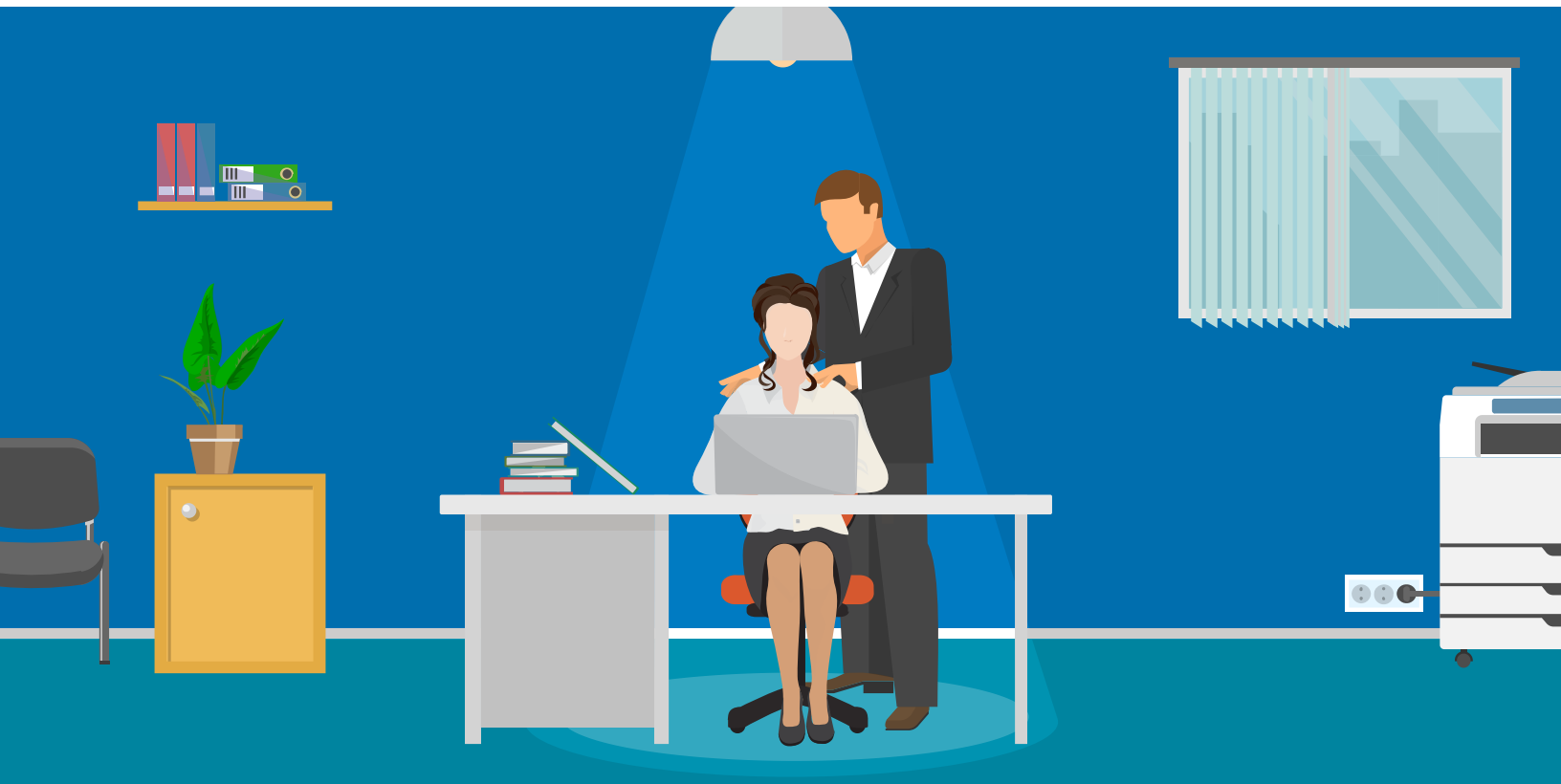




WORKPLACE SEXUAL HARASSMENT LAW IN CALIFORNIA

California employees have a right to a workplace free from sexual harassment. This guide explains what the law prohibits, when conduct crosses the line, and how to enforce that right.

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BY KYLE D. SMITH

Kyle D. Smith is a California employment lawyer and the author of the articles on WorkLawyers.com. He represents employees in disputes with their employers, from unpaid wages and misclassification to wrongful termination.

He writes these guides to put the state’s labor laws into plain English, in neutral terms, with a citation for every claim.



In California, unlawful **workplace sexual harassment** occurs when a person directs negative, inappropriate, or unwanted conduct at a worker based on their sex, gender, marital status, sexual orientation, pregnancy, or other sex-related reason.¹

Sexual harassment can take a variety of forms, and with more media platforms available to employees, sexual harassment has never been more prevalent in the workplace. Coworkers and supervisors alike are connected through Facebook, Twitter, and other social networks. They also commonly communicate through e-mails and text messages. Common violations include:

-  Inappropriate sexual jokes, derogatory comments, or innuendo;
-  Physical harassment, like unwanted touching;
-  Verbal threats or implied threats of a sexual nature;
-  Visual harassment, like posters or signs;
-  Aggressive or repeated requests for sexual favors;² and
-  Showing favoritism based on sex.³

Importantly, harassment of this kind does *not* need to be motivated by sexual desire to be unlawful (although it often is).⁴ It can also be motivated by meanness, bigotry, or personal gratification.⁵

So when does a dirty joke or sexually explicit message become sexual harassment? How far can employees go before they commit unlawful acts? This article provides an answer to these questions and more for California employees.

