

# **Avoid Sexual Harassment Liability Through Effective Policies and Training**

**A Practical Guide to Saving Your Company  
by Avoiding Common Mistakes**

**Report for Small Business Owners/Managers  
Prepared by Vision Law Corporation  
Publication Date: February 1, 2007**

**LEGAL DISCLAIMER (OF COURSE)**

- ◆ Use at your own risk. While every effort has been made to ensure accuracy of the information as of the Publication Date, this report is intended for informational purposes only. This is not legal advice nor does it substitute for legal advice. Even though we provide useful tips, these are generalized tips and may not be how we might advise your business in its particular circumstances and only after knowing the particular facts.
- ◆ This is a Report on how to avoid unlawful harassment, mainly sexual harassment. We give this an “MA” (“Mature Audience”) rating. We are not even close to being as graphic as the real cases we have first hand knowledge of, but nevertheless if you are sensitive to the topic or the material offends you, you don’t have to read it or can throw it away. We also try to use some humor and keep it light as a learning tool, but this should not be construed as our not taking the legal subject matter seriously. We do, and this report is intended to help you prevent unlawful harassment in the workplace.
- ◆ This is intended for CALIFORNIA businesses only. State laws in every 50 state are different. Unless you are a California business or a “foreign” corporation/business doing business in California, you will be wasting your time, and the report is rather lengthy.
- ◆ This obviously hits only what we deem highlights of unlawful harassment law in California. It equally obviously does not and cannot come close to covering all details of unlawful harassment law, federal and Californian. We would need all 640 gigabytes of your server’s hard drive to do that.
- ◆ If your employment and labor attorney tells you something different, go with it. That doesn’t mean they are wrong or we are wrong. Why do you think we have so many lawyers in California? The law is subject to interpretation and reasonable legal minds (some might say that’s an oxymoron) can differ.
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# Avoid Sexual Harassment Liability Through Effective Policies and Training

SUM-100

## SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

YOUR COMPANY NAME HERE;  
YOUR NAME HERE;  
YOUR MANAGER'S NAME HERE, and DOES 1-100

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

VINDICTIVE FORMER EMPLOYEE NAME HERE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

CASE NUMBER:  
(Número del Caso): CV 50001

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

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That is known as a “Summons.” A “Complaint” is usually attached. This is how the lawsuit process starts.

This Avoiding Liability for Sexual Harassment Through Effective Policies and Training Report is intended to help your small business prevent a sexual harassment lawsuit and, if that’s not possible, to help put it in a position to win, quickly and with the least cost.

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## California Litigation Overview

It is commonly accepted that the United States has more lawyers per capita than any other country in the world. The United States had approximately 1,104,766 lawyers in 2005. Except for New York, most are in the “Golden State” (139,571 of our blood sucking brethren or 12.62% of all US lawyers in 2005).

In California, one survey reported the average wrongful termination jury verdict between 1992 and 1996 was \$449,150 for compensatory damages and \$674,843 for punitive damages. Another survey reported that the number of civil lawsuits across the nation is increasing at a rate three times faster than the adult population. In California, that rate is likely to be much higher.

On top of that, average attorney’s fees and costs for defense through trial vary greatly, but could easily run into the low to mid six figures depending on the complexity of the case.

*In a small business survey conducted by Vision, “employee issues” was the #1 legal concern/problem, well ahead of “liability issues generally,” “accounting/financial/tax,” “consumer issues,” and “lawsuits” generally. For survey results, see charts at end of Report.*

Given the above, it’s surprising that in one small business survey, over 65% of small businesses reported they rarely used or did not have a lawyer.

In a small business survey conducted by Vision, “employee issues” was the #1 legal concern, well ahead of “liability issues generally,” “accounting/financial/tax,” “consumer issues,” and “lawsuits” generally. For survey results, see charts at end of Report.

Knowledge is power. And in case you were not already an expert in California and federal sexual harassment law, we thought we would give you a primer.

Based on our experience working with both Fortune 500 and now small business, we have come up with this Report. Knowing what the law is and taking preventive measures will help you avoid sex harassment lawsuits. We also give you some real tips throughout the report. Use them consistently and you should reduce the risk of liability from an unlawful harassment lawsuit.<sup>1</sup>

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## Sexual Harassment

What is it? What is it not? If it happens, is your business toast? Who’s liable, who can be a “victim?” What can you do to make sure it does not happen in your workplace?

These are some of the questions addressed in this Report. We’ll talk about:

1. **What Is IT?**
  2. **Where Can IT Occur?**
  3. **Who Can Be A Plaintiff/Who Can Be A Harasser?**
  4. **Who Is Liable?**
  5. **What Are An Employer’s Obligations Under The Law?**
  6. **What Should I Do To Prevent IT?**
  7. **What Should My Prohibited Harassment Policy Contain?**
  8. **What Do I Do If IT Happens?**
  9. **Is Training Required?**
  10. **FEHC Mandatory Sex Harassment Training Regulations.**
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### 1. What Is IT?

