

**LEGAL  
AID AT  
WORK**



# **A Worker's Toolkit: Taking Action Against Workplace Sexual Harassment**

[legalaidatwork.org](http://legalaidatwork.org)

January 2020

# Overview of Sexual Harassment Survivors' Employment Rights Toolkit

As an employee in the United States, you have a right to work in an environment that is free from sexual harassment. Federal and state laws protect your right to report sexual harassment and have it remedied and prevented. Workers, regardless of immigration status, are protected by these laws.

If you are experiencing workplace sexual harassment, you are not alone. This toolkit provides an explanation of what the law is, what your rights are, steps you can take to advocate for yourself, and a list of attorneys and organizations who provide free or low-cost legal help.

If you experience sexual harassment in the workplace, it is a good idea to keep records of it and to report it to your employer in writing. At the end of this toolkit, we have provided a sample log form and letters that you can use to track and report sexual harassment in your workplace.



If you have any questions about these resources, you can contact our Workplace Sexual Harassment helpline at **(844) 269-0146** toll-free in California or **(415) 864-8848** outside California.

# Table of Contents

<b>I. Frequently Asked Questions About Sexual Harassment</b>	<b>5</b>
● What is sexual harassment?	6
● What if the harasser is not my boss?	7
● What if the harasser is the same gender as me?	7
● What if the harassment did not occur at work?	8
● What if the harassment is not directed at me?	8
● What can I do if I think I am being sexually harassed?	9
● Is my employer responsible for employee harassment or misconduct?	9
● What if I quit because of the harassment?	10
● What outcome am I looking for?	11
● What if I still need more help?	12
● What are my rights if I am undocumented?	12
● What if I am fired, disciplined, or treated worse at work after complaining about sexual harassment?	13
<b>II. Taking Action</b>	<b>15</b>
● Finding Support and Documenting the Harassment	16
● Notifying Your Employer	18
● Filing a Complaint with a Government Agency	19
○ Where can I file a complaint?	19
○ What is the process like?	22



○ Do I need an attorney?	24
○ How long do I have to file?	24
<b>III. Other Legal Issues</b>	<b>26</b>
● Arbitration Agreements	27
● Non-Disclosure Agreements	30
● Protection from Retaliation and Discrimination	31
<b>IV. Sample Letters and Forms</b>	<b>32</b>
● Sample Documentation Log	33
● Sample Letter 1: First Notification	35
● Sample Letter 2: Follow-up Letter	47
● Sample Letter 3: Resignation Letter	56
<b>V. How to Find a Lawyer</b>	<b>70</b>



# I. Frequently Asked Questions About Sexual Harassment



# I. Frequently Asked Questions About Sexual Harassment



## What is sexual harassment?

Sexual harassment is behavior that is unwelcome and happens to you because of your sex. Sexual harassment may take many forms: it does not have to be physical nor motivated by sexual desire and can vary depending on the context.

Unwanted sexual attention, such as proposals for sexual activity, often qualifies as sexual harassment. This conduct can include pressuring you for a date, making sexually suggestive jokes, innuendos, or comments, making comments about your body or sexual activity, requesting sexual acts or behaviors, displaying material that degrades women and/or is sexually explicit, leering, making lewd gestures, touching, grabbing, and other forms of sexual assault, and rape.

Sexual harassment can also involve non-sexual conduct; this is sometimes known as sex or gender based harassment. Gender based harassment is when the harasser insults someone because of their sex or gender. Examples include gender-based insults (such as calling a woman a c--t or a b--ch), sexist comments (like that women belong in the kitchen rather than at work or that male nurses are not real men), or abusive behavior directed at members of one sex and not any other.

If you are being subjected to this or other hostile, offensive, humiliating, or intimidating behavior, you may have a claim for sexual harassment.

If you have been pressured to endure sexual harassment or to engage in sexual conduct in order to get or keep a job, obtain an employment benefit (like a promotion or overtime), or avoid

getting in trouble at work (whether explicitly or implicitly), you may also have a claim for sexual harassment.



## **What if the harasser is not my boss?**

The harasser does not need to be your boss for the harassment to be illegal. A harasser can be an employer, supervisor, co-worker, customer, client, or other third party. For example, the law protects you from harassment by a customer at the restaurant where you wait tables or a shopper at the store where you work; a coworker who works at your factory or in the fields with you; a sales person who comes by to sell something to your company; and by the head of your company or another supervisor or manager or mayordomo who is not your direct boss.



## **What if the harasser is the same gender as me?**

Under the law, a harasser can be of any sex or gender, even your own. Because sexual harassment is a form of sex discrimination under the law, what is important is that the harassment occurred because of your sex or gender. Therefore, the law prohibits male employees from harassing their male coworker for not being masculine enough and female employees from harassing a female coworker for not dressing or behaving in a feminine manner. The law also prohibits other forms of same-sex harassment and harassment of non-binary workers (or workers who identify their gender as non-binary).

