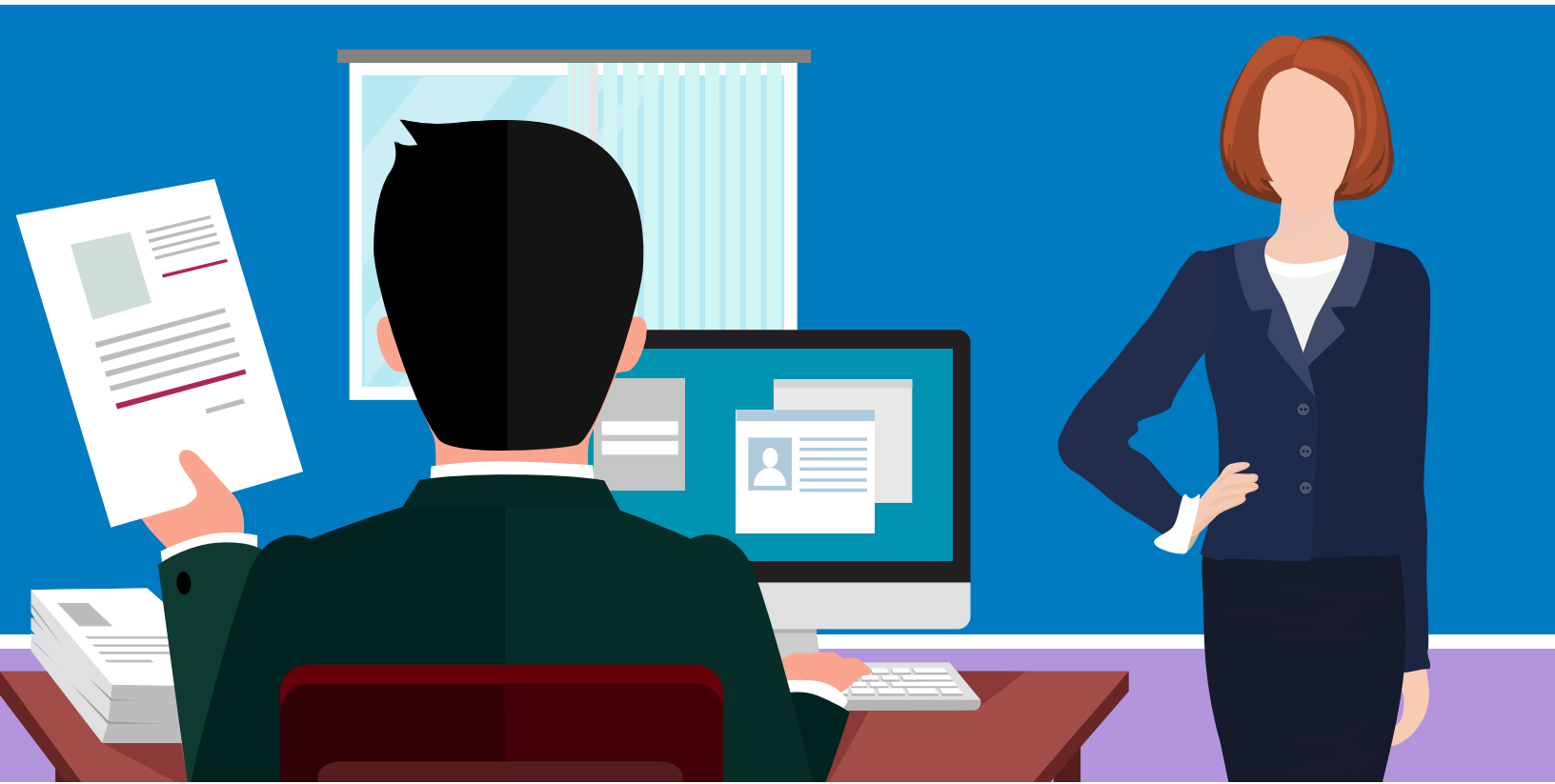




QUID PRO QUO SEXUAL HARASSMENT UNDER CALIFORNIA LAW

In California, quid pro quo sexual harassment happens when a supervisor conditions a job benefit on an employee's submission to sexual demands.

