the internet, can lead to a hostile work environment
- Using the internet/intranet to transfer inappropriate jokes, e-mail messages, and pictures, is in violation of the company's policy regarding use of the internet – It also violates the company's EEO Policy

➤ Sexual Harassment - *Myths and Realities*

“Individuals who are sexually harassed generally provoke harassment by the way they look, dress and behave.”

- Harassment does not occur because an individual may dress provocatively. *Studies have found that victims of sexual harassment vary in physical appearance, type of dress, age, and behavior.

“If you ignore harassment, it will go away.”

Supervisor says - *Didn't make a big deal out of it – harmless fun – figured it would stop on its own....*

- **It will not stop on its own**

* Research has shown that simply ignoring the behavior is ineffective; harassers generally will not stop on their own. Ignoring such behavior may even be seen as agreement or encouragement.

** Information from the American Psychological Association*

Sex Harassment

Who can be held liable?

- 1) Employer
- 2) Individuals may be personally liable for sexual harassment (Civil/State Law)

Who is Protected by the Law?

- Employees
- Job applicants
- Former employees
- Independent contractors (possibly state laws, not federal)
- Volunteers (possibly state laws, not federal)
- Unpaid interns (possibly state laws, not federal)

➤ Who is Liable Under the Law?

Federal Title VII – Employer is Liable

Some states (California and others) have workplace sex harassment laws in place having personal liability.

In general, an employer and most likely the employee both may have liability.

Consider:

- #MeToo movement
- Pervasive workplace sex harassment issues

Accountability

- Every employee or prospective employee
- Every person in the workplace
- Supervisor
- Subordinate, or co-worker

All of the above can be liable for the damages caused by the unlawful harassment.

The individual harasser “can be” personally **liable under state or civil suit** for the damages caused by his or her actions.

➤ Liability of Employer

An employer is strictly liable for the unlawful harassment by its supervisors and agents.

Supervisor - A person qualifies as a supervisor, if they have discretion and authority to:

- a) Hire, transfer, promote, assign, reward, discipline, or discharge other employees, or may/can recommend any of these actions
- b) Act on the grievances of other employees or to effectively recommend action on grievances; OR
- c) Direct the claimant's daily work activities

Harassment by non-supervisory employees

Employers can be liable for harassment by **non-supervisory employees if the employer knew or should have known about the harassing behavior and failed to take immediate and effective corrective action.**

➤ Personal Remedies

Injunctive Relief

- Training
- Development or changes in policies/procedures

Economic Damages

- Lost wages
- Medical expenses
- Job search expenses

Non-Economic Damages

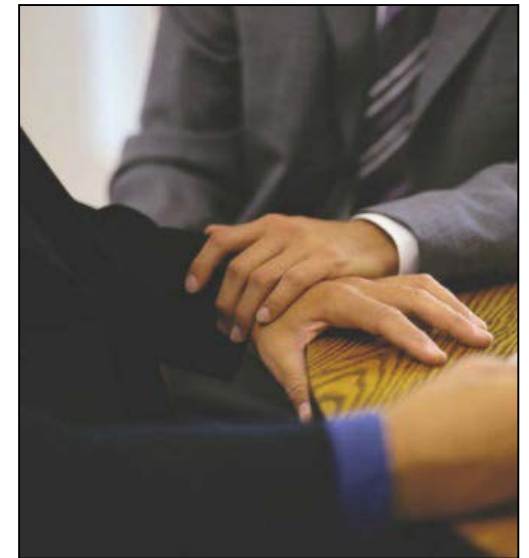
- Emotional Distress
- Loss of Enjoyment of Life

Punitive Damages



➤ Same Sex Sexual Harassment

- 1) Can occur and is actionable between individuals of the same sex
- 2) There does not have to be an economic loss or other adverse employment action
- 3) What is required is an assault on the complainant's personal sense of dignity and well-being



