

SEXUAL HARASSMENT

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September 1997

“America Seikatstu Shoroppo” by ILS Publishing Co.

The definition of sexual harassment is “any unwelcome sexual advances, or visual, verbal or physical conduct of a sexual nature.” It includes:

- 1) Unwelcome sexual advances
- 2) Offering employment benefits in exchange for sexual favors
- 3) Making or threatening reprisals after a negative response to sexual advances
- 4) Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or picture, cartoons or posters
- 5) Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- 6) Verbal sexual advances or propositions
- 7) Verbal abuse of a sexual nature, graphic verbal commentaries about an individual’s body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations
- 8) Physical conduct: touching, assault, impeding or blocking movements

Furthermore, the victim only has to show that the conduct was “unwelcome” to win. The fact that the victim may have consented to the conduct, or acted voluntarily is not a defense.

Sexual harassment claims in California are extremely serious for the employer, company and the harasser. The victim can sue the individual who is accused of sexual harassment, the company, and all supervisors, officers and directors who condone or ratify the sexual harassment. The individuals (including supervisors, officers or directors) who are determined to be at fault could become personally liable even though they may not have been the actual harasser. As a practical matter, sexual harassment cases are almost impossible to win when the supervisor is a man and the victim is a woman. A California jury recently awarded more than \$7,000,000 in damages to a woman for sexual harassment, even though the victim never had sex with the accused supervisor.

California law requires that every sexual harassment claim be investigated by an impartial investigator who provides a report to the victim, the accused and the employer. If any manager or executive of the company tries to interrupt or obstruct the investigation, the victim may also obtain a judgment for punitive damages. In addition to the jury verdict, the embarrassment and negative publicity can also be extremely damaging to the company’s reputation and costs of defense, including legal fees and expert witnesses, can also be very expensive for the company.

The law in the U.S. requires that if a sexual harassment claim arises the company conduct the following:

1. Conduct immediate and thorough investigation and prevent further sexual harassment to occur.
2. Communicate the result of the investigation to the complainant and to the accused.
3. Provide a training regarding sexual harassment for all the employees at the workplace.
4. If necessary, take disciplinary action, for example, suspension or termination.
5. Post a poster prohibiting sexual harassment at the work place or put sexual harassment claim procedure in writing and include it in Employee Manual.

It is important for company not to interrupt the above mentioned investigation process. If the investigation is interrupted, company might have to pay the fines. Even if it was determined that the sexual harassment did not exist, the company may be held responsible if the company does not finish all of the above steps. Our firm represents companies in the training and defense of sexual harassment claims.