For more information about sexual orientation discrimination, visit our website at <https://legallaidatwork.org/> or go directly to our factsheet at <https://tinyurl.com/LAAW-Sexual-Orientation>. For more information about gender identity discrimination, visit our website or go directly to our factsheet at <https://tinyurl.com/LAAW-Gender-Identity>.



## **What if the harassment did not occur at work?**

You are still protected from harassment that occurs outside of your standard work hours or regular workplace. For example, sexual harassment at an out-of-office business meeting or training, or sexual harassment at a company holiday party may still constitute unlawful workplace harassment.

Also, under the law, harassing conduct on social media that affects the workplace is illegal. For example, your supervisor messaging you on Facebook to request sexual conduct or behavior may also constitute illegal workplace harassment.



## **What if the harassment is not directed at me?**

You may still have a claim for sexual harassment if the harassment takes place while you are present, and it permeates your workplace so as to create a “hostile working environment.” For example, favoritism where a supervisor treats the female workers he is having sex with better than their female coworkers who he is not having sex with may create a hostile working environment if it is severe or pervasive enough to alter your working conditions. Also, sexualized comments made about others but not necessarily directed at you may create a hostile working environment.

If you witness sexual harassment in your workplace you have the right to complain even if you are not the one being directly harassed. See page 18 for an explanation of the complaint process.





## What can I do if I think I am being sexually harassed?

It is important to start documenting the harassment you are experiencing. See page 33 for a template documentation log and page 16 for more details on further actions you can take.

If you are unsure why you are being harassed, or whether the harassment is based on your sex, it is still a good idea to document the harassment. You may still have a claim if the harassment is based on another “protected category.” Under federal law, it is illegal to harass workers because of their sex, race and color, national origin, age, disability, pregnancy status, religion, or genetic information. In California, these protected categories also include sexual orientation, medical condition, marital status, gender identity and expression, military and veteran status, and status as a survivor of domestic violence, sexual assault, or stalking.

Sometimes harassment can be based on your membership in two or more protected groups; for example, you may be harassed because you are a woman with a disability; or because you are a Latina; or because you are a female veteran. Harassment is also unlawful.



## Is my employer responsible for employee harassment or misconduct?

Generally, yes. California’s anti-harassment laws apply to private employers, state governments, local governments, employment agencies, labor unions, and state licensing boards, no matter how many employees they have. This means your employer has a responsibility to create a harassment-free workplace for you.

If you work for the federal government, a federal anti-sexual harassment law, known as Title VII, applies instead. Title VII applies only to employers that have 15 or more employees.

**Note:** Under Title VII, your employer may be able to claim that it is not responsible for the harassment if it can prove 1) It exercised “reasonable care to prevent and correct promptly any sexually harassing behavior;” and 2) You “unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.” For example, if your employer has an effective reporting procedure, you should try to follow it. However, if the reporting procedure requires you to file a complaint directly with the harasser, it may be reasonable for you not to use that procedure. Also, California law requires your employer to translate any harassment, discrimination, and retaliation policy into any language spoken by more than 10 percent of its employees. If your employer has not translated the procedure into your language, it may be reasonable for you to not use that procedure.

**Note:** California state law is similar to Title VII. Although your employer may still be responsible for the harassment, it may be able to pay you less or no money damages if it can prove 1) It took reasonable steps to prevent and correct the harassment; 2) You unreasonably failed to use the preventive/corrective measures the employer provided; and 3) Reasonable use of your employer’s procedures would have prevented at least some of your suffering. However, even if your employer can prove all three things, you may still be able to seek declaratory or injunctive relief. Examples of declaratory or injunctive relief are a court order requiring your employer to give you your job back if you were fired, move your harasser to a different location, or conduct sexual harassment prevention training for all staff in your workplace.



## What if I quit because of the harassment?

If you had to quit because you were experiencing sexual harassment, you may be able to claim that you were forced to quit or “constructively discharged.” You are “constructively discharged” when your work environment is so intolerable that any reasonable person would have felt

forced to quit. You also may be entitled to claim unemployment insurance benefits under the “good cause quit” theory. To have a strong claim for Unemployment Insurance benefits, you must show 1) you had a good reason to quit and 2) that you took reasonable steps to solve the problem in order to keep your job.

If you are still working for your employer, make sure to document the steps you have taken to try to solve the problem. This documentation may include complaints you wrote to a supervisor, manager, or Human Resources. If you complained in-person, then make your own written notes of the complaint and the conversation. Having it written down means that there is a record of the steps you took.

If, despite your reasonable best efforts, work conditions do not improve, you may feel forced to resign due to an intolerable work environment. If this happens, consider using the sample resignation letter on page 56, because how you explain why you quit can help establish “good cause” in order to qualify for Unemployment Insurance. Your resignation letter also may be helpful evidence in the future if you decide to pursue legal claims for sexual harassment. For more information about Unemployment Insurance, please visit our Unemployment Insurance Guide available on our website, <https://legalaidatwork.org/> or directly at <https://tinyurl.com/LAAW-UI>.