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In California, **quid pro quo** sexual harassment occurs when a supervisor or employer conditions a job benefit, such as a raise, a promotion, or continued employment, on an employee's submission to a sexual demand.¹ The Latin phrase means "this for that," and the harassment takes exactly that shape: a work benefit offered or withheld in exchange for sexual favors.²

 EXAMPLE

A direct supervisor says to a subordinate employee: "If you perform a sex act with me, I will give you a raise."

Quid pro quo sexual harassment generally appears in one of two forms:

- ⇒ An employer or supervisor **offers** an employee some kind of benefit that is conditioned on the employee submitting to a sexual favor;³ or
- ⇒ An employer or supervisor **threatens** an employee with an adverse work-related action, like termination, unless the employee submits to a sexual demand.⁴

Quid pro quo cases often involve unwanted sexual advances, inappropriate discussions of graphic sexual acts, or commentary on the employee's body and the sexual uses to which it could be put.⁵

These violations can be committed either expressly or impliedly. Merely hinting at a job benefit in exchange for sexual favors can constitute quid pro quo sexual harassment.⁶

Quid pro quo sexual harassment is usually a serious legal violation. Even a single instance can be enough to support a lawsuit, as long as a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands.⁷ A *tangible employment action* is a significant change in employment status, such as being fired, demoted, denied a promotion, or reassigned to a job with significantly different responsibilities.⁸

Contrast: Hostile Work Environment Sexual Harassment



Quid pro quo sexual harassment can be contrasted with *hostile work environment* sexual harassment. Hostile work environment sexual harassment is conduct severe or pervasive enough to create an abusive working environment.⁹ It is unlawful regardless of whether it is motivated by sexual desire.¹⁰

Conduct of this kind violates the law only if it is *objectively* hostile or abusive. A few annoying or mildly offensive comments are usually not enough.¹¹

The conduct must also *subjectively* offend, humiliate, or distress the victim.¹² A person cannot claim a hostile work environment if they were emotionally unaffected by the harassment or if they welcomed it.¹³ The Legislature has made clear, though, that a victim need not prove that the harassment caused a measurable drop in productivity; it is enough that a reasonable person subjected to the conduct would find it harder to do the job.¹⁴ To show that harm, a victim usually must demonstrate one or more of the following:

- ☹️ The harassment disrupted their emotional tranquility in the workplace,
- ☹️ The harassment affected their ability to perform the job as usual, or



The harassment interfered with and undermined their personal sense of well-being.¹⁵

A hostile work environment often arises from a pattern of offensive conduct, but California law does not require one. Since 2019, a single incident of harassment has been enough to support a claim if it unreasonably interfered with the employee's work performance or created an intimidating, hostile, or offensive working environment.¹⁶ The California Supreme Court has since confirmed the point, holding that an isolated act of harassment may be actionable when it is sufficiently severe in light of the totality of the circumstances.¹⁷ A single serious act, such as a physical assault or the threat of one, can meet that bar on its own.¹⁸

California courts weigh several factors to decide whether a work environment is sufficiently hostile or abusive:¹⁹



Severity of the Conduct. Conduct that is particularly bad (like nonconsensual physical touching) is more likely to be unlawful than mild conduct. The worse the conduct is, the less frequently it needs to occur to meet the threshold of “pervasive” conduct.



Frequency of the Conduct. Even mild behaviors can be unlawful if they happen frequently enough. Improper activities that happen often are more likely to be considered “pervasive” than those that happen once every other month. Some California courts will even attempt to count or approximate the total number of days on which the conduct occurred.



Context of the Conduct. All of the circumstances surrounding the harassment can be examined. In some cases, there may be circumstances beyond the improper conduct that make it more or less egregious. For example, the conduct may be less egregious if it took place only outside of the workplace.

