

Harassment Prevention Training for Supervisors and Officials (AB 1661)

League of California Cities Mayors and
Council Members Academy

Wednesday, January 29, 2025 | 9am



HOUSEKEEPING

You **MUST** be signed
in

You must be present
for the full two-hour
training

You will receive your
certificate at the end
of the training

We also have
certificates for
attorneys for MCLE
credit

Contact Melissa
Kuehne
([mkuehne@ca-
ilg.org](mailto:mkuehne@ca-ilg.org)) with questions
or concerns

ILG IS NONPROFIT, NONPARTISAN & HERE TO HELP

- ILG is the nonprofit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



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Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities



Harassment Prevention Training

Cal Cities Mayors and Councilmembers Academy

January 29, 2025

Presented by: Katherine Read

Introduction

- Katherine Read, Labor & Employment Attorney
- At RWG, we provide a broad range of legal services to cities, special districts, and public agencies all over the State of California.
- Two-hour training today
- Certificates of completion provided by the event organizers

Why are we here?

- **California legal requirement**

- Two hours every two years for supervisors and City Councilmembers
- One hour every two years for non-supervisors

- **Respect in the workplace**

- Benefits the entire workforce (you are a part of the workforce!)
- More efficient operations
- Better services to the community

Objectives of this Training

- Understand laws against sexual harassment
- Understand how to prevent harassment and remedy violations
- Discuss real-life examples and learn to identify and address harassment if it occurs
- Learn about other forms of unlawful harassment, including harassment on the basis of gender, gender identity, gender expression, and sexual orientation
- Promote respect and dignity in the workplace

Ground Rules

- There are no stupid questions! The more questions you ask, the better.
- Your trainers are here to assist, not judge.
- There is not always an obvious “right” or “wrong” answer. Take a guess!
- Participation is appreciated and will make this training more interesting and useful.

What do you think?

- **Is harassment under-reported?**

- This means harassment often occurs and is not reported because victims or witnesses are either afraid to report or do not understand what harassment is.

- **Is harassment over-reported?**

- This means harassment is often reported even when it does not occur.

Know Your Policy

- Effective policies go beyond what the law requires.
- Know where your copy of the policy is?
- When was the last time you reviewed it?
- When was it last updated to reflect new laws?
- Is it accessible to all employees?
- Does it provide a clear procedure for reporting and responding to harassment complaints?

True or False?

- Intent matters: If you did not mean to offend someone, you cannot be liable for harassment.
- Off-duty or off-site conduct (e.g., at a bar after work) is not workplace harassment.
- It is illegal to discriminate against an employee based on their hairstyle.
- The First Amendment protects what you say at work. All opinions are protected!
- Employers are required to make exceptions to dress code policy if an employee's religion prevents them from following the dress code.

Who gets harassed?

■ Statistics for women:

- Verbal sexual harassment (including catcalling, sexist slurs, offensive comments about body parts, inappropriate sexually explicit advances): 78%
- Cyber sexual harassment: 31%
- Physically aggressive sexual harassment: 59%

■ Statistics for men:

- Verbal: 54%
- Cyber: 24%
- Physically aggressive: 21%

Anti-Harassment Law

The federal and state governments have enacted laws protecting employees against harassment.

Federal Anti-Harassment Law

- **Civil Rights Act of 1964**

- Race
- Color
- Religion
- Sex (including pregnancy status, sexual orientation, and gender identity)
- National origin
- Age
- Disability
- Genetic information, including family medical history

- **Workplace harassment is a form of discrimination.**

- **Harassment/discrimination claims can be filed directly with the Equal Employment Opportunity Commission**

State Law (Fair Employment and Housing Act)

- Race (including characteristics historically associated with race, such as hair texture and style)
- National Origin
- Color
- Ancestry
- Sex
- Sexual Orientation
- Gender
- Gender Identity/Expression
- Physical or Mental Disability
- Religion or Creed
- Medical Condition
- Genetic Information
- Marital Status
- Pregnancy or Pregnancy-Related Condition
- Veteran or Military Status
- Age (40 or older)
- Beginning January 1, 2024, off-duty, off-site use of cannabis
- Reproductive health decision making
- Lack of driver's license
- Taking off time for jury duty, court ordered presence, victim or family member of victim time off

