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2018 EMPLOYMENT LAW CONFERENCE
MISSION=POSSIBLE

**#NotHere: ADDRESSING SEXUAL
HARASSMENT IN THE WORKPLACE**
SESSION 11

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AGENDA



- Sexual Harassment - 2018
- Risk Factors
- Preventative Measures
- Eliminating Barriers to Reporting
- Responding to Complaints
- Leadership and Accountability
- Looking Forward

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ANTI-HARASSMENT MOVEMENTS




SEXUAL HARASSMENT COMPLAINTS





RISK FACTORS

- ✓ A homogenous workforce
- ✓ Workplaces where some workers do not conform to workplace norms
- ✓ Cultural and language differences in the workplace
- ✓ Workplaces with many young workers



WARNING

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RISK FACTORS

- ✓ Workplaces with “high value” employees
- ✓ Workplaces with significant power disparities
- ✓ Workplaces that rely on customer service or client satisfaction



RISK FACTORS

- ✓ Workplaces where work is monotonous or consists of low-intensity tasks
- ✓ Isolated workspaces
- ✓ Decentralized workplaces
- ✓ Workplaces that tolerate or encourage alcohol consumption





PREVENTATIVE MEASURES

- Comprehensive Written Anti-Harassment Policy
 - Lists protected categories under FEHA
 - Explains prohibited conduct
 - Includes a social media component

PREVENTION



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PREVENTATIVE MEASURES

- Comprehensive Written Anti-Harassment Policy
 - Establishes a comprehensive complaint procedure
 - Provides alternative avenues for raising complaints
 - Provides for appropriate remedial action
 - Maintains confidentiality to the extent possible
 - Ensures no retaliation

PREVENTION



PREVENTATIVE MEASURES

Training

- California mandates harassment prevention training for supervisory employees (AB 1825)
 - Qualified trainer
 - “Effective Interactive Training”
 - Expanded scope
 - Abusive conduct
 - Gender, gender identity, gender expression, sexual orientation

PREVENTION



PREVENTATIVE MEASURES

Training

- Go beyond mandated training requirements
 - Provide regular reminders between formal training sessions
 - Train all employees, not only supervisors and managers
 - Promote culture of mutual respect and appreciation

PREVENTION



ELIMINATING BARRIERS TO REPORTING



ELIMINATING BARRIERS TO REPORTING

- Barriers to reporting
 - Fear of retaliation, including job loss
 - Fear of being ostracized by coworkers
 - Fear of being blamed
 - Embarrassment
 - Incident seemed trivial



ELIMINATING BARRIERS TO REPORTING

- Barriers to reporting
 - Negative experiences of coworkers who reported harassment
 - Fear of not being believed
 - Lack of knowledge of reporting options
 - Belief that nothing will happen in response to complaints



ELIMINATING BARRIERS TO REPORTING

- Steps to eliminating barriers to reporting
 - Have a clearly worded anti-harassment policy and reporting procedure
 - Effectively communicate the anti-harassment policy and reporting procedure



ELIMINATING BARRIERS TO REPORTING

- Steps to eliminating barriers to reporting
 - Treat employees who utilize the reporting system with dignity and respect
 - Provide prompt and appropriate response to complaints
 - Ensure no retaliation



ELIMINATING BARRIERS TO REPORTING

- Steps to eliminate barriers to reporting
 - Identify multiple individuals who are trained to receive reports
 - Direct supervisor or any supervisor or member of management
 - No requirement to report to direct supervisor first
 - Human Resources or EEO officer



ELIMINATING BARRIERS TO REPORTING

- Steps to eliminate barriers to reporting
 - Provide multiple means for reporting
 - Formal written or verbal report
 - Innovative methods such as hotlines or apps
 - Employer Assistance Programs
 - Ombudsperson





DUTY TO INVESTIGATE

When an employer receives notice—from any source—of potentially harassing conduct, the employer is obligated to investigate and take prompt corrective action that is reasonably calculated to prevent/end harassment.

DUTY TO INVESTIGATE

- Notice may include
 - Formal complaint from the harassed individual
 - Coworker statements
 - Workplace rumors or gossip
 - Statements by customer or vendor
 - Passing comments from the harassed individual



INVESTIGATION BASICS

- ✓ Promptly review the complaint and determine the scope of the investigation
- ✓ Select an appropriate investigator
- ✓ Determine the laws, policies, regulations, or procedures that apply
- ✓ Interview the complainant(s), relevant witnesses, and the respondent(s)



INVESTIGATION BASICS

- ✓ Perform other work necessary to obtain all facts, such as document/video review and/or a site visit
- ✓ Weigh the evidence for each allegation
- ✓ Make a factual finding for each allegation based on a preponderance of the evidence standard



INVESTIGATION BASICS

- ✓ Review all of the factual findings to determine if a policy violation occurred
- ✓ Prepare a confidential investigative report
- ✓ Communicate the results to the complainant(s) and respondent(s)
- ✓ Ensure no retaliation against complainant(s) and/or investigation participants



POST-INVESTIGATION

- Determine and implement appropriate remedial action that:
 - Stops behavior before it rises to the level of unlawful conduct recurrence
 - Is commensurate with the misconduct and discourages or eliminates recurrence
 - Is consistent with action the employer has taken in the past in similar situations
- Follow up to determine if remedial action was effective



LEADERSHIP AND ACCOUNTABILITY



LEADERSHIP AND ACCOUNTABILITY

- Assess workplace for risk factors associated with harassment and minimize those risks
- Consider conducting a climate survey
- Devote sufficient resources to harassment prevention efforts



LEADERSHIP AND ACCOUNTABILITY

- Hold managers and supervisors accountable for preventing and responding to harassment
- Communicate and model a consistent commitment to harassment prevention



LEADERSHIP AND ACCOUNTABILITY

- Have a diversity and inclusion strategy which promotes harassment prevention
- Foster an organizational culture that promotes respect and civility and does not tolerate harassment



LOOKING FORWARD



LOOKING FORWARD



THANK YOU
For questions or comments,
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