The weight of each factor depends heavily on the facts of the case. These factors help assess whether a hostile work environment may be present, but the court ultimately makes that determination. The legal standard does not change with the type of workplace: a history of crude or sexual commentary in a particular occupation does not make otherwise unlawful harassment permissible there.²⁰

Gender Is Irrelevant



The laws against both types of workplace sexual harassment protect men and women equally, as well as people of any gender identity. Sexual harassment committed by a woman is unlawful to the same extent as harassment committed by a man.²¹

Sexual harassment is also unlawful when the victim is the same gender as the harasser.²²

Examples of Quid Pro Quo Sexual Harassment



The tests defining “sexual harassment” can be a little difficult to understand. This is particularly true for hostile work environment claims because there is no clear rule defining which conduct is severe or pervasive. As such, when analyzing an allegation, many courts rely on the fact patterns of prior cases. These examples can help clarify where courts draw the line in determining whether conduct is unlawful.

3.1 Inappropriate Propositions

Propositions are relatively common in the workplace. In general, a single request to go on a date does *not* amount to sexual harassment.²³ There may, however, be a valid claim of sexual harassment if the employee is subjected to repeated advances by the same person or if the employee is punished for rejecting an advance.

In one case, an employee was asked out on a date three or four times by a coworker.²⁴ Each time, the employee rejected the request. Some time later, the coworker described his sexual fantasies about the employee to her.²⁵ Upset, the

employee complained to her supervisor about the coworker's conduct. After that, the coworker began to stare at her angrily several times each day.²⁶

The court in that case held that the coworker's initial propositions could potentially constitute overt acts of sexual harassment. Likewise, the coworker's prolonged campaign of staring at the employee could potentially constitute unlawful retaliation.²⁷ An employer in such a situation could potentially be liable for unlawful sexual harassment.

Another clearly prohibited behavior in California is the offering of employment or employment benefits in exchange for sexual acts. As mentioned above, these kinds of offers or threats are unlawful quid pro quos.²⁸

Importantly, inappropriate propositions do *not* have to be directly spoken to be unlawful; they can be implied by words or conduct.²⁹ This can occur when a supervisor or other superior implies that a subordinate will get ahead in the workplace through sexual acts.

3.2 Favoritism and Unequal Treatment

California law prohibits sex-based discrimination.³⁰ In the context of sexual harassment, this kind of discrimination can occur when supervisors reward employees with whom they are having sex or punish those who refuse to have sex with them.

In general, isolated instances of favoritism toward an employee with whom the supervisor is having a sexual affair would *not* constitute unlawful sexual harassment.³¹ These situations, however, often blur the line between consensual sexual conduct and job-motivated sexual favors.

When sexual favoritism in a workplace is widespread, it can create an unlawful hostile work environment. In those cases, the demeaning message conveyed to employees is that they are viewed by management as sexual playthings. Or, even worse, the employees may feel that they are required to engage in sexual conduct with their supervisors or management to get ahead in their job.³²

In one such case, two female employees sued their employer for sexual harassment because their supervisor engaged in sexual affairs with three subordinate employees at the same time.³³ The supervisor promised and granted unfair employment benefits to the women with whom he was having sex.³⁴ The court held that this conduct could potentially constitute sexual favoritism widespread enough to justify a claim of hostile work environment sexual harassment.³⁵

Who Can Be Held Responsible?

Because quid pro quo harassment involves someone who controls job benefits, the question of who can be held responsible is often central to a case. Several parties may be liable.

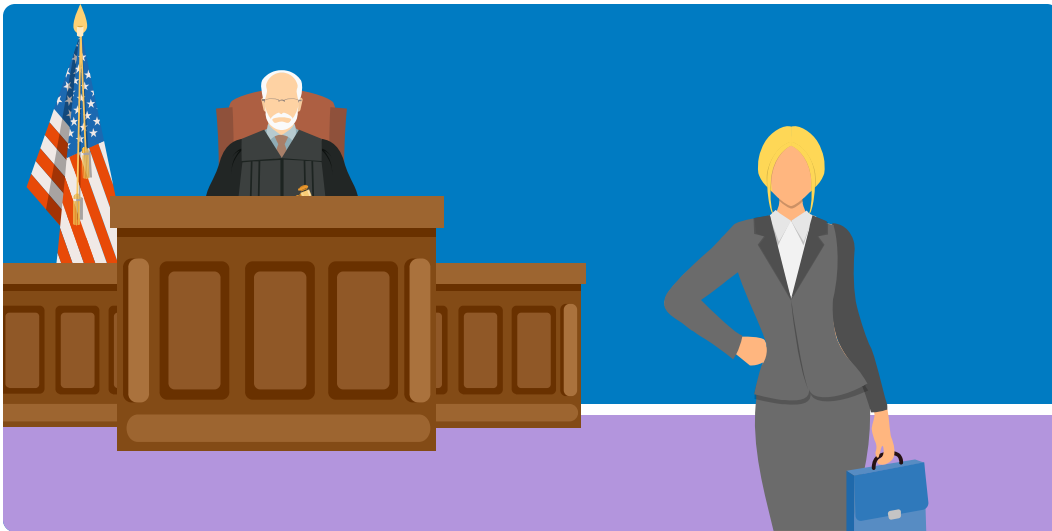
When a **supervisor** commits the harassment, the employer is automatically responsible. California treats an employer as strictly liable for sexual harassment by a supervisor, without regard to whether the employer knew about the conduct.³⁶