*What IT Is Not.*

“Harassment” claims are a misnomer, because it really is “unlawful” harassment that we are talking about. Not that you would want to “harass” employees, but legally there is nothing wrong with

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<sup>1</sup> This is not a guaranty nor are our generalized tips legal advice. Please refer to Legal Disclaimer #1 on front of report.

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that. The problem is employees don't know the difference and will sue for "general harassment" resulting from unpleasant management demeanor. Then it can look like unlawful harassment based on some protected class in the eyes of a jury.

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## How IT Differs From Other Employment Lawsuits.

Bonafide unlawful harassment is different from most other employment related claims. Most employment claims are based on decisions considered a normal part of doing business, like hiring, promoting or firing employees. Unlawful harassment is seen as an individual wrong motivated by personal bigotry unrelated to legitimate business purposes.

As a result, in most other employment claims, an individual manager who made the decision to take adverse action is not personally liable for that decision. The company employer is, but the decision maker is not. However, in harassment claims because it is personal misconduct at issue rather than a bonafide business decision, the individual harasser is personally liable.

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## Harassment Based On "Protected Class".

The most common form of unlawful harassment is sex harassment. The alleged victim is harassed because of her/his sex. "Sex" is a protected class – protected by law in the sense that an employer cannot base employment decisions or take actions based solely on this criteria.

Most forget harassment can also be based on any other protected classes, including race, religious creed, color, national origin, ancestry, mental or physical disability, medical condition, marital status, pregnancy, child birth or related medical conditions, age, or sexual orientation. We will focus on "sexual harassment," but don't forget all of the principles discussed pertain to other forms of unlawful harassment as well.

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## Two Types of IT: "Quid Pro Quo" and "Hostile Work Environment."

### 1. Quid Pro Quo Harassment

If one of your supervisors tells a subordinate if you give me sex, I'll give you a salary increase, that's called "*quid pro quo*" harassment. It is unlawful, the company is strictly liable and the company will have no defense (other than proving it did not happen). Conditioning any term or condition of employment on sex, submission to sexual advances, etc. is blatantly unlawful, not to mention devastating to one's business pocket book.

### 2. Hostile Work Environment Harassment

The other kind of unlawful harassment is more subtle and is based on the "*work environment*" rather than specific trade-offs for sex. The environment must be "hostile" to that person's sex (or religion, or race, or sexual orientation, etc.) To become "hostile" the harassment must be "*severe or pervasive*." Not "*and*."

This type of harassment is more difficult to identify and prove. There is no hard and fast rule as to how much is too much or too often. Words, pictures, gestures, actions, touching, looks, basically any thing that can trigger the five senses if *unwelcome* and *offensive* to a *protected class* can constitute unlawful "harassment."

*The thing to remember is the test for unwelcome offensive conduct rising to the level of "unlawful harassment" has both a "quality" (i.e. severity) and "quantity" (i.e. pervasive) component. More severe (qualitative) conduct requires less pervasiveness/quantity and vice versa.*

On one extreme, a single incident of unwanted touching (groping, sexual assault) can, and probably would be, sufficiently "severe" to support a jury verdict. On the other, a single off colored joke alone in our view (though we strongly

discourage them) should not be anywhere close to meeting the "hostile work environment" standard because it meets neither the "severe" or "pervasive" test.

Multiple off color jokes over a period of time directed to a protected class, however, can meet the "pervasive" standard. Anything in between with enough frequency can be sufficient, including comments, posters on walls, leering, rubbing shoulders, touching hands, standing too close, prohibiting movement, etc.

The thing to remember is the test for unwelcome offensive conduct rising to the level of "unlawful

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## Unwelcome Conduct

We just covered the kind of conduct that might constitute “quid pro quo” or “hostile work environment” sexual harassment.

What if such conduct is welcomed, or encouraged, or even participated in, by the alleged “victim.” Then no problem, it’s not “unlawful sexual harassment,” is it?

Literally, no, because the law does not regulate voluntary conduct between two consenting adults. But try proving that to the jury. While the behavior has to be “unwelcome,” the sexual harassment plaintiff will absolutely say it was unwelcome, and the burden is on us to prove otherwise - a tough sell.

*The bottom line here if you are a supervisor: assume conduct of a sexual nature will be unwelcome to your subordinates (of either sex) and don't do it. It is too risky to assume sexually related touching, instant messaging, e-mails, posters, jokes, banter, etc. will be “welcomed” by your staff.*

Better to have policies in place prohibiting the kind of conduct that can be construed as “harassing” and unwelcome, to train employees, to enforce the policy, to investigate all complaints immediately and thoroughly and to take immediate appropriate corrective action, as

discussed in Sections 5, 6, 7, 8 and 9 below.

The bottom line here if you are a supervisor: assume conduct of a sexual nature will be unwelcome to your subordinates (of either sex) and don't do it. It is too risky to assume sexually related touching, instant messaging, e-mails, posters, jokes, banter, etc. will be “welcomed” by your staff.