Hypothetical

Mary, a supervisor, constantly screams at Jordan, her assistant. She tells Jordan he is stupid and lazy, and humiliates him in front of his coworkers. One day, Mary threatens Jordan, “if you don’t finish this project on time, I’m going to ruin every part of your life.” Jordan believes that the reason Mary speaks abusively is that their children are rivals at school, and Jordan’s son once hit Mary’s son. Jordan was upset about the incident, and apologized to Mary, but Mary still treats him poorly. Is Mary engaging in unlawful harassment?

Hypothetical

Erica and Terra are friendly coworkers who often talk about the men they date. One day Erica tells Terra that she started dating a woman. Terra seems surprised but does not say anything negative.

After that day, Terra stops speaking to Erica. Erica finds out that Terra is spreading false rumors at work about Erica's personal life. Could Terra be liable for harassment?

What Is Sexual Harassment?

- **Sexual harassment is a form of sex discrimination.**
- **There are two forms of sexual harassment:**
 - Quid pro quo (Accounts for 1/3 of cases filed)
 - Receipt of a workplace benefit in exchange for a sexual favor; or
 - Denial of a workplace benefit as retaliation for refusal of sexual advances.
 - Hostile work environment (Accounts for 2/3 of cases filed)

Definition of Sexual Harassment

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive work environment.”

Quid Pro Quo Sexual Harassment

- The conduct is unwelcome; and
- The conduct is sexual in nature; and
- Submission to or rejection of sexual advances affects the terms and conditions of employment, including:
 - Hiring and firing
 - Pay raises/bonuses
 - Better work assignments
 - Promotions

Hostile Work Environment

- **The conduct is unwelcome; and**
- **The conduct is sexual in nature; and**
- **The conduct**
 - unreasonably interferes with an individual's work performance; or
 - creates an intimidating, hostile, or offensive work environment.

Hostile Work Environment

Three types of hostile work environment:

- Sexual conduct directed at the complainant
- Sexual conduct directed at others, and complainant observes
- Sexualized environment - implicit pressure to submit to sexual advances or participate in sexual discussions, jokes, etc.

What is *not* a hostile work environment:

- Mean behavior that is **not** based on a protected category
- Rudeness, criticism, unfair or harsh performance feedback
- Horrible work environments and abusive bosses do not necessarily create a “hostile work environment.”

Hostile work environment?

- Supervisor walks around discussing his preference for blond women.
- Supervisor screams when you make very small mistakes and threatens to fire you even when it's not your fault.
- Co-worker with your same job title disagrees with your political affiliation and makes fun of you in front of others.
- Co-worker tells sexual jokes in the break room; if you don't laugh, she insults you for being a "prude."

Incident vs. Environment

- A single incident of quid pro quo harassment can constitute a sexual harassment claim.
- “Hostile work environment” harassment requires that the conduct is severe or pervasive.

What is severe or pervasive?

■ Considerations:

- The nature of the conduct
Example: Groping (assault) vs. pat on the knee
- The frequency of the conduct
- Physically threatening or humiliating?
- Did it interfere with the complainant's work performance?
- Did the offender have power over the victim?

Forms of Sexual Harassment

■ Verbal

- Sexually explicit language
- Request for sexual favors
- Unwanted comments on a person's appearance
- Obscenities, jokes, comments about sex

■ Physical

- Unwanted touching
- May not rise to the level of assault

■ Visual

- Pictures, posters, office decorations
- Cartoons, other “humorous” depictions
- Question: what about pictures in a private office?
- What if the purpose is not sexual (e.g., family vacation photos)?

What is unwelcome conduct?

