A Guide for Avoiding . . .

Discrimination

and Harassment

In the Workplace

Personnel Department
San Luis Obispo County
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A GUIDE FOR AVOIDING

DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

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DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

INTRODUCTION

It is the policy of the County of San Luis Obispo that discrimination including sexual harassment is unacceptable conduct in the workplace and will not be condoned. Personnel and/or clients shall be free from being victimized by this type of conduct.

Within the County of San Luis Obispo, an employee who uses implicit or explicit coercive sexual or discriminatory behavior to control, influence, or affect the career, salary, job or appointment of any employee, contractors, or awarding of contracts, clients, or potential clients is engaging in illegal harassment. County policy prohibits derogatory comments, written or visual insults made on the basis of an individual's race, religion, national origin, marital status, disability, age, sex or sexual orientation. Any employee who participates in deliberate or unsolicited verbal comments, gestures, or conduct of a discriminatory nature which is unwelcome and/or interferes in work productivity is considered in violation of this policy.

Harassment is employee misconduct which undermines the integrity of the employment relationship and the employee upon whom it is practiced. All employees must be allowed to work in an environment free from discrimination and unsolicited and unwelcome sexual overtones. Discrimination and harassment debilitate morale and interfere with the work productivity of the County work force.

This training is designed to increase awareness of the laws surrounding the issues of discrimination and harassment. We will identify the kinds of situations that can move work relationships into the realm of discrimination or harassment; and we will explore the skills needed to both recognize and deal most appropriately with the conflict brought into the workplace by overt and subtle discriminatory harassment.

Harassment is a serious issue and needs to be acknowledged as such. Everyone deserves the right to work in an environment free from any type of discrimination or harassment, where respect for individuals is encouraged and safeguarded.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: GUIDELINES ON DISCRIMINATION/ HARASSMENT

Chapter 49.60 RCW, particularly discrimination on the basis of sex.
Section 703, Title VII of the Civil Rights Act of 1964 (as amended in 1972).
29 CFR Ch XIV, '1604.11, Sexual Harassment.

a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

c) Apply general Title VII principles, an employer, employment agency, joint apprenticeship committee, or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

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[1]The principles involved here continue to apply to race, color, religion, or national origin.

f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for, but denied that employment opportunity or benefit.

CALIFORNIA STATE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING REGULATIONS

7287.6 Term, Conditions, and Privileges of Employment

(b) Harassment

(A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act;

(B) Physical harassment, e.g., assault, impeding or blocking movement, when directed at an individual on a basis enumerated in the Act;

(C) Visual forms of harassment, e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act: or

(D) Sexual favors, e.g., unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors (See also Section 7291.1(f)(1).)

(E) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.

(2) Harassment of an applicant or employee by an employer or other covered entity, its agents, or supervisors is unlawful.

(3) Harassment of an applicant or employee by an employee other than those listed in Subsection (b)(2) above is unlawful if the employer or other covered entity, its agents or supervisors knows of such conduct and fails to take immediate and appropriate corrective action. Proof of such knowledge may be direct or circumstantial. If the employer or other covered entity, its agents or supervisors did not know but should have known of the harassment, knowledge shall be imputed unless the employer or other covered entity can establish that it took reasonable steps to prevent harassment from occurring. Such steps may include affirmatively raising the subject of harassment, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise the issue of harassment under California law, and developing methods to sensitize all concerned.

(4) An employee who has been harassed on the job by a co-employee should inform the employer or other covered entity of the aggrievement; however, an employee's failure to give such notice is not an affirmative defense.

San Luis Obispo County Policy Against Discriminatory Harassment

It is the policy of San Luis Obispo County that all employees shall have a working environment free of unlawful discrimination. A businesslike workplace assures courteous treatment for both employees and the public we serve. Harassment of an applicant or employee by a supervisor, manager or coworker on the basis of race, religion, national origin, marital status, disability, age, sex or sexual orientation is employee misconduct that constitutes illegal discrimination and is grounds for disciplinary action up to and including termination. San Luis Obispo County requires that all employees treat the public and other employees with courtesy and respect.

