

Safe and Respectful Workplaces: **Preventing Sexual Harassment and Abusive Conduct** in the Janitorial Industry

SUPERVISOR TRAINING GUIDE



This training program was developed by the Labor Occupational Health Program at UC Berkeley for the Department of Industrial Relations and the Commission on Health and Safety in Workers' Compensation.

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ABOUT THIS TRAINING GUIDE

Preface

This sexual harassment and abusive conduct training is for supervisors in the janitorial industry in California and meets the requirements of California's Property Service Workers Protection Act (AB 1978) and Fair Employment and Housing Act. The training must be presented interactively by a qualified trainer. (For a list of qualifications, see 2 CCR § 11024.)

The training is two hours long and covers the following topics:

- (1) Introduction (5 minutes)**
- (2) Understanding Sexual Harassment and Abusive Conduct (40 minutes)**
- (3) Preventing Sexual Harassment and Abusive Conduct (20 minutes)**
- (4) Responding to Complaints of Sexual Harassment (40 minutes)**
- (5) Retaliation (10 minutes)**
- (6) Conclusion (5 minutes)**

Training materials include this guide and a video, both downloadable at www.dir.ca.gov/dlse/Janitorial-Training.html.

How This Guide Is Organized

Topic Overview

These introductory pages describe each topic, specify the amount of training time it requires, and list the materials needed.

Script

After the overview is a script you can follow during the training. It includes language you can use to explain concepts, instructions for facilitating activities, questions you can ask participants to guide discussion, and answers you might expect from them.

Supplements

This section includes a legal supplement, handouts for distribution before or during the training, visual aids, and an evaluation form.

ABOUT THIS TRAINING GUIDE

Understanding the Script

The script takes you through the training step by step. It also includes boxes, or sidebars, that feature ideas for optional activities.

These icons in the script are reminders that you need to take action:



Play a video segment.



Refer to a handout.



Divide class into small groups.



Give groups time for discussion.



Lead a discussion.

ABOUT THIS TRAINING GUIDE

Using the Supplements

Legal Supplement

This section contains information you can refer to if you have questions about the law. It's for reference only.

Handouts

Four handouts are included in this guide. Each topic overview identifies the handouts you'll need to teach that topic. In preparing for a training, you should make enough copies of the handouts for each participant to have a set. You can distribute all the handouts together at the beginning of the training or individually when you need to refer to them.

Visual Aids

Also included are four enlarged illustrations from the handout "What Is Sexual Harassment?" You may print a single set of these illustrations and post them on a wall for reference to help you explain sexual harassment.

Evaluation Form

The evaluation form is an opportunity to learn how participants responded to the training. If you wish, distribute copies and ask participants to fill out the form at the end of the training. Make sure to let participants know that their responses will remain anonymous.

Using the Video

You will need a laptop or tablet and a projector to show the video segments referred to in the script. You should download the video onto your laptop or tablet before the training. You might want to stream the video from the website, but it's safer not to depend on having internet access during the training.

OVERVIEW

TOPIC 1

Introduction

Description

- Welcome participants.
- Describe the agenda and learning objectives.
- Warn participants about subjects that can be upsetting.
- Optional: Explain your ground rules.

Duration: 5 min.

Materials

- Sign-in sheet
- Pens
- Optional
 - Flipchart or whiteboard
 - Markers

OVERVIEW

TOPIC 2

Understanding Sexual Harassment and Abusive Conduct

- Play “How Sexual Harassment Affects Workers: True Stories from Janitors.”
- Ask participants about their reactions.
- Explain handout “What Is Sexual Harassment?”
- Play three video scenes illustrating harassment.
- Have small groups refer to the handout to discuss how the scenes are examples of harassment.
- Define abusive conduct.
- Explain the liability of employers, managers, supervisors, and harassers.

Duration: 40 min.

