

ACWA JPIA

Training for Water Utility Employees

Sexual Harassment Prevention Training for Board Members and Management



YOUR BEST PROTECTION

**Association of California Water Agencies
Joint Powers Insurance Authority**

**Phone: 800.231.5742 Ext. 3421 – E-mail: training@acwajpia.com
Online: www.acwajpia.com**

That's MY Leader

Sexual Harassment Prevention Training

(Meets AB 1825, AB 1661, AB 2053, SB 1343 Training Requirements)

Presented by:

Robert Greenfield

General Counsel



Why focus on preventing sexual harassment?

- Create positive work environment
- Maximize productivity
- Viewed as great employer
- Responsibility to your co-workers
- The law



2019 Filings With DFEH

28,739 Complaints received

22,584 Complaints filed

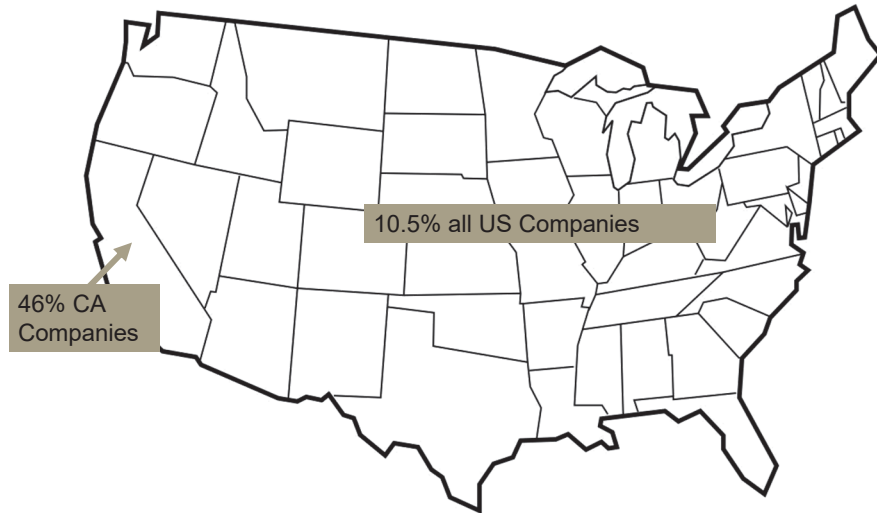
Negotiated settlements - 710
\$14,834,753



EEOC: 24,221 Sex Based Harassment Charges in '20

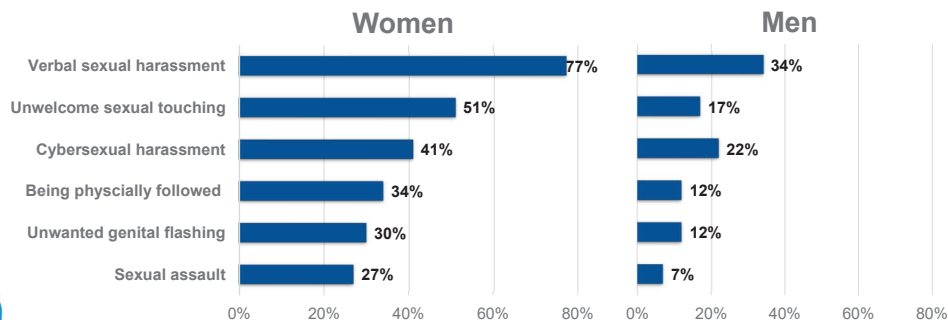


Chance of Suit on Employment Practices



More than 3 Out of 4 Women Have Been Verbally Harassed

Share of respondents who have experienced different forms of harassment or assault:



Source: Stop Street Harassment
Credit: Hilary Fung/NPR



Why #MeToo Came to the Forefront

- EEOC receives over **23,000 sex-related harassment complaints** annually (approximately **32%** of *all* claims)
- In 2019: **17%** of complaints from men (new annual high)
- EEOC: only **6% to 13%** of those harassed file a formal complaint
- *The “Cost of Bad Behavior” research found that **95%** of employees were aware of inappropriate behavior but ignored it since they didn’t know how to deal with it effectively.*



Why Doesn't It Get Reported?

