

Sample Sexual Harassment and Abusive Conduct Prevention Training

Note that this training is intended to be presented in an interactive fashion by a qualified trainer. Trainer qualifications are listed at [2 CCR 11024](#).

Learning Objectives

During this training we will:

1. Review the elements of sexual harassment and the remedies available to victims of sexual harassment under both California and federal laws.
2. Discuss other forms of unlawful harassment.
3. Consider strategies for preventing and responding to unlawful harassment.
4. Address concerns regarding abusive conduct in the workplace.

OVERVIEW OF LAWS AGAINST SEXUAL HARASSMENT

True or False Quiz #1

1. Individuals can be personally liable for sexual harassment. True/False
2. Volunteers and unpaid Interns are not protected against sexual harassment. True/False

Answer to True or False Quiz #1

1. Individuals can be personally liable for sexual harassment. **TRUE**
2. Volunteers and unpaid Interns are not protected against sexual harassment. **FALSE**

Who is Protected by the Law?

- Employees
- Applicants
- Contractors
- Volunteers
- Unpaid Interns

Who is Liable Under the Law?

- Every employer or prospective employer.
- Every person in the workplace: supervisor, subordinate, or co-worker found liable for sexual harassment is personally liable for the damages caused by the unlawful harassment.

Personal Liability of Harasser

The individual harasser is personally liable for the damages caused by his or her unlawful actions.

Liability of Employer

An employer is strictly liable for the unlawful harassment by its supervisors and agents.

“Supervisor” Explained

A person qualifies as a supervisor for purposes of the California Fair Employment and Housing Act (FEHA) if they had the discretion and authority (a) to hire, transfer, promote, assign, reward, discipline, or discharge other employees, or effectively recommend any of these actions; (b) to act on the grievances of other employees or to effectively recommend action on grievances; or (c) to direct the claimant’s daily work activities.

Harassment by non-supervisory employees

Employers can be liable for harassment by non-supervisory employees if the employer knew or should have known about the harassing behavior and failed to take immediate and effective corrective action.

Two Forms of Sexual Harassment

Sexual harassment is defined by case law in two ways:

1. **Quid Pro Quo**

- A. Demanding sexual favors in exchange for employment benefits
- B. Demanding sexual favors by threatening negative employment actions; OR

2. **Hostile Work Environment**

- A. Harassing behavior directed toward the complainant
- B. Harassing behavior witnessed by the complainant
- C. Widespread sexual favoritism that infects the workplace creating a hostile or abusive environment

Remedies

- Injunctive Relief
 - Training
 - Development or changes in policies/procedures
- Economic Damages
 - Lost wages
 - Medical expenses
 - Job search expenses
- Non-Economic Damages
 - Emotional Distress
 - Loss of Enjoyment of Life
- Punitive Damages

CLOSER ANALYSIS: QUID PRO QUO

True or False Quiz #2

1. The promise of reward or threat of punishment in exchange for sexual favors must be explicit in order to constitute quid pro quo sexual harassment. True/False
2. An employee who gives in to the demand for sex in order to avoid negative consequences forfeits his or her claim for quid pro quo sexual harassment. True/False
3. If the alleged harasser denies the charge, a claim for sexual harassment cannot be successful without a neutral witness or documentary evidence supporting the complainant's accusations. True/False

Answer to True or False Quiz #2

1. The promise of reward or threat of punishment in exchange for sexual favors must be explicit in order to constitute quid pro quo sexual harassment. **FALSE**
2. An employee who gives in to the demand for sex in order to avoid negative consequences forfeits his or her claim for quid pro quo sexual harassment. **FALSE**
3. If the alleged harasser denies the charge, a claim for sexual harassment cannot be successful without a neutral witness or documentary evidence supporting the complainant's accusations. **FALSE**

Quid Pro Quo Explained

- The essence of a quid pro quo sexual harassment claim is that a supervisor relies on his or her apparent or actual authority to extort sexual favors from an employee.
- The threat may be expressed or implied.

