

# Preventing Harassment in the Workplace and Beyond

New Mayors and Council Members Academy  
January 22, 2020



## ILG's Mission

Empower local government leaders and deliver real-world expertise to help them navigate complex issues, increase their capacity, and build trust in their communities.

# ILG is Connected to Key Local Gov Groups



ILG is the non-profit training and education affiliate of...



**California Special Districts Association**  
*Districts Stronger Together*

## What Does ILG Do?

*Promoting good government at the local level*

### Program Areas

Leadership & Governance

Sustainable Communities

Public Engagement

Youth & Civics Education



### Services

Education & Training

Technical Assistance

Capacity Building

Convening

The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, enclosed within a white rectangular box.

Renne Public Law Group®

The background of the slide is a photograph of a classical building facade with white columns and a blue sky with light clouds. The text is overlaid on this image.

## PREVENTING HARASSMENT & DISCRIMINATION IN THE WORKPLACE & BEYOND

January 2020

League of California Cities

Presented by Sara Church Reese

The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, enclosed within a white rectangular box.

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## WHY?

- Positive, Inclusive Environment
- Public Service
- #MeToo – Now a Global Movement

### **We Have To**

It's The Right Thing To Do

## NEW URGENCY — EXAMPLES IN THE NEWS

**Nobel Laureates, Judges, Journalists,  
Clergy, Uber, Actors, Directors, Producers,  
Local Officials...**

**Judge Alex Kozinski** (NY Times / Wash. Post)

- 2008 reprimand for pornography on website
- Showed pornography to employees
- Suggested another employee exercise naked
- Memo to judges re ban on push-up bras to combat gender bias
- Retired after investigation began

**Assemblymember Cristina Garcia** (KQED)

- Flirty texts
- Referring to colleague as “homo”

**Senator Bob Hertzberg**

- Trademark Hugs
- Reprimanded by Senate Rules Committee
  - Not OK to Ask if Hug is Welcome

## LOCAL GOVERNMENT — EXAMPLES IN NEWS

**Mountain View Police Chief Max Bosel**  
(SF Chronicle, NBC, Mercury)

- Dispatcher accused SWAT Team and Police Chief of sexual harassment
- Lewd jokes, nudity, sexual banter
- Current ruling – 2006-7 acts too old for suit

**Santa Clara County Sheriff Laurie  
Smith** (KGO, Mercury News)

- Accused of pinning a male deputy down in a county van

**Santa Clara County Sheriffs' Union  
President (Mercury)**

- Demoted 2013 for looking at pornography at work
- Demoted 2016 for failing to stop guards from sharing bigoted texts and participating in text strings that included racist slurs against Vietnamese, Jewish, and African-American people, and homophobic and transphobic slurs
- Resigned as Association President 2018

## LOCAL GOVERNMENT — EXAMPLES IN NEWS

### **Former San Diego Mayor** (Washington Examiner)

- Pled guilty to false imprisonment and battery against 3 women.
- No jail time
- Need not register as sex offender
- 2019: Plea deal criticized as too lenient
- “The cultural change since #MeToo is having an impact on how prosecutors listen to victims”

### **Santa Clara County Sheriffs’ Union President (Mercury)**

- Demoted 2013 for looking at pornography at work
- Demoted 2016 for failing to stop guards from sharing bigoted texts and participating in text strings that included racist slurs against Vietnamese, Jewish, and African-American people, and homophobic and transphobic slurs
- Resigned as Association President 2018

## HARVEY WEINSTEIN

- Disgraced in public media
- Hundreds of civil lawsuits
- Criminal charges in New York and Los Angeles
- No longer married
- NOT employment context

## EXAMPLES IN THE NEWS

- Billionaire Alki David
- Sexual Battery Trial
- \$58.25 million verdict

## EXAMPLES IN THE NEWS

- Former Grover Beach Mayor and Planning Supervisor resigned amid sexual harassment allegations (Tribune Oct. 2019)
- Inglewood Mayor accused of harassment by former assistant (L.A. Times Dec. 2019)
- West Hollywood Mayor accused of using Grindr app during public meetings (L.A. Times Feb 2019)
  - 2016 suit settled for \$500,000
  - New allegations by Gay Men's chorus colleagues calling for his resignation.

