

County of Tuolumne



Sexual Harassment Prevention Policy Manual

**Human Resources/Risk Management
Tuolumne County Administration Center
2 South Green Street
Sonora, CA 95370
Phone: (209) 533-5566
Fax: (209) 533-5901**

Assistance Section #1

Sexual Harassment Prevention Policy Manual

On February 1, 1994, the County of Tuolumne Board of Supervisors adopted the following Sexual Harassment Prevention Program statement of intent in order to ensure that the County complied with Government Code Sections 12940 (a)(h) and (i). The policy states that:

The County of Tuolumne strictly prohibits its employees from sexually harassing any other employee or member of the public. It is the stated policy of the County that all employees and members of the public will be treated with respect, dignity, and courtesy at all times.

The County's objective is to ensure a harassment free workplace where unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature are strictly prohibited. Failure to conform to this standard will be considered cause for disciplinary action up to and including termination of employment.

The Human Resources Department should immediately be made aware of any case of harassment. Complaints of harassment should be filed directly to the Human Resources Department. The Human Resources Department will be responsible for a thorough review and investigation of each incidence to which it is made aware.

To achieve our goal of a harassment free workplace, it is necessary that each member of this organization understand the importance of this policy and be responsible to contribute towards its maximum fulfillment.

Why is Preventing Sexual Harassment Important?

Following a sexual harassment prevention policy is important for a number of reasons; aside from the Board mandating it or Government Code requiring it. One reason is that all employees have a fundamental right to a harassment free workplace. Studies indicate that this most basic right is not available to many. It is reported that between 70 and 90 percent of working females experience sexual harassment at some time during their working lives. Although documented statistics only address harassment of women, there is definite evidence that working males also experience sexual harassment on the job. Our society is finally acknowledging that this is a human rights, not just a women's rights issue.

Another important reason for having a prevention policy is that failure to prevent harassment will surely bring litigation, not only against the alleged harasser, but against the County and the management responsible to assure a harassment-free workplace. There is a potential for lawsuit, administrative agency claims, claims for workers' compensation, and even criminal prosecution if the harassment involves assault, battery, or other criminal acts. In 1993, sexual harassment became the most frequently adjudicated civil rights (Title VII) claim.

The County has both a moral and financial interest, then, in creating a harassment free workplace.

What is Considered "Sexual Harassment"?

When sexual harassment was initially recognized as an actionable wrong, victims of harassment faced reluctance on the part of the courts to redress actual injury caused by the harassment (such as loss of employment, etc.). They've come a long way since then. Courts and legislatures are now rejecting the notion that sexual taunts, game-playing, and other "subtle"

conduct are benign. Settlements are now made for even these “subtle” forms of harassment and, in 1992, the average settlement for such claims exceeded \$240,000.

Administrative agencies, including the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing, agree that sexual harassment can be defined as follows:

Sexual Harassment = ***unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature.***

This definition includes many forms of “offensive” behavior and includes gender-based harassment of a person of the same sex as the harasser.

Harassment can be categorized as either quid pro quo harassment or as hostile environment harassment.

Quid Pro Quo Harassment

Quid pro quo harassment occurs when employment benefits have been conditioned upon sexual favors. Examples of quid pro quo offenses include, but are not limited to:

- offering employment benefits in exchange for sexual favors.
- conditioning continued employment or career advancement on the provision of sexual favors.
- making or threatening reprisals after a negative response to sexual advances.

Hostile Environment Harassment

Hostile environment harassment, the most prevalent type of claim, occurs when an individual is subjected to unwelcome sexual conduct which unreasonably interferes with his or her job performance or creates an intimidating, hostile or offensive working environment. Examples of hostile environment offenses include, but are not limited to:

- unwanted sexual advances.
- visual conduct including leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters.
- verbal conduct including making or using derogatory comments, epithets, slurs, and jokes.
- verbal sexual advances or propositions.
- verbal abuse of a sexual nature, graphic verbal commentaries about an individual’s body, sexually degrading works used to describe an individual, suggestive or obscene letters, notes, or invitations.
- physical conduct including touching, assault, impeding or blocking movement.

Reasonable Person Standard

Perhaps the most often litigated issue in sexual harassment claims is whether the conduct was “unwelcome”. Courts consider a “reasonable person standard” in determining the issue.

This standard holds that well-intentioned complaints by co-workers or supervisors can form the basis of a sexual harassment cause of action if a reasonable victim of the same sex as the plaintiff would consider the comments sufficiently severe or pervasive to alter a condition of employment and create an abusive working environment.

Recently, both the courts and the EEOC have held that, when the victim is female, a more specific “reasonable woman” standard should apply instead of the theoretically gender-neutral “reasonable person” standard. In so holding, it becomes recognized by these regulatory agencies that men and women often have different sensibilities as to what is offensive workplace behavior.

What constitutes sexual harassment for one person may or may not constitute harassment for another. Determining what action is harassment and what action is not becomes a specialized process best left to a trained investigator.

Who is Responsible for Preventing Sexual Harassment?

It is a manager’s responsibility to provide a good work environment for his/her staff. This includes providing for a harassment free workplace. The day-to-day enforcement of this policy is the responsibility of each manager and/or supervisor. The “buck can not be passed” in this area.

It is a victim’s responsibility to tell the person or group perpetrating the alleged harassment that “this behavior makes me uncomfortable”. Sexual harassment remains somewhat nebulous and ill-defined, and as such employees should not assume that their perspective is also the general societal notion.