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How much fluff is in your budget?

Unhappy workers cost the US between **\$450 - \$550 billion** in lost productivity each year

Cost of Harassment to **ACWA JPIA**:
\$10M since 2007



Productivity & Positive Work Environment

- **\$100,000** per year, per target of a harasser at one business
- 57% report being subject to some kind of harassment over 2 year period with a cost of **\$180M** to the Federal Government.
- Cost of Harassment to American businesses estimated at **\$64 billion annually in 2007**
- Each employee departure costs about one third of that worker's annual earnings

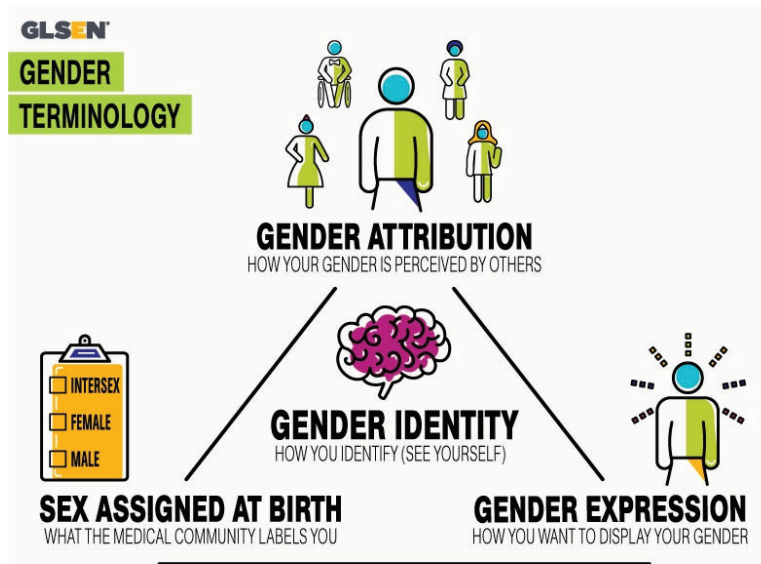


Which are Protected Characteristics?

Race		Color	
Medical Condition		Gender expression	
Hair Color		Pregnancy	
Gender identity		Sexual orientation	
Marital Status		Obesity	
Age		Genetic info	
Smoker		Religion	
Ancestry		National origin	
Gender		Political Party	
Military Status		Disability	



What is the definition?

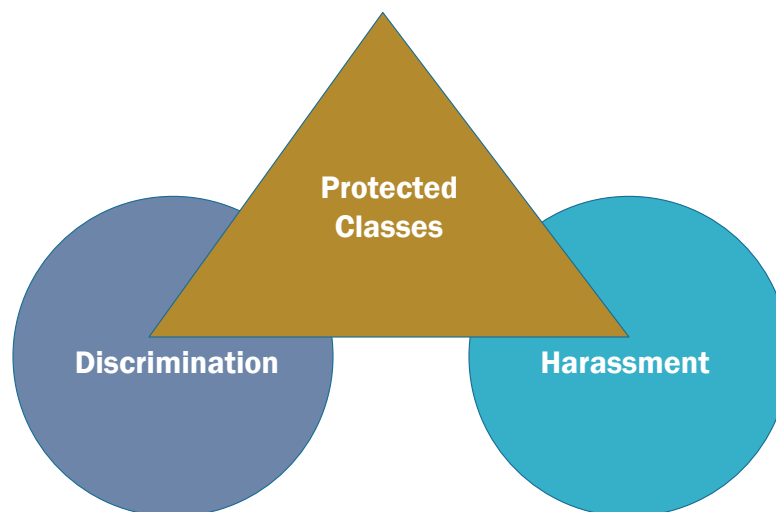


What is Harassment?