The staff person is unlikely to say anything for fear of losing their job (#1 favorite argument of the sex harassment plaintiff's lawyer) and even if it appears “welcome” and participated in, the staff person now has leverage over you. And trust us (“because we're lawyers”), even partners in law firms (not ours) don't always get this one.

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## 2. Where Can IT Occur?

The harassing conduct need not occur literally in the “workplace.” While it generally does occur in the physical space known as the “workplace,” it need not. It can happen in the car during a commute, in a hotel room on a business trip, in a bar afterwork, in a restaurant, on the golf course, etc.

The point here is don't be thinking unlawful harassment is necessarily tied to the “workplace.” It's more about the relationships between persons who work in the “workplace.”

The classic “offsite” unlawful sex harassment case is a supervisor and subordinate away from the workplace and possibly outside working time, such as in a bar, at lunch or dinner, on a business trip/seminar, in a hotel or taxi.

Something happens (and here's where it's always “he said – she said”). The victims always say the alleged harasser “crossed the line.” The next day they no longer feel “comfortable” working with the alleged harasser (usually supervisor) and want the supervisor removed from the workplace.

Or suddenly because an employee doesn't get a raise or a promotion, the employee no longer feels comfortable around his/her manager because the manager was allegedly too “close” and too “friendly” during one of these offsite encounters.

Particularly as a supervisor, manager or owner it's important to remember that just because an interaction takes place outside of the “workplace,” it does not mean there can be no “sexual harassment.”

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## 3. Who Can Be A Plaintiff/Who Can Be A Harasser?

The answer is everyone and anyone. Under California law, anyone who comes into the workplace can be a plaintiff. This includes employees, applicants and third party “independent contractors.” Likewise, anyone who comes into or works in the workplace can be a “harasser,” including owners, management, supervisors, coworkers and independent contractors. The idea is the employer is responsible for regulating the work environment.

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## 4. Who Is Liable?

The “harasser” *is always* liable if guilty of the conduct charged.

A California employer *is strictly* (i.e. always) liable for *quid pro quo* (sex for work benefits) harassment.

A California employer *can be liable* for *hostile environment harassment* depending on who has created the hostile work environment.

1. If a *supervisor* creates the hostile work environment, the *company will be liable* subject to a *reduction in damages* if the employer can show it took *reasonable steps* to *prevent* and *correct* the unlawful harassment and the alleged *victim failed to take reasonable action to avoid harm*.
2. If the hostile work environment is created by a *non-supervisor*, then the *company* will be liable if it “*knew or should have known*” of the hostile work environment and *failed* to take *immediate* and *appropriate action* to correct the unlawful harassment.

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## 5. What Are An Employer’s Legal Obligations Under California Law?

All California employers (even if you have only 1 employee other than yourself) have the following legal obligations:

1. Duty to *prevent unlawful harassment* from occurring;
2. Duty to *promptly investigate* claims of unlawful harassment; and
3. Duty to take *immediate and appropriate corrective action* if it finds unlawful harassment has occurred.

If your company satisfies these legal duties, it may have a defense or at least the ability to reduce damages in a hostile work environment case. In a “quid pro quo” case remember there is no defense (other than IT never happened) or reduction in damages available. The company will be strictly

liable for the misconduct of its employee supervisor and will be liable to pay the injured plaintiff. The company might have a claim against the supervisor, however, which is enhanced if it has complied with its legal duties.

If your company has more than 50 employees, then it has the *additional legal obligation* to train all “supervisor” employees in unlawful harassment for two hours every two years. Details of this obligation are discussed below in Section 9.

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## 6. What Can I Do To Prevent IT?

If you value your profits, you should:

1. Implement an unlawful harassment policy and complaint procedure;
2. Collect and secure all employee signatures on the “acknowledgment” form stating the employee has received, read and understands the policy and complaint procedure;
3. Train employees on the policy and complaint process and do so on a recurring basis;
4. Train all supervisors on the details of sexual harassment (and other forms of unlawful harassment) and how to identify and avoid it;
5. Post the required California and federal posters in the workplace;
6. Monitor and have all supervisors monitor employee conduct and work areas and report and take immediate measures to correct all violations of the company’s unlawful harassment policy;
7. Investigate immediately all complaints of unlawful harassment;
8. Don’t retaliate against complaining parties and supporting witness;
9. Hire a neutral third party investigator, at least for the more egregious allegations. Alleged bias of the investigator can critically impair the investigation itself;

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10. Immediately take sufficient corrective action following a thorough and unbiased investigation as warranted;
11. The corrective action should be based on “violation of the company’s unlawful harassment policy” and not necessarily that “unlawful harassment” occurred. The “legal standard” to prove unlawful harassment is a much higher standard than “violation of company policy” and is a moving target anyway. What is unlawful harassment to one jury may not be to another.
12. Fit the punishment to the “crime.” Your company may be open to a suit by the alleged harasser if it “overreacts” or falsely accuses the alleged harasser of wrongdoing.

