

EMPLOYMENT LAW 101



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Special points of interest:

- What is discrimination?
- What is harassment?
- What about sexual harassment?
- Who do I contact if this happens?

CAL STATE HAYWARD
Human Resources

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MISSION

The purpose of this newsletter is to inform administrators, deans, chairs, faculty and staff regarding Equal Employment Opportunity and Affirmative Action issues that affect them. Equal Employment Opportunity ("EEO") encompasses the laws and requirements regarding discrimination and harassment in the workplace. Affirmative Action ("AA") encompasses the federal laws designed to increase representation of women, minorities, individuals with disabilities and covered veterans in the workplace.

For questions and comments regarding this newsletter please contact Dorian West, Director of Equal Employment Opportunity at 510/885-4918 or dwest@csuhayward.edu.

DISCRIMINATION, HARRASSMENT, OR WHAT?

The terms "discrimination" and "harassment" are legal terms of art. In the employment relations arena, discrimination involves adverse employment actions based on a protected category. "Adverse employment actions" include, but are not limited to, denial of promotions, unequal pay, demotions, terminations, etc. Harassment, on the other hand, involves behavior that has the effect of unreasonably interfering with a reasonable person's performance or creating an offensive, hostile and intimidating work environment. "Behavior" includes physical (e.g., touching, blocking movement) and verbal (e.g., jokes, derogatory comments). In addition, the discrimination or harassment MUST occur because the alleged victim belongs



to a protected category. "Protected categories" include age, ancestry, citizenship, color, disability, medical condition, sex, gender, gender identification, immigration status, marital status, pregnancy, national origin, race, religion, sexual orientation and covered veteran's status. Any discrimination or harassment not based on one of these protected categories is not actionable under Equal Employment Opportunity laws or policies. For more information on discrimination and/or harassment, please see the University's Diversity and Equal Opportunity website at <http://www.csuhayward.edu/ODEO/>.

SEXUAL HARRASSMENT: THE HOT CATEGORY!

Sexual harassment is a particular type of harassment. The behavior involved in this harassment specifically includes physical (e.g., fondling, kissing, grabbing), verbal (e.g., sexual jokes, questions regarding sex life, requests for dates or sex), visual (e.g., sexual postings, sexual hand gestures) and/or unfavorable consequences for failing to submit to any of the above. Such behavior could be "quid pro quo" or "hostile environment." *Quid pro quo* literally means "this for that." *Quid pro quo* harassment occurs when a person in a position of power over the victim subjects the victim to offensive behavior based on the protected category **and** implies either overtly or covertly that employment opportunities are conditional upon acceptance of the offensive behavior **or** retaliates against the victim for failing to accept those conditions. "Hostile environment," on the other hand, while it can be perpetrated by a person in power, is not tied to educational or employment



opportunities *per se*. Finally, a sexual harassment claim can be brought by a co-worker when someone is being treated better because of their sexual relationship with a supervisor or co-worker. For more information on sexual harassment, please see the University's Diversity and Equal Opportunity website at:

<http://www.csuhayward.edu/ODEO/>

or specifically at

<http://www.csuhayward.edu/ODEO/shpp.pdf>,

<http://webapps.csuhayward.edu/public/odeo/tintro.cfm> or

<http://www.calstate.edu/gc/AntiSexualHarassmentTraining/sh-page1.shtml>.



"...a sexual harassment claim can be brought by a co-worker when someone is being treated better because of their sexual relationship with a supervisor or co-worker."

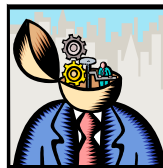
If you believe you have been or are being discriminated against or harassed by a supervisor or co-worker on the basis of a protected category, please contact Dorian West, Director of Equal Employment Opportunity at 510/885-4918.

If you believe you have been or are being discriminated against or harassed by a student on the basis of a protected category, please contact Hal Gin, Executive Director of Student Judicial Affairs at 510/885-3763.

She/he will evaluate your situation, investigate if appropriate, protect your confidentiality to the degree allowed under the law, protect you from retaliation, and recommend prompt corrective action where appropriate. Failure to report alleged discrimination or harassment as set forth above could subject you to affirmative defenses which could effectively bar any claim in federal court and/or void damages in state court.

TRAINING, TRAINING, TRAINING!!!

Training on discrimination and harassment, including sexual harassment, is coming soon to all employees, i.e., administrators, deans, chairs, faculty and staff. TRAINING IS



MANDATORY. Failure to take training on discrimination and harassment could subject you to affirmative defenses which could effectively bar any claim in

federal court and/or void damages in state court. In addition, failure of any administrator, dean, chair or supervisory staff member to take training could subject you to personal liability and/or require you to personally defend a suit.

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