The challenged conduct is unwelcome if “**the employee did not solicit or incite it. . . .**”

Henson v. City of Dundee,
682 F.2d. 897 (11th Cir. 1982)

- A person does not have to say “no” in order to prove that the conduct was unwelcome or unwanted. If an employee complains of sexual harassment, the burden is on the accused person to prove that the conduct was *not* unwelcome.
- ALWAYS make sure your conduct is welcome!

Hypothetical

Kyle and Holly work together. Kyle has asked Holly to go out with him before, and she said no, but they are still friendly. Holly confides in Kyle that she is afraid she won't get the promotion she's applying for. Kyle says, "maybe I can do something about that. Would you mind giving me a quick shoulder massage?"

Is this sexual harassment?

- a) Yes, this is quid pro quo.
- b) No, because a shoulder massage is not sexual.
- c) No, as long as Kyle only does this once, the massage never happens, and he apologizes when his supervisor reprimands him.
- d) The answer depends on whether Kyle supervises Holly.

What do you think?

Allie and Kaysie work together. Allie asks Kaysie out on a date. Kaysie accepts the invitation. They have a nice first date, but Kaysie isn't interested in going out again. When Allie asks her on another date, she says no. Allie starts wearing provocative clothing that is not work appropriate. She often walks past Kaysie's desk and asks Kaysie if she likes the way Allie looks. Kaysie asks Allie to stop because Allie's behavior makes her uncomfortable. Allie's behavior becomes more aggressive. She frequently stands close to Kaysie and makes sexual comments; the comments are not about Kaysie and they are not flirtatious. Kaysie complains to a supervisor that Allie's behavior is affecting Kaysie's work performance. The supervisor says "you're both adults, you should tell her again to stop. I can't control the way Allie dresses, and it's not like she's hitting on you. Just try to ignore her."

Did the supervisor do anything wrong? What could he have done instead?

Is the conduct unwelcome?

- Conduct may begin as welcome, but then become unwelcome.
- The person engaging in the conduct has the duty to prove that their behavior is welcome.
 - Employees may not feel comfortable telling their co-workers to stop.
 - When an employee exercises **control or power** over another employee (e.g., supervisor-supervisee relationship), it is important to be especially sensitive to the interactions.
 - Think: what are some ways an employee may exercise control or power over a co-worker?

Friendly versus “Unwelcome”

- **To determine if your behavior is unwelcome, ask yourself the following:**
 - Is there equal power between me and the person I am interacting with?
 - Is there equal initiation and participation between me and the person I am interacting with?
 - Does the person I am interacting with give any verbal or visual signs of discomfort with my conduct?
 - Is my behavior appropriate for the workplace? (If you have to pause to think about it, the answer is probably no.)

Is the conduct sexual in nature?

- Pictures of people in non-work appropriate clothing
- Pictures of people engaging in sexual acts
- Discussions of physique, appearance, or sexual acts
- Requests of another employee to engage in sexual or romantic behavior
- Repeated requests to go on a date
- Physical contact or requests for physical contact, even if not overtly sexual (e.g., hugging, shoulder rubs)
- Jokes involving sex or gender, sexual orientation, gender identity or gender expression
- When in doubt, don't do it.

Good excuses?

- “We have a laid-back environment at work. We’re like family, and we joke around a lot.”
- “She didn’t tell me the comments made her uncomfortable, so how could I have known?”
- “My co-workers do it all the time and no one has complained.”
- “Our supervisor doesn’t care if we talk about our sex lives – she does it too!”
- “I was expressing my opinion and did not mean to offend anyone.”
- “He’s a very touchy-feely person, so I didn’t think he would care if I touched him.”

Gray Areas

- Hugs, pats on the back – “But I’m a hugger!”
- “You look nice today!”
- Safest approach: Avoid commenting on coworkers’ physical appearance.
- Safest approach: Avoid discussions of a sexual or intimate nature with coworkers unless directly related to work.
- Do not comment on or ask questions about a person’s sexuality, sexual orientation, gender identity, or gender expression, unless that person raises it first. Be respectful!

Appropriate workplace behavior?