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## 7. What Should My Prohibited Harassment Policy Contain?

The prohibited harassment policy should:

- define forms of unlawful harassment, and provide examples;
- provide a complaint procedure, including who to complain to;
- provide for the employee to by-pass the employee’s supervisor to complain if the supervisor is the alleged harasser;
- describe the disciplinary measures that the company might use in a harassment case;
- state that the complaint will be kept confidential to the extent possible;
- state that retaliation for complaining or participating in an investigation will not be tolerated; and
- be distributed to each employee, with acknowledgment receipt signed by employee.

## 8. What Do I Do If IT Happens?

Suggested general protocols (there could be much more depending on your particular circumstances so consult your employment and labor law attorney):

- Take all complaints very *seriously*;
- *Immediately* start the investigation process (this means the process should start the day the complaint is made);
- *Starting* the investigation *immediately* could entail:
  - If the company is doing it *in house* – start with interviewing the complaining party. Get the names of alleged harasser(s), all details, all documents, all witnesses.
  - If the company will use a *third party* neutral investigator – start the process of locating a competent investigator with knowledge of sexual harassment and experience with investigation technique, particularly with assessing credibility.
  - Either way, may we suggest that experienced employment counsel be involved during the entire investigation as this process is critical to any potential defense or reduction in damages the company may have.
- If the alleged victim is already gone from employment when management first learns of the complaint, nevertheless attempt to contact the alleged victim to interview him/her. Follow up in writing with some kind of proof of delivery if telephone calls are not returned. Even if the alleged victim does not participate, depending on the nature of the complaint, the company may still have an obligation, or it may be in its best interests, to continue with and complete the investigation;
- Request that the complaining party also put the *complaint* in *writing* with as much detail as possible;

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- Conduct a thorough, unbiased investigation and finish it within a reasonable period of time. You don't want to rush or cut corners, but you don't want to take your time either. There is no hard and fast rule, but we would feel comfortable if the investigation is started immediately and is completed within two weeks. Some investigations may take less time, others will require more time. It will depend on the nature of the complaint and extent of the conduct, documents and witnesses. The overriding point however is that the complaint and investigation process must take top priority (sorry more important than more sales, unless the particular sales deals in question will more than cover the potential liability created by failure to conduct a thorough yet prompt investigation);
- Interview the alleged harasser. The timing of the interview will depend on subjective factors and the investigator's judgment, but generally interviewing the alleged victim and the key witnesses provided by the victim before interviewing the alleged harasser is advisable;
- Interview all key witnesses and review all key documents;
- What constitutes a complete and competent investigation is too complex to cover in this Report. This is in part why we recommend an experienced and knowledgeable third party investigator;
- Reach a conclusion as to whether a violation of company policy has occurred. This is another reason we suggest a neutral third party investigator because sometimes the in house investigator knows both the alleged victim and the alleged harasser and has a hard time coming to a conclusion;
- Create a detailed written report of the complaint, the investigation process, all facts, evaluation and analysis of the facts, including witness credibility, documentary evidence/attachments, the conclusion and remedial action taken. The length of the report will vary depending on the particular case;
- If the conclusion is a violation of company policy has occurred, determine appropriate corrective/remedial action and implement it without undue delay;
- Appropriate corrective action could include anywhere from a verbal reprimand and reminder of the company's unlawful harassment policy to discharge. Every remedy in unlawful harassment will generally have to be customized to the particular circumstances. Part of the remedy may be separation of the alleged victim and alleged harasser if practicable.
- Tell the alleged victim of the remedial action taken;
- Request confidentiality from the alleged victim, but it is unlikely that you will get it (nor is the alleged victim legally required to keep the matter confidential);
- Other than the victim and management personnel with the "need to know" we suggest you make no comments to anyone concerning anything related to the complaint and investigation, unless required to do so by legal process. This includes potential employers calling for a reference on the alleged harasser.
- Re-evaluate company policies and procedures, training, and investigation process relating to unlawful harassment and make adjustments as necessary.

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## 9. Is Training Required?

Yes – for employers with 50 or more employees.

*At Vision we enjoy working with entrepreneurs and business owners. One of the key reasons is we respect greatly your high tolerance for risk. However, in this case the cost/benefit and risk/reward ratios of not training employees in unlawful harassment probably does not justify the cost/risk.*

So my business has less than 50 employees, I don't have to worry about it right? Well that depends on your level of risk tolerance.

At Vision we enjoy working with entrepreneurs and business owners. One of the key reasons is we respect greatly your high tolerance for risk. However, in this case the cost/benefit and risk/reward ratios of not training employees in

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unlawful harassment probably does not justify the cost/risk.

There is no benefit to not training employees, especially your supervisors and managers, in unlawful harassment. Well ok, you save some money.

