

## **California Employers Obligations Prevention of Workplace Harassment & Discrimination**

It's been all over the news lately—dozens of stories, accusations and apologies surrounding harassing and inappropriate behavior in the workplace. We work in California, but not even our state legislature, who has passed more anti-harassment laws than any other state, is immune to the onslaught. So how do employers protect themselves?

First, all California employers should remember the obligations to prevent and correct any potential harassment and discrimination in the workplace.

These include:

1. Employers are all legally required to adopt a written discrimination, harassment, and retaliation prevention policy. This policy must be distributed and acknowledged by all employees. This policy should include:
  - a. A definition of sexual harassment
  - b. A complaint mechanism regarding harassment
  - c. An outline of disciplinary steps that may be used in harassment cases
  - d. Statement that confidentiality of complaint will be preserved when possible
  - e. Prohibition against retaliation toward employees who complain
  - f. Statement that supervisors must report any complaints
  - g. Confirmation that the employer will conduct a fair and timely investigation
2. Employers, regardless of size are required to distribute California's harassment pamphlet DFEH-185 to all employees.
3. California employers with 50 or more employees are required to provide at least two hours of interactive training regarding sexual harassment to all supervisors.
4. Employers must investigate all complaints. If an employer knows or should have known of inappropriate conduct and failed to take appropriate action they will be held liable under the law.

Speaking of being held liable, when is an employer liable for harassment? According to California law, an employer is liable if:

1. They know or should have known of the conduct and fail to take immediate and appropriate corrective action
2. They fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring
3. The harassment occurs by a manager
4. The harassment occurred by a non-management employee, and the employer does not take immediate and appropriate corrective action to stop the harassment once they learn about the harassment

Now that we know what our obligations and responsibilities are under the law, what do we do?

Never ignore a claim, rumor, or "open secret" about bullying, sexual harassment or any other harassing conduct. Failing to take even a whisper of a problem seriously can have serious ramifications for your company. Despite the possible financial and legal consequences, failing to deal with issues sends a message that unacceptable behavior is part of the organization's culture.

It is important to be proactive to prevent possible problems. Having a policy and conducting the supervisor training is not enough without putting forth an effort to create a corporate culture that is fair, diverse and safe. Educate your entire employee base not only on sexual harassment, but also communication, diversity, and the dangers of implicit bias. Creating a culture where harassing and bullying behavior is unacceptable is your best defense against the damage a harassment claim can do to your organization's finances and reputation.

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