

1. What is sexual harassment?

Sexual harassment under California and Federal law is generally defined as unwanted sexual contact of two main types: (a) quid pro quo harassment which occurs when employment is conditioned on the submission to unwelcome sexual advances, or (b) unwelcomed sexual conduct that was severe or pervasive enough to create an abusive environment for the employee.

2. Who can sue for sexual harassment in the work place?

Any person who works for any company can sue for sexual harassment.

3. Does the sexual harassment have to be perpetrated by a member of the opposite sex?

No. Both male and female employees are protected by California sexual harassment laws and are protected from sexual harassment by a member of the same sex even if the perpetrator and/or the victim are not homosexuals.

4. Does there need to be actual touching for sexual harassment to occur?

No. Sexual harassment has been found to include a large range of inappropriate behavior including requests for sexual favors, unwanted sexual advances or propositions, verbal conduct, slurs or derogatory comments and comments about a person's body, appearance or sexual activity.

In fact, visual harassment, including leering looks, offensive gestures or derogatory posters, cartoons or drawings have been found sufficient to create a hostile environment.

5. Are sexual harassment cases limited to the work place?

No. The most frequent type of sexual harassment case arise out of an employment relationship; however, California has passed a special law which prohibits sexual harassment in a very wide range of business, service or professional relationships. California Civil Code section 51.9 lays out the relationships covered.

6. Does the sexual harassment have to be directed at me and how bad does it have to be for me to win my case?

Under California law, if sexual harassment permeates an employee's work environment, they may have a claim even if the harassing conduct is not directed at the employee personally, but occurs in the employee's presence.

However, whether the harassment is directed at the employee or someone else, for the plaintiff to be able to recover, they must establish that the harassment was severe or pervasive. The court will look at the frequency of the conduct; the severity of the conduct; whether the conduct was physically threatening, humiliating or was a mere offensive utterance; and whether the conduct reasonably interfered with the employee's work performance. The courts will generally hold that any sexual touching passes the severe standard.

7. Can I win a sexual harassment case if it is only my word against the perpetrator's?

Yes. Plaintiffs frequently prevail in "he said/she said" cases if the plaintiff is more credible than the perpetrator, although it does help if there are other witnesses to the sexual harassment or evidence that the perpetrator harassed other employees.

8. I'm scared to report the harassment because I fear that I will be retaliated against or fired. What should I do?

Don't worry. The California law protections against retaliation for reporting sexual harassment are even stronger than the laws that prevent the harassment from occurring. The law strictly prohibits an employer from retaliating against anyone who has opposed practices of sexual harassment and/or discrimination or has filed a complaint, testified or assisted in any proceeding involving sexual harassment. If the employer retaliates, the employee has yet another cause of action to sue the employer and there has been a recent trend in California cases for employees to receive larger verdicts for the retaliatory conduct of the employer than for the original sexual harassment.

9. What do I need to do to protect my rights if I have been sexually harassed?

Generally it is wise to seek the advice of an attorney immediately. If you want to try to work it out within your company first, you should consult your employee handbook and procedure manual to learn of the appropriate way to report sexual harassment within your company. If there is no manual, and the company has a human resource department, it is generally wise to report the harassment to human resources, if the company has a human resource department.

Any report of the sexual harassment to the company should be in writing, detailing all of the acts.

An employee can bring a sexual harassment claim against a company while they are still working for the company. Before bringing a lawsuit, the employee must first file a claim with the Department of Fair Employment and Housing (DFEH) or with the Equal Employment Opportunity Commission (EEOC). The employee then has a choice of allowing the administrative agency to investigate or immediately obtain a right to sue letter.

Because the statute of limitations in sexual harassment cases is not very clearly defined, an employee should move quickly to find an attorney once they feel there has been sexual harassment. It is important that the administrative claims are filled out properly and an attorney can help in this regard.

10. Will my case have to go to trial?

Probably not. Over 90% of sexual harassment cases are settled prior to trial and a significant number are settled without litigation.

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