## **What outcome am I looking for?**

Knowing the result you want may help you decide what actions to take. Although no outcome or remedy is guaranteed, some potential outcomes may include:

- Stopping the harassment so you can continue working
- Stopping the harassment by leaving your job
- Moving to a different position or role at the same employer
- Having the harasser fired

- Receiving financial compensation for the harassment you have endured, including money for your lost wages and/or the emotional distress you faced
- Finding someone to talk to about your experiences
- Connecting to resources, including mental health services, doctors, advisors, etc.
- Changing your employer’s practices to create a harassment-free workplace



## What if I still need more help?

You can call Legal Aid at Work’s Workplace Sexual Harassment helpline at (844) 269-0146 for free legal information and advice about sexual harassment and other workplace issues. You can also call Legal Aid at Work’s Worker’s Rights Clinic at (888) 864-8335. We provide legal help in English, Spanish, Mandarin, and Cantonese, and we can accommodate other languages as well.

You can also find information about filing sexual harassment and sex discrimination complaints from the California Department of Fair Employment and Housing (DFEH) by calling (800) 884-1684 (TTY (800) 700-2320) or going to [www.dfeh.ca.gov/complaint-process/file-a-complaint/](http://www.dfeh.ca.gov/complaint-process/file-a-complaint/), or from the federal Equal Employment Opportunity Commission (EEOC) by calling (800) 669-4000 (TTY (800) 669-6820) or going to [www.eeoc.gov/employees/charge.cfm](http://www.eeoc.gov/employees/charge.cfm). If you belong to a union, you may be able to get information and assistance by talking to your union representative.



## What are my rights if I am undocumented?

Both documented and undocumented immigrants are protected against sexual harassment under the law and have the right to file sexual harassment claims. If you are undocumented, it is a good idea to consult with an immigration lawyer before filing a sexual harassment complaint to discuss

any immigration consequences to reporting. Some online resources for finding an immigration lawyer are:

- Immigration Advocates (available in 12 languages, including Spanish, and searchable by zip code) - [www.immigrationadvocates.org/nonprofit/legaldirectory/](http://www.immigrationadvocates.org/nonprofit/legaldirectory/)
- Executive Office for Immigration Review - [www.justice.gov/eoir/list-pro-bono-legal-service-providers](http://www.justice.gov/eoir/list-pro-bono-legal-service-providers)
- American Immigration Lawyers Association (available in Spanish and searchable by zip code) - [www.aialawyer.com/](http://www.aialawyer.com/)

Undocumented immigrants may qualify for immigration relief as crime victims under the U visa program if the sexual harassment was also a crime (like sexual assault or rape). You should consult an immigration lawyer to discuss this possibility.

Undocumented workers do not qualify for Unemployment Insurance benefits. However, citizenship and immigration status do not affect eligibility for other state benefits like Paid Family Leave or State Disability Insurance. Therefore, undocumented workers may be eligible for Paid Family Leave or State Disability Insurance. Consider consulting with an immigration lawyer before deciding whether to apply for these benefits.



## **What if I am fired, disciplined, or treated worse at work after complaining about sexual harassment?**

It is illegal for a person or company to “retaliate” against you for engaging in protected activity like complaining about sexual harassment. Retaliation may include actions such as firing you, moving you to less favorable assignments or shifts, denying you promotions or benefits, making undeserved negative evaluations, or intensifying the harassment. For example, if you complain to your supervisor that your coworker is sexually harassing you and then one week later your hours are cut, that may qualify as retaliation.

To file an initial retaliation complaint, you do not have to prove that the sexual harassment you complained about was illegal. If you had a “good faith” belief that the harassment was unlawful and you complained about it, that counts as protected activity. Also, participating in an investigation of a harassment complaint is protected activity. For instance, if a coworker complains that your supervisor is sexually harassing her, and you support her complaint by telling Human Resources that you saw your coworker being harassed, it is illegal for your employer to retaliate against you because of your report. This is true whether or not the harassment your coworker faced was in fact illegal. If anyone (including a coworker or supervisor) retaliates against you for complaining about illegal harassment at your workplace, you can file a retaliation complaint with the California Department of Fair Employment and Housing (DFEH) or the federal Equal Employment Opportunity Center (EEOC). For a retaliation complaint, you may only file a complaint against your employer, not the individual who retaliated against you. This is different than a harassment complaint because for a harassment complaint, you may file with the state DFEH against your employer and the individual harasser.

If you have already filed a sexual harassment complaint with the DFEH or EEOC, you may need to file a **separate** retaliation complaint. The retaliation complaint must be filed **within the same time limits as apply to filing your initial complaint of harassment** (see page 21).

# II. Taking Action



## II. Taking Action

### Finding Support

- **Tell a loved one**
- **Document the harassment**
- **Locate your employer's sexual harassment policy**
  - It may be in your employee handbook, or posted in a break room

### Notifying Your Employer

- Try to **follow your employer's complaint procedure**
  - Good reason to not follow: it requires you complain to your supervisor, but your supervisor is the person harassing you
- **Complain** to a supervisor, manager, Human Resources rep, or Equal Employment Opportunity officer

### Filing a Formal Government Complaint

- **File with the EEOC** (federal), within **300 days** of the last act of harassment
- **File with the DFEH** (CA state), within **1 year** of the last act of harassment or within **3 years** if the harassment happened on or after January 2, 2019.