Sources of Sexual Harassment Law in California



Workplace sexual harassment in California, like in many states, is a significant problem. In 2024 alone, there were more than 9,517 right-to-sue letters requested on the basis of employment-related sexual harassment.⁶ Lawmakers have attempted to curb this epidemic by adopting laws that punish inappropriate sexual behaviors in the workplace.

California employees are protected by three primary sets of laws that prohibit workplace sexual harassment:



Title VII of the Civil Rights Act of 1964 is a *federal* law that prohibits discrimination on the basis of, among other things, sex.⁷ Although Title VII does not explicitly prohibit harassment, courts interpret “discrimination” on the basis of sex to include sexual harassment.⁸



The Fair Employment and Housing Act (called “FEHA”)⁹ is a California *state* law that governs many types of discrimination and harassment faced by employees, unpaid interns, job applicants, and some independent contractors.¹⁰



The California Constitution prohibits employment discrimination on the basis of sex, race, creed, color, nationality, or ethnic origin.¹¹ This is not a traditional route for bringing sexual harassment claims, however, as most are handled under Title VII or FEHA.

Each law provides significantly different protections for employees. In almost all cases, the rules under FEHA are the most protective of employee rights (or *equally* as protective as Title VII).¹² For example, Title VII provides harsh caps on the amount of damages employees can recover in sexual harassment lawsuits,¹³ while FEHA does not.¹⁴

Similarly, FEHA's anti-harassment provisions apply to *all* private, state, and local employers.¹⁵ Title VII, on the other hand, applies only to employers who have 15 or more employees.¹⁶

Fortunately for employees, employers in California are required to follow the law that is most protective to employees.¹⁷ That means employees can choose to pursue relief under one or more of the laws that benefit them the most.

Most employees choose to pursue their case under FEHA because it is usually the most protective of employee rights. The remainder of this article will focus on employment rights under FEHA, unless otherwise stated.

The Legal Definition of “Sexual Harassment”



California law prohibits both employers¹⁸ and employees¹⁹ from harassing any worker, employee, applicant, volunteer, independent contractor, or unpaid intern if that harassment is motivated by certain unlawful reasons.²⁰ Those unlawful reasons include the employee's:

-  Sex,
-  Gender,
-  Gender identity,
-  Gender expression,
-  Marital status,
-  Sexual orientation,
-  Pregnancy,
-  Childbirth, or
-  Pregnancy-related medical conditions.²¹

This list defines which *motives* are unlawful, but it doesn't define which *actions* are unlawful. Unfortunately, there is no bright-line rule that defines which actions constitute “harassment.” Rather, courts have described the concept using very general terms.²²

To clarify matters, many courts separate sexual harassment claims into two distinct categories:

- ■ *Quid pro quo* sexual harassment, and
- ■ Hostile work environment sexual harassment.²³

These two categories are not legally-definitive, especially because many situations involve both types of sexual harassment.²⁴ But they help illustrate which actions are prohibited. Both are examined below.

2.1 *Quid Pro Quo* Sexual Harassment

Quid pro quo is a Latin phrase that means “this for that.”²⁵ Like the name implies, quid pro quo sexual harassment occurs when sexual favors are requested or demanded in exchange for a specific job benefit.²⁶ (E.g., “If you perform a sex act on me, I will give you a raise.”)

Generally, quid pro quo sexual harassment appears in one of two forms:

- ! **An Offer.** An employer or supervisor *offers* an employee some kind of benefit which is conditioned upon the employee submitting to a sexual favor;²⁷ or
- ! **A Threat.** An employer or supervisor *threatens* an employee about some sort of work-related action, like a threat of termination, unless the employee submits to certain sexual demands.²⁸

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.²⁹

These kinds of 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.³⁰

Courts have noted that these kinds of cases usually involve, “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.”³¹

Quid pro quo sexual harassment is usually a serious legal violation. Even just one instance of quid pro quo harassment can be enough to bring a lawsuit, as long as a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands.³²

2.2 Hostile Work Environment Sexual Harassment

A hostile work environment sexual harassment claim arises when unwelcome, sex-based conduct is severe or pervasive enough to make the victim's work environment hostile, offensive, oppressive, intimidating, or abusive.³³

This type of harassment is unlawful regardless of whether it is motivated by sexual desire.³⁴ But the conduct must be severe or pervasive: severe enough, or frequent enough, to alter the conditions of the victim's employment and create an abusive working environment.³⁵ There is both an **objective** and a **subjective** component to this kind of sexual harassment.

Sexual harassment of this sort must be *objectively* hostile or abusive. A few annoying or mildly offensive comments are usually not enough.³⁶ Courts will look at each case from the perspective of a reasonable person in the shoes of the alleged victim.³⁷

The sexual harassment must also *subjectively* offend, humiliate, or distress the victim.³⁸ A person cannot claim that they experienced a hostile work environment if they were emotionally unaffected by the harassment or if they purposefully invited it.³⁹ To prove that the victim suffered, they must usually demonstrate one or more of the following:

-  The harassment disturbed their emotional tranquility in the workplace,
-  The harassment affected their ability to perform their job as usual, or
-  The harassment interfered with and undermined their personal sense of well-being.⁴⁰

California law does not require the victim to prove a long pattern of misconduct. A single incident of harassing conduct is enough to create a triable hostile work environment claim if it unreasonably interfered with the employee's work performance or created an intimidating, hostile, or offensive working environment.⁴¹ In adopting that standard, the Legislature expressly rejected older federal authority suggesting that an isolated incident could almost never qualify.⁴² A single severe act, such as a physical assault, has long been recognized as potentially sufficient on its own.⁴³

Courts in California use several factors to determine whether the work environment is sufficiently hostile or abusive:⁴⁴



Severity. 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 in order to meet the threshold of “pervasive” conduct.