Exercise A

Blake, the sole proprietor of Acme Co., has decided to expand and compete for state contracts. Blake hires Jack, an independent contractor, to install a computer network. Jill responds to Blake's Craigslist ad for an office manager.

Blake threatens to sue Jack for breach of contract unless Jack agrees to engage in sexual activity.

Blake also tells Jill the job is hers if she agrees to have sex.

Exercise A Test

Choose the best answer:

- A. Jack can't sue Blake because he is an independent contractor.
- B. Jill can't sue Blake because Acme Co. has fewer than five employees.
- C. Jack can't sue Blake because he is a man.
- D. Jack and Jill can sue Blake for quid pro quo sexual harassment.
- E. Jack can sue Blake for quid pro quo sexual harassment but Jill cannot.

Exercise A: Best Answer

D.

Jack and Jill can sue Blake for quid pro quo sexual harassment.

Exercise B

Sara is the Deputy Director of a state agency. She approaches Nancy, an office technician, and says, “Hi Nancy. I’ve seen you at the gym. You seem to have a great time in Zumba! And so sexy! Nancy, I’d love to take you to Tahoe this weekend. Just the two of us.” Nancy is stunned and intimidated by the attention. She says, “Well Sara, I’m flattered, but I’m not interested.” Sara smiles wanly and says, “Well, I had to ask. You are just so sexy. But I get it. I’ll leave you alone.” Sara does not proposition or engage in any unwelcome conduct toward Nancy again. Three months later Nancy is late to work for three days and her supervisor threatens to deny her MSA if she is late again.

Exercise B Test

Choose the best answer:

- A. Nancy can establish a claim for quid pro quo sexual harassment because Sara should never have asked a subordinate on a date.
- B. Nancy cannot establish a claim for quid pro quo sexual harassment because there is no evidence that she is a lesbian.
- C. Nancy's claim for quid pro quo sexual harassment is weak because there is no evidence that Sara was offering job benefits if Nancy said yes, or threatening punishment if Nancy said no.

Exercise B: Best Answer

C.

Nancy's claim for quid pro quo sexual harassment is weak because there is no evidence that Sara was offering job benefits if Nancy said yes, or threatening punishment if Nancy said no.

CLOSER ANALYSIS: HOSTILE WORK ENVIRONMENT

True or False Quiz #3

1. To prove hostile work environment sexual harassment, the complaining party does not need to show that they suffered an adverse employment action. True/False
2. To prove hostile work environment sexual harassment, the complaining party must show that they were subjected to unwanted sexual attention that was both severe and pervasive. True/False

Answer to True or False Quiz #3

1. To prove hostile work environment sexual harassment, the complaining party does not need to show that they suffered an adverse employment action. **TRUE**
2. To prove hostile work environment sexual harassment, the complaining party must show that they were subjected to unwanted sexual attention that was both severe and pervasive. **FALSE**

Three Varieties of Hostile Work Environment Sexual Harassment

The courts have recognized three varieties of hostile work environment sexual harassment:

1. Hostile Work Environment – Conduct Directed at Claimant.
2. Hostile Work Environment – Conduct Directed at Others.
3. Hostile Work Environment – Widespread Sexual Favoritism.

“Harassing Conduct” Explained

Harassing conduct includes unwanted sexual advances that can be:

- Verbal
- Visual
- Physical

Hostile Work Environment: Verbal

- Foul or obscene language
- Derogatory comments
- Explicit discussions about sexual activities
- Comments about other people's physical attributes

Hostile Work Environment: Visual

- Leering
- Staring
- Making sexual gestures
- Displaying sexually explicit objects, pictures, cartoons, graffiti, or posters
- Sending graphic emails, text messages, or jokes

Hostile Work Environment: Physical

- Kissing
- Hugging
- Grabbing
- Impeding or blocking movement
- Assault

Exercise C

Tamika starts as a supervisor for the Commission in Yuba County. The other four supervisors and all the field crews at the Yuba County office are men. Eve, the District Administrator does not think women should be field supervisors and resents that headquarters is “forcing an affirmative action case” on her office.