➤ Common Supervisor Statements

When Faced With a Harassment Claim

Common responses:

- It never happened
- There are no witnesses
- Look at how she dresses
- I'm a hugger
- *Hey, I give compliments – am I “not” supposed to comment on employees – when they look good!!!*

➤ Employer Defense to Harassment Claims

- 1) The victim could have avoided part or most of the harm if they had reported the incident(s) to Management.
 - Avoidable Consequences Doctrine
- 2) The amount of harm to the victim could have been less if the employee had followed policy.
 - Failure to Mitigate Damages

Employee is victim to harassing comments from coworkers

Examples:

- “You look really sharp when you wear those jeans and have makeup.” This occurs daily or frequently during the day or other comments on attire are made... “wish you would wear those jeans again...”
- “You can’t do this job – you’re a woman – how can you control contractors... I’ll do it! You can’t do the heavy lifting.” Negative and/or derogatory statements with sexual connotations
- “Pete – I know this is your customer but we want the sale – Mary is sexier than you are and we want to make a good impression and of course she will get the commission.”

Note: Any one occurrence does not typically create a hostile work environment sex harassment claim unless intentional and severe...



Federal TITLE VII

- **Negligence theory only** [Employer not automatically liable]
- Employer not liable if:
 - Employer exercised reasonable care; and
 - Employee unreasonably failed to take advantage of opportunities to avoid harm
- **15 employees or more**
- No application to independent contractors, volunteers and unpaid interns

California FEHA

- **Strict liability** [Employer automatically liable for harassment by managers and supervisors]
- Employer has no defense if manager or supervisor is harasser
- All employers, even those employing one person or sole proprietors
- Includes independent contractors, volunteers and unpaid interns

➤ Harassment Based on Any of These Characteristics is Illegal

- 1) *Race
- 2) Color
- 3) National Origin
- 4) Sex
- 5) Sexual Orientation
- 6) Gender
- 7) Gender Identity
- 8) Gender Expression
- 9) Religious Creed
- 10) Mental Disability
- 11) Physical Disability
- 12) Medical Condition
- 13) Military/Veteran Status
- 14) Marital Status
- 15) Age
- 16) Genetic Characteristics
- 17) Ancestry

CA – SB 188 adds Hair style as a protection under race discrimination – *“In a society in which hair has historically been one of many determining factors of a person’s race, and whether they were a second class citizen, hair today remains a proxy for race. Therefore, hair discrimination targeting hairstyles associated with race is racial discrimination” ...*

- Section 12926 of the Government Code is amended to read:
 - (w) “Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.
 - (x) “Protective hairstyles” includes, but is not limited to, such hairstyles as braids, locks, and twists.
- Passed CA Assembly & Enrolled: 6/27/2019

➤ Abusive Workplace Conduct

Conduct in the workplace that a **reasonable person** would find hostile, offensive and unrelated to an employer's legitimate business interests, including:

- 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
- The gratuitous sabotage or undermining of a person's work performance

A single act shall not constitute abusive conduct, unless especially severe and egregious.

➤ Your Policy & Commitment

- The company is dedicated to promoting and establishing a work-place free of harassment and discrimination
- The company encourages the use of the “Open-Door Policy”
- The company has an Equal Employment Opportunity Policy which denounces discrimination, sexual/racial/other unlawful harassment, and outlines steps for addressing such behavior in the workplace
- If you feel you may have a situation that needs to be addressed and you are comfortable confronting the “harasser”, make it clear his/her behavior is not welcomed, inappropriate, offensive and it must stop
- Document your discussion and contact management or Human Resources for assistance
- If you are not comfortable confronting the “harasser” inform your supervisor or other management representative

➤ Sexual Harassment Policy

Policy Statements

When a manager or HR becomes aware of a possible sexual harassment allegation, a prompt investigation will take place.