Materials

- Video segments
 - “How Sexual Harassment Affects Workers: True Stories from Janitors” (00:50-3:00)
 - “Carmen’s Story” (3:12-4:11)
 - “Carlos’s Story” (4:13-5:20)
 - “Maria’s Story” (5:22-5:58)
- Handout
 - “What Is Sexual Harassment?”
- Optional
 - Enlarged copies of the images on the handout “What is Sexual Harassment?”
 - Tape for posting images

OVERVIEW

TOPIC 3

Preventing Sexual Harassment and Abusive Conduct

Description

- Brainstorm how employers, managers, and supervisors can prevent misconduct and harassment.

Duration: 20 min.

OVERVIEW

TOPIC 4

Responding to Complaints of Sexual Harassment

Description

- Play a scene showing how a supervisor can respond to a complaint.
- Highlight key sections of the employer's sexual harassment policy.
- Present and discuss a series of brief scenarios.

Duration: 40 min.

Materials

- Video segment
 - "Strategies for Carmen's Story" (6:16- 9:04)
- Handouts
 - The employer's sexual harassment policy
 - "Sexual Harassment at Work Is Illegal"

OVERVIEW

TOPIC 5

Retaliation

Description

- Provide an overview of illegal retaliation.
- Present and discuss a series of brief scenarios.
- Encourage participants to keep the handouts for reference.

Duration: 10 min.

Materials

- Handouts
 - The employer's sexual harassment policy
 - "Sexual Harassment at Work Is Illegal"

OVERVIEW

TOPIC 6

Conclusion

Description

- Refer to “Resources for Addressing Sexual Harassment and Assault” and discuss resources.
- Play “Messages from Survivors.”
- Optional: Ask participants to fill out workshop evaluations.

Duration: 5 min.

Materials

- Video segment
 - “Messages from Survivors” (13:54- 14:51)
- Handout
 - “Resources for Addressing Sexual Harassment and Assault”
- Optional
 - Trainer’s handout with contact information for local resources
 - Workshop evaluation forms

SCRIPT

OPTIONAL ACTIVITY

Set ground rules:

- Please take turns talking and listen respectfully.
- Please silence your phone and go outside if you need to use it.
- It's ok to say you disagree.
- Please respect others – even when you disagree.

TOPIC 1

Introduction

(5 min.)

Welcome. My name is _____. I'll be your trainer for this workshop on sexual harassment at work. This training was designed for managers and supervisors in the janitorial industry. The Property Service Workers Protection Act requires janitorial employers in California to train all janitors and supervisors on sexual harassment.

Today's training will last two hours. After the training, you will be able to:

- Define sexual harassment by its legal elements.
- Recognize common examples of harassment and abusive conduct in the workplace.
- Explain how harassment and abusive conduct affect workers, supervisors, managers, and employers.
- Describe how employers and supervisors can prevent harassment and abusive conduct.
- Respond to reports of wrongful conduct.
- Describe employer and harasser liability for harassment under state and federal law.

Harassment and abusive conduct can be difficult subjects to address. Some of you might have experienced harassment or even violence at work. We won't discuss our personal experiences as a group, but I'll provide information on options that could help in your particular situation. If any subject discussed during this workshop makes you uncomfortable, please feel free to step outside for a break anytime.

SCRIPT

OPTIONAL ACTIVITY

At any point during the training, write important words or concepts on a flip chart or whiteboard.

TOPIC 2

Understanding Sexual Harassment and Abusive Conduct

A. Impact Video (10 min.)

We're going to hear the stories of some janitors who experienced sexual harassment or assault at work. They'll tell you how it affected their lives.



Play "How Sexual Harassment Affects Workers: True Stories from Janitors" (00:50-3:00).

What words come to mind in reaction to the video?



Lead a discussion for 1-2 minutes.

Possible responses:

- Sad, angry, helpless, or anxious
- Unjust, unfair, or discriminatory
- Sympathy or solidarity

SCRIPT

What did you hear about the impacts of sexual harassment and violence at work?



Lead a discussion for 1-2 minutes.