Eve tells the other supervisors and crew members, “the field is no place for a woman.” She tells Tamika’s crew to “keep an eye on her” and “use your own judgment in the field.” During office meetings, around the office, and in emails, Eve consistently refers to Tamika as “little one,” “Wonder Girl,” “Oprah Jr.,” and similar names.

Tamika tells Eve she is undermining her but Eve tells her to “grow a pair or you’ll never make it out there.”

Exercise C Test

Choose the best answer:

- A. Eve's use of diminutive nicknames and undermining of Tamika's authority is OK because Tamika needs to demonstrate the ability to supervise men in what can be an inherently crude environment.
- B. Eve's nicknames and statements undermining Tamika's authority have created a hostile work environment.
- C. Because Eve has no interest in Tamika sexually, her hostile behavior is not actionable as sexual harassment.

Exercise C: Best Answer

B.

Eve's nicknames and statements undermining Tamika's authority have created a hostile work environment.

Exercise D

Warren, a member of Tamika's crew, frequently refuses to follow her orders, saying, "your boss told me to use my own judgment." Warren and Ben routinely interrupt team meetings by burping, talking and laughing. They insincerely offer "apologies to your ladyship."

Frank tells Warren and Ben, "leave my gal alone." Frank repeatedly comments on Tamika's appearance saying things like, "you are the hottest boss I've ever had," and, "dollface, you can tell me what to do whenever and wherever you want." He repeatedly asks her out even though Tamika makes clear she is happily married.

Tamika is afraid to call Eve on her behavior, but complains about the treatment by her crew. Eve takes her written complaint but takes no action.

Exercise D Test

Choose the best answer:

- A. Frank cannot be found liable for hostile work environment sexual harassment because he is defending Tamika.
- B. Warren and Ben are not liable for sexual harassment because there is no evidence that their disruptive actions are substantially motivated by Tamika's sex. Besides, their actions are neither severe nor pervasive.
- C. The Commission is liable for the sexual harassment of Warren, Ben and Frank because management knew or should have known of their behavior.

Exercise D: Best Answer

C.

The Commission is liable for the sexual harassment of Warren, Ben and Frank because management knew or should have known of their behavior.

“Severe or Pervasive” Explained

To be actionable, the unwanted behavior must be “severe or pervasive” and alter the conditions of employment to the extent that it creates a hostile or abusive work environment.

Considerations

- The nature of the conduct.
- The frequency of the conduct.
- The period of time over which it occurred.
- Whether the conduct was physically threatening or humiliating.
- The extent to which the conduct unreasonably interfered with an employee's work performance.

Exercise E

Cody is a unit supervisor for the Board.

Drew, an office technician, sits in a row of five open workstations right outside Cody's office.

On Drew's first day, Cody gives Logan, another office technician, a lingering hug and kiss on the lips. Cody says, while looking Drew up and down, "welcome to Cody's World. If you remember just one rule: what Cody wants, Cody gets, you'll have a bright future here." The next day, Logan arrives early to work to be seated before Cody arrives, but Cody starts rubbing Logan's shoulders and says, "you can't stay seated forever." Drew sees and hears these interactions.

Logan tells Drew what is happening and Drew says, "just get over it." Drew starts losing sleep and misses work because of Cody's mistreatment of Logan.

Exercise E Test

Choose the Best Answer:

- A. Drew cannot state a claim for hostile work environment because Drew told Logan not to complain.
- B. Drew has personally witnessed Cody's harassment of Logan and, therefore, can sue Cody and the Board for sexual harassment due to a hostile work environment.

Exercise E: Best Answer

B.

Drew has personally witnessed Cody's harassment of Logan and, therefore, can sue Cody and the Board for sexual harassment due to a hostile work environment.