The downside risk even from one complaint though can destroy everything you risked and worked for to grow your company.

Even for Fortune 500 companies, the cost of unlawful harassment hurts. According to the California FEHC, the administrative body that is creating regulations (discussed below) on mandatory unlawful harassment training, “[u]nlawful harassment costs the average Fortune 500 company \$6.7 million in indirect costs alone.”

The Fortune 500 can absorb this high price tag. Can your small business? One sexual harassment litigation matter can easily cost six figures to defend. And if your company were to lose, in part because the jury is upset there was no unlawful harassment training, the award to the plaintiff can set them up for retirement at the expense of yours.

So whether your company has greater than 49 employees or not, take note, as we explain California’s mandatory unlawful harassment training requirement.

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## What’s The Training Obligation?

2 Hours of “classroom or other effective interactive training and education” regarding sexual harassment of all “supervisory” employees every two years. Newly promoted or hired supervisors must be trained within 6 months of placement into position.

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## Which Employers’ Have This Obligation?

Those with “50 or more employees.”

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## Who Must Be Trained?

“Supervisory employees.” Supervisors are those with the authority to hire, transfer, suspend, lay off, recall,

promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or the authority effectively to recommend those actions.

Only supervisors physically located in California must be trained.

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## What Kind Of Training Is Required?

1. Information and practical guidance regarding federal and state law concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment;
  2. Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation.
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## Who Can Train?

Trainers or educators with knowledge and expertise in the prevention or harassment, discrimination and retaliation.

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## What If My Company Doesn’t Comply?

The stated penalty in the statute itself is “the commission shall issue an order requiring the employer to comply.”

Sounds pretty innocuous right? In our opinion, “wrong!”

Remember, an employer has a specific obligation under California law to take “reasonable steps necessary” to prevent discrimination and harassment from occurring.

This new law is the California legislature’s way of telling businesses operating in California that “reasonable steps necessary” to prevent discrimination and harassment now include the mandatory training of supervisory employees on those topics.

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It seems clear to us as employment defense attorneys that for any employer that fails to train its supervisory employees as required by law that plaintiffs and their attorneys have a clear cut argument either that 1) the employer has violated its obligations to take all reasonable steps necessary to prevent harassment or 2) should pay more damages because the supervisor responsible had not been trained.

Yes – for employers with 50 or more employees.

## 10. FEHC Mandatory Sex Harassment Training Regulations.

“Regulations” are rules that do not have the same legal force as a statute, but we nevertheless strongly suggest they be followed.

*It seems clear to us as employment defense attorneys that for any employer that fails to train its supervisory employees as required by law that plaintiffs and their attorneys have a clear cut argument either that 1) the employer has violated its obligations to take all reasonable steps necessary to prevent harassment or 2) should pay more damages because the supervisor responsible had not been trained.*

For mandatory sexual harassment training the actual statute is Government Code section 12950.1, passed by our elected officials and it is the law. The “regulations” created by the FEHC are still in the final process of being approved. The regulations fill in some of the gaps in the statute.

The rest will be

filled by court decisions resolving disputes between plaintiffs and defendants (i.e. employees/contractors and employers).

Some of the “gaps” in the statute that the proposed final FEHC regulations cover include the details of the qualifications of the course designer and trainer, the specific definitions of “classroom,” “e-learning,” and “webinar” training, and how the two year requirement may be tracked.

The FEHC adopted “Final Proposed Sexual Harassment Training and Education Regulations” on November 14, 2006. We estimate the final regulations will be published and become effective in late March or early April 2007.

Once they become effective, we will make necessary changes to this Report.