## EXAMPLES IN THE NEWS

- CA Appellate Justice Jeffrey Johnson accused of sexual harassment
- Commission on Judicial Performance concluded he did it
- Mistreated his own female colleagues

## NOT ALL MISCONDUCT IS EXTREME

- Touching is risky
- People differ
- Dirty jokes
- Keep your distance
- Staring/leering
- Blocking
- Discussing sexual topics, even if newsworthy
- Perceptions of judges and jurors are changing

## VICTIM/COMPLAINANT PERSPECTIVE:

“We want safety. We want healing. We want accountability. We want closure. We want to live a life free from shame.”

-Tarana Burke, #MeToo Leader

“I have been dehumanized. My body has been subject to ridicule. I am consistently being referred to as female. Supervisors and co-workers alike point me out to anyone including outside vendors. The behavior has made me feel like a freak in a zoo.”

-Transgender SF MTA employee who received \$650,000 settlement

“This way of treating women ends now.”

-Gwyneth Paltrow in *She Said*

## VICTIM/COMPLAINANT PERSPECTIVE:

“He counted on my shame to keep me silent”

“He said some version of I’m going to ruin your career”

“I was petrified. I thought he was going to fire me.”



## OBLIGATIONS

- Employer's duty is "to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

## YOUR ROLE

- LEADERS are the heart of prevention
- Training helps YOU deal with harassment that:
  - You OBSERVE
  - Is REPORTED to you
  - You HEAR about
  - Is RUMORED

## YOUR ROLE

- Bystander intervention
- “We don’t go for that kind of thing here”
- “That’s not okay”
- Report to appropriate person
- Reflect: What are barriers to your intervening?

## YOUR ROLE

- What steps can you take to prevent harassment?
- What steps do you take to achieve business or civic objectives?
- How do you record steps you take?

## BEYOND EMPLOYMENT

- Sexual Harassment in a business relationship: Civ. C. §51.9
- Civil stalking: Civ. C. §1708.7
- Civil Harassment: Civ. C. §527.6
- Employment cases apply by analogy
- Lesson: Behave professionally all the time

## POLL

Should you report  
harassment  
if it is just hearsay?

YES

NO



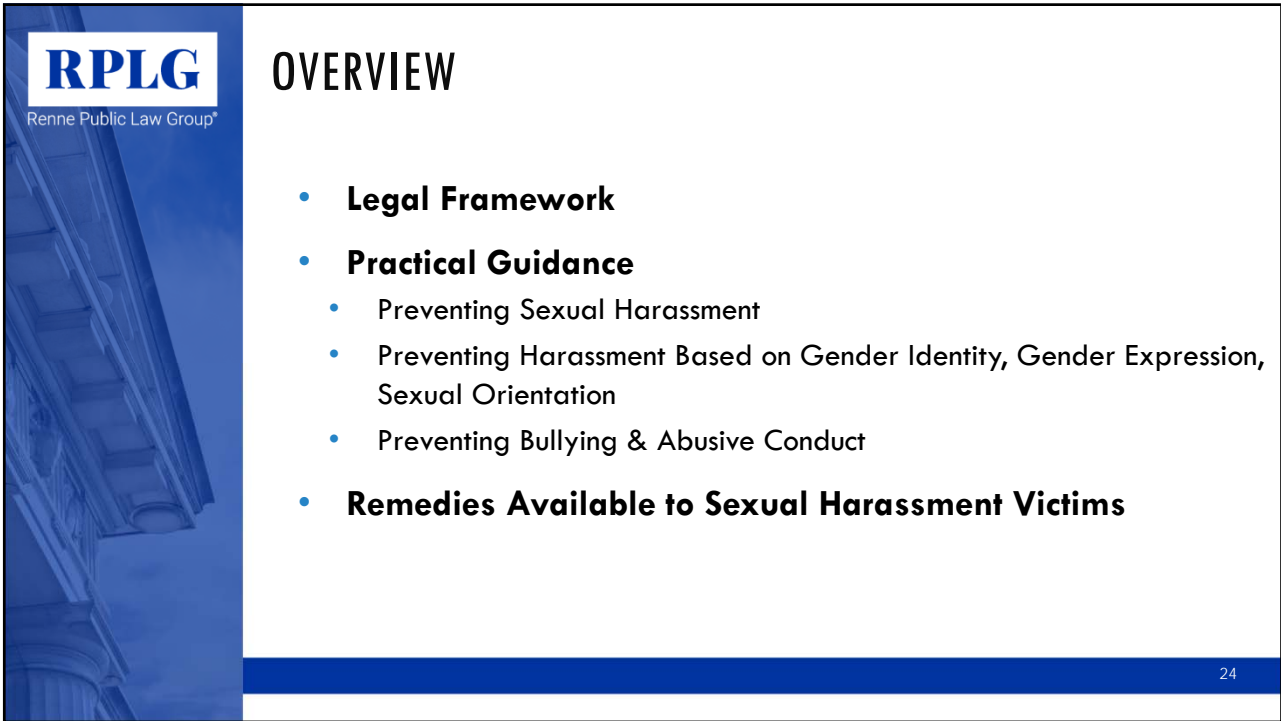
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**POLL**