Exercise F

Cody and two office technicians, Parker and Rachel, are openly in a sexual relationship. Cody regularly calls them to the office for “special consultations.” Their sexual congress is audible through the door.

Cody gives Parker and Rachel preferred shifts, bonuses, and training denied to others. Cody allows Parker and Rachel to use Drew, Logan, and Timothy, another office technician, to do their work and run personal errands for them.

Drew, Logan, and Timothy are disgusted but work together to make sure they excel at all assignments.

Exercise F Test

Choose the best answer:

- A. Drew and Logan can successfully maintain a sexual harassment/hostile work environment – widespread sexual favoritism claim against Parker and Rachel but not Cody.
- B. Timothy, who has never been harassed by Cody, cannot maintain a successful action for sexual harassment/hostile work environment – widespread sexual favoritism.
- C. Drew, Logan and Timothy can successfully sue Cody, Parker, Rachel and the Board for sexual harassment/hostile work environment – widespread sexual favoritism.

Exercise F: Best Answer

C.

Drew, Logan, and Timothy can successfully sue Cody, Parker, Rachel, and the Board for sexual harassment/ hostile work environment – widespread sexual favoritism.

KEY CONCEPTS

True or False Quiz #4

1. Sexual desire is a key element to any claim for sexual harassment. True/False.
2. An employee can file a claim for sexual harassment even if the supervisor took no adverse employment action (e.g., termination, failure to hire, demotion), against the employee. True/False.

Answer to True or False Quiz #4

1. Sexual desire is a key element to any claim for sexual harassment. **FALSE**
2. An employee can file a claim for sexual harassment even if the supervisor took no adverse employment action (e.g., termination, failure to hire, demotion), against the employee. **TRUE**

Sexual Harassment Can Occur Between Individuals of the Same Sex

It has been settled law for some time that “same sex” sexual harassment is actionable under the FEHA.

Sexual Desire is NOT Required

Recent legislation clarified existing law by expressly stating that “Sexually harassing conduct need not be motivated by sexual desire.” The legislation, SB 292 (Corbett) was passed to repudiate the contrary decision in *Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191.

Adverse Employment Action NOT Required

- The complainant does not have to have a tangible economic loss or other adverse employment action.
- The crux of a harassment claim is the assault on the complainant's personal sense of dignity and well-being.

DENIALS AND DEFENSES

True or False Quiz #5

In California, if the employee does not take advantage of the established internal complaint process, the employer has a complete defense to an action for sexual harassment. True/False

Answer to True or False Quiz #5

In California, if the employee does not take advantage of the established internal complaint process, the employer has a complete defense to an action for sexual harassment. **FALSE**

Denials

The common response to charges of sexual harassment is a denial of the charges:

- “It never happened.”
- “There are no witnesses.”
- “Look at how she dresses!”
- “I am a hugger.”
- “Ever hear of a woman scorned? If I don’t say she’s hot, she’s not going to get the job done.”

Exercise G

Sam, a senior supervisor for the Department calls Maggie into his office. He tells her that if she'd like to avoid a bad review she must perform a sexual act with him. He grabs her and pushes her to the ground. Maggie manages to escape Sam's grasp and flees.

Jose sees Maggie running out of Sam's office in distress and thinks her blouse may have been partially off. Katie sees Maggie in the restroom crying and fixing a tear in her blouse. Maggie tells Katie about the attack. Sam abruptly promotes Maggie.

Katie and Jose tell the Equal Employment Opportunity (EEO) Officer what they saw and heard. Sam denies anything happened. Maggie files a complaint with the California Department of Fair Employment and Housing alleging quid pro quo sexual harassment.

Exercise G Test

Choose the best answer:

- A. Sam is a senior executive and no one witnessed the alleged unwelcome conduct so no one will believe Maggie.
- B. Because Maggie was promoted she suffered no damages, so there can be no claim for quid pro quo harassment.
- C. A reasonable investigator would conclude, based on circumstantial evidence and credibility assessments, that quid pro quo sexual harassment did occur.