Discriminatory Harassment: Includes unwelcome derogatory comments, physical acts, written or visual insults which are made on the basis of an employee's protected status (race, religion, etc.) The harassing conduct unreasonably interferes with an employee's work performance by creating an intimidating, hostile or offensive working environment.

Sexual Harassment: Includes unwelcome sexual overtures by any officer, employee, supervisor or manager, whether written, verbal, physical or visual where submission is made a term or condition of employment or the basis of an employment decision. Sexually harassing conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

Because the County seeks to prevent any form of illegal harassment, behavior such as unnecessary touching, sexual or discriminatory remarks or joking, which may lead to illegal harassment, will not be tolerated.

Often, simply telling someone of the offensive nature of his/her behavior will resolve the problem. If possible, an employee should inform the harasser that his/her behavior is unwelcome, offensive, in poor taste, and highly inappropriate. An employee who wishes to seek advice is encouraged to contact the County's Affirmative Action Office at telephone number (805) 781-5959. Confidential advice is also available from the County's Employee Assistance Program at telephone number (800) 999-7222.

When an employee's efforts to resolve the discriminatory harassment concern are unsuccessful, or when an employee feels uncomfortable or threatened in raising the issue with the harasser, the employee is urged to:

1. Advise, in writing, closest level supervisor not a part of the problem, the department's Harassment Prevention Coordinator, or departmental personnel staff of the situation and/or

2. Make a complaint to the Personnel Department, which will be investigated with the appointing authority.

Please note: It is the policy of the County to investigate all allegations of discriminatory harassment, including those in which anonymity is requested. Departmental supervisors, managers, personnel staff or Harassment Prevention Coordinators who receive complaints of discriminatory harassment including sexual harassment must document the complaint and advise the Personnel Department. At that time, a determination will be made by the

Personnel Department in conjunction with the Department regarding an investigation into the alleged discriminatory harassment. The Personnel Department will ensure that allegations of discriminatory/illegal harassment are investigated. All departments must report to the Personnel Director the number and type of discriminatory harassment complaints received, the parties involved, the result of any investigation, and the action taken.

Further, every employee has the right to use the formal written grievance procedures of the Civil Service Commission. The Personnel Department Affirmative Action Officer (extension 5959) is available to discuss inquiries, formal and informal complaints and appropriate solutions.

Employees are also advised that state and federal enforcement agencies are available to provide protection to victims of discriminatory harassment. Those agencies are cited below:

Agency:	Telephone No.
State of California Fair Employment and Housing (Ventura Office)	(800) 884-1684
United States Equal Employment Opportunities Commission (Los Angeles Office)	(800) 669-4000

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SEXUAL HARASSMENT DEFINITIONS/BEHAVIOR

SEXUAL HARASSING BEHAVIOR MAY INCLUDE:

subtle pressure for sexual activity

sexual remarks regarding clothing, body or sexual activities

actual or attempted rape or sexual assault

unnecessary touching, patting, leaning over, cornering or pinching

leering or ogling of a person's body

constant brushing against a person's body

sexually suggestive gestures

verbal abuse or harassment

pressure for dates either off or during working hours

sexual jokes, remarks, or teasing

where employment opportunities or benefits are granted or promised due to an individual's submission to the employer's sexual advances

a pattern of consistent unequal treatment that would not occur but for the person's sex or gender

conduct of **non-employees** if the employer knew or should have known of the harassment, failed to take corrective action and had some control and/or legal responsibility for the conduct of the offending non-employees

3 BASIC FORMS OF SEXUAL HARASSMENT:

1. **Offers of employment rewards for sexual favors, including threats of employment punishment if sexual activities are not engaged in--also termed "quid pro quo" harassment.**

2. **Creating an intimidating, hostile, threatening and/or offensive work environment through verbal acts, physical acts and graphic displays which interfere with an individual's job performance.**

3. **Retaliation against an employee for submitting complaints of alleged sexual harassment.**

VICTIMS - TYPE OF RESPONSES - ACTIONS VICTIMS CAN TAKE

TYPES OF RESPONSES THAT APPEAR OPEN TO THE VICTIM OF HARASSMENT:

Ignore it.

Avoid the harasser.

Make a joke of it.

Go along with it.