- Appropriate action will be taken based on the findings of the investigation
- Every attempt will be made to protect confidentiality, but no guarantee can be given – It is the organization's responsibility to investigate any/all claims of harassment

No Retaliation

- Many employees fear retaliation if they come forward with a claim of harassment
- Retaliation is against the law
- Retaliation is not permitted under company policy
- We encourage employees to use the “Open Door” to discuss issues of harassment in the workplace

Policies & Procedures

Basic Steps in an Investigation

The employer is obligated to conduct an effective workplace investigation of a harassment complaint, and should:

- Conduct a thorough interview with the complaining party
- Give the accused party a chance to share their perspective of the events
- Interview relevant witnesses
- Obtain all relevant documents
- Investigate all relevant avenues applicable to the allegations
- Reach a reasonable and fair conclusion based on the facts

➤ Investigation Process – Action Items

1) Have a policy with a complaint procedure.

- Train and communicate policy to managers and employees
- Best to have employees sign an acknowledgment that they received and understand the policy
- Include complaint procedures and include alternative ways to report complaints

2) Recognize when an investigation should take place.

- Complaints may come directly from the alleged victim, as well as from workers, contractors, or even customers who report witnessing improper behavior
- All forms of harassment should be investigated
- Act promptly

3) Identify the appropriate investigators and investigate.

- If the matter may result in litigation, consider outside investigators (independent parties) to conduct the investigations / interviews
- Know the relationship between the potential investigator, the alleged victim, and the alleged harasser
- Any bias could affect the validity of the investigation
- Select an investigator who would make a good witness at trial if necessary
 - Two individuals should be present, may include an HR representative in addition to the investigator.
 - Gender of the interviewers may be a factor – often one male and one female are best. Typically, the lead investigator is of the same gender as the claimant.

➤ Investigation Process – Action Items (continued)

- 4) Ask the claimant to prepare a written statement (signed and dated).
- 5) Use a prepared list of questions as part of the interview process.
 - For the claimant
 - Ask for names of witnesses
 - Ask for all other information / evidence
 - Written – electronic
 - Questions for the alleged harasser
 - Questions for witnesses
- 6) Research any history between the claimant and alleged harasser.
- 7) Let all parties know that you will make a conscious effort to maintain confidentiality during the process but “don’t promise”. Some disclosure is necessary during the investigation and others may discuss outside of the investigation as well.
- 8) Inform employees that retaliation will not be tolerated and must be promptly reported.
- 9) Document all interviews.
 - One of the interviewers asks the questions and the 2nd takes notes
 - Handwritten statements from witnesses can be helpful as well or have the witness review, sign and date the notes / comments as being an accurate assessment of the events

➤ Investigation Process – Action Items (continued)

10) Maintain the investigation file separate from personnel files.

11) Create a written report.

- Summarize the investigation – Include the allegations, explanations, witness summaries, and documents relied upon
- Make credible determinations base on the information / evidence
 - Make recommendations on disciplinary actions to be taken or reach other conclusions regarding the inappropriate conduct occurred and to what extent.

➤ Sex Harassment Investigation - Interviews



All opening statements are similar:

- Thank the employee for their time & cooperation
 - Explain what is being investigated and the process
 - Advise the employee that the matter under investigation is serious and the company has a commitment/obligation to investigate the claim
 - Inform the employee that no conclusion will be made until all facts have been gathered and thoroughly reviewed
 - State that any attempt to influence the outcome of the investigation by retaliating against anyone who participates, providing false information or failing to be forthcoming can be the basis for corrective action up to and including termination
 - Advise that the intent is to maintain confidentiality but due to the circumstances and the nature of the event(s) information may be disclosed
- ❑ **Record the day / times of all interviews**
 - ❑ **Take notes and transcribe the notes – Ask the interviewee to review the meeting transcript, correct any comments, date and sign a copy of the transcript**



➤ Sex Harassment Investigation - Questions

Claimant Questions

Review the claimants written statement (if provided)