- An employee talks about her sexual adventures in front of 10 co-workers. No one appears to be offended.
- An employee is talking to a trusted friend on the job about his sexual fantasies. Another employee overhears.
- An employee notices that his coworker seems stressed, so he gives the coworker a shoulder massage without asking.
 - What if a gay man does this to a female employee – does that make a difference?
- An employee tells jokes about a friend who recently transitioned from the gender they were assigned at birth.
- An employee imitates the accent of someone who was born in a different country. The employee says it's okay because she was imitating her own grandmother.
- An employee makes fun of a coworker who uses a wheelchair due to a disability. The coworker laughs and jokes along.
- An employee has pictures of his wife in his private office:
 - In her wedding dress
 - In a Halloween costume, dressed as Britney Spears
 - In a bikini

I Want Bright Line Rules!

- **Can I ask another employee on a date?**

- Under the law, yes, but employers are allowed to adopt policies about romantic relationships between coworkers.
- Once your coworker says no, continuing to express interest may constitute sexual harassment.

- **Can I hug my coworkers?**

- If you have a workplace friend and you both initiate hugging and participate equally in the physical contact, then you may be on safe ground. But you may be making other employees uncomfortable by hugging them, even though you are not making sexual advances and don't intend to make anyone uncomfortable.
- Why not err on the safe side?

Harassment By Third Parties

- **Employers are required to protect employees from harassment by non-employees, even if they cannot control the behavior of third parties:**
 - Customers
 - Clients
 - Members of the public
 - Vendors, contractors, suppliers
 - Other third parties
- **If the employer knew or should have known that harassment was occurring, it may be liable unless it takes corrective measures.**

Off-Duty Conduct

Workplace harassment can occur:

- In any location
- On- or off-duty
- In work or social environments

UNLESS

- The relationship is completely private and not connected to employment; and
- The conduct occurs off-duty; and
- It occurs at an event or location that has no relation to work.

Off-Duty Conduct: Gray Areas?

- A few coworkers meet for a drink at a bar after work. One of them inappropriately touches another.
- A supervisor invites the whole team to meet for a drink after work. The supervisor uses an offensive slur to refer to a gay coworker who is not present.
- Two employees are hanging out on their break in the lunchroom, and one of them shows the other graphic photos on her phone.
- The City has a party for all employees. Attendance is optional. At the party, an employee gets drunk and tells one of his co-workers “you need to dress differently, I can’t tell if you’re a man or a woman.”
- Two employees become friends. They go on vacation together, and when they return, one employee complains to their supervisor that the other employee was making inappropriate sexual advances.

Gender-Based Harassment

- A majority of individuals who identify as transgender or whose gender does not conform to traditional male/female binary categories say that they have experienced workplace discrimination or harassment.
- California law requires employers to allow employees to use the restroom that matches their gender identity, regardless of their biological sex.
- California law requires employers to allow employees to wear clothing and use the pronouns that match their gender identity or gender expression, regardless of their biological sex.
- Why is this complicated?

Gender-Based Harassment

- Harassment based on someone's gender identity, gender expression, or sexual orientation is unlawful even if it is not sexual harassment.
- Examples: negative comments about transgender or other people whose gender identity or gender expression is different from the sex they were assigned at birth; slurs, insults, stereotypes, offensive jokes; refusal to address a coworker by their chosen name or gender pronoun; refusal to accept a person's gender identity or gender expression including refusal to accommodate how they dress or what bathroom they use.
- How do we create a respectful work environment when people have different opinions?

Problematic Behavior

- Negative comments about sexual orientation
- Teasing, jokes, slurs, insults, stereotyping
- Refusal to accept someone's sexual orientation
- Invasive questions
- Expressing a political or religious opinion that does not respect someone's sexual orientation
- Assumption that heterosexuals are the "norm"
- Respect = Common Sense

Everyone Makes Mistakes

- **Heteronormative assumptions:**

- Asking your male co-worker “Did your wife go on vacation with you?”
- Try this instead: “Did you go on vacation alone or with family?”
- If you are corrected, apologize, move on in the conversation, and try not to make the assumption again.