Possible responses:

Emotional impacts

- Anxiety, stress, or fear
- Shame or loss of self-esteem
- Feeling helpless

Physical impacts

- Trouble sleeping
- Digestive problems

Economic impacts

- Losing one's job
- Losing one's home

You can see how sexual harassment can affect the health, safety, and well-being of workers and their families. Potential costs for employers are high too, including lost productivity, high turnover, discipline or termination of the harasser, and legal expenses.

It's difficult to know how many people experience sexual harassment at work because most people don't know exactly what it is or don't report it. But based on surveys and studies, we can estimate that about 1 out of every 3 women has been harassed.

SCRIPT

OPTIONAL ACTIVITY

On the wall, post enlarged copies of the handout images representing parts of the definition. You can refer to these images as you explain the definition and analyze the videos.

B. Defining Sexual Harassment (10 min.)

Whether the victim is an employee, job applicant, contractor, volunteer, or unpaid intern, sexual harassment is illegal. But often, managers and supervisors who receive reports, or complaints, of harassing or abusive conduct don't know it's illegal.

You're a supervisor because you have discretion and authority

- to hire, transfer, promote, assign, reward, discipline, or discharge other employees, or effectively recommend any of these actions;
- to act on the grievances of other employees or to effectively recommend action on grievances; or
- to direct the victim's daily work activities.

Being a supervisor means having special responsibilities under the law. You have to prevent and address harassment and abusive conduct. You also have to report discrimination, harassment, and retaliation to the person identified in your employer's harassment policy.

It's important for supervisors and managers to understand the legal definition of sexual harassment so they can prevent harassment or recognize and respond to it as the law requires.



Refer to "What Is Sexual Harassment?"

Sexual harassment includes a wide range of conduct. The legal definition has three parts.

First, sexual harassment is conduct (speech or actions) that is sexual or related to sex. Sexual comments can be harassment. Non-sexual comments based on sex – such as demeaning comments about women in general – can also be harassment.

The conduct doesn't have to be motivated by sexual desire. Often, sexual harassment is about exerting power more than it is about desire.

SCRIPT

OPTIONAL ACTIVITY

Instead of summarizing the definition, ask participants to summarize one part at a time. If someone's answer isn't complete, ask others to help them out.

Harassment based on sexual orientation, gender identity, or gender expression is also illegal.

Second, the conduct is **unwelcome** or unwanted by the victim.

The victim doesn't have to resist the harasser or complain to the employer. Because she's afraid to speak up, she might tolerate the harassment or even give in when the harasser demands sex. But if she doesn't want the conduct at the time it happens, it can still be harassment.

Third, the conduct fits one of two types: EITHER trying to use a **reward or punishment** to get a sexual favor OR creating a **hostile work environment**. Let's look at these separately. The other side of the handout has examples of both of these types of harassment.

- **Type 1:** Trying to use a reward or punishment to get a sexual favor (quid pro quo harassment)

Quid pro quo means "this in exchange for that." Someone who promises a job benefit (such as a better shift or a promotion) in exchange for a sexual favor (such as a date or sex) is breaking the law. So is someone who threatens to punish a worker to get a sexual favor, or punishes the worker for refusing one. The promise or threat doesn't have to be explicit to be harassment.

For this type of conduct, the harasser is usually a supervisor or someone else who has power over the victim.

- **Type 2:** Creating a hostile work environment based on sex or another protected characteristic can also be harassment.

Characteristics protected from harassment under California law include not only sex, sexual orientation, gender, gender identity, and gender expression, but also race, color, national origin, religious creed, mental disability, physical disability, medical condition, military or veteran status, marital status, age, genetic characteristics, and ancestry. It's illegal to harass an employee based on any of these characteristics.

- This type of conduct can be physical, verbal, or visual. Give me some examples from the handout.

SCRIPT

- The conduct can be directed toward OR witnessed by the person who reports it.
- The conduct has to
 - be severe (for example, physically threatening or humiliating) OR pervasive (frequent) AND
 - change the conditions of employment (for example, by interfering with an employee's work performance).
- Widespread sexual favoritism, which involves preferential treatment based on a sexual relationship, can create a hostile work environment.

