



## Navigating Toxic Work and School Environments

### Legal Definitions of

### Harassment and Discrimination

When I would start at a new university or workplace, I remember receiving information regarding my workplace protections, but I always found them boring to read through. I dismissed them thinking that if something were to happen, *then* I would act. I thought simply being somewhat aware of the legislation was enough, but it wasn't.

As a graduate student, my colleagues would make jokes about women and minorities, but I never spoke up or reported it because I thought it was something I was supposed to brush off. I did not think it was a big deal. That was the year I became ill, and was diagnosed with a chronic illness and depression. It wasn't until I took my university's new sexual harassment training, and I read the symptoms of harassment (fatigue, depression, nausea, etc.) that it clicked in my mind: the harassment was causing my illnesses. Looking back, I realized that I did not know how to recognize all the forms of harassment because I did not know the precise legal definitions that constituted harassment. I did not realize that I had a right to speak up and report the harassment.

Once I read through the legislation, I had so many "light-bulb" moments, and realized that there were so many times I was harassed but did not know it was harassment. If I had actually known how to recognize harassment, knew how to report harassment, and had the confidence to speak up for myself, I could have saved myself years of illness, and my PTSD from the harassment may not have been so severe.

I realize this information is boring. I wish I could make it more exciting for you to learn; however, you do actually need to read the laws that pertain to you and learn these word for word. **You must read them word for word because, if you find yourself in a court room, it is THESE words that have the power to help you reach justice.** I also wish that you never have to use these laws, and you thrive in your career without facing any type of harassment and discrimination. Unfortunately, it is more common for people to experience harassment than not, especially if you are a woman or minority in your workplace. That means that it is not a matter of "if you are harassed", but "when you are harassed". My hope is that when you are harassed, you are prepared.

Before you read this section, I want to note there may be differences in how abuse and harassment are categorized and penalized based on the location of an institution or organization; therefore, it is important to look at your own legal protections based on your location, workplace, school, and/or organization.



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### Legal Definitions of Harassment and Discrimination

For the sake of covering the definitions of abuse and harassment, I will be using the legal definitions listed by California law in the USA. Other legislation is likely similar to this, but wording, definitions, and more may differ.

### Overview:

- Legal Definitions of Harassment and Discrimination under California FEHA
- Sexual Harassment Protection in USA Schools & Institutions: Title IX

### Legal Definitions of Harassment and Discrimination

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**Consider the following as an example in learning about harassment and discrimination so that you can recognize when you can pursue legal action if you are experiencing harassment and/or discrimination.**

The legal definition of harassment under [California's Fair Employment and Housing Act \("FEHA"\)](#) encompasses two distinct forms of harassment:

1. **Quid pro quo harassment** – when a supervisor asks an employee to engage in sexual activity as a condition of receiving some form of benefit at work (a promotion, a raise, retention in her/his job, etc.)
2. **Hostile work environment harassment** – when harassing conduct and workplace bullying create an abusive work environment for an employee (from either supervisors, coworkers/colleagues, or people who don't work with you like clients or visiting contractors)



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Quid pro quo harassment is a form of sexual harassment only, while hostile work environment does not need to involve sexual harassment or have anything to do with sex or gender.

Hostile work environment harassment can be based on race, religion, color, national origin, immigration retaliation, ancestry, physical or mental disability, medical condition or genetic information, marital status, sex, gender, gender identity or gender expression, age, sexual orientation, or military or veteran status under Government Code 12940 GC.

In order for someone to have a valid claim of California harassment under the "hostile work environment" context, they need to be able to show that the harassment was either:

- Severe, or
- Pervasive

This means that isolated, minor or subtle incidents aren't recognized as harassment under Government Code 12940 GC. This is why it is important to record all instances of harassment, no matter how subtle. By accumulating thorough records of harassment can aid in supporting your case if you need to pursue legal action.

### Who is liable for harassment?

If harassment is committed by a supervisor, the employer is strictly liable for the harassment, even if the employer's behavior was not negligent in any way.

If harassment was committed by someone other than a supervisor, then the employer is only liable if it behaved negligently with respect to the harassment. A negligent employer is one that knew or should have known about the harassment, but failed to take appropriate corrective action.