- Who committed the alleged inappropriate behavior?
- Explain what exactly happened?
- When did the incident occur or is it ongoing?
- Where did the incident occur?
- How did you react?
- Did you ever indicate that you were offended or somehow displeased by the act or offensive treatment?
- Who else may have seen or heard the incident?
- Have you discussed the incident with anyone?
- Did the person who harassed you, harass anyone else? If so, who?
- Do you know whether anyone complained about harassment by that person? If yes, who?
- How has the behavior affected you and your job?
- Did you seek any medical treatment or counseling as a result of the incident(s)?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Is there anyone else who may have relevant information?
- Do you have any other relevant information?
- **What action do you want the company to take?**
- If not already provided, at the end of the interview allow the claimant time to write and sign a statement detailing the alleged harassment event(s).

➤ Sex Harassment Investigation - *Questions*

Questions for the alleged harasser

Review the claimants recollection of events as stated in their statement and other pertinent information gained during the claimants interview not included in their statement.

Ask the following questions:

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Ask the alleged harasser to give their interpretation of the event(s) and intentions.
- Are there any employees / others that may have relevant information regarding this matter?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?
- Do you have any additional comments you would like to add or include as a part of this interview / investigation?

At the conclusion of the interview provide time to the employee to write and sign a written account of events or statement.

➤ Sex Harassment Investigation - *Questions*

Witness Questions

- Please describe any inappropriate or offensive behavior that you have experienced or witnessed. What did you see or hear? When did this occur? How often did it occur?
- Are you aware of behavior by the accused toward the complainant or toward others in the workplace?
- What did the complainant tell you? When did he or she tell you this?
- Do you know if the complainant reported the concern to his or her supervisor?
- Upon knowledge of the incident(s), did you report it to your supervisor?
- Do you have any notes, physical evidence or other documentation regarding the incident(s)?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

At the conclusion of the interview allow the witness time to write a signed witness statement of they have not already done so.

➤ Harassment Investigation - Checklist

Example Harassment Investigation Checklist & Process

I. When a complaint of harassment is received:

- First ensure complainant and any other alleged victims are safe and free from further harassment during course of investigation (until permanent resolution is decided).
- If alleged harasser is a Company employee, remove alleged harasser from same working vicinity as complainant (if appropriate) for duration of investigation (assign to another location or suspend pending outcome of investigation, as appropriate).
- Determine who should be involved in investigation (names of complainant(s), alleged harasser(s), witnesses, etc.). Limit discussion of incident to these individuals.

Consider the order in which the investigation will be conducted:

- Complainant(s)
- Alleged harasser
- Co-workers and other witnesses
- Second interview of the complainant to discuss any factual questions as a result of the investigation
- Second interview with the alleged harasser to discuss any factual questions as a result of the investigation

II. Begin Interview Process:

- Interview each witness separately in an office or room where the discussion will not be overheard by other witnesses, the alleged harasser, or any other unauthorized persons.
- Two interviewers should participate in the interview process if possible. At least one of the investigating managers should be familiar with sexual harassment law and the Company's harassment policies and procedures. One interviewer should be designated as the interviewer, and the other should act primarily as a witness and take notes of the discussion.
- Before beginning the interview, explain the purpose of the interview by referring generally to recent complaints about the relationship between the Complainant and the alleged harasser. Do not necessarily discuss the issue of sexual harassment so that you do not influence the witness's recollection of the events.
- Emphasize that the Company takes these charges very seriously and that the Company is investigating these charges by interviewing all potential witnesses in compliance with our policy.
- Explain that upon completion of the investigation, the Company will attempt to determine what occurred, and will take appropriate action based on its determination.