Frequency. 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. Under this factor, 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 only took place outside of the workplace.

The weight of each factor will depend heavily on the facts of the case. And, while these factors are helpful in assessing whether a hostile work environment may be present, it is ultimately the court that makes the determination.

2.3 Gender is Irrelevant

Workplace sexual harassment laws protect men and women equally (as well as any other gender identifications). As such, sexual harassment perpetrated by women is unlawful to the same extent it would be for men.⁴⁵

Moreover, sexual harassment is unlawful even when the victim is the same gender as the aggressor.⁴⁶

In other words, the genders of both the harasser and the victim are irrelevant. The only question is whether the underlying conduct violated the law.

When Do Actions Cross the Line?



The line between sexual harassment and innocent conduct is not always clear. Generally, if you are concerned about whether conduct is sexual harassment, it is a good idea to avoid engaging in that conduct. This usually includes avoiding sexual jokes, offers, or innuendo.

But not all jokes, offers, or innuendo meet the standard of unlawful sexual harassment. In fact, courts have stated that comments “tinged with offensive sexual connotations” are not enough to constitute unlawful sexual harassment.⁴⁷ Rather, courts take a fact-specific approach to sexual harassment cases.

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 Unwanted Physical Touching

Unwanted physical touching is generally the clearest type of sexual harassment. Courts have described physical touching as being more offensive than mere words or

verbal abuse, in most cases.⁴⁸ As such, it is more likely that a court will find unlawful sexual harassment has occurred where there is physical touching.

Where things get confusing is when a form of touching could be construed in multiple ways. Touching a coworker's shoulder, for example, could seem sexual in some circumstances but not others.

Unfortunately, there is no bright-line test to determine what kind of touching is okay and what kind of touching is not. Instead, courts look at all of the surrounding facts of each case. Touching will be found to be unlawful if it is both unwanted and severe or pervasive enough to create an abusive working environment.⁴⁹

The Ninth Circuit has given several examples of the kinds of touching that would constitute unlawful sexual harassment, including:

-  Crotch-grabbing.
-  Touching a coworker's buttocks.
-  Repeatedly touching a coworker's breasts.
-  Mouth-to-breast contact.
-  Rubbing thighs.
-  And touching genitals.⁵⁰

In *Rene v. MGM Grand Hotel, Inc.*, for example, an employee was inappropriately touched on his crotch and anus through his clothing on numerous occasions by his coworkers.⁵¹ The court found that this kind of physical conduct was so severe and pervasive that it constituted an objectively abusive working environment.⁵² It therefore held that the employee had a valid claim of unlawful sexual harassment.

In *Mokler v. County of Orange*, on the other hand, an employee sued her employer for sexual harassment in part because her supervisor had hugged her and, as he did so, he rubbed her breast with his arm.⁵³ The court found that this touching was brief and did not constitute a sufficiently-extreme act of harassment.⁵⁴ So, although the supervisor's behavior was rude, inappropriate, and offensive, the employee did not have a valid claim of sexual harassment.⁵⁵ That decision predates Government Code section 12923, however, and a similar case could come out differently today: a single unwelcome touching of an intimate body part can now be enough to create a triable hostile work environment claim.⁵⁶

Older decisions also held that isolated incidents of sexually-charged horseplay might not constitute sexual harassment, even when they took place sporadically over a period of years.⁵⁷ Those courts acknowledged that the conduct was improper but

found that it did not meet the severity or pervasiveness required at the time. Cases like these predate section 12923, and courts now weigh the totality of the circumstances rather than applying a rigid pattern requirement. In any event, the conduct underlying such a lawsuit could still support a different claim, like assault or battery.

The fact is that all employees have different preferences in terms of what they are physically comfortable with. Some employees like to hug, while others don't. Unfortunately, courts don't have a clear line for these kinds of close-call cases. Instead, they weigh the severity and frequency of the touchings.

3.2 Sexually Derogatory Comments

Perhaps the most common type of sexual harassment comes in the form of sexually derogatory comments. In the real world, these comments are often directed towards women in the workplace. They might be jokes, insults, slurs, or other types of verbal harassment.⁵⁸ These can include any comments that demonstrate hostility toward a specific protected group (in many cases, women).⁵⁹

Comments that evidence sexism through the use of demeaning, gender-specific terms have been held to constitute unlawful sexual harassment.⁶⁰ Courts have held that even cruel practical jokes, although not conduct of a sexual nature, may be properly considered to constitute sexual harassment.⁶¹

This means that comments alone, with no physical touching, *can* be enough to constitute sexual harassment. But the comments usually need to be more than just crude, vulgar, or sexually disparaging to be actionable.⁶² Rather, like other hostile work environment claims, sexually derogatory comments must be severe or pervasive.⁶³

In one case, repeated use of the phrase “f—ing b—ch” and one-time use of “c—t” were enough to establish unlawful sexual harassment. In other cases, phrases like “dumb f—ing broads” were sufficiently offensive.⁶⁴ In each of those situations, derogatory language directed specifically at women used gender-specific, demeaning language. Because the language involved gender, it constituted sexual harassment.