Transfer out of the department or office.

Ask the harasser to stop.

Threaten to and/or actually tell your co-worker.

Report harassing behavior to supervisor, or County Personnel Department.

File a formal complaint with the EEOC or DFEH.

REASONS WHY VICTIMS DO NOT TAKE ACTION AGAINST HARASSERS:

They are not aware of their right not to be harassed.

They are not aware of what action to take, i.e., departmental policies and procedures.

They see no need to report it.

They don't want to hurt the person who bothered/harassed them.

They think that it wouldn't be worth their time.

They believe that nothing would be done anyway.

They believe that it would be held against them and that somehow they would be punished.

They think they would be blamed for the incident.

They think that it would cause problems for others to become involved.

They fear the publicity that a complaint may cause.

They believe that it would affect the entire work environment in a negative fashion.

They believe that they would lose their job; receive a bad evaluation or no recommendation in the future.

ACTIONS VICTIMS MAY TAKE . . .

1) **Confront the harasser**(s) directly (in person) or by letter (hand delivered with a witness present) clearly indicating that you want the specified harassing behavior to stop in a polite and firmly stated manner. State how you feel about his/her actions; intimidated, offended, uncomfortable, etc. If practical, bring a witness with you for this discussion. Let the harasser know that you will take further action if it does not stop. **Discuss the incident or situation with a trusted co-worker (or other victims).**

2) **Document the incident**(s). Include: date(s); time(s); place(s); the precise harassing behavior(s) (using objective behavior description) listing witnesses; and the physical and emotional effect it had on you, especially your ability to perform your job, as well as a synopsis of the conversation with the person you believe is harassing you and what the person's reaction was when you confronted them. Keep this statement for possible use at a later time.

3) **Report the incident to your supervisor immediately.** Discuss with your supervisor what happened, when it happened, how it happened, and how you felt at the time and how you feel about it now. Provide as much detail as you can, including the steps you have taken thus far.

4) **Document all attempts to make the harassment stop,** keeping photocopies of letters or memos.

5) **Attempt to remedy the situation** through internal procedures and channels, recognizing that you have recourse to outside assistance if necessary. If after what you consider to be a reasonable length of time (such as 30 days) inadequate action is being taken to resolve your complaint, or if there are continued sexual harassment incidents, contact the Personnel Department to continue the process as set forth in the Personnel Guidelines, policies and procedures. If after doing this you are still dissatisfied, you can seek redress with the federal or state EEOC district office or the California State Department of Fair Employment and Housing.

THE SUPERVISOR'S ROLE IN HANDLING CASES OF DISCRIMINATION, INCLUDING SEXUAL HARASSMENT

NOTE: Supervisors should first of all be aware that under California law, employers are strictly liable for sexual harassment by supervisors.

1) Know the County's Personnel Policies on Affirmative Action - Discrimination and the recommended procedures for handling such complaints.

2) Know the EEOC and DFEH regulations which pertain to discrimination and harassment. Consult with your Affirmative Action Officer.

3) If you receive a complaint, proceed with the following steps at the initial contact with the complainant:

   Calm the employee.

   Assure the employee that you are taking the matter seriously.

   Maintain objectivity while discussing the following:

   What happened?
   Who is the alleged harasser?
   What happened? (Note: For clarity it will be important to get behavior described in specific terms, e.g., body movement, language, and action taken. A description such as: "awful things were said to me," is not clear. A better description would be to use specific language, number of times spoken, etc. Objective terms rather than subjective. You will also be following up on subjective feelings a few steps later.)
   Where did the incident take place?
   When did the incident take place?
   How was your work affected?
   Is this the only incident, or have there been others?
   What did you do?
   What were your feelings then? Now?
   Did you talk to anyone else about it?
   Did you document the incident in writing; in a diary, memo, or a letter?
   What remedy do you suggest? Immediately? In the future?

   Tell the complainant what you intend to do and when you will get back to him/her.

   Document and date your discussion with the complainant.

4) Promptly bring to the alleged harasser's attention that a complaint has been made against him/her. Be clear that you are responding to **an allegation** and that you want to hear his/her side of the story. Explain the specific nature of the complaint in terms of precise behavior. Get their side of the story without the complainant being present. Listen attentively as the alleged harasser talks. Be sensitive to the difficult feelings involved.