## Finding support and documenting the harassment



### Tell a loved one

If you are comfortable, a good first step is to tell a family member or friend about the harassment.



They can support you through the process and help you decide what steps you want to take.

Also, if you decide to report the harassment and file a complaint, telling someone about the harassment while it is happening or soon after can be additional evidence that your complaint is true.



## **Document the harassment**

Documenting the harassment is important and helpful for your complaint or resolution process. You can keep a journal recording the dates, times, places, and any details of any incidents, including if there were any witnesses. For an example of how to document this information, please refer to the Sample Sexual Harassment Log Form (page 33). You also should keep any letters, emails, text messages, voicemails, photographs, videos, or other communications from the harasser. You should keep these materials in a safe place not at your worksite. For example, forward emails to your personal email account or to a friend, take screenshots of text messages, and keep copies of other materials at home.

Documenting the harassing conduct will help ensure it is not just your word against the harasser's. But know that even if it is just your word against the harasser's, you can still come forward and seek help.



## **Locate your employer's harassment policy**

Try to find your employer's sexual harassment policy. Employers may provide this to employees when they start the job or have it posted on a wall in the break room or a similar central location. This information may also be in your employee handbook. This policy should state the complaint procedure employees are to follow, including the name of the person to whom you should

complain.

California law requires your employer to translate any harassment, discrimination, and retaliation policy into any language spoken by more than 10 percent of its employees.

Even if you have not been subjected to sexual harassment, it is a good idea to locate your employer's policy when you first start working in case you or a coworker needs it.

## Notifying Your Employer



### **Complain to your employer unless there is a good reason not to**

If you are aware of your employer's complaint procedure, you should try to follow it, unless you have a good reason not to. Ideally, your complaint should describe what happened in as much detail as possible, including dates (or approximate dates), places, and descriptions of the incidents. If you are comfortable, describe how these events made you feel (angry, disgusted, afraid, embarrassed, etc.) and your thoughts about what happened. State what you want to happen next and keep a copy of the complaint.

To follow your employer's procedure, you may have to meet with a manager or a representative from the Human Resources department. If you can, you should take notes in these meeting or obtain some form of written record after the meeting, to remember and confirm what you discussed. It may also be helpful to ask to have someone else with you to witness the meeting. They can support you and also later confirm what was said. It is important to know that in California, both parties have to agree or consent to being recorded. If you have made a video or audio recording without consent, do not destroy it but refrain from making such recordings in the future.

If your employer does not have a complaint procedure, or if you have a good reason not to follow it, you can complain to a supervisor or manager, human resources, or your company's equal employment opportunity officer. If you are a member of a union, you can also talk to your shop steward or union representative. Examples of good reasons not to follow your employer's complaint procedure are if it requires you complain to your supervisor, but your supervisor is the person harassing you or if the procedure is not in a language you can understand.

We recommend that all complaints be made in writing. For templates and samples, please see pages 32-69.

Your employer should objectively investigate any complaints of sexual harassment, and take prompt and effective action to remedy the situation. If they do not take such action, you may want to consider filing a formal complaint through the government complaint process.

## Filing a Complaint with a Government Agency



### Where can I file a complaint?

If your informal complaints to your employer do not work, you may want to file a formal sexual harassment complaint. This means a government agency will investigate your complaint and may help you resolve the problems.

Sexual harassment complaints can be filed with the California Department of Fair Employment and Housing (DFEH) or the federal Equal Employment Opportunity Commission (EEOC). If you file with one agency, you may request that they file with the other. The two agencies have a work-sharing agreement, so whichever agency first receives your complaint should investigate.

You can generally file with either agency, but sometimes you may only be able to file with the

DFEH. For instance, at the DFEH, you may file a harassment complaint against your employer and the individual harasser or just against the individual harasser. At the EEOC, you may only file a complaint against your employer. Another example of when you may only be able to file with the DFEH is if the time to file with the EEOC has already passed because the agencies have different deadlines. See “How long do I have to file?” below for more information on the time limits to file complaints. Finally, if your employer only has a few employees, you will probably have to file with the DFEH because the EEOC only accepts complaints against employers with 15 or more employees.

You do not need an attorney in order to file a complaint, and these administrative processes are free of cost to you.