Should you address  
sexual harassment  
when it doesn't happen at work?

YES      NO

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**OVERVIEW**

- **Legal Framework**
- **Practical Guidance**
  - Preventing Sexual Harassment
  - Preventing Harassment Based on Gender Identity, Gender Expression, Sexual Orientation
  - Preventing Bullying & Abusive Conduct
- **Remedies Available to Sexual Harassment Victims**

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## SOME PROHIBITIONS ON HARASSMENT, DISCRIMINATION, AND RETALIATION

Title VII of the 1964 Civil Rights Act (42 U.S.C. 2000e)

California Fair Employment and Housing Act (FEHA) (Gov. Code 12900 et seq)

Equal Pay Acts (29 U.S.C. 206(d); Labor Code 1197.5)

Court Decisions

MOUs

Employer's Policy – **BROADER** than laws

## STATISTICS FROM THE EEOC

- Sexual harassment charges filed with the EEOC increased by over 12% in FY 2018 over 2017
- The EEOC filed 66 harassment lawsuits in FY 2018, and 41 included sexual harassment allegations
- The EEOC recovered \$70 million for victims of sexual harassment in FY 2018, up from \$47.5 million in 2017

## PERSONNEL MANAGEMENT DECISIONS

- Hire/Fire
- Promote/Demote
- Assign job duties/ training programs
- Discipline
- Compensation or benefits
- “Terms, conditions, or privileges of employment”
- Person’s status as an employee

## PROHIBITED HARASSMENT

- Quid Pro Quo
  - Job benefits, terms of employment, or favorable working conditions made contingent (explicitly or implicitly) on acceptance of unwanted sexual advances or conduct
- Hostile Work Environment
  - Much more common

## HOSTILE WORK ENVIRONMENT HARASSMENT

Harassing conduct, based on protected status, that is so severe or pervasive that it alters the conditions of the victim's employment and creates an objectively abusive working environment

Acts of supervisors have greater power to alter the environment than acts of co-employees

## CHANGES TO STANDARDS FOR HOSTILE WORK ENVIRONMENT HARASSMENT

- Plaintiffs do not need to show their productivity has declined – just that the harassment made it “more difficult to do the job.”
- Single incident of harassing conduct can show a hostile environment.
- Stray remarks can show discriminatory intent.
- Legal standard for sexual harassment does not vary by workplace.

## DISTINCTION

- Legally actionable
- vs.
- Policy violation
  - Bad idea
  - Can hurt someone
  - Can hurt your career/position / reputation

## PROTECTED STATUS

Race, Color	Religious creed	Age (at least 40)
National Origin (Height/Weight), Ancestry	Physical Disability	Mental Disability
Medical Condition, HIV/AIDS	Genetic Information	Marital Status
Sex (includes pregnancy, childbirth, breastfeeding or related medical conditions including abortion)	Gender	Gender Identity
Gender Expression	Sexual Orientation (heterosexuality, homosexuality, and bisexuality)	Opposition to unlawful discrimination/ harassment
Military and Veteran status	(Workplace Injury, Family/Medical Leave)	Perception that the person has any of these characteristics or that the person is associated with a person who has, or is perceived to have, these characteristics.