## Conclusion

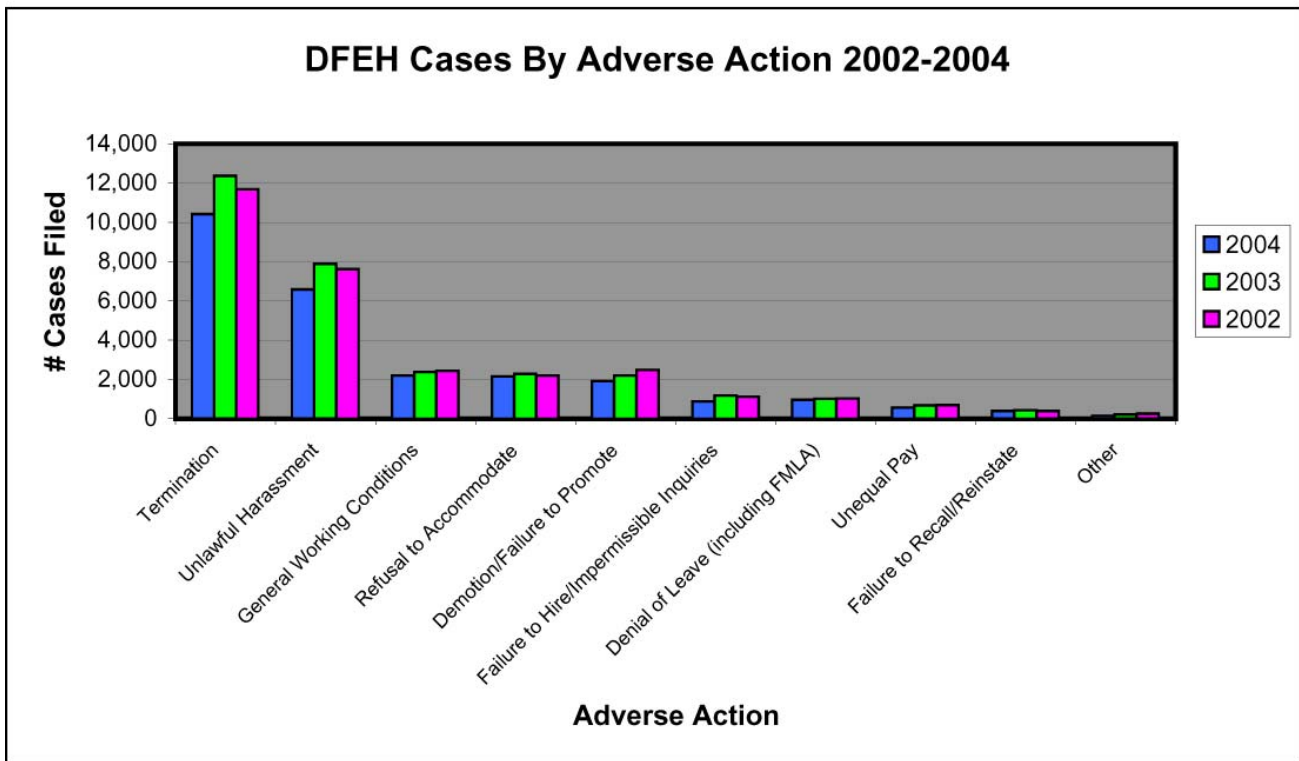
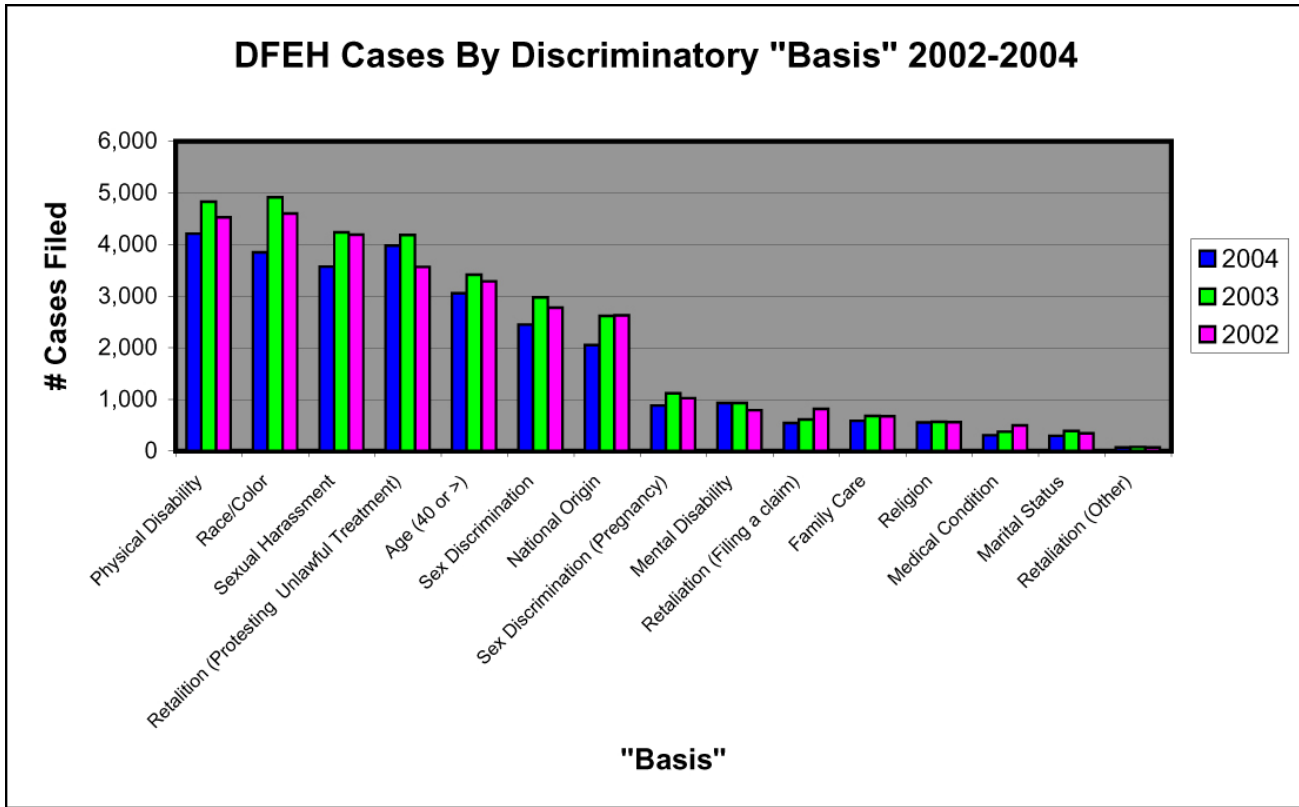
“Knowledge is power.” And in this case it can save you a lot of money and headache.