Filing with the DFEH (CA state)	Filing with the EEOC while in CA (federal)
If your employer has at least <b>1 employee</b> , sexual harassment is prohibited.	If your employer has <b>15 or more employees</b> , sexual harassment is prohibited.
You can file a complaint with the DFEH <b>against an individual harasser and / or your employer for sexual harassment</b> . You may only file a <b>retaliation complaint</b> against your employer, not against the individual who retaliated against you.	You can file a complaint <b>against your employer</b> for sexual harassment and / or retaliation.
<p>You must file a complaint with the DFEH <b>within 3 years</b> of the last act of harassment if the harassment happened on or after January 2, 2019.</p> <p>If the harassment occurred before January 2, 2019, you have to file <b>within 1 year</b>.</p>	You must file a complaint <b>within 300</b> days of the last act of harassment.
<p>To file a complaint:  Call the DFEH at (800) 884-1684 to make an intake appointment, <b>OR</b> file online at <a href="http://www.dfeh.ca.gov/complaint-process/file-a-complaint/">www.dfeh.ca.gov/complaint-process/file-a-complaint/</a>.</p>	<p>To file a complaint:  Call the EEOC at (800) 669-4000 to discuss your situation and make an appointment, <b>OR</b> file online at <a href="http://www.eeoc.gov/employees/howtofile.cfm">www.eeoc.gov/employees/howtofile.cfm</a>,</p> <p>If you prefer to file in person, please visit an EEOC office near you. For office locations, visit: <a href="http://www.eeoc.gov/field/index.cfm">www.eeoc.gov/field/index.cfm</a></p>



## What are the processes once you file a complaint with the state DFEH or federal EEOC?

You file your complaint with the DFEH.

- After filing, the DFEH will decide whether to investigate your complaint
- The DFEH offers **voluntary, free mediation** to both parties. This means that the DFEH would guide a conversation between you and your employer to figure out if there is a solution that you are both happy with.
- At any point, you may end the process and request a Right to Sue letter, which means you may file a formal lawsuit against your employer in court within one year of receiving the letter.

The DFEH investigates your complaint. Their investigation could last up to 1 year.

The DFEH chooses to not pursue your complaint.

If the DFEH decides that your complaint has merit then they will represent you in **mandatory mediation** with your employer.

The DFEH may decide not to continue with your case once they complete their investigation.

The DFEH will issue you a **Right to Sue Letter** which means you may **file a formal lawsuit** against your employer in court **within 1 year**.

If this does not resolve the case, the **DFEH may decide to litigate** the complaint in court.

The DFEH may decide not to continue with your case if the mediation fails.

## You file a complaint with the EEOC.

- After filing, the EEOC offers **voluntary, free mediation** to both parties. This means that the EEOC would guide a conversation between you and your employer to figure out if there is a solution that you are both happy with.
- The EEOC will investigate your complaint. Their investigation could last several months up to several years.

### The EEOC accepts your complaint.

The EEOC's investigation may include interviewing witnesses or requesting documents. If the EEOC finds your employer **violated the law**, it will help you through a **conciliation process**.

If the conciliation does not end the case, the **EEOC may decide to litigate** the complaint in federal court.

### The EEOC chooses not to pursue your complaint.

The EEOC may choose not to pursue your complaint after the initial investigation or after failed conciliation.

The EEOC will issue you a **Right to Sue Letter**, which means you may **file a formal lawsuit** against your employer in federal court **within 90 days**.

After you have filed a complaint with either the DFEH or EEOC and received a Right to Sue letter, you can file a sexual harassment lawsuit in court.



## Do I need an attorney?

You do not need an attorney in order to file a complaint, and these administrative processes are free of cost to you.



## How long do I have to file?

To complain with the EEOC, you must file a complaint **within 300 days** of the last act of harassment or retaliation.

To complain with the DFEH, you must file a complaint **within 3 years** of the last act of harassment or retaliation.

**Important Note:** As of January 1, 2020, the time you have to file a complaint with the DFEH is extended under California law (section 12960 of the California Government Code). The new statute of limitations (deadline) for filing an employment discrimination complaint with the DFEH is **3 years** from the last act of harassment or retaliation. This means that if the last act of harassment you faced was on or after January 2, 2019, you must file a complaint with the DFEH within 3 years of that date. However, if the last act of harassment was before January 2, 2019, you must file a complaint with the DFEH within 1 year of the last act of harassment. See the chart on the following page for examples.

If you are a federal employee, you must contact the Equal Employment Opportunity office within your agency within 45 days of the last act of harassment or retaliation.



<b>Example situation</b>	<b>Date of last act of harassment or retaliation</b>	<b>Deadline to file complaint with the DFEH*</b>	<b>Deadline to file complaint with the EEOC*</b>
Harassed and fired from job for reporting the harassment on August 1, 2018	August 1, 2018	July 31, 2019	May 28, 2019
Supervisor was harassing you, but then you transferred divisions on March 29, 2019 and the harassment stopped	March 29, 2019	March 28, 2022	January 22, 2020
Harassed during your pregnancy but then the harassment ended after you gave birth on January 13, 2020	January 13, 2020	January 12, 2023	November 7, 2020

---

\*Conservatively calculated

**III.**

# **Other Legal Issues**



## III. Other Legal Issues

### Arbitration Agreements



#### What is arbitration?

In arbitration, an arbitrator decides the case rather than a judge or jury. An arbitrator is a third party—not someone who works for the employer or has a relationship with the employee—who listens to the employee and employer’s stories, reviews the evidence, and makes a decision that everyone must follow. The arbitrator’s decision is final and enforceable in court, and you usually cannot appeal the decision. The reason an arbitrator would decide your harassment complaint rather than a judge or jury is if you and your employer signed an agreement requiring that an arbitrator decide your claims.