To summarize, the legal definition of harassment includes three parts:

- First, the harassing conduct is sexual or related to sex or to another protected characteristic.
- Second, the conduct is unwelcome.
- Third, either the harasser tries to use a reward or punishment to get sexual favors, or the harasser's conduct creates a hostile work environment.

Notice that an adverse employment action such as demotion or termination isn't part of this definition – that is, an economic loss isn't required for harassing conduct to be illegal.

Any questions?

C. Activity: Scene Analysis (20 min.)

Now that we know how sexual harassment is defined, let's apply the definition to some examples. We're going to watch three scenes based on the experiences of janitors. (Most of the actors are janitors too.) After each scene, we'll use the definition we just talked about to analyze the characters' conduct.

SCRIPT

First, I'll divide you into small groups.



Divide class into groups of 4 or 5.

As you watch each scene, think about the parts of the sexual harassment definition. We're going to start with "Carmen's Story."



Play "Carmen's Story" (3:12-4:11).

In your group, take a few minutes to talk about this scene, referring to the handout. Is this sexual harassment? Consider each part of the definition.



Give groups 3-5 minutes to discuss.

Let's take a moment to share. Is "Carmen's Story" an example of sexual harassment? . . . Who can explain why?



Lead a discussion on "Carmen's Story" for 5 minutes.

SCRIPT

Make sure the following points are covered in the discussion:

- Roberto’s conduct is sexual: he calls Carmen gorgeous and asks her out on a date, not to a business meeting.
- Roberto’s conduct is unwelcome: we can see that Carmen doesn’t like it because she looks upset, makes excuses, and tries to leave.
- Roberto tries to get a sexual favor (the date) both by offering a job benefit (more hours) and by threatening punishment (firing Carmen and her brother). This is a classic example of a supervisor demanding a sexual favor.

Now let’s watch “Carlos’s Story.”



Play “Carlos’s Story” (4:13-5:20).

In your group, decide whether this is sexual harassment by going through the definition step by step.



Give groups 2-3 minutes to discuss.

Let’s talk about “Carlos’s Story” together. Is it an example of sexual harassment? . . . Who can explain why? . . . Does anyone disagree? . . . Why?



Lead a discussion on “Carlos’s Story” for 5 minutes.

SCRIPT

Make sure the following points are covered in the discussion:

- Pedro's conduct is sexual: his comments are about Carlos's sexual orientation.
- Pedro's conduct is unwelcome: Carlos tells Ana that the comments bother him and appears uncomfortable when Pedro arrives.
- Carlos doesn't tell Pedro to stop, but he doesn't have to.
- Pedro's sexual innuendos and jokes (verbal conduct) create a hostile work environment because they are frequent: Carlos says Pedro makes comments every day, and Ana says Pedro has been bothering Carlos since he was hired.

Now let's watch "Maria's Story."



Play "Maria's Story" (5:22-5:58).

In your group, discuss whether this is sexual harassment. Get ready to explain the reasons for your conclusion.



Give groups 2-3 minutes to discuss.

Who would like to explain their group's conclusions? . . . Do other groups agree or disagree? . . . Why?



Lead a discussion on "Maria's Story" for 5 minutes.

SCRIPT

Make sure the following points are covered in the discussion:

- Bruno's conduct is sexual: he grabs Maria, and the video implies that he sexually assaults her.
- Bruno's conduct is unwelcome: Maria tells him twice to let her go and tries to escape his grip.
- Bruno's sexual assault (physical conduct) creates a hostile work environment because it is very serious. A sexual crime almost always creates a hostile work environment because of its severity.
- We don't know whether Bruno is a coworker, supervisor, or office worker in the building Maria cleans. His conduct is sexual harassment no matter who he is.

You've seen three examples of sexual harassment. It happens in many other ways, but we don't have time to talk about them. Instead, after you leave here today, please take time to review the handouts.