When the harasser is a **coworker** rather than a supervisor, the standard is different. The employer is liable only if it knew or should have known about the harassment and failed to take immediate and appropriate corrective action.³⁷

The reach of these protections is broad. For sexual harassment, the FEHA applies to employers with **one or more** employees, not just to the larger employers covered by the general discrimination rules.³⁸ The individual who did the harassing can also be held **personally** liable, in addition to the employer.³⁹

An employer can also be liable for *failing to prevent* harassment. California law requires employers to take all reasonable steps to prevent harassment from occurring, and an employer that does not can face a separate claim.⁴⁰ This claim is not a standalone shortcut, though: a court will not impose liability for failing to prevent harassment unless actionable harassment actually occurred.⁴¹

Handling Sexual Harassment Violations



Despite the clear requirements of California law, some employers still violate their employees' legal rights. Employees who have experienced a violation of their right to be free from workplace sexual harassment have three basic options:

- ≡ They can attempt to resolve the dispute informally with their employer,
- ≡ They can bring an administrative claim to seek damages, or
- ≡ They can file a lawsuit in court.

In selecting one of these paths, employees should keep in mind that a successful claim can produce a range of remedies. These may include back pay for lost wages, front pay for future lost earnings, damages for emotional distress, punitive damages, reinstatement, and an order requiring the employer to change its practices.⁴² One advantage of state law is that, unlike federal law, the FEHA places no cap on the amount of compensatory and punitive damages a jury can award.⁴³ For that reason, employees in California usually bring their claims under state law.

Each option has benefits and disadvantages, and some situations call for employees to try all three approaches. It is often a good idea to discuss the case with an

employment lawyer.

5.1 What Should You Do If You Are Being Harassed?

If you are experiencing quid pro quo sexual harassment, a few practical steps can protect your rights and strengthen a later claim:

-  **Write it down.** Keep a record of what happened, including dates, times, locations, what was said or done, and the names of anyone who saw or heard it.
-  **Report it.** If your employer has a complaint procedure or a human resources department, reporting the harassment in writing gives the employer a chance to fix the problem and creates a record that you raised it.
-  **Preserve evidence.** Save any relevant emails, text messages, voicemails, or documents in a safe place, ideally not only on a work device.
-  **Get advice.** Consider speaking with an employment lawyer, especially before signing anything your employer asks you to sign.

5.2 Do Employees Need a Lawyer?

Employees are *not* required to have a lawyer to file a claim against their employer. But it is often a good idea to have one.

The law can be complex, and very few cases are straightforward. Even if the facts are strong, an experienced employment law attorney can sometimes help by:

-  Collecting all legally relevant information,
-  Applying the law to the evidence and related facts in a compelling way,
-  Avoiding the strategic pitfalls many nonlawyers are unfamiliar with, and
-  Maximizing the financial damages the employee receives.

There is no guarantee that a lawyer will accomplish these things. But when employees handle their legal disputes without representation, there is sometimes an increased risk that they will lose or severely harm their case through legal missteps that a lawyer would have avoided.

If the employer contests the employee's claim, which happens often, legal arguments will have to be made and evidence might need to be presented. This might occur in court or before an administrative agency, sometimes according to complicated procedures. It can help to have a lawyer who is familiar with doing those things.