In another case, an effeminate male restaurant employee was subjected to an unrelenting barrage of sexually derogatory names. He was also repeatedly referred to as a woman and was taunted for behaving like a woman.⁶⁵ The court held that this kind of verbal abuse was sufficient to establish a valid claim of sexual harassment.⁶⁶

These cases show how abusive conduct can become unlawful when it specifically targets a person because of characteristics related to their gender.

3.3 Inappropriate Propositions

Propositions are also relatively common in the workplace. In general, a single request to go on a date does *not* amount to sexual harassment.⁶⁷ 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.⁶⁸ Each time, the employee rejected the request. Some time later, the coworker described his sexual fantasies about the employee to her.⁶⁹ 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.⁷⁰

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.⁷¹ An employer in such a situation could be potentially 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.⁷²

Importantly, inappropriate propositions do *not* have to be directly spoken to be unlawful; they can be implied by words or conduct.⁷³ This can occur when a supervisor or other superior implies that their subordinate will get ahead in the workplace through sexual acts.

3.4 Favoritism and Unequal Treatment

California law prohibits sex-based discrimination.⁷⁴ 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.⁷⁵ 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 the management to get ahead in their job.⁷⁶

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.⁷⁷ The supervisor promised and granted unfair employment benefits to the women with whom he was having sex.⁷⁸ The court held that this conduct could potentially constitute sexual favoritism widespread enough to justify a claim of hostile work environment sexual harassment.⁷⁹

3.5 Persistent Leering

At least one court has held that persistently staring at an employee in a sexual manner can justify a hostile work environment sexual harassment claim.

In one case, an employee made repeated complaints to her employer that her supervisor was staring at her breasts.⁸⁰ The inappropriate staring continued for more than two years. The court held that, in some cases, persistently staring or leering in the workplace can constitute unlawful sexual harassment.⁸¹

It should be noted, however, that these kinds of cases can be very hard to prove. Juries and judges may be very skeptical that mere looks are sexual in nature, without additional evidence of sexual misconduct.

3.6 Isolated Incidents

Not every stray comment or one-off encounter creates a hostile work environment. Conduct that is merely occasional, isolated, sporadic, or trivial usually will not, on its own, rise to the level of unlawful sexual harassment.⁸²

California law does not, however, require a victim to prove a long or repeated pattern. A single incident of harassing conduct can support a hostile work environment claim if it unreasonably interfered with the employee's work performance or created an intimidating, hostile, or offensive working environment.⁸³ As a general rule, the more severe the conduct, the less often it needs to occur.

For years, some federal courts set that bar much higher. In one decision, a federal appeals court held that a single incident, in which a supervisor forced his hand under

an employee's sweater and bra to fondle her bare breast, was not enough to establish a hostile work environment because it happened only once and lasted only a few minutes.⁸⁴ The California Legislature has since repudiated that reasoning. Government Code section 12923 expressly rejects *Brooks* and directs that the opinion “shall not be used” in deciding whether conduct is severe or pervasive under California law.⁸⁵ Under the current California standard, a serious single incident like the one in *Brooks* can support a sexual harassment claim.

3.7 Mildly-Offensive Behaviors

There is a lot of conduct that most people would consider improper but nevertheless may not constitute sexual harassment under the law.⁸⁶ Simple teasing and offhand comments, for example, will not amount to unlawful conduct unless they are serious or persistent.⁸⁷

Additionally, different people have different comfort levels when it comes to things like physical touching or jokes in the workplace. A good rule of thumb for employers looking to avoid sexual harassment claims is that it's best not to engage in or allow any behavior which may be on the line or which you're not sure an employee would be comfortable with.

The Duty to Create a Harassment-Free Workplace



In California, employers have a duty to create a harassment-free workplace.⁸⁸ For many employers, this duty involves preventing foreseeable sexual harassment, immediately correcting known harassment, and proactively training employees about sexual harassment.⁸⁹

4.1 Sexual Harassment Prevention

An employer violates the law if it allows sexual harassment to occur that could have otherwise been prevented.⁹⁰ To prove this kind of legal violation, employees must show two things:

- ☞ The employer knew or should have known of the harassing conduct, and
- ☞ The employer failed to take immediate and appropriate corrective action.⁹¹

Put simply, if an employee has a history of sexual misconduct or a victim of harassment complains about sexual harassment to the employer, the employer must

take all reasonable steps necessary to prevent further sexual harassment from occurring.

4.2 Sexual Harassment Training

In California, employers with five or more employees must provide sexual harassment prevention training to their employees who work in California. Supervisory employees must receive at least two hours of training, and nonsupervisory employees at least one hour. New supervisors must be trained within six months of assuming a supervisory position and new nonsupervisory employees within six months of hire, and every covered employee must be retrained at least once every two years.⁹²

This training must include:

-  Information and practical guidance about the federal and state laws prohibiting sexual harassment;
-  Information about the remedies available to victims of sexual harassment in employment;
-  Practical examples of harassment, discrimination, and retaliation;
-  Information about the prevention and correction of abusive conduct, meaning workplace bullying; and
-  Examples of harassment based on gender identity, gender expression, and sexual orientation.⁹³

The failure to provide this training does not automatically make employers liable for sexual harassment.⁹⁴ But if a qualified employer fails to comply with California's training requirements, they may find themselves without a defense to certain sexual harassment claims. The failure of the employer to comply with the training requirements could show that the employer did not take reasonable steps to prevent sexual harassment or even correct it.