## NATIONAL ORIGIN — DEFINED (2 CCR 11027.1)

An individual's or ancestors' actual or perceived:

- (1) physical, cultural, or linguistic characteristics associated with a national origin group;
- (2) marriage to or association with persons of a national origin group;
- (3) tribal affiliation;
- (4) membership in or association with an organization identified with or seeking to promote the interests of a national origin group;
- (5) attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group; and
- (6) name that is associated with a national origin group.

## NATIONAL ORIGIN — DEFINED (2 CCR 11027.1)

A national origin group includes, but is not limited to:

- Ethnic groups
- Geographic places of origin
- Countries not presently in existence

## NATIONAL ORIGIN – DISCRIMINATION

- Language restrictions such as “English Only,” unless:
  - Justified by business necessity
    - NOT convenience or coworker or customer preference
    - NEVER during non-work time, such as breaks
  - Narrowly tailored
  - Notice of circumstances, times, consequence

## NATIONAL ORIGIN – DISCRIMINATION

- Employment decisions based on:
  - Accents, unless materially interferes with the job
  - English proficiency, unless justified by business necessity
    - OK to ask about ability to speak English or any other language, if justified by business necessity
  - Immigration status, unless clear and convincing evidence that it is necessary to comply with federal immigration law
    - Includes asking about immigration status
  - Holding a driver’s license under Vehicle Code section 12801.9
  - Citizenship, if pretext or has effect of national origin discrimination

## NATIONAL ORIGIN – DISPARATE IMPACT (11028)

- **Height and Weight Requirements**
  - Unlawful if create a disparate impact on basis of national origin, unless
    - Job related
    - Justified by business necessity
    - No effective, less-discriminatory alternatives

## NATIONAL ORIGIN – HARASSMENT

The use of epithets, derogatory comments, slurs, or non-verbal conduct based on national origin, including, but not limited to:

- Threats of deportation
- Derogatory comments about immigration status
- Mockery of an accent or a language or its speakers

## GENDER EXPRESSION

- A person's gender-related appearance and/or behavior whether or not stereotypically associated with the person's assigned sex at birth

## GENDER IDENTITY

- A person's internal understanding of their gender, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender

## TRANSGENDER

- General term that refers to a person whose gender identity differs from the person's sex assigned at birth.
- A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth.
- A transgender person may or may not identify as “transsexual.”

## TRANSITIONING

- A process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth, such as:
  - Change in name and pronoun usage
  - Change in facility usage
  - Change in participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering),
  - Undergoing hormone therapy, surgeries, or other medical procedures.

## PROHIBITIONS

- Unlawful to inquire about or require documentation or proof of an individual's sex, gender, gender identity, or gender expression as a condition of employment.
- Unlawful to deny employment to an individual based wholly or in part on the individual's sex, gender, gender identity, or gender expression.
- Unlawful to discriminate against an individual who is transitioning, has transitioned, or is perceived to be transitioning.

## GUIDANCE RE GENDER IDENTITY/EXPRESSION

### **Workplace Attire**

- Must allow employees to appear or dress consistently with their gender identity or gender expression
- OK to require employees to adhere to reasonable workplace appearance, grooming, and dress standards not otherwise precluded by law

### **BFOQ Defense?**

- ONLY IF ordinary BFOQ defense would apply

### **Job Assignments**

- Must let employees perform jobs or duties that correspond to their gender identity or gender expression, regardless of assigned sex at birth.