- **Gender-based assumptions:**

- Telling an employee with masculine traits, “That’s the women’s restroom – you have to use the men’s room.”
- Try this instead: Don’t say anything! If the person is entering the wrong restroom, they will likely realize it very quickly. You may think the person is a man, but perhaps they are a woman with traits/appearance more associated with masculinity.
- If you make a mistake, apologize.

- **What assumptions do you make?**

What should you do if you experience harassment?

- If you feel comfortable, tell the person to stop.
- Report the conduct.
- The law permits you to complain to the EEOC or California Civil Rights Department without reporting it internally.
- Retaliation for reporting harassment is illegal. You cannot be punished for making a good faith report of conduct you believe to be harassment.
- Discussion: What does “good faith” mean?

Remedies for Harassment Victims

- File internal complaint
- Who to report harassment to?
 - Immediate supervisor, any supervisor, or any management employee.
 - City Manager or Human Resources Manager or anyone else designated in the City's policy.
 - City Attorney or City's employment counsel.
- Option to file complaint with state or federal agency
- Option to sue in court
- Employees have the right to a harassment-free work environment, but management determines how to accomplish that (e.g., reassignment, transfer, removal from workplace, etc.). The remedy cannot be punitive towards the complainant.

Bystander Duties

- Strategies for addressing harassment when you witness it?
- When are you obligated to report harassment?
- Supervisor versus non-supervisor obligations
- Know your employer's policy!

Employer Liability

- Harassment by officers and directors acting within the scope of their employment
- Strict liability for harassment by a supervisor with “immediate (or successively higher) authority over the employee”
- An employer is liable for harassment by non-supervisory employees if it:
 - “Knew or should have known” about the harassing conduct; and
 - Failed to take immediate and appropriate corrective action.

Retaliation Prohibited

- The law prohibits retaliation against employees who complain about harassment or participate in a harassment investigation.
- Conduct that may constitute retaliation includes:
 - Demotion, suspension, reduction in pay, termination
 - Negative treatment (gossip, insults, rumors)
 - Change in duties or intangible benefits
 - Hostility or ostracizing
- Beware of perceived acts of retaliation. The employee who has filed a complaint will be more sensitive to treatment perceived as negative.
- Claims of retaliation are taken seriously and should be investigated the same way harassment complaints are investigated.
- What should you do if you know someone has filed a harassment complaint?
 - Don't speculate, gossip, make judgments or conclusions
 - Keep information confidential
 - Be respectful to all sides
 - Don't involve yourself in someone else's complaint unless you are a witness

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. Abusive conduct may include 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, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.”
(Govt. Code § 12950.1)

What is Abusive Conduct?

- Different from harassment
- More extreme than “bad boss behavior”
- Not related to legitimate business purposes (e.g. a poor performance evaluation is not “abusive”)
- Not illegal (yet)
- Employers may develop their own definitions of abusive conduct and prohibit abuse of fellow employees.

Hypothetical

Abigail and Sarah are both supervisors (in different divisions). Abigail confides in Sarah that she is having an affair with another supervisor at the same level. She says she doesn't want to continue the relationship, but she feels uncomfortable breaking it off because it will be awkward for them to work together. Sarah asks Abigail if the relationship is consensual. Abigail tells her, "yes, but I wish I could end it." Is Sarah obligated to report this conduct?

- a) No, because Sarah does not supervise Abigail.
- b) No, because Abigail and the employee with whom she is having an affair are at the same level.
- c) No, because the relationship is consensual.
- d) Yes, because the relationship is unwanted.
- e) Yes, because all workplace relationships might potentially constitute sexual harassment.

Hypothetical

Austin, a manager, often tells sexual jokes in the lunchroom. The jokes are not directed at anyone in the workplace. Bret, a manager in a different division, finds the jokes funny, and sees that most of his other coworkers laugh at the jokes. Then one of Austin's direct reports, Alex, tells Bret that the jokes make her feel harassed because she is female. Bret tells her that she is being too sensitive because the jokes are about men and women equally. He does not tell anyone what Alex told him, and does not confront Austin. He thinks "if I do nothing, Alex will get over it soon." Did Bret do anything wrong?