Investigation of harassment claims is the responsibility of the Human Resources Department. This is due to the complexity of the investigation process, the need for confidentiality, and the need to separate the claim from the workplace. Managers should not be the investigative arm because most will not have the training and/or skills necessary to perform the balancing act that these investigations require. Therefore, employees should make a claim directly to the Human Resources Department and managers should refer staff to the Human Resources Department.

How Do I Prevent Sexual Harassment From Occurring?

Claims of sexual harassment inherently confront managers with the problem of embarrassment. In most cases the allegations involve conversations or acts which either “cry for privacy” or are so “distasteful” that the immediate reaction of a manager is not to get involved. But, because the conduct has allegedly occurred in the workplace, or is alleged to still be occurring, the manager must get involved. There is no choice.

Over-reaction, on the other hand, is also perilous. Few allegations are potentially more damaging than one of sexual harassment, which can damage the employee’s life both at work and at home. Not surprisingly, when confronted with such claims, the accused “come out fighting”. Although a proper and thorough investigation must be made, a manager could end up involved in litigation brought by a falsely accused harasser – litigation alleging defamation, invasion of privacy, negligent infliction of emotional distress and/or wrongful termination. So how do you proceed?

Managers must set the tone for their department. Sexual harassment thrives in environments where the first subtle incident is allowed to escalate to a second – unchecked. Demand that your staff show the utmost respect, dignity, and courtesy to both co-workers and the public. Discipline those who fail to do so. Be assured that you will be held accountable if the situation continues unabated.

This policy must be disseminated to your staff. One of the requirements under Government Code Section 12940 is that “employers must take all reasonable steps to prevent discrimination and harassment from occurring”. Certainly, this begins with discussing the subject with your staff. A copy of the Department of Fair Employment and Housing notice has been forwarded to all employees. New employees receive a copy during orientation. This policy manual should also be made accessible to your staff.

Procedure for Investigating Complaints

Even in cases when the manager has not specifically been notified of harassment, if he/she should have been aware of the existence of the unlawful harassment, then the County had knowledge within the meaning of the law and, therefore, a duty to investigate. If you are aware of a harassment situation that, for whatever reason, has not yet been reported, notify the Human Resources Department immediately.

If a staff member comes to you with a claim of harassment you should have the employee contact the Human Resources Department about the complaint. If they are hesitant, you should inform the HR Department yourself. HR staff will then contact the individual employee confidentially.

An immediate investigation of the incident will follow and a determination will be made with the results communicated to the complainant, the alleged harasser, and, as appropriate, to all others directly concerned. If the complaint is proven there will be prompt and effective remedial action. This will include:

1. taking appropriate action against the harasser.
2. implementing a corrective plan of action to ensure that further incidents do not occur.
3. remedying the complainant’s loss, if any.

An employee has the greater right to file the complaint with the Department of Fair Employment and Housing. The address of the district office to which the County is assigned is

2000 “O” Street, #120
Sacramento, CA 95814-5212
(916) 445-9918

Although we can not interfere with this right to file, the County encourages the complainant to allow us to remedy the situation first.

Disciplinary Measures Resulting From Sexual Harassment

The County strictly prohibits its employees from sexually harassing any other employee or member of the public. Failure to conform to this standard will be considered cause for

disciplinary action up to and including termination of employment. Sexual harassment will be considered as discourteous treatment of the public or other employees and, as is outlined by the County of Tuolumne Personnel Rules and Regulations, this is a recognized cause for disciplinary action.

Disciplinary action means an action taken by the County resulting in dismissal, suspension, reduction in salary step for a specified time period or demotion of a permanent employee. Provisions outlining disciplinary action are included in the County of Tuolumne Personnel Rules and Regulations and in various Memorandums of Understanding between the County and its employee associations.

Conclusion

The County's goal is to create a harassment free workplace. To achieve our goal, all employees must be committed to its fulfillment. This commitment hopefully will not result from fear of the potential ramifications, but rather on moral grounds.

This prevention policy is a proactive attempt to achieve our goal. Developing procedures and training supervisors after a claim has been raised is too late. By then, emotion rather than reason will dominate. Under these circumstances, objective, dispassionate investigation is all but impossible.

All employees and members of the public have a right to an environment free from harassment. With this policy the County obligates itself to ensuring that becomes reality.

County of Tuolumne

Harassment Complaint Form

Complainants Full Name: _____ Work Phone: _____

Job Title: _____ Department: _____

Name of the person who is accused of causing the harassment: _____

Date on which the alleged harassment took place: _____

Check below the basis on which you believe you were harassed:

- | | | | |
|--|--|--|------------------------------|
| ☐ race | ☐ ancestry | ☐ religion | ☐ sex |
| ☐ color | ☐ medical condition | ☐ sexual orientation | ☐ age |
| ☐ national origin | ☐ marital status | ☐ physical or mental disability | |

Explain how you believe the harassment against you took place (Attach additional sheets if necessary.)

Date(s), time(s), and location(s) of incident(s):

Names(s) of witnesses, if any:

What corrective action or remedy are you seeking?

Waiver of Confidentiality

I, _____ understand that I waive my right to confidentiality for purposes of this investigation and hearing process.

Signature: _____ Date: _____

When completed, please return to Human Resources Department.
Aug. 1997