

LEADING AGAINST WORKPLACE BULLYING

“I’M BEING HARASSED!”

HOW DO YOU SORT OUT WHAT KIND OF CASE THIS IS?

1. Discrimination / Harassment (Quid pro Quo or Hostile Work Environment)
2. Bullying,
3. Workplace violence, or
4. General Incivility (not really a case yet)

YOU NEED TO KNOW THE ESSENTIAL ELEMENTS OF EACH TYPE.

There are important differences:

- The type of complaint that you can file is different.
- The remedies that you can ask for are different.
- What you have to prove in order to win is different.
- The outside agency that enforces your rights is different.

That’s why it’s important to file the right type of case – and it has to match the situation.

1. Discrimination / Harassment (Quid pro Quo or Hostile Work Environment)

Discrimination – treating a person or group of people differently when making employment decisions.

Examples: “We won’t hire you, because you don’t have a commercial truck driver’s license.” Or “We’re going to write you up, because you were late 5 times this month.”

Illegal Discrimination – when that different treatment is due to the person’s membership in protected class.

Example: “We won’t hire you, because you’re pregnant.” Or “We’re going to write you up, because your hair is too ethnic.”

Harassment – unwelcome course of conduct based on membership in a protected class.



1) Quid Pro Quo – employee must continue to endure the unwelcome conduct as condition of employment. Usually it's Sexual Harassment, or religious practices.

2) Hostile Work Environment - the conduct is severe or pervasive enough create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Note: If it's not about bias or prejudice against a protected class, it's not discrimination or harassment.

PROTECTED CLASSES:

The California Civil Rights Department (CRD) enforces laws that protect you from illegal discrimination and harassment in employment based on your actual or perceived:

- ANCESTRY
- AGE (40 and above)
- COLOR
- DISABILITY (physical, developmental, mental health/psychiatric, HIV and AIDS)
- GENETIC INFORMATION
- GENDER EXPRESSION
- GENDER IDENTITY
- MARITAL STATUS
- MEDICAL CONDITION (genetic characteristics, cancer, or a record or history of cancer)
- MILITARY OR VETERAN STATUS
- NATIONAL ORIGIN (includes language restrictions and possession of a driver's license issued to undocumented immigrants)
- RACE (includes hair texture and hairstyles)
- RELIGION (includes religious dress and grooming practices)
- REPRODUCTIVE HEALTH DECISIONMAKING
- SEX/GENDER (includes pregnancy, childbirth, breastfeeding and/or related medical conditions)
- SEXUAL ORIENTATION

“HOSTILE WORK ENVIRONMENT”

Many people misunderstand what this means. As a steward, you will have to explain



what ‘Hostile Work Environment’ means. A Harassment Complaint for Hostile Work Environment does NOT mean that people are hostile towards you.

“Hostile Work Environment” means that the person is

- Experiencing harassment (a course of conduct, unwelcome behavior)
- Based on membership in a **protected class**
- Harassment rises to the level of “severe and pervasive conduct”
- Interferes with an employee’s ability to perform their job
- Reasonable person in the same circumstances would consider the working environment to be abusive or hostile
- Not merely an “offensive utterance”

These elements were extremely difficult to prove.

However, we don’t need to be able to win a full-blown ‘Harassment Complaint for Hostile Work Environment’ in order to file a complaint and improve the situation. Employers want to prevent actual discrimination and harassment lawsuits. For that reason, they will include ‘lead-up’ behaviors in their EEO Policy, which means off-color jokes, prejudiced statements, one-time events, offensive pictures, some slang, talking about sex, standing too close, and even some discourteous conduct can be a violation of the department’s EEO Policy. And that means we can file an EEO complaint for ‘lead up’ behaviors that are not severe enough to create a Hostile Work Environment – and get them to stop.

It’s still a good idea to know the elements of Hostile Work Environment, because when you assist people with EEO Complaints you don’t want to misuse the term, give them bad advice, or skip right to the EEOC/CRD stage if their case doesn’t have the necessary elements. Keep in mind that if the member goes to EEOC/CRD they won’t be applying the EEO Policy, they will be applying the law.

2. Bullying

Elements of Workplace Bullying

- Type: behavior that is inappropriate in the working environment
- Personal Nature: conduct is directed at the person, rather than their work
- Intent: the purpose of the behavior is to wound, demean, or harm the target
- Repetition: an ongoing pattern of repeated behaviors
- Duration: persists over time
- Escalation: increasing levels of aggression

Power disparity: employee cannot take action against supervisor



Check to see if your department has a Workplace Bullying Policy. If there is a policy, there is an option to file a departmental policy complaint. If there is no policy, the lack of policy is also an MOU violation.

To address bullying issues, we usually use MOU 5.11. and MOU 10.21. for a grievance.

5.11 Dignity Clause

The State is committed to providing a workplace where all employees, regardless of the employee's classification or pay status, are treated by supervisors and managers in a manner that maintains generally accepted standards of human dignity, courtesy and respect. Employees alleging they have not been treated accordingly may file a grievance. The decision reached at Step 3 (CalHR) shall be final.

10.21 Workplace Violence and Bullying Prevention Program

The State and the Union developed a model Workplace Violence and Bullying Prevention Program. The parties agree that the model Workplace Violence and Bullying Prevention Program will be updated during the term of this Contract to include the definition of "abusive conduct", consistent with Government Code Section 12950.1, and that "abusive conduct" is also known as "bullying". Each department shall maintain a Workplace Violence and Bullying Prevention Program that meets the existing mutually agreed upon model program until an updated model program is made available to departments. The department program shall be in writing and distributed and/or made available to all employees.

California Government Code 12950.1 (h)(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 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.



3. Workplace Violence (WPV):

- Workplace Violence (WPV) does not have specific elements that must be met, but there is a threshold where ‘discourteous’ conduct crosses over into Workplace Violence.
- WPV is based on the department’s WPV Policy
- WPV depends on specific circumstances and (sometimes) how people felt at the time.
- Physical harm or threats of physical harm are WPV, but are not necessary to prove WPV. There is no rule that says they have to touch you, for this to be WPV. There is also no rule that says every touch is WPV.
- Conduct that is threatening, intimidating, or frightening can be WPV.
- ‘Lead-up’ behaviors such as using profanity, yelling, blocking doorways, throwing things, standing too close, slamming doors, or even extremely discourteous conduct can be a violation of the department’s WPV Policy. And that means we can file a WPV complaint about it. Refer to the department’s policy when making the WPV Complaint.

4. General Incivility:

People can be unkind, without crossing the line into Bullying. Petty arguments, annoyances, isolated incidents of rudeness, supervisors monitoring your work, backhanded compliments, passive aggressive comments, minor discourtesy, holding you to the ‘letter of the law,’ using a curt tone, timing your breaks, not getting along with someone, low-level personality conflicts, and uncomfortable corrective meetings are all unkind, but not necessarily meeting the threshold of a policy violation.

In these instances we may not have a case yet. However, we should be supportive of members in that situation, and keep the lines of communication open, **document what’s happening**, in case it gets worse later, explain the elements of the different types of cases, and explore other types of coping strategies, besides filing a complaint – creative ways to resolve or mitigate the specific conflicts or situations that are making the member uncomfortable.