Exercise G: Best Answer

C.

A reasonable investigator would conclude, based on circumstantial evidence and credibility assessments, that quid pro quo sexual harassment did occur.

Defense: Lack of Action by the Victim

1. The victim could have avoided part or most of the harm if they had taken advantage of the employer's procedures for addressing sexual harassment (Avoidable Consequences Doctrine)
2. The amount of harm to the victim could have been less if the employee had taken action (Failure to Mitigate Damages)

Exercise H

ABC Co. provides all employees a handbook that details ABC's "zero tolerance" sexual harassment policy, and instructs employees to call ABC's HR Department immediately if they experience or witness any sexual harassment.

Quinn, an ABC supervisor, walks by Pat's desk and whispers to Pat that he should "forget" to wear undergarments the next day. Pat, shocked, pretends not to have heard. From then on, Quinn whispers similar comments to Pat every opportunity they are alone in the office. Pat does nothing, thinking it is only a matter of time before Quinn, who is an incompetent supervisor, is replaced. After six months, Quinn is terminated for poor performance, at which point Pat recounts all of Quinn's past actions to a senior executive and asks the manager to make sure the next supervisor is "less disgusting."

Exercise H Test

Choose the best answer:

- A. Pat cannot sue anyone for sexual harassment because six months have gone by and Pat waited until Quinn was fired before anything was shared with management.
- B. Pat can sue both Quinn and ABC, but ABC can try to reduce the amount it must pay by arguing that the harassment would have stopped if Pat called HR after Quinn's first comment.
- C. Pat can only bring a claim against Quinn. ABC is not liable because Pat chose not to follow the instructions in the employee handbook.

Exercise H Best Answer

B.

Pat can sue both Quinn and ABC, but ABC can try to reduce the amount it must pay by arguing that the harassment would have stopped if Pat called HR after Quinn's first comment.

COMPARING FEDERAL & STATE SEXUAL HARASSMENT LAWS

True or False Quiz #6

1. Unpaid interns and volunteers are protected under federal laws against sexual harassment. True/False
2. California law is broader than federal law in providing protection against sexual harassment. True/False

Answer to True or False Quiz #6

1. Unpaid interns and volunteers are protected under federal laws against sexual harassment. **FALSE**
2. California law is broader than federal law in providing protection against sexual harassment. **TRUE**

Federal TITLE VII

- Negligence theory only [Employer not automatically liable].
- Employer not liable if:
Employer exercised reasonable care; and
Employee unreasonably failed to take advantage of opportunities to avoid harm.
- 15 employees or more.
- No application to independent contractors, volunteers and unpaid interns.

California FEHA

- Strict liability [Employer automatically liable for harassment by managers and supervisors].
- Employer has no defense if manager or supervisor is harasser.
- All employers, even those employing one person or sole proprietors.
- Includes independent contractors, volunteers and unpaid interns.

OTHER TYPES OF HARASSMENT

True or False Quiz #7

1. California law identifies 17 specific protected bases for employment discrimination, harassment and retaliation. True/False
2. Sex, sexual orientation, gender, gender identity and gender expression are all protected bases under the FEHA. True/False

Answer to True or False Quiz #7

1. California law identifies 17 specific protected bases for employment discrimination, harassment and retaliation.
TRUE
2. Sex, sexual orientation, gender, gender identity and gender expression are all protected bases under the FEHA. TRUE

Harassment Based on Any of These Characteristics is Illegal

1. Race
2. Color
3. National Origin
4. Sex
5. Sexual Orientation
6. Gender
7. Gender Identity
8. Gender Expression
9. Religious Creed
10. Mental Disability
11. Physical Disability
12. Medical Condition
13. Military/Veteran Status
14. Marital Status
15. Age
16. Genetic Characteristics
17. Ancestry

Exercise I

Carl has been a manager for the Board for 5 years. Carl approaches another manager, Terry, and tells him that she identifies as a transgender woman and is beginning the process of transitioning at work. From now on, Carl would like to be called Kay, will be wearing clothing consistent with an identity as a woman, and prefers the use of feminine pronouns.