Some legislation, like [California law Civil Code 51.9](#), provides a right to sue to the people who are the victim of sexual harassment in professional relationships (if a



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doctor, attorney, teacher, therapist, etc. is harassing). This law applies only to professional relationships that are not easy to terminate and uses the same definition of sexual harassment as the FEHA.

### **What is the difference between discrimination and harassment?**

Under California's FEHA, discrimination in the workplace is prohibited on the bases of the same categories on which harassment is prohibited (race, sex, religion, national origin, etc.).

The difference between harassment and discrimination is this:

**Harassment** occurs when the harassing party engages in behavior that is outside their/her/his job description and official duties.

**Discrimination** occurs when the responsible party is engaged in activities that are part of their/her/his official duties.

For example, it is harassment when a supervisor makes disparaging remarks to an employee, while it is discrimination when a supervisor favors or disfavors employees on prohibited grounds when making work assignments.

It is possible to sue for both harassment and discrimination at the same time in the case that both are occurring.

### **Title IX Resources**

Source: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>

**Title IX** of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §1681 *et seq.*, is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities (hereinafter "schools") receiving any Federal funds must comply with Title



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IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.

Below is additional information regarding the specific requirements of Title IX as they pertain to sexual harassment and sexual violence.

### **What are a school's responsibilities to address sexual harassment and sexual violence?**

- A school has a responsibility to respond promptly and effectively. If a school knows or reasonably should know about sexual harassment or sexual violence that creates a hostile environment, the school must take immediate action to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects.
- Even if a student or their/her/his parent does not want to file a complaint or does not request that the school take any action on the student's behalf, if a school knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.
- A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.
- **Every School Must Have And Distribute A Policy Against Sex Discrimination**
  - Title IX requires that each school publish a policy that it does not discriminate on the basis of sex in its education programs and activities. This notice must be widely distributed and available on an on-going basis.
  - The policy must state that inquiries concerning Title IX may be referred to the school's Title IX coordinator or to OCR.
- **Every School Must Have A Title IX Coordinator**
  - Every school must designate at least one employee who is responsible for coordinating the school's compliance with Title IX. This person is sometimes referred to as the Title IX coordinator. Schools must notify all students and employees of the name or title and contact information of the Title IX coordinator.



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- The coordinator's responsibilities include overseeing all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.
- **Every School Must Have And Make Known Procedures For Students To File Complaints Of Sex Discrimination.**
  - Title IX requires schools to adopt and publish grievance procedures for students to file complaints of sex discrimination, including complaints of sexual harassment or sexual violence. Schools can use general disciplinary procedures to address complaints of sex discrimination. But all procedures must provide for prompt and equitable resolution of sex discrimination complaints.
  - Every complainant has the right to present his or her case. This includes the right to adequate, reliable, and impartial investigation of complaints, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same appeal processes, for both parties.
  - Every complainant has the right to be notified of the time frame within which: (a) the school will conduct a full investigation of the complaint; (b) the parties will be notified of the outcome of the complaint; and (c) the parties may file an appeal, if applicable.
  - Every complainant has the right for the complaint to be decided using a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred).
  - Every complainant has the right to be notified, in writing, of the outcome of the complaint. Even though federal privacy laws limit disclosure of certain information in disciplinary proceedings:
    - Schools must disclose to the complainant information about the sanction imposed on the perpetrator *when the sanction directly relates to the harassed student*. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.
    - Additionally, the Clery Act (20 U.S.C. §1092(f)), which only applies to postsecondary institutions, requires that both parties be informed of t



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- outcome, including sanction information, of any institutional proceeding alleging a sex offense. Therefore, colleges and universities may not require a complainant to abide by a non-disclosure agreement, in writing or otherwise.
- The grievance procedures may include voluntary informal methods (e.g., mediation) for resolving some types of sexual harassment complaints. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In cases involving allegations of sexual assault, mediation is not appropriate.

### Additional Title IX Information:

- AAUW Title IX resources:
  - <https://www.aauw.org/resources/legal/laf/deliver-title-ix-resources/>
- Example of a College's Title IX Information:
  - <https://www.venturacollege.edu/college-information/about-ventura-college/title-ix>
- If you want to learn more about your rights, or if you believe that a school district, college, or university is violating Federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov). If you wish to fill out a complaint form online, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.