5.3 Paying for a Lawyer

In many cases, attorneys are willing to work with no upfront cost to the employee. Instead, they take a percentage of what the employee wins at the end of the case.

It is also possible that the employer will be required to pay the employee's legal fees at the end of the case. Under the FEHA, a court may award attorney's fees and costs to the prevailing party. In practice, this protects employees: a prevailing employer generally cannot recover its fees from the employee unless the court finds the claim was frivolous, unreasonable, or groundless.⁴⁴

So, although there is no legal requirement that an employee have an attorney, navigating the claims process can be much easier with one. Feel free to visit the explanation of our firm's contingent fee pricing.

5.4 State Law Claims Start with a Government Agency

When an employee decides to sue their employer, a coworker, or their supervisor for violating California's sexual harassment laws, they must first file a complaint with California's Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH).⁴⁵ The complaint can be filed through the CRD's online portal, or by mail, email, or phone.⁴⁶ Employees pursuing a claim related to sexual harassment generally *cannot* go straight to court with a lawsuit.⁴⁷

The law treats sexual harassment as a form of sex discrimination. As a result, the process for filing a sexual harassment claim with the CRD is the same as the process for filing a discrimination complaint. That process is explained in our article: *How to File a Work Discrimination Complaint with California's Civil Rights Department*.

After a complaint is filed, the Civil Rights Department investigates. If the department does not bring its own civil action within 150 days (or determines that it will not), it must notify the employee, who may then obtain a right-to-sue notice; an employee who wants to go directly to court may instead request that notice immediately.⁴⁸ Once the right-to-sue notice issues, the employee may bring a lawsuit in court.

5.5 The Deadline to File (Statute of Limitations)

Employees are up against strict deadlines when pursuing relief for sexual harassment violations. If the employee is bringing claims under state law, they must file a complaint against the employer with the Civil Rights Department no later than **three years** from the date of the alleged violation.⁴⁹

Once the employee has gone through the administrative process and has been issued a right-to-sue notice, the employee will then have **one year** to file a lawsuit in civil court against the employer.⁵⁰ This one-year clock starts on the date the right-to-sue notice is issued.

There are, of course, exceptions to these time limits. Employees who also want to pursue federal claims must instead file a charge with the U.S. Equal Employment Opportunity Commission (EEOC), which has its own, shorter deadline.⁵¹ You should speak with a lawyer immediately if you are unsure whether your claim is time-barred.

5.6 What If You Signed an Arbitration Agreement?

Many employees sign arbitration agreements when they are hired, often without realizing it. These agreements usually require workplace disputes to be resolved privately, before an arbitrator, rather than in court. For sexual harassment claims, though, a federal law gives the employee a choice.

Under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, a person who alleges sexual harassment can decide that a pre-dispute arbitration agreement will not be enforced, and can take the case to court instead.⁵² The choice belongs to the employee, not the employer. An employee who would rather use arbitration can still do so, but the employer cannot force it.

5.7 Retaliation Is Prohibited

Even though most employers follow the law, employees are often worried about the consequences of pursuing a claim against their employer. Fortunately, employers are legally prohibited from wrongfully terminating or taking adverse employment actions against their employees simply because they opposed the employer's violations of the law.⁵³

Similarly, an employee who has suffered a violation of California's sexual harassment laws has a right to file a complaint, testify, or assist in any proceeding under these laws. The employer may not retaliate against them for doing so.⁵⁴

California law also protects an employee's ability to speak about what happened. A settlement agreement or a separation agreement generally cannot include a provision that prevents you from disclosing the facts of workplace sexual harassment you experienced, and any such provision is void.⁵⁵ You cannot be forced to stay silent as a condition of resolving your claim.