4.3 Written Employment Policies

Employers in California are required to develop a written policy regarding the prevention of sexual harassment, discrimination, and retaliation, and distribute that policy to employees.⁹⁵ The policy is subject to certain specific requirements, including the following:

-  The policy must list all protected categories covered under the California Fair Employment and Housing Act (FEHA);
-  It must indicate that the law prohibits coworkers, third parties, supervisors, and managers from engaging in practices unlawful under FEHA;
-  It must create a complaint process;
-  It must provide a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor;
-  It must instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally;
-  It must indicate that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected;
-  It must state that confidentiality will be kept by the employer to the extent possible, but it cannot indicate that the investigation will be completely confidential;
-  It must indicate that if at the end of the investigation misconduct is found, appropriate remedial measures will be taken;
-  It must make clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation; and
-  It must include a link to, or otherwise list, the Civil Rights Department's online sexual harassment prevention training courses.⁹⁶

Additionally, employers should distribute a sexual harassment brochure [☞](#) or an information sheet [☞](#) prepared by the Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH). Employers are required to distribute those unless they have informational documents with equivalent information.⁹⁷

Employers in California are also required to post a specific anti-discrimination and harassment notice from the Civil Rights Department in a “prominent and accessible” location in the workplace.⁹⁸ That notice is available on the CRD website [☞](#).

Sexual Harassment Liability



When sexual harassment occurs in the workplace, the victims suffer. To compensate them for their suffering, California law gives many victims the right to recover money from their harassers.⁹⁹

Many employers believe, incorrectly, that only the person directly sexually harassing another is responsible for paying damages to the employee. While it is true that the individual harassers can be held personally liable for their misconduct,¹⁰⁰ employers are often liable as well.

If the harasser is a supervisor or employer, the employer will be *strictly* liable for the harassment.¹⁰¹ This means that the employer will be required to pay the victim's damages, even if the employer was not at fault for the harassment and did nothing wrong.

If, on the other hand, the harasser is merely a coworker or other non-supervisory employee, the employer will only be liable for the harassment when:

- ☐ The employer knew or should have known of the harassing conduct, and
- ☐ The employer failed to take immediate and appropriate corrective action.¹⁰²

This test essentially imposes liability on employers if they were negligent in handling one or more instances of workplace sexual harassment.

Additionally, employers can be liable for sexual harassment even if the harasser is not an employee. But the extent of the employer's liability may depend on the amount of control they have to prevent the nonemployee's offending conduct.¹⁰³

EXAMPLE

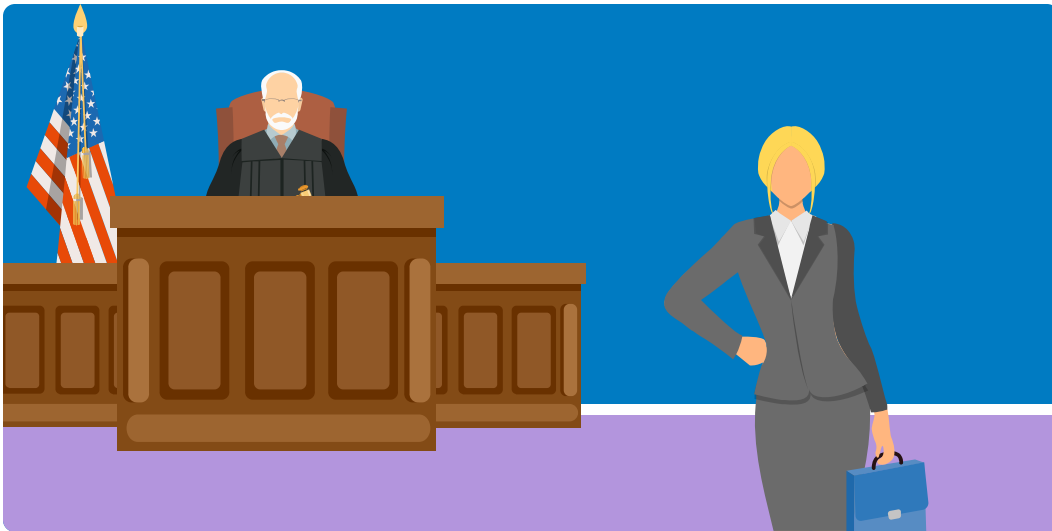
Jane works at a local coffee shop. John, a regular customer, comes into the coffee shop every day and sexually harasses Jane. Jane's supervisor sees the harassment, but does nothing to prevent it from happening. Jane's employer could be liable for failing to prevent the sexual harassment.

When a court finds that a person or business is liable for sexual harassment, the consequences can be severe. Among other damages, employers could be subject to the following:

-  Paying the employee backpay, contributing to the employee's retirement funds, or giving the employee other amounts that are meant to compensate them for all the harm caused by the unlawful acts;¹⁰⁴
-  Paying damages equal to the amount of money the employee may have lost from: an unfair firing, the refusal to promote the employee, or unequal pay;¹⁰⁵
-  Repaying the employee's attorney fees;¹⁰⁶
-  Repaying the employee's litigation expenses or expert witness fees;¹⁰⁷
-  Reinstatement of the employee in their job, or paying the employee's future projected earnings if reinstatement isn't feasible;¹⁰⁸
-  Interest on the amounts won as a result of a lawsuit;¹⁰⁹
-  Compensation for the employee's emotional pain or suffering;¹¹⁰ and
-  Punitive damages meant to punish the employer for their wrongdoing.¹¹¹

These types of damages are the most common seen in employment cases. If specific facts merit, there may be other types of remedies the employee can pursue.

Handling Sexual Harassment Violations



Despite the clear requirements of California law, some employers still violate their employees' legal rights. Employees that 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 remember that they may be entitled to compensatory damages, punitive damages, or, in some cases, reinstatement to their former job.