## MORE GUIDANCE

### ▪ **Not OK to Require Gender on Forms**

- Voluntary: For EEO record-keeping, OK to ask an applicant to provide solely on a voluntary basis
- No fraud or misrepresentation for listing gender on a form that is inconsistent with the applicant's assigned sex at birth or presumed gender without a permissible defense

### ▪ **Use Preferred Name and Pronoun**

- Exception: OK to use an employee's gender or legal name as indicated in a government-issued identification document *if it is necessary* to meet a legally-mandated obligation

## MORE GUIDANCE

### ▪ **OK to Discuss Gender With Employee?**

- Employer and employee can communicate about the employee's sex, gender, gender identity, or gender expression **when the employee initiates communication** with the employer regarding the employee's working conditions, such as:
  - Facilities
  - Rest periods
  - Support services and office space
  - Job duties
  - Childcare

## FACILITIES

- **Must Let Employees Use Facilities that Correspond to Gender Identity or Expression**
  - Can't require an employee to use a particular facility
  - Can't require an employee to provide proof of gender or of any medical treatment or procedure to use facilities designated for use by a particular gender
- **Gender-Neutral Signs for Single-Occupancy Facilities**
  - "Restroom," "Unisex," "Gender Neutral," "All Gender Restroom"
- **Ensure Privacy**
  - Locking toilet stalls, staggered showering times, shower curtains, etc.
- **OK to Make Reasonable and Confidential Inquiry To Ensure Access to Comparable, Safe, and Adequate Multi-User Facilities.**

## JOB DUTIES

- Cannot assign job duties according to **sex stereotypes**:
  - Assumptions about a person's appearance or behavior, gender roles, gender expression, or gender identity, or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.
- "Benevolent" discrimination prohibited



## EXAMPLES — SEX STEREOTYPES

### ***Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)***

- Didn't make partner because did not conform to sex stereotypes
- Described as "macho," as using too much profanity, as overcompensating for being a woman
- Advised to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" to improve her chances for partnership

### ***Husman v. Toyota Motor Credit Corporation, 12 Cal.App.5th 1168 (2017)***

- Fired executive did not conform to one decisionmaker's stereotypical views of gay men or of appropriate gender identity expression
  - Told he made "a very clear statement" about his sexual orientation and should cut his hair
  - Ridiculed for wearing a scarf as an accessory when it was not cold outside
  - Fired for "excluding the majority"
- Court: Less flagrant than *Price*, but reveal same kind of stereotypical thinking

## ABUSIVE CONDUCT — FEHA

- **"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," such as:**
  - Repeated infliction of **verbal abuse**, such as derogatory remarks, insults, epithets
  - Verbal or physical conduct that a reasonable person would find **threatening, intimidating, or humiliating**
  - Gratuitous **sabotage** or undermining of a person's work performance
  - A single act can be abusive conduct only if "especially severe and egregious"
- **Not unlawful under FEHA - yet**

## ABUSIVE CONDUCT – POLICIES

- Some MOUs have language on a cause for discipline:
  - Disrespectful or discourteous conduct toward a City officer or official, another employee, or a member of the public [while representing the City]

## ABUSIVE CONDUCT - NEGATIVE EFFECTS

- Hurts productivity and morale
- Increases turnover
- Can be perceived as unlawful with gender harassment
- Worker's compensation claims
- Leaves of absence

## ABUSIVE CONDUCT — RESPONSE AND PREVENTION

- Report to HR — Promptly!
- Consider enacting an abusive conduct policy, if one does not exist already
- Demand and model RESPECT and CIVILITY
- Manage by positivity
  - Check in with employees
  - Pause before reacting
  - Celebrate successes

## HOSTILE WORK ENVIRONMENT TEST

- Is there harassment?
  - Directed at or witnessed by victim, widespread sexual favoritism
- Is it based on protected status?
  - If not, is it Abusive Conduct?
  - “Sexual desire” need not be motivation for sex harassment
- Does it meet the subjective test?
  - Did the victim actually consider the work environment to be hostile or abusive?
- Does it meet the objective test?
  - Would a reasonable person with the same protected status have considered it to be hostile or abusive?
- Is it severe or pervasive?
  - Did it harm the victim?
- Did it violate policy?
  - Always: Is it necessary?