As the weeks pass, Kay's coworkers become accustomed to her new name and appearance, but some of them inadvertently refer to Kay as "Carl" and use the masculine pronoun "he," especially when telling stories about things that happened before Kay's transition. Usually, the coworkers quickly correct themselves when this happens. Terry, however, pointedly says "good morning, Carl," when Kay passes by, and makes comments like "nice dress, dude."

Kay, embarrassed, says nothing to Terry or anyone else about these comments for months.

Exercise I Test

What advice would you give Kay?

- A. Kay should keep her head down and try to focus on work. Not everyone is going to be comfortable with her gender transition and she should expect some negative comments and remarks.
- B. Kay has a claim for discrimination and harassment because of gender identity and gender expression against the Board because of Terry's treatment of her, as well as because of her coworkers' occasional use of the wrong name and pronoun. Those coworkers should be reprimanded and notes placed in their files.
- C. Kay has a claim against Terry and the Board because of Terry's negative comments and purposeful, repeated use of the wrong name and pronouns. Her coworkers' occasional and accidental mistakes do not create a situation of discrimination or harassment.

Exercise I: Best Answer

C.

Kay has a claim against Terry and the Board because of Terry's negative comments and purposeful, repeated use of the wrong name and pronouns. Her coworkers' occasional and accidental mistakes do not create a situation of discrimination or harassment.

PREVENTING & RESPONDING TO SEXUAL HARASSMENT

True or False Quiz #8

1. The DFEH can seek injunctive relief to compel employers to take all reasonable steps to prevent unlawful discrimination without proving an underlying violation of the FEHA. True/False
2. The employer's duty to take immediate, effective action in response to a claim of sexual harassment only applies where there is a credible report or threat of unwanted physical contact. True/False

Answer to True or False Quiz #8

1. The DFEH can seek injunctive relief to compel employers to take all reasonable steps to prevent unlawful discrimination without proving an underlying violation of the FEHA. **TRUE**
2. The employer's duty to take immediate, effective action in response to a claim of sexual harassment only applies where there is a credible report or threat of unwanted physical contact. **FALSE**

Employers Must Take All Reasonable Steps

It is unlawful for employers to fail to take all reasonable steps to prevent discrimination, harassment and retaliation. A determination as to whether an employer has complied with Government Code section 12940(k) includes an individualized assessment dependent upon numerous factors sometimes unique to the particular employer, including, but not limited to: workforce size, budget, nature of the business, and the facts of the case.

Policies & Procedures: Basic Steps in an Investigation

The employer is obligated to conduct an effective workplace investigation of a harassment complaint, and should:

- Conduct a thorough interview with the complaining party.
- Give the accused party a chance to share their perspective of the events.
- Interview relevant witnesses.

Policies & Procedures: Basic Steps in an Investigation

- Obtain all relevant documents.
- Investigate all relevant avenues applicable to the allegations.
- Reach a reasonable and fair conclusion based on the facts.

Supervisory Note:

- Supervisors should be provided specific protocols to follow should they be accused of harassment.

Training

1. Provide training as required by the law.
2. Provide training even if it is not required by the law.
 - Implicit bias training
 - Interaction with certain groups
 - Bystander intervention
3. Keep training records.
4. Keep materials readily available in multiple formats (e.g., paper, online).

Leadership

Policies and training must be reinforced by leadership. The managers and supervisors must understand that their adherence to the standards of the law and internal policies is required.

Top management should model desired behavior and provide appropriate support to managers and supervisors on the front lines.

Resources

1. California Department of Fair Employment and Housing – www.dfeh.ca.gov
2. Federal Equal Employment Opportunity Commission – www.eeoc.gov

Legal References (1 of 4)

California Government Code:

- 12940(j)(1):

Unlawful 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, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.