Of course, each option has benefits and disadvantages, and some situations require employees to try all three approaches. It is often a good idea for employees to discuss their case with an employment lawyer.

6.1 First Steps

If you are the victim of sexual harassment, there are a number of actions to consider:

-  **Document It.** Document the offending conduct. It is usually a good idea to keep a personal journal in which you write details about each event of sexual harassment. These details should include the harasser's name, the date and time, and a full description of the events that occurred. This kind of journal can help your allegations later if you seek to enforce your legal rights.
-  **Report It.** Report the offending conduct to your supervisor or human resources department. Letting your employer know about the harassment is often a fast way to stop it immediately. It is a good idea to make the report in writing and, if possible, to keep a copy of the writing yourself for evidentiary purposes down the road.
-  **Exhaust Your Employer's Procedures.** If your employer has provided you with an employee handbook, review it to see what your employer recommends people do in your situation. If there are guidelines follow those, in addition to any other helpful actions listed here. If the employer provides no guidance, consider contacting a lawyer.
-  **Consider Alternatives.** Consider whether it would be a good idea to resign, find a different job, or transfer to a different department. In many cases, sexual harassment is so egregious that no employee should continue to put up with it. Leaving, however, could have both a negative or a positive impact on your legal rights. In some cases it is better to stay at the job, while others it is better to quit. Before you quit, however, you should talk to a lawyer to get personalized legal advice tailored to your situation.
-  **Lawyer Up.** Talk to a lawyer about whether to bring a lawsuit. Even if you are unsure whether you want to bring a lawsuit, it's important to know what your legal rights are before you waive them. Time limits to bring a lawsuit can be short, and a lawyer can help you figure those out. Most lawyers offer free consultations to discuss these matters.

6.2 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.

Of course, there is no guarantee that a lawyer will be able to 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 due to 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 with an administrative agency, sometimes according to complicated legal procedures. It can be a good idea to have a lawyer who is familiar with doing those things.

6.3 Paying for a Lawyer

In many cases, attorneys are willing to work with no upfront costs on the part of the employee. Instead, they will 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. Some laws place the burden of those expenses on the employer because it is easier for them to afford it.¹¹²

The reverse is not symmetrical. An employee who loses generally will not have to pay the employer's attorney fees unless the court finds the lawsuit was frivolous, unreasonable, or groundless.¹¹³

So, although there is no legal requirement that an employee must have an attorney, navigating the claims process can be much easier if the employee has one.

6.4 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 written complaint with California's Civil Rights Department (CRD).¹¹⁴ Employees pursuing a claim related to sexual harassment generally *cannot* go straight to court with a lawsuit.¹¹⁵

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

If, after a complaint is filed with the CRD, the claim is not resolved, the employee will be issued a document called a right-to-sue letter.¹¹⁶ The employee may then pursue their case by bringing a lawsuit in court.

6.5 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 California's Civil Rights Department (CRD) no later than **three years** of the date of the alleged violation.¹¹⁷

If the employee has gone through the administrative process and has been issued a right-to-sue letter from the CRD, the employee will then have **one year** to file a lawsuit in civil court against the employer.¹¹⁸ This one-year clock starts ticking on the date the right-to-sue letter is issued.

There are, of course, exceptions to these time limits. And employees wishing to pursue relief under federal law may be subject to a different timeline altogether. You should speak with a lawyer immediately if you are unsure whether your claim is time-barred.

6.6 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.¹¹⁹

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 in a claim against their employer. The employer may not retaliate against them for doing so.¹²⁰

References

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- 1 Gov. Code, § 12940, subd. (j)(1), (j)(4)(C) [“For purposes of this subdivision, 'harassment' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.”].
 - 2 Cal. Code of Regs., tit. 2, § 11019, subd. (b).
 - 3 *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 466.
 - 4 Gov. Code, § 12940, subd. (j)(4)(C) [“Sexually harassing conduct need not be motivated by sexual desire.”]; *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 469 [“it is clear under California law that a plaintiff may establish a hostile work environment without demonstrating the existence of coercive sexual conduct directed at the plaintiff or even conduct of a sexual nature.”]; *EEOC v. Nat'l Educ. Ass'n* (9th Cir. 2005) 422 F.3d 840, 844 [“The Supreme Court has held that 'harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.'”].
 - 5 *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63.
 - 6 Civil Rights Dept., [2024 Annual Report](#) (2024), Table 2.
 - 7 42 U.S.C. § 2000e-2(a)(1).
 - 8 *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 U.S. 57, 64 [106 S.Ct. 2399, 2404] [“Without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex.”].
 - 9 Gov. Code, § 12900 et seq.
 - 10 Gov. Code, § 12940, subd. (j)(1).
 - 11 Cal. Const., art. I, § 8 [“A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.”].
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- 12 See *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040 [noting that, unlike FEHA, “Title VII lacks specific language on sexual harassment”].
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- 13 42 U.S.C. § 1981a(a)–(d).
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- 14 Gov. Code, § 12965, subd. (d) [“A court may grant as relief in any action filed pursuant to subdivision (a) any relief a court is empowered to grant in a civil action brought pursuant to subdivision (c), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part.”].
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- 15 Gov. Code, § 12940, subd. (j)(4)(A) [“For purposes of this subdivision only, ‘employer’ means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.”].
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- 16 42 U.S.C. § 2000e(b).
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- 17 *Bohemian Club v. Fair Employment & Hous. Comm.* (1986) 187 Cal.App.3d 1, 17 [finding that FEHA is not preempted by Title VII].
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- 18 Gov. Code, § 12940, subd. (j)(4)(A) [“For purposes of this subdivision only, ‘employer’ means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.”].
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- 19 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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- 20 Gov. Code, § 12940, subd. (j)(1) [“For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex,

gender, gender identity, gender expression, age, sexual orientation, reproductive health decisionmaking, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.”].