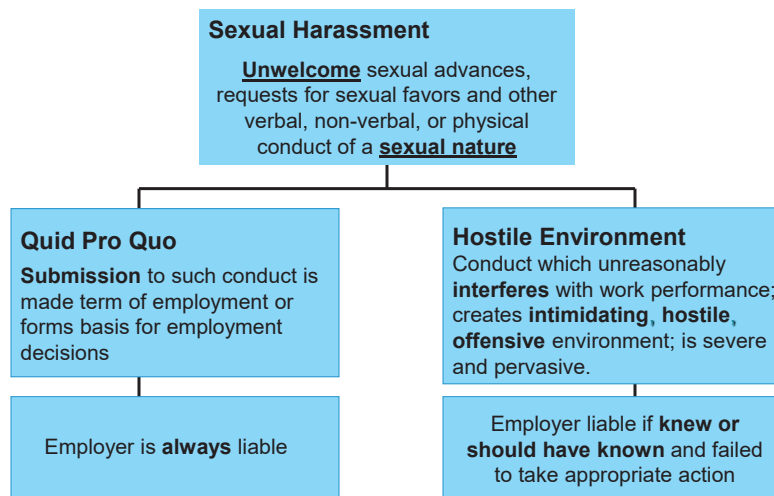
- To disturb persistently
- Torment
- Bother continually
- Persecute
- Repeated incursions
- Badger



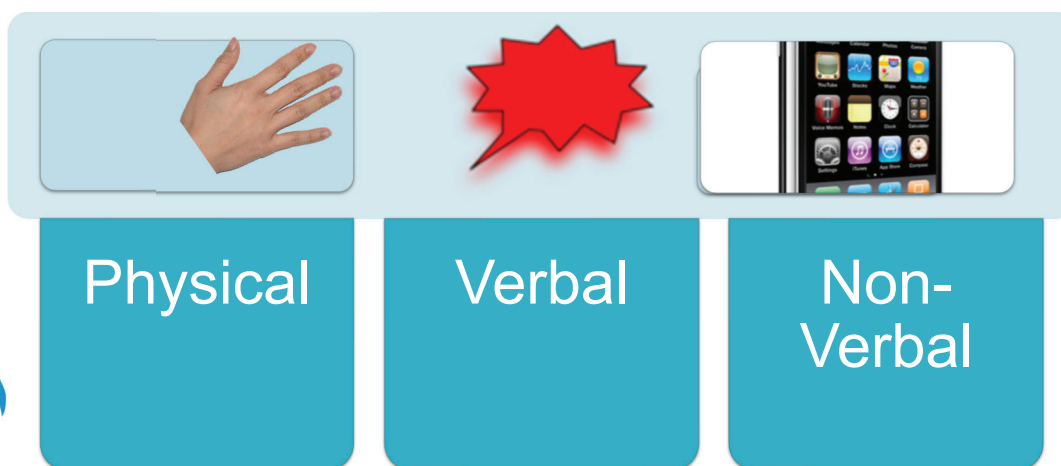
Discrimination & Harassment



Definition



Ways People Harass



Unwelcome Physical Contact

- Touching
- Hugging
- Brushing up against
- Blocking a person's path
- Shoulder/back rubbing
- Invading personal space



Scenario

A Board Member is interested in the new receptionist at Sparkle Water District. He comes in and sits at her desk often, continuously asking for a date. Harassment?

YES or NO

or IT DEPENDS



Unwelcome Verbal Contact

- Flirting
- Demeaning names
- Sexual propositions
- Inappropriate humor
- Threats
- Remarks about sexuality
- Continual requests for dates



AB2053: Abusive Conduct

“Conduct of an employer or employee in the workplace, with **malice...**

that a ***reasonable person*** would find hostile, offensive, and unrelated to an employer’s legitimate business interests.