## HOSTILE WORK ENVIRONMENT — SEXUAL FAVORITISM

- Male supervisor harassed female district attorneys with unwanted touching of hips, thighs and buttocks, offensive and graphic sexual comments, sexually suggestive gestures
- Women who engaged in sexually explicit banter with him and let him touch and grope them received better cases and ratings
- Plaintiff rejected advances and was criticized, given bad assignments, and verbally abused (“difficult bitch”)
- *Beth Silverman v. County of Los Angeles* - \$700,000 settlement (Aug. 21, 2017)

## CASE STUDY 1

- Ed was elected County Sheriff in 1999.
- Ed hugged Vicky at least 100 times at various work events over the next 11 years. She saw him hug and kiss over 20 other female employees, and give male officers handshakes.
- Vicky complained about Ed to supervisors in 2003, and they did not report or investigate.
- In 2010, Ed told Vicky he would not hug her because people had complained, and then hugged her and a female co-worker.
- Ed’s hugs were the type you’d give a friend or relative, but Vicky thought they had sexual overtones. Vicky hugged male co-workers and joked about Ed’s hugs, but was stressed about Ed’s hugs.
- Ed did not know Vicky did not like his hugs until she filed a claim in 2012.

## CASE STUDY 1

- Did Ed's hugs violate FEHA or Title VII?
  - Ordinary workplace socializing?
  - Significant that Ed was an elected official and supervisor?
  - Significant that Ed did not know Vicky did not like his hugs?
- How could this situation have been prevented?



## POLL

Unless a harasser is told that his/her conduct is offensive, the harasser will not be personally liable for the harassment.

TRUE

FALSE

## IS IT HARASSMENT?

FOR EACH, ADD IN SOCIAL MEDIA COMPONENT:

- **Consensual relationships, dates, drinks**
  - Dating Apps? (Location-based – DON'T OPEN AT WORK)
- **Socializing Outside Work**
  - Facebook Friend? Instagram Follow? Unfriend/Unfollow?
  - Message? Text? Etiquette?
- **Compliments on appearance**
  - Facebook, Instagram, SnapChat
- **Joking/ Teasing**
  - Forwarding Emails

## ASK YOURSELF

- **Ask WHY:** Is there a legitimate business reason to do it?
- Could it be taken the wrong way?
- Could it make someone uncomfortable?
- Is it done to members of all sexes?
- Are you starting with, “I shouldn’t say/do this, but...”
- What would you tell your constituents or HR about it?
- Would you care if someone Tweeted it?
- Could you justify it under oath in a deposition or at trial?

## RESOURCES FOR VICTIMS - WORKPLACE

- **Who can be a victim?**
  - Employee, contractor, unpaid intern, volunteer
- **Who can victims tell?**
  - If comfortable, tell harasser to stop
  - Any supervisor, HR
  - DFEH or EEOC
  - If sexual assault, violence, other criminal act, immediately contact law enforcement
- **What if victims don't want to tell?**
- **What if the victim's supervisor is personally accused of harassment?**

## RESOURCES FOR VICTIMS — NON-EMPLOYMENT

- Litigation attorneys
- Mediation
- Police
- News Media
- Social media
- D.F.E.H. — enforces certain civil rights laws

## DO YOU HAVE AN OBLIGATION TO REPORT?

### ▪ **YES!**

▪ “Harassment ... shall be unlawful if the entity, **or its agents or supervisors**, knows or should have known of this conduct and fails to **take immediate and appropriate corrective action.**” (Cal. Gov’t Code 12940(i)(1)).

▪ Must report discrimination, retaliation, and harassment by supervisor, too.

### ▪ How?

▪ **POLICY**

### ▪ When?

▪ Whenever you become aware of it

### ▪ To whom?

▪ **POLICY**

## POLL

An employer can be liable  
for sexual harassment  
even if it didn’t actually  
know about it.