- Both the alleged victim and the alleged harasser should be advised that each will be apprised of the results of the investigation and any action taken at the conclusion.
- Instruct any witnesses interviewed not to discuss the matters covered during the interview with any coworkers or the alleged harasser.
- Explain to the witness that confidentiality is necessary to protect the integrity of the investigation and to ensure that the Company receives trustworthy information in an atmosphere free from coercion. To the best of our ability we will maintain each person's confidentiality throughout the investigation.
- Explain to all witnesses that retaliation will not be tolerated by anyone. If someone attempts to retaliate against them for participating in this investigation, advise the witness to contact you immediately to report such conduct.

III. Documenting the Interviews:

- Ask open ended, non-judgmental questions. Avoid asking leading questions or those with a simple "yes" or "no" answer.
- Use investigation interview questions / forms where appropriate.
- Avoid the appearance of impropriety or favoritism in conducting interviews.
- Observe and record all physical and verbal reactions of the witnesses during the interviews.
- DO NOT** record conclusions or opinions regarding credibility about witnesses.
- Upon completion of each interview, ask the interviewee to prepare their own written statement documenting in their own words what occurred (or what they witnessed, heard, etc.). Attempt to get a written and signed statement from each person interviewed. If a witness is unwilling to provide a written statement, ask them to read your interview notes and sign at the bottom, acknowledging that this is an accurate record of what they communicated to you.

V. After the interviews are completed, the manager should:

- Discuss investigation results and proposed action with the investigation team and/or Human Resources. This discussion should be limited to those with a need to know the results of the investigation.
- Consider credibility determinations, if applicable. Factors include:
 - memory
 - perception
 - truthfulness
 - corroboration or lack thereof
 - bias of witnesses
 - consistency of accounts
 - prior misconduct or lack thereof, and implications of such conduct
 - plausibility of accounts

➤ Harassment Investigation - Checklist

- Review any relevant documentary evidence (records, video tapes, timecards, etc.)
- Consider appropriate remedial action:
 - document investigation in personnel file
 - verbal warning
 - written warning
 - suspension
 - demotion
 - termination
- Factors in determining appropriate remedial action to take include:
 - credibility of alleged harasser, complainants and witnesses
 - prior conduct, if any (positive or negative)
 - prior discipline of alleged harasser
 - level of harassment, including type and frequency of conduct
 - alleged harasser's knowledge of Company rules of conduct
 - prior disciplinary "precedent" for identical, similar or analogous misconduct
 - public and employee relations issues

V. Communication of Findings and Finalization of Investigation

- Communicate findings, determination and actions to be taken to the alleged harasser, reminding him/her not to discuss situation with others and policy against retaliation.
- Communicate findings, determination and actions taken to the complainant, reminding complainant not to discuss situation and to report any issues of retaliation.
- Finalize documentation of investigation and place in confidential harassment investigation file.
- Determine if Company harassment policy was properly communicated, employees were aware of policy and how to report, and any other related issues. Act to correct any deficiencies.

Workplace Violence

All employers are vulnerable – Anyone can create a workplace violence situation.

- Coworkers or former employees
- Customers, patients, or inmates
- Vendors or delivery people
- Employees' friends, family, ex-partners
- Criminals
- Terrorists

➤ Workplace Violence Causes

What are some of the triggers for workplace violence:

- Conflict with coworker
- Disciplinary actions
- Bad behavior warnings
- Perceived unfairness
- Poor performance review
- Layoff
- Termination
- Personal problems
- Personal financial difficulties
- Substance abuse
- Emotional problems

➤ Workplace Violence – What to Look For

Potential signs of looming workplace violence scenarios:

- Excessive tardiness or absences
- An increased need for supervisory attention or supervision
- Reduced productivity
- Inconsistent work habits
- Strained workplace relationships
- Inability to concentrate
- Recent involvement in workplace accidents or other safety violations
- Changes in health or hygiene
- Unusual or sudden behavioral change
- Fascination with weapons
- Alcohol and/or drug abuse
- Stress
- Excuses and blaming
- Depression

QUESTIONS





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