Legal References (2 of 4)

- 12940(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.

Legal References (3 of 4)

California Government Code:

- 12940(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. Sexually harassing conduct need not be motivated by sexual desire.

Legal References (4 of 4)

- 12940(k):
Unlawful for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.
- 2 CCR 11203: Harassment and Discrimination Prevention and Correction

ABUSIVE WORKPLACE CONDUCT

True or False Quiz #9

1. The Fair Employment and Housing Act makes it unlawful to engage in behavior that a reasonable person in the employee's place would find demeaning. True/False

Answer to True or False Quiz #9

The Fair Employment and Housing Act makes it unlawful to engage in behavior that a reasonable person in the employee's place would find demeaning. **FALSE**

Abusive Conduct

Conduct in the workplace that a reasonable person would find hostile, offensive and unrelated to an employer's legitimate business interests, including:

- Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets.
- Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating.
- The gratuitous sabotage or undermining of a person's work performance.

A single act shall not constitute abusive conduct, unless especially severe and egregious.

Exercise J

Jason is a new employee at the Authority and having difficulty learning the office protocols. He asks his supervisor Ming for assistance. In a loud, sarcastic voice, audible throughout the open work station area, Ming tells Jason: “I’ve showed you how to do this simple, simple, simply simple three simple step procedure over and over and over. You should have been paying attention. I won’t show you again!”

Exercise J Test

Choose the best answer:

- A. Jason can sue Ming for abusive conduct.
- B. Jason should have paid better attention earlier.
- C. Ming's actions constitute abusive workplace conduct, and can likely be disciplined for violation of workplace behavior policies.
- D. Ming's conduct exposes the Authority to liability for unlawful discrimination.

Exercise J: Best Answer

C.

Ming's actions constitute abusive workplace conduct, and can likely be disciplined for violation of workplace behavior policies.

Exercise K

Ming writes an email to Jason which reads:

“Jason, are all Irish mutts as stupid as you? What is it about that thick potato head of yours that you can’t understand the most simple, simple, simple instructions?”

Exercise K Test

Choose the best answer:

- A. Ming would likely be found personally liable for harassment based on race, ancestry, national origin.
- B. The Authority is strictly liable for the harassment by Ming, its supervisor.
- C. Jason can recover damages from Ming, personally.
- D. All of the above.

Exercise K: Best Answer

D.

All of the above.

No Independent Cause of Action

- Abusive conduct: “bullying” in and of itself is not a violation of the FEHA unless it can be shown to have been substantially motivated by a protected characteristic.
- Possible Ralph Act claim if violence or the threat of violence is involved. If so, DFEH does have jurisdiction to investigate and litigate.
- Possible non-FEHA claims: assault, battery, or intentional infliction of emotional distress.

REVIEW

Learning Objectives Revisited

We appreciate your participation and hope that we have provided useful information regarding:

1. The elements of sexual harassment and the remedies available to victims of sexual harassment under California and federal law.
2. Other forms of unlawful discrimination, harassment, and retaliation under the FEHA and other statutes enforced by DFEH.
3. Strategies for preventing and responding to unlawful discrimination, harassment and retaliation.
4. Abusive conduct in the workplace.

True or False Quiz #10

1. An employer is strictly liable for sexual harassment committed by a supervisor or agent. True/False.
2. Only employers with 5 or more employees are liable for sexual harassment under the FEHA. True/False.
3. Sexual desire is a required element of a sexual harassment claim. True/False.

Answer to True or False Quiz #10

1. An employer is strictly liable for sexual harassment committed by a supervisor or agent. **TRUE**
2. Only employers with 5 or more employees are liable for sexual harassment under the FEHA. **FALSE**
3. Sexual desire is a required element of a sexual harassment claim. **FALSE**

QUESTIONS/DISCUSSION

Thank You
for your participation