TRUE

FALSE



## WHAT HAPPENS NEXT?

- All reports are taken seriously
- Temporary steps, if needed, to deal with the situation
- Investigation: Internal or External?
- Conclusions
- Appropriate remedial action

## INVESTIGATION

- Reasonable: Depends on Complaint or Report
- Process
  - “Need-to-know” confidentiality
  - Chance for employee to respond
  - No retaliation
- Findings
  - Preponderance of evidence
  - Parties advised of outcome

## PROHIBITED RETALIATION

### Protected Activity

- Only need a “reasonable, good faith belief he or she was opposing an unlawful employment action”
- Includes filing a complaint, testifying, or assisting in any related proceeding

### Adverse employment action or action that would deter complaining

- FEHA: Discharge, expel, call or threaten to call ICE, or otherwise discriminate
- Title VII: Adverse actions “must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination”

### Causal link

- Temporal proximity
- Other

## REMEDIES - RELIEF

- Workplace remedies are any employment action reasonably calculated to stop the misconduct and prevent future misconduct
- Legal remedies may include hiring, reinstatement or upgrading, back pay, or other relief in furtherance of the purpose of the Fair Employment and Housing Act and Title VII

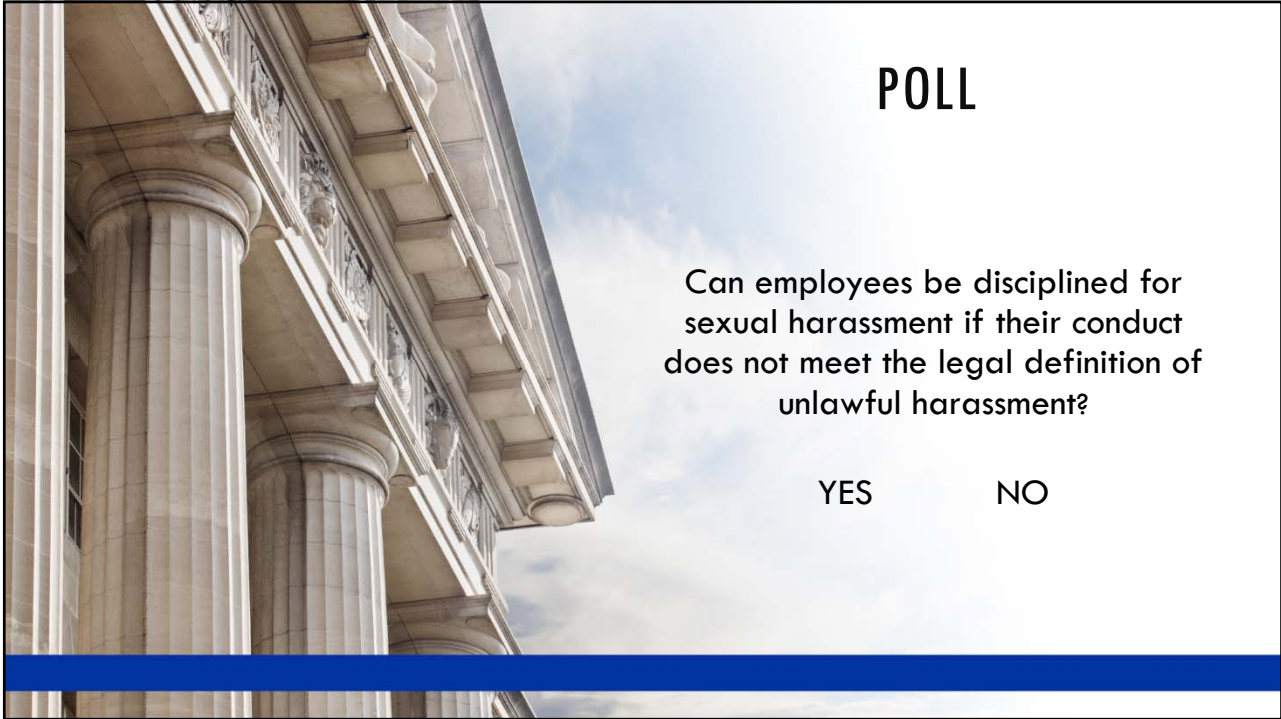
## REMEDIES - CONSEQUENCES

- Discipline
- Legal Liability

## DISCIPLINE

Employer must take immediate and appropriate corrective action:



- to stop the conduct at issue
- ensure it will not continue
- prevent it from happening again
- generally proportionate to severity of misconduct



# POLL

Can employees be disciplined for sexual harassment if their conduct does not meet the legal definition of unlawful harassment?