Make every effort to discuss the matter in a non-accusatory and non-dismissive manner--this is a serious matter. Remain non-judgmental. Document your interaction. Advise him/her you intend to bring both persons together so the entire issue can be discussed in an objective manner. Some suggested questions:

Describe your interaction with the alleged victim.
Do you think you have every done anything that might have caused the alleged victim to feel offended?
To what degree do you think you use discriminatory language, innuendo, jokes, or other mannerisms in the work setting?

5) If the allegations are true, if the employee admits to behaving in the manner complained of, then proceed with . . .

Inform the employee that the behavior is unwelcome and must stop.
Remind the employee of the organization's policies prohibiting discrimination in the workplace.
Advise the employee that disciplinary action will be taken if the behavior continues or if any reprisals are made against the complaining party or parties.
Document the conversation, the action taken, any agreements.
Advise the complainant of the actions taken to resolve the complaint.
Remind the complainant of his/her rights and the procedure for prosecuting the complaint further if not satisfied with the resolution reported.
Urge the complainant to report to you immediately if there is any repetition of the problem behavior or if reprisals occur.

6) If the alleged harasser denies the allegation, and there is no witness nor corroborating evidence, advise the employee that a formal or informal investigation will be necessary to properly resolve the complaint.

7) Assure the complainant that you will do everything possible to prevent any reprisals that may be attempted against her/him and that you will monitor the situation to insure this.

8) Maintain confidentiality and continue to document the essential facts that come out in the investigation process. If your investigation cannot proceed without disclosing the complainant's identity, maintain confidentiality and consult with the Personnel Department.

9) Upon knowledge of (alleged) discriminatory acts of harassment ACTION MUST BE TAKEN - **IMMEDIATE APPROPRIATE, CORRECTIVE ACTION**, which may take the form of reporting it to the Personnel Department.

10) Some questions to consider:

Is the charge true? Can the charge be verified? What steps need to be taken to restore the victim's position, self-esteem, credibility, or privileges? If the charge is false, take appropriate corrective action. Consult with your manager or Personnel.

Merely accepting an employee's denial is not sufficient. If a complaint has been brought against a person and s/he denies the charges, the behavior should be judged by checking with other employees to confirm or deny the complainant's grievance. Since the harassment may be committed in private, when other employees are not around, extreme tact and diplomacy has to be used when handling the investigation. If assistance is needed, call the Personnel Department.

Follow-up. Observe and monitor interaction between the victim and the harasser. Be available for -- or initiate -- conversation with the victim regarding her/his feelings, behavior change, work performance, interaction with co-workers. Be sensitive to the possible informal reprisals that could be directed toward the victim.

Considering the Alleged Harasser. Before corrective action is determined, consider the following: Is the alleged harasser innocent or guilty? If innocent, what needs to be done to maintain or restore his/her credibility? If guilty, how severe was the harassment as indicated by the impact on the victim, department, and harasser? Were other policies violated? When? Was the violation intentional or unintentional? Was the harasser aware of the policy? How cooperative/truthful was the harasser when confronted? Were there other victims? What was the involvement or level of knowledge of the rest of the office? Do you need to consult with the Personnel Department regarding this incident? What corrective action is appropriate? Have you used all appropriate measures available in resolving this issue? Monitor the harasser's behavior, in the case of the alleged harasser being found innocent; be supportive of this person with others in the workplace.

Once again, briefly - - -

1. Create and maintain a proper work atmosphere within your area of responsibility.

2. Be alert and sensitive to possible acts of discriminatory harassment situations or potentially offensive behavior within your work unit.

3. Be accessible to employees within your area of responsibility who feel they are victims of discrimination.

4. View ALL employee complaints of discrimination as serious. Follow the County Personnel policies and procedures on reporting, and investigating. Never make light of a complaint.

REMEMBER: AN EMPLOYEE'S COMPLAINT TO A MANAGER OR SUPERVISOR CAN CONSTITUTE LEGAL NOTIFICATION.

5. Treat confidentially all employee complaints. "Loose talk" or unauthorized discussions of the complaint can injure the reputation of an innocent person.