- a) No, because the jokes are not specifically aimed at men or women.
- b) No, because Bret does not supervise Alex.
- c) Yes, because all sexual jokes constitute sexual harassment.
- d) Yes, because Bret is a supervisor and is required to report all complaints of harassment.

Hypothetical

Amber is a supervisor. An employee tells her that she saw Richard corner Madeline at the holiday party and try to make Madeline reveal her sexual orientation. Amber has been close friends with Richard for many years and does not believe that he would ever do anything inappropriate. Richard has been working for the agency for 15 years and has never had a single complaint against him. Amber believes that the employee who reported the incident is lying. Is Amber obligated to investigate or report the complaint?

- a) Yes, if Amber can confirm that there were other witnesses to the incident.
- b) Yes, because Amber is obligated to act on all reports of potential harassment, even if she does not believe they occurred.
- c) No, because Amber is 100% certain that Richard is a good person.
- d) No, because Amber does not think the employee who reported Richard is telling the truth.

Hypothetical

Clinton has been Georgia's supervisor for 10 years. They have become friends and often joke around. One day Georgia tells Clinton that she is transitioning to being a man, and would like people to start addressing her as George, and to use male pronouns. Clinton laughs and says "come on, Georgia, I've known you for 10 years as a woman, I can't do that." George says it is his legal right to identify as a man. Clinton tells him "I'm sorry, but when you started working here and signed up for benefits, all your papers say female. I can't change that now."

Did Clinton do anything wrong?

What could he have done differently?

Hypothetical

Philip is white; Stephen is black. Philip is an independent contractor whom the City hires to provide technical expertise for the employee email system. He is frequently on-site and many people assume he's an employee of the City. Stephen, an employee, overhears Philip making a racially insensitive joke, and tells him his language is offensive. Philip rolls his eyes. He says "I don't have to follow your ridiculously PC policy, I'm not an employee. Besides, don't be so sensitive. I'm obviously not racist."

Considering that Philip is not an employee, what are Stephen's options?

Hypothetical

Chase, a maintenance worker for the City, walks with a limp. Sometimes that means he gets the job done a little slower than other maintenance workers. Kodie, his supervisor, asks him why he's always behind on tasks. Chase tells her that he can't move from place to place as quickly as others. He says "I could work faster if the areas I cover were closer to each other. You assigned me to areas that are very far apart." Kodie says, "now you want special treatment? Everyone gets treated the same around here." Chase gets discouraged and says "never mind." Kodie doesn't tell anyone about their conversation and doesn't change Chase's assignment. On Chase's next performance review, Kodie gives him a low score for speed & efficiency.

What should have happened differently in this scenario?

Hypothetical

Mustafa is an American of Lebanese descent. The City hires him as an engineer. He is a devout Muslim, and sometimes goes into the conference room, closes the doors, and prays. Joanne accidentally walks in on him and says, “You can’t do that here; this is a government building.” Mustafa says that it is his right to practice his religion, and he’s not bothering anyone. As Joanne is leaving, she says “I don’t know how it works in Lebanon, but in America we have separation of Church and State.” Mustafa starts to explain that he *is* American, and Joanne responds, “I don’t want to hear it. I’ve heard enough from men today.”

What is your opinion this interaction?

Hypothetical

Alisha has worked at the City for years, and is a beloved manager. She decides to retire. The City holds a gathering at a bar after work on Alisha's last day. In one of the toasts to Alisha, her colleague says "We will miss Alisha, but let's be honest; we all know she couldn't keep up with our new technology, and she admits it. Here's to her new life as a full-time grandma, and bringing some young faces to the City!" Alisha laughs, but another employee around Alisha's age complains to the City Manager that she feels like the comment reflects the City's desire to push older employees into retirement.

How should the City respond?

Questions?



Thank you!

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