YES      NO



## INDIVIDUAL LEGAL LIABILITY

- **Liability**
  - Harassment - FEHA
  - Torts: Assault, battery, false imprisonment, ect.
  - Punitive damages
  - Attorney fees
    - Plaintiffs serve as instruments to vindicate federal and state policies against job discrimination, harassment, retaliation
    - To prevailing defendant only if frivolous, unreasonable, without foundation
- **No Liability**
  - Title VII
  - Discrimination and Retaliation - FEHA

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## EMPLOYER LIABILITY

### ▪ **Liability**

- Discrimination, harassment, retaliation
- Failure to prevent
- Pain and suffering, attorney's fees
- Punitive damages (not for public entities)

### ▪ **No Liability**

- Harassment under Title VII **IF**
  - Employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior
  - Employee unreasonably failed to take advantage of employer's remedies or to avoid harm otherwise

## EXAMPLES — SETTLEMENTS

### ***Ryan Marshall v. City of Los Angeles*** - \$975,000 settlement (2015)

- Four male employees claimed their male supervisor called them names, touched them inappropriately, made sexual advances, and made numerous suggestive comments about their bodies and sexuality.

### ***Kim Pavek v. County of Los Angeles*** - \$400,000 settlement (2017)

- After receiving a promotion, male co-worker sent videos of his penis to a female coroner and made inappropriate comments.

## EXAMPLES — JURY VERDICTS

### ***James Pearl v. City of Los Angeles* - \$12,394,972 (2017)**

- Supervisors and managers harassed male employee, they perceived to be gay with insults, demeaning comments, suggestive remarks, offensive posters, cartoons, photo-shopped images of him in a same-sex relationship with a subordinate.
- City did not take all reasonable steps to prevent conduct from occurring

### ***Janis Trulsson v. County of San Joaquin* - \$2,059,708 (2014)**

- Lead investigator for DA's office denied promotion, terminated after advocating for better treatment of women in the office.
- Retaliation, NOT gender discrimination

## HYPOTHETICALS

- “We joke like that all the time; [she/he] doesn't care.”
- “Don't tell anyone, but [something that sounds like it could be sex harassment]”
- “Cute jacket”
- Subordinate complains to you about your own behavior
- Subordinate complains to you about your mentor, who is the best, most ethical person you've ever known
- You see a colleague on a Blacklist or #MeToo

## CASE STUDY 2

- Professional model Anna posted on her Tumblr account a list of photographers that she would not recommend so other models could make more informed decisions.
- Allan was on the list as “Inappropriate,” which Anna defined as: “groping, soliciting sex, sending dick pics, extreme limit pushing, and the like.”
- The list was “liked” and re-blogged hundreds of thousands of times, with other models corroborating.
- Allan lost work, and sued for defamation.

## CASE STUDY 2

- Was the list a legitimate subject of discussion?
- Did the list address a matter of public interest?
- If so, Allan was required to prove the allegations against him were false, and Anna was not required to prove they were true.
- Truth is a defense.

## STRATEGIES TO PREVENT HARASSMENT

Know your policy  
Listen  
Report or complain - immediately  
Respect others' rights to complain  
Include and consider others  
Maintain and respect boundaries  
Communicate  
INTERVENE in real time

## MORE TO CONSIDER

- Improve E.Q.
- It's not just "HR's thing"
- Be serious about creating a culture of trust and respect
- Pay attention to toxic personalities
- Thank persons for reporting problems
- Cultivate diversity
- Monitor your own unconscious biases
- Training isn't just "one and done"
- Collect and analyze data
- Don't overreact
- Books/Movies



## RESOURCES

- Human Resources
- California Department of Fair Employment and Housing
  - [dfeh.ca.gov](http://dfeh.ca.gov)
  - <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf>
- Federal Equal Employment Opportunity Commission
  - [https://www.eeoc.gov/eeoc/newsroom/wysk/harassed\\_at\\_work.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/harassed_at_work.cfm)
  - [https://www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm)

## DISCUSSION

- Questions
- Comments
- More Solutions