Abusive conduct is also illegal if it's motivated by a protected characteristic. Conduct is abusive if it is

- malicious,
- hostile or offensive to a reasonable person, and
- not related to an employer's legitimate business interests, including maintaining performance standards.

Examples of abusive conduct:

- Repeated verbal abuse such as derogatory remarks, insults, or epithets
- Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating
- Sabotage or undermining a person's work performance

A single act isn't abusive conduct unless it's severe or egregious.

SCRIPT

If abusive conduct isn't related to a protected characteristic but violates the employer's policy, it could still be grounds for discipline.

To wrap up this section, I want to emphasize a few points:

- The harasser and the victim can be either sex, and they can be the same sex or different sexes.
- In third-party harassment, the harasser doesn't work for your employer. A janitor can be harassed by a security officer working for another employer, someone who works in the building the janitor is cleaning, or a member of the public. The janitorial employer has to stop the harassment even if it doesn't employ the harasser.
- A worker who reports inappropriate conduct, or **files a complaint**, doesn't have to be a legal expert. They can simply describe their experience. As a supervisor, you don't have to be an expert either. Your responsibilities are to pass the complaint on to the person who handles complaints for your employer and to treat the worker professionally and respectfully.
- Whether or not the worker filed a complaint with the employer, the employer is legally responsible, or liable, for damages caused by harassment
 - if a manager or supervisor harasses someone, even if upper management doesn't know about it;
 - if the employer didn't take immediate and effective steps to prevent and correct harassment; or
 - if a worker or third party harasses someone and the court finds that the employer knew about it (or should have known) and didn't do anything to stop it.

The employer may settle the claim to avoid a lawsuit, agreeing to change its behavior in the future, pay the victim compensation, and even rehire the victim.

SCRIPT

If the victim didn't file a complaint with the employer or filed long after the harassment began, the employer could argue that its liability should be less because it would have intervened to prevent some of the damages.

If the case gets to court and the employer loses, the court could order the employer to train its employees better; change its policies or procedures; rehire the victim; and pay economic, non-economic, and possibly even punitive damages.

- Finally, a court could find the harasser **personally liable** and order the harasser to pay compensation and other costs out of their own pocket. In the videos we watched, Roberto, Pedro, and Bruno could be found personally liable.

Are there any questions before we move on to the next section?

SCRIPT

TOPIC 3

Preventing Sexual Harassment and Abusive Conduct

(20 min.)

In California, it's the employer's responsibility to stop misconduct before it rises to the level of illegal sexual harassment. By acting early, it's sometimes possible to prevent misconduct from escalating.

Let's brainstorm about what managers and supervisors can do to prevent sexual harassment and abusive conduct in the workplace. Think as broadly and creatively as you can.



**Lead a discussion on prevention
for 15 minutes.**

Make sure the following ways to prevent harassment and abusive conduct are covered in the discussion:

- Policies and training must be reinforced by leadership at the top. Managers and supervisors must adhere to the anti-harassment policy and model desired behavior.
- Attend harassment prevention training every two years, and ensure that workers also attend.
- Make sure workers with leadership responsibilities are not only well trained but also well supervised.

SCRIPT

- The employer has to have an anti-harassment policy written in the language workers understand.
 - Distribute the policy to workers and post it in the workplace.
 - Review the policy in staff meetings, explaining how to file a complaint.
 - Follow the policy.
- Change how work is structured to lower the risk of harassment. For example, assign janitors to work in pairs instead of alone, or schedule daytime instead of nighttime shifts.
- Conduct a survey to find out whether employees feel safe and have experienced any misconduct. Allow anonymous responses.
- Set a respectful tone.
- Invite and welcome feedback.
- Keep all work communications professional.
- Don't text or call a worker's private phone except in an emergency.
- Remove any sexual or offensive posts, actual or electronic, from the workplace
- Don't discuss sex in the workplace or allow your staff to discuss sex.
- Don't offer to exchange job benefits for sexual favors or joke about it.
- Don't touch anyone.
- Don't allow others to touch anyone in a way that could be unwelcome or interpreted as sexual or threatening.