References

- 1 Cal. Code of Regs., tit. 2, § 11034, subd. (f)(1) [“Quid pro quo’ (Latin for ‘this for that’) sexual harassment is characterized by explicit or implicit conditioning of a job or promotion on an applicant or employee’s submission to sexual advances or other conduct based on sex.”].
- 2 *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1042 [quid pro quo sexual harassment is “a demand for sexual favors in return for a job benefit”].
- 3 Cal. Code of Regs., tit. 2, § 11019, subd. (b)(2)(D) [“Harassment includes but is not limited to: . . . Sexual favors, e.g., unwanted sexual advances, which condition an employment benefit upon an exchange of sexual favors.”].
- 4 *Burlington Indus. v. Ellerth* (1998) 524 U.S. 742, 751 [118 S.Ct. 2257, 2264] [“Cases based on threats which are carried out are referred to often as quid pro quo cases, as distinct from bothersome attentions or sexual remarks that are sufficiently severe or pervasive to create a hostile work environment.”].
- 5 Cal. Code of Regs., tit. 2, § 11019, subd. (b); *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1414 [“A cause of action for quid pro quo harassment involves the behavior most commonly regarded as sexual harassment, including, e.g., sexual propositions, unwarranted graphic discussion of sexual acts, and commentary on the employee’s body and the sexual uses to which it could be put.”].
- 6 *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1414 [“To state a cause of action on this theory, it is sufficient to allege that a term of employment was expressly or impliedly conditioned upon acceptance of a supervisor’s unwelcome sexual advances.”].
- 7 *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1049 [“To establish quid pro quo sexual harassment under these employment laws, a plaintiff must show

'that a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands.'"].

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- 8 *Burlington Indus. v. Ellerth* (1998) 524 U.S. 742, 761 ["A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."].
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- 9 *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 279 ["a hostile work environment sexual harassment claim requires a plaintiff employee to show she was subjected to sexual advances, conduct, or comments that were . . . sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment"].
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- 10 Gov. Code, § 12940, subd. (j)(4)(C) ["Sexually harassing conduct need not be motivated by sexual desire."].
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- 11 *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283 ["Although annoying or 'merely offensive' comments in the workplace are not actionable, conduct that is severe or pervasive enough to create an objectively hostile or abusive work environment is unlawful, even if it does not cause psychological injury to the plaintiff."].
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- 12 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608.
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- 13 *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 U.S. 57, 68 [106 S.Ct. 2399, 2406] ["The gravamen of any sexual harassment claim is that the alleged sexual advances were 'unwelcome.'"].
-
- 14 Gov. Code, § 12923, subd. (a) (Stats. 2018, ch. 955 (SB 1300)) [affirming the standard from Justice Ginsburg's concurrence in *Harris v. Forklift Systems* (1993) 510 U.S. 17; a victim need not prove a tangible decline in productivity, only that a reasonable person would find the conduct made the job more difficult].
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- 15 Gov. Code, § 12923, subd. (a) ["the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine

the victim's personal sense of well-being”]; *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608.

- 16 Gov. Code, § 12923, subd. (b) (SB 1300) [“A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment.”]. The same subdivision expressly rejects *Brooks v. City of San Mateo* (9th Cir. 2000) 229 F.3d 917, which “shall not be used” in determining what conduct is sufficiently severe or pervasive to violate the FEHA.
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- 17 *Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611 [an isolated act of harassment may be actionable if it is severe enough, judged from the perspective of a reasonable person in the plaintiff's position; there is no fixed number of incidents a plaintiff must prove].
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- 18 *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1049 [“employment law acknowledges that an isolated incident of harassing conduct may qualify as 'severe' when it consists of 'a physical assault or the threat thereof.'”].
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- 19 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610 [“The factors that can be considered in evaluating the totality of the circumstances are: (1) the nature of the unwelcome sexual acts or words (generally, physical touching is more offensive than unwelcome verbal abuse); (2) the frequency of the offensive encounters; (3) the total number of days over which all of the offensive conduct occurs; and (4) the context in which the sexually harassing conduct occurred.”].
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- 20 Gov. Code, § 12923, subd. (d) (SB 1300) [“The legal standard for sexual harassment should not vary by type of workplace.”].
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- 21 Gov. Code, § 12940, subd. (j)(1).
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- 22 *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1525 [“Under both Title VII and FEHA, sexual harassment can occur between members of the same gender as long as the plaintiff can establish the harassment amounted to discrimination because of sex.”].
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- 23 *Herberg v. California Institute of the Arts* (2002) 101 Cal.App.4th 142, 153. Herberg predates Gov. Code, § 12923 (SB 1300, eff. 2019); a single incident of harassment can now be sufficient if it is severe enough, so

this point reflects only that an ordinary, one-time request to socialize is not by itself severe or pervasive.