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- 21 Gov. Code, § 12940, subd. (j)(1), (j)(4)(C) [“For purposes of this subdivision, 'harassment' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.”].
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- 22 See, e.g., *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63 [Harassment consists of improper conduct that is engaged in for personal gratification, because of meanness or bigotry, or for other personal motives, and is outside the scope of the harasser's job]; *Reno v. Baird* (1998) 18 Cal.4th 640, 646.
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- 23 *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 U.S. 57, 65 [106 S.Ct. 2399, 2404]; see also Cal. Code of Regs., tit. 2, § 11034, subd. (f).
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- 24 Cal. Code of Regs., tit. 2, § 11019, subd. (b)(2) [including both categories under the definition of “harassment”]; see also *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706, fn. 8 [noting that quid pro quo sexual harassment was simply a subcategory of sexual harassment generally].
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- 25 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.”].
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- 26 *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”].
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- 27 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.”].
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- 28 *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.”].
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- 29 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.”].
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- 30 *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1414 [“To state a cause of action on this theory, is it sufficient to allege that a term of employment was expressly or impliedly conditioned upon acceptance of a supervisor's unwelcome sexual advances.”].
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- 31 *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1415.
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- 32 *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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- 33 *Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 348–349; Cal. Code of Regs., tit. 2, § 11034, subd. (f)(2).
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- 34 Gov. Code, § 12940, subd. (j)(4)(C) [“Sexually harassing conduct need not be motivated by sexual desire.”].
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- 35 *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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- 36 *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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- 37 *Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 516–517.
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- 38 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608.
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- 39 *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.’”].
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- 40 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608; Gov. Code, § 12923, subd. (a) [codifying this standard and affirming that a plaintiff “need not prove that his or her tangible productivity has declined as a result of the harassment,” only that a reasonable person subjected to the conduct would find it made the job more difficult].
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- 41 Gov. Code, § 12923, subd. (b); Cal. Code of Regs., tit. 2, § 11034, subd. (f) (2)(A) [“A single, unwelcomed act of harassment may be sufficiently severe so as to create an unlawful hostile work environment.”].
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- 42 Gov. Code, § 12923, subd. (b) [declaring the Legislature's rejection of *Brooks v. City of San Mateo* (9th Cir. 2000) 229 F.3d 917, and stating that the opinion “shall not be used” in determining what conduct is sufficiently severe or pervasive under the FEHA].
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- 43 *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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- 44 *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 works (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.”]; Gov. Code, § 12923, subd. (c) [the existence of a hostile work environment “depends upon the totality of the circumstances”].
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- 45 Gov. Code, § 12940, subd. (j).
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- 46 *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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- 47 *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1525–1526.
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48	<i>Fisher v. San Pedro Peninsula Hospital</i> (1989) 214 Cal.App.3d 590, 610 [“generally, physical touching is more offensive than unwelcome verbal abuse”]; <i>Herberg v. California Institute of the Arts</i> (2002) 101 Cal.App.4th 142, 150 [“physical touching generally considered more offensive than mere words”].
49	<i>Fuller v. City of Oakland</i> (9th Cir. 1995) 47 F.3d 1522, 1527.
50	<i>Rene v. MGM Grand Hotel, Inc.</i> (9th Cir. 2002) 305 F.3d 1061, 1065–1066; <i>Kelly-Zurian v. Wohl Shoe Co.</i> (1994) 22 Cal.App.4th 397, 409 [touching of the breast, crotch, and pinching of the buttocks was sexual harassment].
51	<i>Rene v. MGM Grand Hotel, Inc.</i> (9th Cir. 2002) 305 F.3d 1061, 1064.
52	<i>Rene v. MGM Grand Hotel, Inc.</i> (9th Cir. 2002) 305 F.3d 1061, 1065.
53	<i>Mokler v. County of Orange</i> (2007) 157 Cal.App.4th 121, 132.
54	<i>Mokler v. County of Orange</i> (2007) 157 Cal.App.4th 121, 145.
55	<i>Mokler v. County of Orange</i> (2007) 157 Cal.App.4th 121, 145–146.
56	Gov. Code, § 12923, subd. (b).
57	<i>Candelore v. Clark County Sanitation Dist.</i> (9th Cir. 1992) 975 F.2d 588, 590.
58	<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 280 [“verbal harassment may include epithets, derogatory comments, or slurs on the basis of sex”].
59	<i>Lyle v. Warner Brothers Television Prods.</i> (2006) 38 Cal.4th 264, 281.
60	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 465–466.
61	<i>Accardi v. Superior Court</i> (1993) 17 Cal.App.4th 341, 349, citing with approval <i>Hall v. Gus Construction Company, Inc.</i> (8th Cir. 1988) 842 F.2d 1010.
62	<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 282 [“a hostile work environment sexual harassment claim is not established where a supervisor or coworker simply uses crude or inappropriate language in front of employees or draws a vulgar picture, without directing sexual innuendos or gender-related language toward a plaintiff or toward women in general.”].