SCRIPT

- Keep relationships with your staff professional. Don't befriend staff members or friend them on social media.
- Only invite a staff member to a social event, including lunch, if you're inviting your whole team.
- Treat all workers fairly. Avoid treating a favorite worker differently from others.
- Make diversity a priority in hiring managers and supervisors.

Which of these ideas would you be willing to try in your workplace? What would your first steps be?



Lead a discussion for 5 minutes.

Take some of these ideas back to your workplace and discuss them with your colleagues. Creating a safe and respectful workplace by preventing harassment can save your employer a lot of time and money in the long run.

SCRIPT

TOPIC 4

Responding to Complaints of Sexual Harassment

A. Sexual Harassment Policy (20 min.)

How should you respond if you receive a complaint of harassment? Your employer has to have a sexual harassment policy establishing complaint procedures and should provide supervisors with protocols to follow if they're personally accused of harassment.



Refer to the employer's sexual harassment policy.

Each employer writes its own policy, but all policies should cover these main points.

Review the policy, making sure to point out the following:

- Who is designated to receive complaints
- How an employee can file a complaint (in person, by phone, or in writing)
- The extent of confidentiality
- The investigation process
- The prohibition against retaliation

SCRIPT

B. Responding to Complaints of Sexual Harassment (20 min.)

Now we'll talk in more detail about what to do if you get a complaint.

Let's go back to "Carmen's Story." Remember Carmen? Her supervisor, Roberto, asked her out to dinner. When Carmen refused to go out with him, he threatened to fire her. Roberto was demanding a sexual favor.

Watch what happens when Carmen decides to report the harassment.



Play "Strategies for Carmen's Story" (6:16-9:04).

Whom does Carmen report the sexual harassment to?

How does Laura handle the complaint?



Lead a discussion for 5 minutes.

Make sure the following points are covered in the discussion:

- Laura takes the complaint seriously.
- Her tone is calm and reassuring.
- She summarizes the investigation process and says it will be fair and thorough.
- She says that the employer will keep the information as confidential as possible but doesn't promise anonymity or full confidentiality.
- She tells Carmen that the employer won't retaliate against her for coming forward.

SCRIPT

Anyone who represents the employer, including managers and supervisors, should handle sexual harassment complaints appropriately, as Laura does. You may have handled complaints this way yourself.

But managers and supervisors sometimes make mistakes despite good intentions. Let's talk through some responses that could get a supervisor in trouble.

1. A worker who complains often about various issues tells a supervisor that a coworker made a sexual comment. The supervisor says that one comment isn't enough to be harassment and that the reporting worker should stop causing trouble. The supervisor does nothing more about the complaint.

What did this supervisor do wrong? What should he have done instead?



Lead a discussion for 3 minutes.

Make sure the following points are covered in the discussion:

- The supervisor should not judge whether the complaint is valid.
- The supervisor has to follow the sexual harassment policy, passing the complaint on to the designated person, even if
 - the supervisor doesn't think the behavior is harassment,
 - the reporting person complained in the past, or
 - the complaint is anonymous.
- Coming forward is often hard. The supervisor should set the right tone from the beginning by taking the complaint seriously and being supportive.

SCRIPT

- A supervisor should not
 - say they don't believe the complaint,
 - tell the reporting person they have to have a neutral witness or documentary evidence to support the claim,
 - blame the reporting person for the reported misconduct, try to silence or intimidate the reporting person, or
 - laugh at or ridicule the reporting person.
- 2. A supervisor tells the reporting person that she needs to confront the alleged harasser directly and try to resolve the problem.

Why was this a bad idea? What should the supervisor have done instead?



Lead a discussion for 3 minutes.