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- 24 *Birschtein v. New United Motor Manufacturing, Inc.* (2001) 92 Cal.App.4th 994, 997.
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- 25 *Birschtein v. New United Motor Manufacturing, Inc.* (2001) 92 Cal.App.4th 994, 998.
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- 26 *Birschtein v. New United Motor Manufacturing, Inc.* (2001) 92 Cal.App.4th 994, 998.
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- 27 *Birschtein v. New United Motor Manufacturing, Inc.* (2001) 92 Cal.App.4th 994, 1002.
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- 28 *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1042.
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- 29 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 461 [the prohibition against sexual harassment includes “impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances”].
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- 30 Gov. Code, § 12940, subd. (a).
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- 31 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 451.
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- 32 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 451.
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- 33 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 466.
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- 34 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 466.
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- 35 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 468.
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- 36 *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [an employer is strictly liable for sexual harassment by a supervisor]. Because quid pro quo harassment can only be carried out by someone with authority over the employee's job, it will usually involve a supervisor, which makes this rule especially important.
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- 37 Gov. Code, § 12940, subd. (j)(1).
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- 38 Gov. Code, § 12940, subd. (j)(4)(A) [defining “employer” for harassment purposes to include a person regularly employing one or more persons].
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- 39 Gov. Code, § 12940, subd. (j)(3) [“An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this

section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”].

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- 40 Gov. Code, § 12940, subd. (k) [unlawful “to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring”].
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- 41 *Dickson v. Burke Williams, Inc.* (2015) 234 Cal.App.4th 1307, 1314 [a finding of actual harassment or discrimination is required before a plaintiff may prevail under Gov. Code, § 12940, subd. (k)]; *Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 286–287.
-
- 42 Gov. Code, § 12965 [authorizing broad relief in FEHA actions]; *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211 [punitive damages are available under the FEHA].
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- 43 42 U.S.C. § 1981a(b)(3) [capping combined compensatory and punitive damages under Title VII based on employer size, from \$50,000 to \$300,000; back pay and front pay are not capped]. The FEHA has no comparable cap.
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- 44 Gov. Code, § 12965, subd. (c)(6) [“In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.”].
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- 45 Gov. Code, § 12960.
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- 46 California Civil Rights Department, Complaint Process (calcivilrights.ca.gov/complaintprocess/).
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- 47 *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724; *Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 90 [“Before a person may file a civil complaint alleging a violation of this statute, he or she must first file an administrative claim with the DFEH.”].
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- 48 Gov. Code, § 12965, subd. (c)(1)(A) [“Except as specified in subparagraphs (B) and (C), if a civil action is not brought by the

department pursuant to subdivision (a) within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought pursuant to subdivision (a), the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice.”].

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- 49 Gov. Code, § 12960, subd. (e)(5).
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- 50 Gov. Code, § 12965, subd. (c)(1)(D) [“The notices specified in subparagraphs (A), (B), and (C) shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice.”].
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- 51 42 U.S.C. § 2000e-5 (Title VII charge-filing requirement; federal claims are subject to their own, shorter deadline).
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- 52 9 U.S.C. § 402(a) (Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021) [at the election of the person alleging conduct constituting a sexual harassment dispute, no predispute arbitration agreement is valid or enforceable with respect to a case relating to that dispute]. The Act applies to claims that arise or accrue on or after March 3, 2022.
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- 53 Gov. Code, § 12940, subd. (h).
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- 54 Gov. Code, § 12940, subd. (h).
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- 55 Code Civ. Proc., § 1001; Gov. Code, § 12964.5 (SB 331, the Silenced No More Act, eff. Jan. 1, 2022) [prohibiting settlement and separation-agreement provisions that prevent the disclosure of factual information relating to claims of workplace harassment, discrimination, or retaliation]. An employee may still request a provision protecting his or her own identity.
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