

Harassment

Harassment at work can become a nightmare, especially if your boss is the harasser. You can bring harassment claims against your employer, your supervisor, and coworkers if they commit the harassment. Many forms of workplace harassment are illegal. You may be entitled to monetary compensation from a court of law if you endured harassment at your place of employment. If your employer terminated you for objecting to harassment, you may also sue for wrongful termination and retaliation. When harassment becomes so intolerable that you are forced to resign, you may bring a constructive discharge claim to court. Constructive discharge claims are in many respects like wrongful termination claims and permit the same remedies, such as damages for emotional distress and lost wages. The harassment laws generally permit you to seek attorney's fees from your employer if you prevail in the lawsuit.

Sexual harassment is by far the most prevalent form of actionable harassment that individuals experience in the workplace. Sexual harassment violates the law when it is so severe or constant that it alters the conditions of the victim's employment and creates an abusive working environment. Sexual harassment is illegal under both federal and California law. The California Fair Employment & Housing Act (also known as "the FEHA") has always prohibited sexual harassment at work. The FEHA applies to all private employers, many public employers, recruitment agencies, labor organizations, state licensing boards & state and local governments that have 1 or more employees. The FEHA provides protection against sexual harassment for persons who provide services pursuant to a contract. Federal law, including Title VII of the Civil Rights Act of 1964, offers protections to employees of companies of 15 or more employees.

What is Considered Sexual Harassment?

In California, sexual harassment is prohibited for employers of any size. Sexual harassment takes many forms:

- Being the butt of sexually-charged jokes or pranks
- Spreading rumors about the victim
- Being grabbed, groped, fondled or whistled at
- Sexual advances
- Threats
- Requests for sexual favors
- Leering or staring
- Blocking the victim's movements at work
- Invasion of the victim's person space
- Unfairly disciplining the victim
- Stalking the victim

- Flashing the victim
- Texting and emailing the victim
- Denying promotions or pay raises to the victim
- Invasion of privacy

Verbal, visual, or physical conduct of a sexual nature can qualify as sexual harassment.

Sexually charged conduct need not be directly aimed at victim for a lawsuit. For example, if the harasser exposes the victim to pornographic pictures, the victim may have a sexual harassment lawsuit.

Quid pro quo sexual harassment occurs when a supervisor demands sexual favors from you in exchange for his assistance in promoting, hiring, or retaining you ("Do this... or else!"). The demand for sexual favors can be express, like "If you go to bed with me, I will make sure you keep your job," or it can be implied from unwelcome physical conduct such as touching, grabbing or fondling. In "quid pro quo" cases, a single sexual advance may constitute harassment if it involves the denial of an employment benefit (such as a raise) in exchange for sex.

Sexual assault and rape are the most egregious forms of sexual harassment. Victims of such crimes may bring civil suits against the perpetrator and, in many instances, against the employer is responsible for occurrence of the incident.

However, your employer can defend against a sexual harassment claim with proof that you permitted or consented to the "harassment." In order to prove a hostile work environment claim, you may also have to show that the sexual conduct was without your permission. If you consented to the sexual conduct, you may be unable to maintain a sexual harassment lawsuit. Even if you once had an intimate relationship with someone who later sexually harasses you, you may still have a sexual harassment claim if you can show that you clearly indicated that the sexual attention was no longer welcome. For example, by having written a letter to the harasser that you are no longer interested in continuing a relationship with him and that his sexual attention is no longer welcome or appreciated, you may be able to establish that any sexual conduct that follows is harassment.

Harassment is illegal if it is based on the following:

- Sex
- Sexual Orientation
- Gender identity and expression
- Age
- Religion
- Race
- Color
- National Origin

- Ethnicity
- Disability
- Military Service
- Immigration Status
- Marital Status
- Pregnancy
- Union Activities
- Family and Medical Leaves of Absence
- Medical Condition

A work environment charged with ethnic or racial discrimination can violate the law. An employer has a duty to prevent and remedy instances of racial and national origin harassment. Racial slurs may constitute harassment even if made by one member to another member of the same race. An employer can be held liable for creating a hostile work environment when one of its supervisors makes a single racial slur. A hostile environment may exist even if some of the hostility is directed at other workers. Claims of harassment based upon religion involve the same principles. Hostile work environment claims can also arise from disability discrimination.

As an employee or a student, you have a right to work or study in an environment that is free of discrimination, intimidation, insult and ridicule. You may be able to file a hostile work environment claim in court if the harassment you experienced unreasonably interfered with your work performance or created an offensive or intimidating work environment. In order to have a claim for hostile work environment, generally, you must be able to prove that there was more than a single incident of harassment. However, an extremely severe single incident of harassment (such as a sexual assault or rape) may be enough for a lawsuit. Unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally will be inadequate to prove the existence of a "hostile environment."

If you are a victim of harassment at work, it may be wise to:

- Make clear to the harasser that you object to his conduct and demand that it cease
- Avoid the harasser where possible
- Cease communication with the harasser where possible
- Document the harassment
- Preserve proof of the harassment (email and text messages, Facebook posts, photos, disciplinary memos and write-ups)
- Note the names and contact information of any witnesses
- Note the names and contact information of any victims

- Inform a supervisor in writing of the harassment
- Inform a human resources representative of the harassment
- Demand an investigation into the harassment by your employer
- Resign from employment if the harassment becomes too difficult to bear
- Advise the Department of Fair Employment and Housing (“DFEH”) of the harassment within one year of its occurrence
- Advise the Equal Employment Opportunity Commission (“EEOC”) of the harassment within 90 days of its occurrence

Before a sexual harassment suit may proceed, you must bring your claims to the attention of the DFEH and/or the EEOC within specific time frames. Don’t delay. You may lose your right to sue. Speak to an employee rights attorney before you take these actions. They aren’t right for everyone.