Make sure the following points are covered in the discussion:

- The employer, not the reporting person, is legally responsible for investigating complaints and stopping misconduct or harassment on the job.
- As a representative of the employer, a supervisor who doesn't follow the harassment policy could make the employer liable for damages.
- Telling the reporting person to confront the alleged harasser could aggravate the situation by
 - communicating to the alleged harasser that the employer tolerates or even encourages misconduct or harassment;

SCRIPT

- subjecting the reporting person to further misconduct or harassment, and possibly even to physical danger; and
 - subjecting the reporting person to public humiliation or ridicule by involving other workers.
 - If the reporting person is experiencing trauma, the impact of facing the alleged harasser could be greater than would otherwise be expected.
3. A supervisor receives a complaint and immediately fires the person accused of harassment.

What did this supervisor do wrong? What should he have done instead?



Lead a discussion for 3 minutes.

Make sure the following points are covered in the discussion:

- The supervisor has to forward the complaint to the designated person so it can be investigated.
- The investigation has to be fair, impartial, and thorough. The reporting person and any witnesses must be interviewed.
- The accused person is entitled to due process. This means that they have to be allowed to present their side of the story and their evidence.
- The investigator must also review all relevant documents and reach a reasonable and fair conclusion based on the facts.

SCRIPT

- Only if the investigation uncovers misconduct or harassment should the employer counsel, discipline, reassign, demote, or fire the harasser.

4. Human Resources receives a complaint against a supervisor and asks the accused supervisor to conduct an investigation.

What did HR do wrong? What should they have done instead?



Lead a discussion for 3 minutes.

Make sure the following points are covered in the discussion:

- Because an investigation has to be fair and impartial, the investigator should not be the accused person or someone supervised by the accused person.
 - HR should have assigned the complaint to a different investigator.
5. While the investigation of a sexual harassment complaint is ongoing, a well-intentioned supervisor calls a meeting to inform workers that the employer doesn't tolerate harassment. During the meeting, she describes the complaint and discloses the names of the workers involved.

What did this supervisor do wrong? What should she have done instead?



Lead a discussion for 3 minutes.

SCRIPT

Make sure the following points are covered in the discussion:

- The employer has to keep a complaint as confidential as possible. Information about it should be shared only as needed for the employer to investigate thoroughly and stop any illegal behavior.
- This supervisor did the right thing by calling a meeting to discourage harassment, but she shouldn't have shared details about the complaint.
- Generally, but not always, *workers* have the right to discuss complaints and do not have to keep information confidential.



Refer to “Sexual Harassment at Work Is Illegal”

This handout summarizes the rights of workers and the responsibilities of employers. Please read it and keep it for reference.

SCRIPT

TOPIC 5

Retaliation

(10 min.)

It's illegal for an employer to retaliate against, or punish, a worker for reporting harassment or participating in an investigation. The employer can't legally

- fire, suspend, or discipline the worker;
- cut their pay, benefits, or overtime; or
- threaten the worker or their family with deportation.

Also, in some circumstances, the employer can't

- change the worker's assignment to less desirable tasks or shifts or
- prevent the worker from getting another job.

Retaliating against a witness for reporting harassment or participating in an investigation is also illegal. Retaliation is illegal even if the investigation finds no harassment.

A worker who believes they've been retaliated against for complaining or being interviewed about harassment can file a retaliation complaint with their employer, with a government agency, or in court.

Let's say a worker files a sexual harassment complaint.

- Supervisor A reduces the worker's hours to teach them not to cause trouble.
- Supervisor B threatens to report the worker to immigration authorities.

SCRIPT

- Supervisor C reassigns the worker to a different job site to prevent further contact between the worker and the alleged harasser.

How would you evaluate these choices in light of what you've learned today?



Lead a discussion for 6-8 minutes.