6. Protect yourself. False charges of discrimination have been known to be filed by disgruntled employees whose work performance or attendance is unsatisfactory. Avoid being alone with such employees, if possible. Keep appropriate records of work performance. Alert the Personnel Department, in advance, to the possibility of a problem.

SOME HELPFUL INVESTIGATIVE QUESTIONS TO ASK TOWARDS RESOLVING A SITUATION

1) What happened?

2) Who was involved?

3) What was the incident?

4) Where did the incident take place?

5) When did the incident take place?

6) Did anyone else witness the incident?

7) Is this the only incident, or have there been others?

8) If the incident is a pattern of conduct, not of a sexual nature, tell me how this conduct is based solely on your sex?

9) What did you do?

10) What were your feelings at the time of the incident?

11) What are your feelings now?

12) Did you talk to anyone else about the incident?

13) Does the harasser(s) have a history of harassing others?

14) Did you document the incident (diary, memo, letter)?

15) What remedy was sought (if any)? Immediately? In the future?

16) What could have been done to prevent it from developing?

17) What could have been done at various points in the progression of events to stop the harassment? By you? By the department? By your supervisor?

18) In what ways can the situation be resolved right now?

(These same steps are recommended for all types of discrimination or harassment.)

EMPLOYEE RESPONSIBILITIES

1. **Understand.** Know the County's policy and procedures on discrimination and harassment. Know the three main components of the EEOC guidelines on sexual harassment. Become aware of your own attitudes and feelings regarding harassment. Become aware of how this issue has touched your life, directly or indirectly.

2. **Observe.** Be conscious of what goes on around you. Pay attention to the way people interact and be sensitive to the way in which those who are more vulnerable may react to the behaviors of others. Watch for the more subtle forms of harassment and how they may negatively affect the workplace and self-esteem of those in your work environment.

3. **Look at yourself.** Pay attention to how others respond to what you say and do. Don't assume that your co-workers or employees enjoy comments about their appearance, hearing sexually-oriented or derogatory racial jokes or comments. Think about the impact of what you do and say on another person's attitude toward work, job performance, and self-esteem. Talk to your spouse, family members, and close friends about experiences they might have had with discrimination and harassment. As people describe the vulnerability, powerlessness, or anger they experienced as victims, relate those feelings to experiences you have had. Consider your own interactions. You may be unknowingly encouraging harassment by the way you communicate. Don't encourage harassment by the way you communicate. Don't encourage harassers by smiling, laughing at their jokes, joining in, or "flirting back." This type of response can be misleading.

4. **Confront.** When you are harassed, talk to the harasser. Tell him/her that you find the behavior offensive. Describe how the harassment negatively affects your work.

   Say things like:

   "Please don't touch me. I don't like it. It makes me uncomfortable and then I make mistakes."

   "I don't think jokes like that are funny. Please don't tell them when I am in the room."

   "I'd like it a lot better if you'd comment on the quality of my work rather than the way I look."

   "My name is _____, not 'Honey.'"

5. **Report the incident to your supervisor.**

6. **Support.** When you see someone being harassed, talk to the harasser. Comment such as:

   "Do you have any idea how much your jokes upset _____?"

   "S/he really has a hard time concentrating on work because s/he's embarrassed by the things you say."

   "What makes you think you've got the right to touch him/her like that? That kind of

familiarity is really out of line for our office. That's not acceptable."

"If you said that kind of stuff to me, I'd go straight to the boss. Do you have any idea how it feels to hear that sort of thing?"

Give support to victims. Say things like:

"I'd be really angry (offended, embarrassed) if s/he did that sort of thing to me.

Do you want to talk about it?"

"If you get to the point of wanting to complain about it, let me know. I've seen enough to know how s/he really interferes with your work."

If the case is investigated, support the victim with your observations.

I HAVE ATTENDED THE
NEW EMPLOYEE ORIENTATION/
DISCRIMINATION & HARASSMENT PREVENTION
CLASS
PRESENTED BY THE
HUMAN RESOURCES DEPARTMENT.

_____ PRINT NAME	_____ DATE
_____ SIGNATURE	