Many advocates and scholars believe that arbitration creates an uneven playing field for employees because employers benefit from arbitration more than employees.

Research shows that employers sometimes pick an arbitrator who they have worked with before and who has previously made decisions that benefit the employer. For more information, visit <https://journals.sagepub.com/doi/abs/10.1177/0019793915591984>. Similarly, employees often receive less money in damages when the case is decided by an arbitrator rather than by a judge or jury. For more information, visit [www.epi.org/publication/the-arbitration-epidemic/](http://www.epi.org/publication/the-arbitration-epidemic/).



#### How do I know if I have to use arbitration instead of going to court?

An employment application or employee handbook may contain an arbitration clause requiring

that all *employment-related* claims be arbitrated instead of filing a lawsuit in court. Signing this agreement is a promise that you will bring any legal claim against your employer through arbitration rather than to a judge.

However, sometimes arbitration agreements have requirements that are “unconscionable” (too one-sided in favor of your employer or were obtained through an unfair process) and so a court will not require you to arbitrate. For example, in one recent case, a judge decided that a farmworker did not have to arbitrate because his employer made him sign the arbitration agreement in an unfair way. He was only given the arbitration agreement after he had traveled to the United States for the promised job and only after he had worked a full day. He was given no time to read the agreement and was told that if he did not he would be sent back to Mexico. Because of those circumstances, the judge did not require him to arbitrate his employment claims.

**Practical Note:** Make sure you read all the paperwork your employer gives to you because sometimes the arbitration agreement can be hidden in other documents. Do not sign any documents saying you agree to the terms of the workplace before you read all of the terms.



## **If I sign an arbitration agreement, can I still get help from a government agency?**

Yes, you can still file a complaint with the federal agency, the Equal Employment Opportunity Commission (EEOC), or the California state agency, the Department of Fair Employment and Housing (DFEH). The agency can decide to sue the employer in court on your behalf because the arbitration agreement does not apply to them.

**Practical Note:** It is not likely that the EEOC or DFEH will decide to sue your employer on your behalf: the EEOC files suit in less than one percent of the complaints filed with it each

year, and in less than five percent of the cases in which it finds reasonable cause. Similarly, the DFEH received 24,779 complaints in 2017 but only filed suit in court in 35 cases.



## **Can I refuse to sign an arbitration agreement?**

You can refuse to sign an arbitration agreement, but your employer can then rescind your employment offer. Your employer can also fire you if you are an at-will employee and have refused to sign an arbitration agreement.



## **Can I negotiate the requirements of the arbitration agreement?**

Yes, you may try to negotiate the terms and requirements of the arbitration agreement, but your employer may not agree to the request. You may want to consult with an attorney to help with the negotiating.

One term you may request is for a choice of arbitrator by giving you and your employer the right to reject at least one arbitrator.

You may also request that the arbitrator give you information about his or her interests or relationship with your employer. This information can help you determine if the arbitrator is biased.

# Non-Disclosure Agreements



## What is a Non-Disclosure Agreement (NDA)?

An NDA is an agreement or contract where one or both parties agree to limit what they can say in public about any future disputes between them. They usually also say that you may not talk to the media, coworkers, or future employers. But an NDA does not stop you from going to the police if anyone, including your employer, commits a crime, such as sexual assault.



## Are all NDAs the same?

No, an NDA is whatever the employer and employee agree to, so each NDA can be different. For example, an NDA might say that an employee may publicly discuss anything about the dispute, but the amount of money the employer paid the employee will be confidential. Another NDA might prevent the employee from saying anything at all about the dispute and also prevent the employee from participating in other legal action against the employer, such as a class action. In that case, the employee may be prohibited from discussing the dispute even on her personal social media accounts.



## What happens if I violate an NDA?

The penalties for violating an NDA vary widely. If you violate the agreement, then a judge may require you to pay money to your employer for any harm it suffered.



## **After settling, can my employer make me to keep the facts of my sexual assault, harassment, or discrimination case secret through an NDA?**

As of January 1, 2019, California law (section 1001 of the California Code of Civil Procedure) prohibits a settlement agreement from requiring that an employee keep secret and not share the factual information about her sexual assault, sexual harassment, or sex discrimination cases. This includes workplace sexual harassment cases. The law applies to both private and public employers in California, including the California State Legislature. Employees can still choose to sign confidentiality agreements regarding this information, but their employers can no longer require employees to sign them.

## **Protection from Retaliation and Discrimination**



### **What is retaliation?**

It is illegal for a person or company to “retaliate” against someone who complains about sexual harassment in the workplace. Retaliation may include actions such as firing you, moving you to less favorable assignments or shifts, denying you promotions or benefits, making undeserved negative evaluations, glaring or staring in an intimidating manner, or intensifying the harassment.

See page 13 for more information about retaliation. See page 47 for what you can do if you are retaliated against.