63	<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 283.
64	<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 281–282; <i>Steiner v. Showboat Operating Co.</i> (9th Cir. 1994) 25 F.3d 1459, 1464.
65	<i>Nichols v. Azteca Rest. Enters.</i> (9th Cir. 2001) 256 F.3d 864, 872–873.
66	<i>Nichols v. Azteca Rest. Enters.</i> (9th Cir. 2001) 256 F.3d 864, 878.
67	<i>Herberg v. California Institute of the Arts</i> (2002) 101 Cal.App.4th 142, 153 [a lone, ordinary request to socialize is not, by itself, severe or pervasive].
68	<i>Birschtein v. New United Motor Manufacturing, Inc.</i> (2001) 92 Cal.App.4th 994, 997.
69	<i>Birschtein v. New United Motor Manufacturing, Inc.</i> (2001) 92 Cal.App.4th 994, 998.
70	<i>Birschtein v. New United Motor Manufacturing, Inc.</i> (2001) 92 Cal.App.4th 994, 998.
71	<i>Birschtein v. New United Motor Manufacturing, Inc.</i> (2001) 92 Cal.App.4th 994, 1002.
72	<i>Hughes v. Pair</i> (2009) 46 Cal.4th 1035, 1042.
73	<i>Miller v. Department of Corrections</i> (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”].
74	Gov. Code, § 12940, subd. (a).
75	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 451.
76	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 451.
77	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 466.
78	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 466.
79	<i>Miller v. Department of Corrections</i> (2005) 36 Cal.4th 446, 468.
80	<i>Billings v. Town of Grafton</i> (1st Cir. 2008) 515 F.3d 39.
81	<i>Billings v. Town of Grafton</i> (1st Cir. 2008) 515 F.3d 39, 50.

82	<i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 283 [“courts have held an employee generally cannot recover for harassment that is occasional, isolated, sporadic, or trivial”].
83	Gov. Code, § 12923, subd. (b); Cal. Code of Regs., tit. 2, § 11034, subd. (f) (2)(A).
84	<i>Brooks v. City of San Mateo</i> (9th Cir. 2000) 229 F.3d 917, 921, 926–927.
85	Gov. Code, § 12923, subd. (b).
86	See, e.g., <i>Lyle v. Warner Brothers Television Productions</i> (2006) 38 Cal.4th 264, 283.
87	<i>Hughes v. Pair</i> (2009) 46 Cal.4th 1035, 1042.
88	Gov. Code, § 12940, subd. (j)(1) [“Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.”].
89	Cal. Code of Regs., tit. 2, § 11023, subd. (a) [“Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct.”]; Gov. Code, § 12950.1, subd. (a).
90	Gov. Code, § 12940, subd. (j)(1) [“Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.”].
91	Cal. Code of Regs., tit. 2, § 11019, subd. (b)(4); <i>Myers v. Trendwest Resorts, Inc.</i> (2007) 148 Cal.App.4th 1403, 1419–1420 [“The employer is liable for harassment by a nonsupervisory employee only if the employer (a) knew or should have known of the harassing conduct and (b) failed to take immediate and appropriate corrective action.”].
92	Gov. Code, § 12950.1, subd. (a).
93	Gov. Code, § 12950.1, subd. (a).
94	Gov. Code, § 12950.1.

95	Cal. Code of Regs., tit. 2, § 11023, subd. (b).
96	Cal. Code of Regs., tit. 2, § 11023, subd. (b).
97	Gov. Code, § 12950, subd. (b).
98	Gov. Code, § 12950, subd. (a)(1).
99	Gov. Code, § 12965, subd. (d); <i>Commodore Home Systems, Inc. v. Superior Court</i> (1982) 32 Cal.3d 211, 215 [“the FEHA does not limit the relief a court may grant in a statutory suit charging employment discrimination”].
100	<i>Janken v. GM Hughes Electronics</i> (1996) 46 Cal.App.4th 55, 62–63 [“it was the intent of the Legislature to place individual supervisory employees at risk of personal liability for personal conduct constituting harassment”].
101	<i>State Dept. of Health Services v. Superior Court</i> (2003) 31 Cal.4th 1026, 1041 [“the FEHA makes the employer strictly liable for harassment by a supervisor.”].
102	Gov. Code, § 12940, subd. (j)(1); <i>Hope v. California Youth Authority</i> (2005) 134 Cal.App.4th 577, 588.
103	Gov. Code, § 12940, subd. (j)(1) [“An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered.”].
104	Civ. Code, § 3333 [“For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”].
105	Civ. Code, § 3333.

- 106 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."].
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- 107 Gov. Code, § 12965, subd. (c)(6).
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- 108 *Pollard v. E. I. du Pont de Nemours & Co.* (2001) 532 U.S. 843, 846 [121 S.Ct. 1946, 1948, 150 L.Ed.2d 62, 67] ["In cases in which reinstatement is not viable because of continuing hostility between the plaintiff and the employer or its workers, or because of psychological injuries suffered by the plaintiff as a result of the discrimination, courts have ordered front pay as a substitute for reinstatement."].
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- 109 Civ. Code, § 3287, subd. (a).
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- 110 42 U.S.C. § 1981a(b)(3).
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- 111 Civ. Code, § 3294, subd. (a) ["In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."].
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- 112 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."].
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- 113 Gov. Code, § 12965, subd. (c)(6) [a prevailing defendant may recover fees and costs only if the court so finds]; see *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 115.
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- 114 Gov. Code, § 12960.
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- 115 *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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- 116 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.”].

117 Gov. Code, § 12960, subd. (e)(5).

118 Gov. Code, § 12965, subd. (c)(1)(C).

119 Gov. Code, § 12940, subd. (h).

120 Gov. Code, § 12940, subd. (h).