For more information on how Vision Law can help you and your small business with employee legal issues, visit our website at <http://visionlaw.com>. We offer a unique monthly flat rate unlimited employment/labor law advice program we call the **Predicable Fees Program** (PFP). We also offer an innovative litigation defense program where we “share in your risk” (SIR<sup>SM</sup>). As a monthly flat rate subscriber you enjoy an additional discount off our Vision SIR<sup>SM</sup> program. Both are discussed in detail at <http://visionlaw.com>.

See Our Charts of DFEH Filing Statistics and Small Business Survey Results on the next few pages:

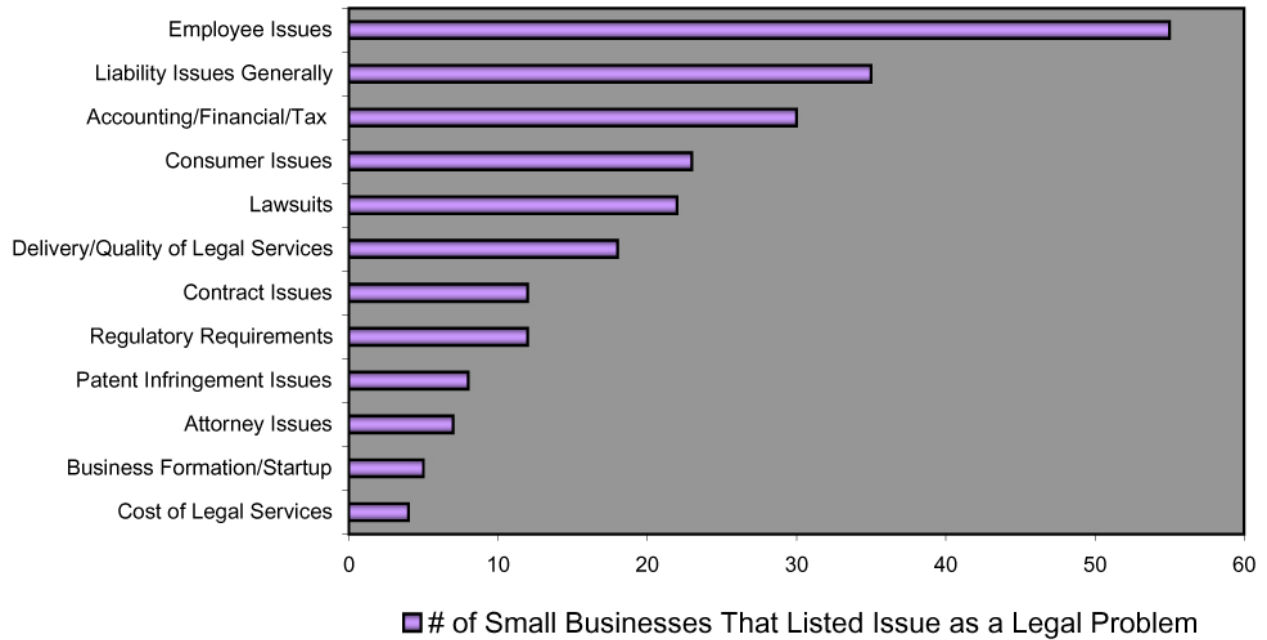
- DFEH Cases By Discriminatory “Basis”
- DFEH Cases By Adverse Action
- Top Legal Problems Facing Small Business
- Employee Legal Problems Facing Small Business
- Small Business Problems with Lawyers/Legal Information
- Negative Consequences If Not Proactive
- Willingness To Pay to Reduce/Manage Legal Risk