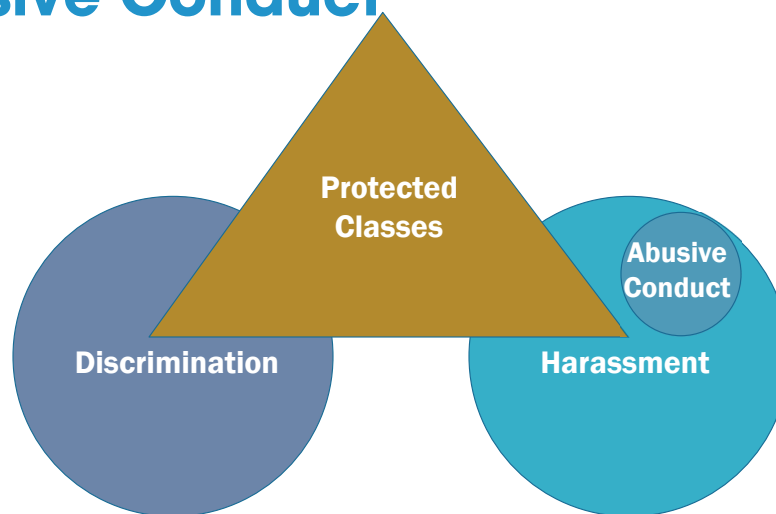


7 Types Of Abusive Conduct

- Ignoring, isolation and exclusion
- Minimization
- Creating hostility among colleagues
- Undue criticism
- Projection of blame, taking credit
- Deception
- Manipulation

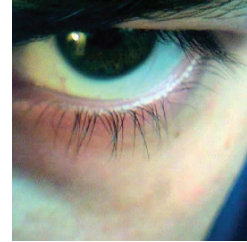


Discrimination, Harassment & Abusive Conduct



Unwelcome Non-Verbal Contact

- Staring
- Suggestive noises
- Printed calendars or posters
- Inappropriate letters or email
 - Facebook, Twitter, videos, etc.
- Sexual content on computer displays



Scenario

A Manager has daily meetings with some staff first thing in the morning. They convene in his office with the door closed. The Manager's assistant becomes aware that inappropriate pictures and pornography are being shared in these meetings. She confronts the Manager, who just laughs it off.

Could this be sexual harassment?

YES or **NO** or **IT DEPENDS**



Digital Harassment

- Face-to-face versus digital contact
- Use care with:
 - Email and instant messaging
 - Forums, discussion boards and blogs
 - Social networking sites
 - Photo and video sharing
 - Text messaging

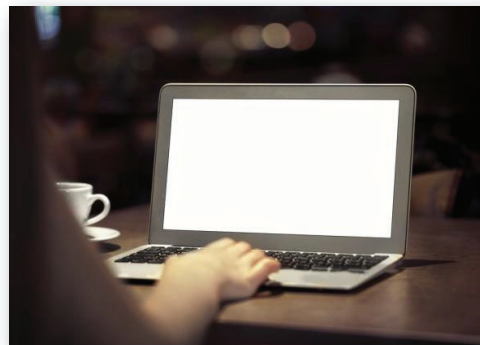


Scenario

A General Manager was sending sexually explicit jokes to an employee at another agency, after work hours on his personal computer.

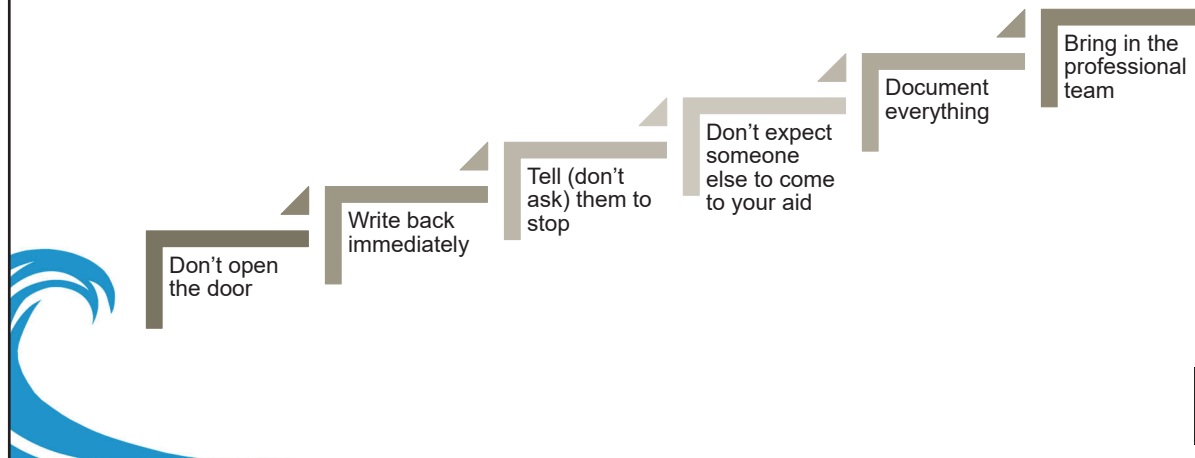
Could this be sexual harassment?