**IV.**

# **Sample Letters and Forms**







## Sample Sexual Harassment Log Form: Document the Harassment

Documenting the harassment that you face is important and helpful. By writing down what happened, you can make sure that you do not forget any details or important dates if you choose to complain to your employer or file a complaint with a government agency. It can also help you keep track of any complaints that you do make to your employer and what actions your employer takes in response. One way to document what happened to you is to keep a journal that includes all the important information, including the dates, times, places, and any details of any incidents, like if there were any witnesses. The Sample Sexual Harassment Log Form is an example of how to document this information.

# Sample Sexual Harassment Log Form

Do you know where your employer’s sexual harassment policy is? If so, where?

---

Do you know whom you can complain to at your place of employment? If so, who?

---

Do you know what your employer’s process is for reporting and addressing sexual harassment?

---

<b>Date &amp; Time</b>		
<b>Where did the harassment occur?</b>		
<b>Who was the harasser?</b>		
<b>What happened?</b>		
<b>Were there any witnesses? If so, who?</b>		
<b>Was the encounter video or audio recorded? If so, by whom?<sup>1</sup></b>		
<b>What did you say and/or do?</b>		

---

<sup>1</sup> Note that in California, both parties have to consent to be recorded. If you have made a recording without consent, don't destroy it but refrain from making such recordings in the future.



## Sample Employer Notification Letter 1: Reporting Sexual Harassment to Your Employer

If you choose to report the sexual harassment to your employer, it will be helpful to you to write down your complaint. By writing it down, you can make sure that your complaint is clear and says everything that you want it to. It also creates a record that you reported, which can be important if your employer does not immediately fix the problem. For instance, if you write down your complaint, it is much harder for your employer to say later that it did not know about the harassment.

Your complaint should describe the harassment in as much detail as possible. It is important to include who was involved, what happened, when it happened (even approximately), and where it happened. The more specific you can be, the better. If you are comfortable, describe how these events made you feel (angry, disgusted, afraid, embarrassed, etc.) and your thoughts about what happened. If you know, include how you want your employer to respond to your complaint.

Do not forget to keep a copy of your complaint!

The Sample Letter to Report Sexual Harassment (First Notification) is a fill-in-the-blank example of how to report sexual harassment to your employer. There are also two example letters that use the Sample Letter in different situations: one where the harassment happened more than once and one for a single event of harassment.

**First, answer these questions to collect the information that you should include in your letter to your employer. Next, you will use your answers to fill in the letter on the following pages.**

---

## **Reporting Sexual Harassment to Your Employer**

- 1) What is your position? \_\_\_\_\_
- 2) What is the name of the business you work for? \_\_\_\_\_
- 3) What is your harasser's name? \_\_\_\_\_
- 4) What is your harasser's relationship to you? (For example, boss, co-worker, customer, a contractor hired by your company) \_\_\_\_\_
- 5) Who are you writing your complaint to? \_\_\_\_\_

## **Harassment**

In this section, you will describe the harassment that you have experienced. Please be as specific as possible about what happened and when it happened. Although there are many kinds of harassment, you may report to your employer if you have faced just one type of harassment or many types.

**Verbal Harassment** includes unwelcome sexual comments; questions to or about you, your activities and your body; jokes; insults; name-calling; repeatedly asking you out on dates; and sending you unwelcome and repeated text messages.

Have you experienced verbal harassment?    YES    NO

6) If no, please go to the next section. If yes, please describe what happened. Please be as detailed as possible. If what your harasser's comment really meant would not be clear to an outsider, be sure to explain it. (For example: At least every week, he told me that I should be nicer to him or else he would tell them I was coming in late to work. He would say this while touching my leg or my arm. I knew that "them" meant my supervisors because he had told me before that he was friends with my supervisors and that they would trust him over me.)

---

---

---

7) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

**Visual Harassment** includes possession or display of derogatory or graphic materials, exposing their intimate body parts to you, etc.

Have you experienced visual harassment?    YES    NO

8) If no, please go to the next section. If yes, please describe what happened. Please be as detailed as possible.

---

---

---

9) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

**Physical Harassment** includes unwelcome touching or physical contact, pulling of hair, and groping.

Have you experienced physical harassment?    YES    NO

10) If no, please go to the next section. If yes, please describe what happened. Please be as detailed as possible. If applicable, describe individual incidents of harassment (including sexual assault) that are particularly severe.

---

---

---

11) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

**Harassment in exchange for a benefit** includes sexual conduct the harasser required you to perform to receive an employment benefit (e.g., promotion, raise, bonus), avoid the denial of an employment benefit, or avoid an adverse employment consequence

(e.g., warning, suspension, demotion).

Have you experienced harassment in exchange for a benefit?    YES    NO

12) If no, please go to the next section. If yes, please describe what happened. Please be as detailed as possible. (For example: "On Thursday after work, he told me that he would not promote me if I did not have sex with him.").

---

---

---

13) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

## Your Responses to the Harassment So Far

It is ok if you have not yet told your harasser to stop. However, if you have, that information is important.

Have you asked your harasser to stop?    YES    NO

14) If yes, describe any times you have told the harasser(s) not to make the unwelcome comments, touch you, etc. and when you spoke to them.