Make sure the following points are covered in the discussion:

- Reducing the worker's hours as punishment for filing a harassment complaint is illegal retaliation.
- Punishing the worker by reporting or threatening to report their immigration status to a government agency is illegal.
- Retaliating by reporting or threatening to report the worker's family is illegal too.
- Whatever the reason, reassigning the reporting worker could look like retaliation to a court. The employer should avoid even the appearance of retaliation.
- Remembering that the reporting worker could be experiencing trauma, the supervisor could ask them how to help them feel safer.
- Sometimes the best choice for the reporting worker is reassignment or taking leave, but the supervisor should be careful not to create liability for the employer.
- The supervisor could consider resolving the problem by reassigning the accused person instead.

SCRIPT

To summarize, if a worker reports harassment to you, set the right tone from the beginning by taking the complaint seriously. Describe the investigation process and pass the complaint on to the designated person. If appropriate, ask the worker how you can help them feel safer.

And remember that witnesses are also protected from retaliation. A supervisor can't punish a witness for reporting harassment or for participating in an investigation.

Any questions before we wrap up?

SCRIPT

OPTIONAL ACTIVITIES

(1) If you obtained any contact information for local resources, please refer to it now.

(2) Review participants' reactions to "How Sexual Harassment Affects Workers" from the beginning of the training. Then lead a discussion of the following questions:

- How would you describe the kind of work environment you want?
- How can your work environment be improved?

(3) To get feedback that can help you improve your teaching, distribute evaluation forms and ask participants to fill them out. Collect the completed evaluations as participants leave.

TOPIC 6

Conclusion

(5 min.)

I hope you've learned a lot about sexual harassment and ensuring a safe and respectful workplace.



Refer to "Resources for Addressing Sexual Harassment and Assault."

This handout can help you locate services for victims or survivors of sexual harassment and assault. Many resources are free, and organizations won't ask about your immigration status.

At the beginning of the training, we heard from some survivors about the impact that sexual harassment had on them. We're going to hear from them again.



Play "Messages from Survivors" (13:54-14:51).



**OPTIONAL:
Lead a discussion for 1-2 minutes.**

We should applaud and support these survivors for speaking out to end sexual harassment and assault in the janitorial industry.

Thank you for coming to the training and sharing your thoughts.

SUPPLEMENTS

Legal Supplement

- Federal and California Civil Rights Laws Compared
- Legal References: Relevant Provisions of California Laws

Handouts

- “What Is Sexual Harassment?”
- “Sexual Harassment at Work Is Illegal”
- “Resources for Addressing Sexual Harassment and Assault”

Visual Aids

- Enlarged illustrations from the handout “What Is Sexual Harassment?”

Evaluation Form

SUPPLEMENTS

Legal Supplement

Federal and California Civil Rights Laws Compared

California law provides broader protection against harassment than federal law.

Title VII of the Federal Civil Rights Act of 1964	California Fair Employment and Housing Act
Employer not automatically liable; showing of negligence required	Strict liability, i.e. employer automatically liable for harassment by managers and supervisors
Employer not liable if it exercised reasonable care and employee unreasonably failed to take advantage of opportunities to avoid harm	Employer has no defense if harasser is a manager or supervisor
Only employers with 15+ employees liable	Covers all employers, including sole proprietors
Doesn't cover independent contractors, volunteers, or unpaid interns	Covers independent contractors, volunteers, and unpaid interns

Under California Government Code section 12940(k), an employer must “take all reasonable steps necessary to prevent discrimination and harassment.” What steps are considered reasonable depends on many factors, including the nature of the business, its budget, the number of employees, and other facts of the case.

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Legal References: Relevant Provisions of California Laws

California Government Code § 12940

(j)(1) [It is an unlawful employment practice] for an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract.

(j)(4)(A) For purposes of this subdivision only, “employer” means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(j)(4)(C) For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(k) [It is an unlawful employment practice] for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

California Government Code § 12950.1

(i)(2) For purposes of this section, “abusive conduct” means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an

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employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Title 2 of the California Code of Regulations

§ 11023. Harassment and Discrimination Prevention and Correction.

§ 11024. Sexual Harassment Training and Education.

Title 8 of the California Code of Regulations

§ 13820-13822, Sexual Violence and Harassment Prevention Training for Property Service Workers