YES or **NO** or **IT DEPENDS**



Curbing Electronic Harassment

The first response is the most important:



Impact

Individuals

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Agency

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That Was the Good News

- Health Care expenses at stressful workplaces are **50% higher**
- **550 million workdays** are lost annually due to stress
- **60 to 80%** of workplace accidents are attributed to stressful work environment
- **80%** of employee doctor visits include complaints of stress

Harvard Business Review December 1, 2015



What Can We Do?



Your Role

- Understand your role
- Understand district's policy and procedure
- Take all complaints seriously
- Know what to do
- Document, document
- Get help



Follow Your Policies

- No expectation of privacy in employer-related communication (no matter device used)
- Address inappropriate conduct immediately – even if not level of illegal harassment
- Distribute policy regularly to all staff



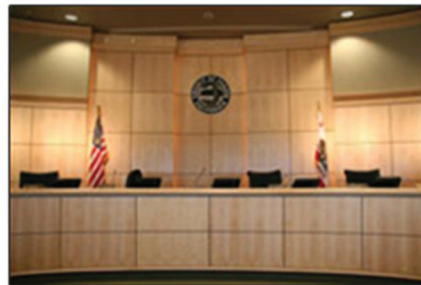
Don't Be An Ostrich

- Performance changes
- Loss of focus or disorganized
- Problem solving skills deteriorate
- Isolated
- Less friendly
- Attendance changes
- Tension in the workplace
- Communication problems

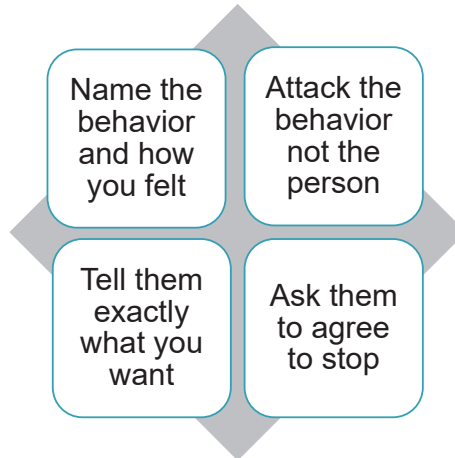


Board Responsibilities

- If you witness it, take steps to stop it
 - Government code states “employer liable if knew or should have known”
 - Understand organization policy
 - Inform GM, HR, legal counsel or Board President



When Being Direct, Remember...



Board Responsibilities

- If someone comes to you
 - Tell employee who to report it to
 - Remind employee to follow employee manual/policy
 - Make note of conversation
 - Communicate info to proper staff person



Think Before You Act

- Would you tell your family about this activity?
- Would you be angry or distressed if one of your family members were subjected to this conduct?
- Would you be comfortable testifying under oath in a courtroom that you engaged in this activity and see nothing wrong with it?



Thank You for Attending

For further questions email:

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Thank you!



SEXUAL HARASSMENT

FACT SHEET

DFEH



Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

THERE ARE TWO TYPES OF SEXUAL HARASSMENT

1. **"Quid pro quo"** (Latin for "this for that") sexual harassment is when someone conditions a job, promotion, or other work benefit on your submission to sexual advances or other conduct based on sex.
2. **"Hostile work environment"** sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you.

The harassment must be severe or pervasive to be unlawful. A single act of harassment may be sufficiently severe to be unlawful.

SEXUAL HARASSMENT INCLUDES MANY FORMS OF OFFENSIVE BEHAVIORS

BEHAVIORS THAT MAY BE SEXUAL HARASSMENT:

1. Unwanted sexual advances
2. Offering employment benefits in exchange for sexual favors
3. Leering; gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
4. Derogatory comments, epithets, slurs, or jokes
5. Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations
6. Physical touching or assault, as well as impeding or blocking movements

Actual or threatened retaliation for rejecting advances or complaining about harassment is also unlawful.