# Avoid Sexual Harassment Liability Through Effective Policies and Training

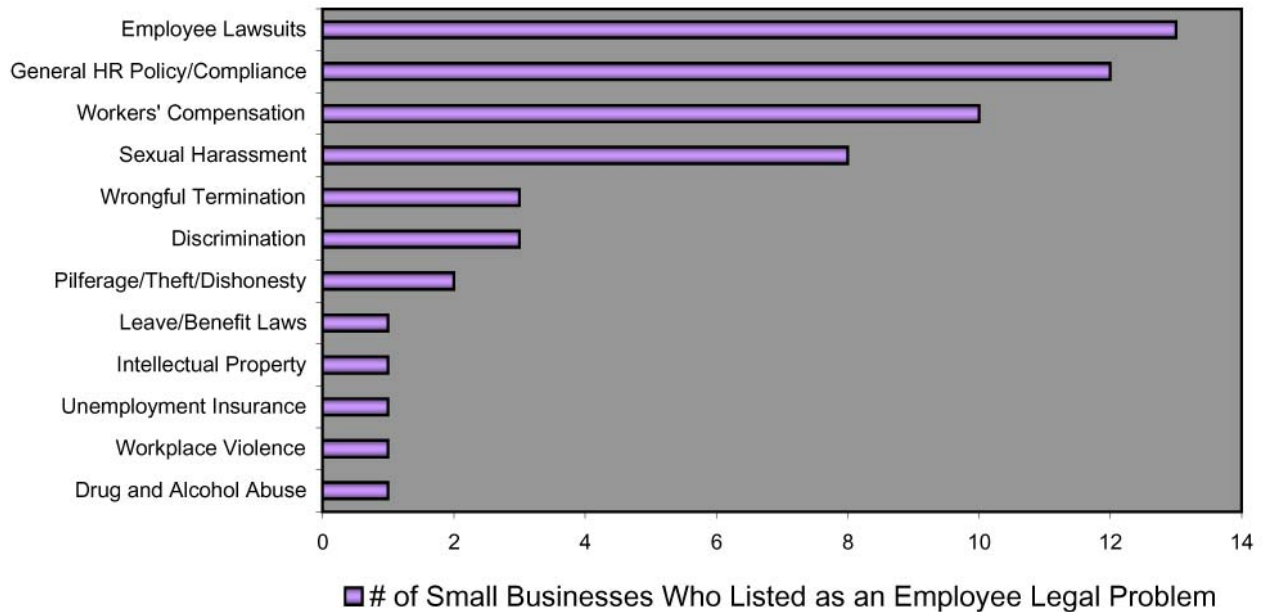


# Avoid Sexual Harassment Liability Through Effective Policies and Training

## Top Legal Problems Facing Small Business

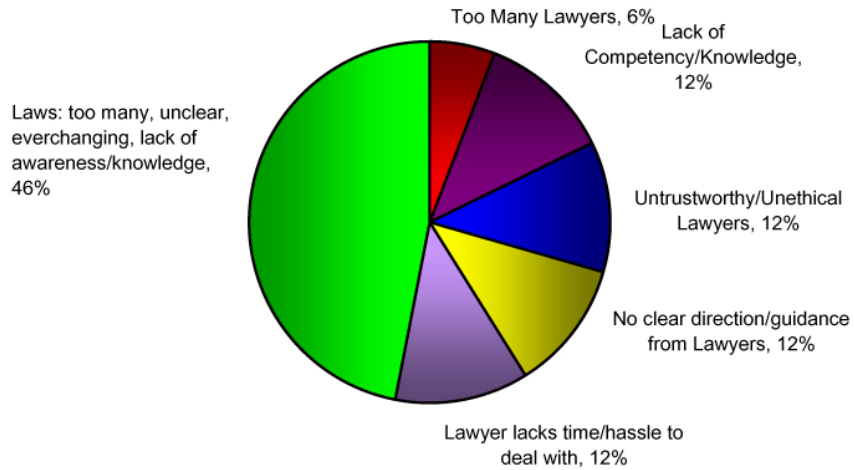


## Employee Legal Problems Facing Small Business

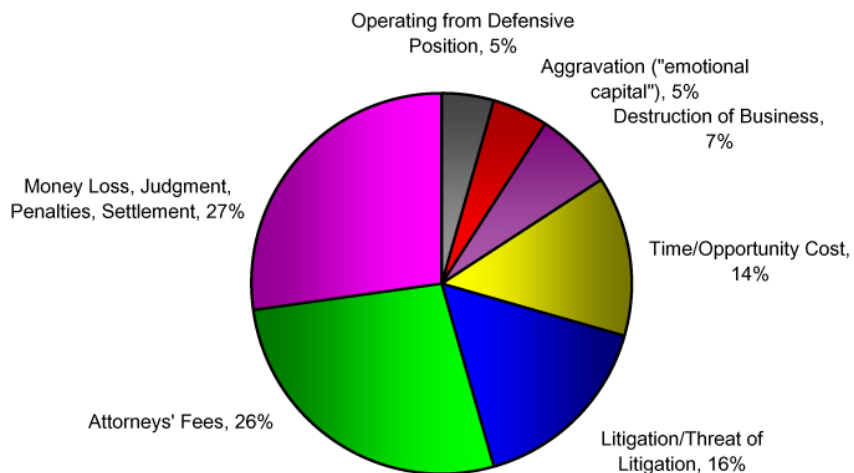


# Avoid Sexual Harassment Liability Through Effective Policies and Training

## Small Business Problems with Lawyers/Legal Information



## Small Business Survey -- Negative Consequences If Not Proactive



## Avoid Sexual Harassment Liability Through Effective Policies and Training

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### Small Business Willingness to Pay to Reduce/Manage Legal Risk