Employees or job applicants who believe that they have been sexually harassed or retaliated against may file a complaint of discrimination with DFEH within three years of the last act of harassment or retaliation.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court to address the causes of the discrimination and on behalf of the complaining party. DFEH may seek court orders changing the employer's policies and practices, punitive damages, and attorney's fees and costs if it prevails in litigation. Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

EMPLOYER RESPONSIBILITY & LIABILITY

All employers, regardless of the number of employees, are covered by the harassment provisions of California law. Employers are liable for harassment by their supervisors or agents. All harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassment or for aiding and abetting harassment. The law requires employers to take reasonable steps to prevent harassment. If an employer fails to take such steps, that employer can be held liable for the harassment. In addition, an employer may be liable for the harassment by a non-employee (for example, a client or customer) of an employee, applicant, or person providing services for the employer. An employer will only be liable for this form of harassment if it knew or should have known of the harassment, and failed to take immediate and appropriate corrective action.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct, and to create a workplace free of harassment.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way for an employer to avoid or limit liability if harassment occurs.

SEXUAL HARASSMENT

FACT SHEET



CIVIL REMEDIES

- **Damages for emotional distress from each employer or person in violation of the law**
- **Hiring or reinstatement**
- **Back pay or promotion**
- **Changes in the policies or practices of the employer**

ALL EMPLOYERS MUST TAKE THE FOLLOWING ACTIONS TO PREVENT HARASSMENT AND CORRECT IT WHEN IT OCCURS:

- 1.** Distribute copies of this brochure or an alternative writing that complies with Government Code 12950. This pamphlet may be duplicated in any quantity.
- 2.** Post a copy of the Department's employment poster entitled "California Law Prohibits Workplace Discrimination and Harassment."
- 3.** Develop a harassment, discrimination, and retaliation prevention policy in accordance with 2 CCR 11023. The policy must:
 - Be in writing.
 - List all protected groups under the FEHA.
 - Indicate that the law prohibits coworkers and third parties, as well as supervisors and managers with whom the employee comes into contact, from engaging in prohibited harassment.
 - Create a complaint process that ensures confidentiality to the extent possible; a timely response; an impartial and timely investigation by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures.
 - Provide a complaint mechanism that does not require an employee to complain directly to their immediate supervisor. That complaint mechanism must include, but is not limited to including: provisions for direct communication, either orally or in writing, with a designated company representative; and/or a complaint hotline; and/or access to an ombudsperson; and/or identification of DFEH and the United States Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
 - Instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so that the company can try to resolve the claim internally. Employers with 50 or more employees are required to

include this as a topic in mandated sexual harassment prevention training (see 2 CCR 11024).

- Indicate that when the 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.
- Make clear that employees shall not be retaliated against as a result of making a complaint or participating in an investigation.

4. Distribute its harassment, discrimination, and retaliation prevention policy by doing one or more of the following:

- Printing the policy and providing a copy to employees with an acknowledgement form for employees to sign and return.
- Sending the policy via email with an acknowledgment return form.
- Posting the current version of the policy on a company intranet with a tracking system to ensure all employees have read and acknowledged receipt of the policy.
- Discussing policies upon hire and/or during a new hire orientation session.
- Using any other method that ensures employees received and understand the policy.

5. If the employer's workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their spoken language, that employer shall translate the harassment, discrimination, and retaliation policy into every language spoken by at least ten percent of the workforce.

6. In addition, employers who do business in California and employ 5 or more part-time or full-time employees must provide at least one hour of training regarding the prevention of sexual harassment, including harassment based on gender identity, gender expression, and sexual orientation, to each non-supervisory employee; and two hours of such training to each supervisory employee. Training must be provided within six months of assumption of employment. Employees must be trained during calendar year 2020, and, after January 1, 2021, training must be provided again every two years. Please see Gov. Code 12950.1 and 2 CCR 11024 for further information.

TO FILE A COMPLAINT

Department of Fair Employment and Housing

dfeh.ca.gov

Toll Free: 800.884.1684

TTY: 800.700.2320