---

---

### Your Feelings

15) How has the harassment made you feel? (For example: scared, embarrassed or humiliated).

---

---

### Resolving the Problem

You have the opportunity to describe what you would like to happen to fix this problem. "For example, you can request that your employer investigate the harassment, schedule your harasser on different work shifts than you, discipline the harasser, assign you a new client or work team, implement anti-harassment trainings for all employees, and / or correct a negative performance evaluation you received due to harassment.

16) What would you like your employer to do to fix the problem?

---

---

---

---

17) When would you like your employer to respond to your letter? (For example: "soon" or "in 1 week").

---





## Sample Letter 1: Reporting Sexual Harassment (First Notification)

Using your answers to the questions above, write your letter using this template. When you see *blue italicized text*, replace it with the answers you wrote.

Re: Reporting Sexual Harassment

*Today's date*

To *#5 Name of Human Resources director, supervisor, program director, or other manager*:

I work at *#2 Location* as a *#1 your position*. *#3 Harasser's Name(s)* is sexually harassing me. I am asking you to take prompt, corrective action to end the harassment and prevent it from recurring. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the person responsible for addressing sexual harassment in our workplace.

As you know, *#3 Harasser's Name(s)* is *#4 Harasser's relation*.

*#3 Harasser's Name(s) has subjected me to:*

- *#6 & 7 Describe any verbal harassment*
- *#8 & 9 Describe any visual harassment*
- *#10 & 11 Describe any physical harassment*
- *#12 & 13 Describe any harassment in exchange for a benefit*

I have asked **#3 Harasser's Name(s)** not to **#14 Describe any times you have told the harasser(s) not to make the unwelcome comments, touch you, etc.** on **Date**. However, **his/her/their** conduct has persisted.

The harassment makes me feel **#15 Describe how the harassment made you feel** and makes it difficult for me to do my job.

Under the law, an employer must take all reasonable steps necessary to promptly correct harassment and prevent its recurrence. In order to stop the harassment, prevent its recurrence, and remedy the situation, I would like you to **#16 Describe how you want your employer to respond to your complaint.**

Thank you for your attention to this matter, and I expect to hear from you **#17 List when you would like a response.**

Sincerely,

**Your name**



## Example Letter 1A: Reporting Repeated Sexual Harassment

This is an example of a completed complaint.

---

Re: Reporting Sexual Harassment

July 19, 2019

To **Human Resources Director**:

I work at the **XYZ Store in the clothing department. Charlie T. and David S.** are sexually harassing me. I am asking you to take prompt, corrective action to end the harassment and prevent it from recurring. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the person responsible for addressing sexual harassment in our workplace.

As you know, **Charlie T. and David S.** are **my coworkers**.

**Charlie T. and David S. often subject me to harassment, including:**

- **On many shifts that we worked on together in the spring, Charlie T. and David S. made sexual comments to or about me, like “hey baby,” “hey sexy,” or “you’re so fine.”**
- **On multiple occasions, Charlie T. and David S. have asked for my phone number. When I said no, David S. kept asking, saying “why not,” “come on honey,” and “don’t worry you can trust me.”**
- **On about four occasions, Charlie T. has asked if he could “take me out,” persisting even after I said “No, I have a boyfriend.”**

- The last time I said no, Charlie T. threatened to lie to my supervisor and say I was leaving early from my shifts if I did not “play nice.”
- About two-three times a month, Charlie T. has made comments about my appearance on photos I post on my social media, including “damn girl,” and “you’re so fine.”

The harassment makes me feel **embarrassed** and makes it difficult for me to do my job. **I now feel nervous going to work and am always on edge, worried about demeaning comments.**

Under the law, an employer must take all reasonable steps necessary to promptly correct harassment and prevent its recurrence. In order to stop the harassment, prevent its recurrence, and remedy the situation, **I would like you to discipline Charlie T. and David S. and, while the investigation is ongoing, ensure that I’m never on a shift with either of them.**

Thank you for your attention to this matter, and I expect to hear from you by **next Friday, July 27.**

Sincerely,

Rosa B.



## Example Letter 1B: Reporting a Single Incident of Harassment

This is another example of a completed complaint.

---

Re: Reporting Sexual Harassment

**July 20, 2019**

To **Human Resources Director:**

I work at the **XYZ Store in the clothing department. Charlie T.** is sexually harassed me. I am asking you to take prompt, corrective action to end the harassment and prevent it from recurring. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the person responsible for addressing sexual harassment in our workplace.

As you know, **Charlie T.** is my **weekend shift manager.**

**Two weeks ago, everyone from our store went to a bar after closing the store. After most people had left, Charlie T. put his hand on my thigh and said, "Want to go over to my place?" I said "I have a boyfriend, I need to go home." Charlie T. became angry and said, "You don't want to make me mad. I control your shifts." I asked what he meant, and he said, "You know what I mean." I repeated that I had to go home and left the bar. Charlie T. followed me into the parking lot, and blocked me from entering my car, demanding that I come with him instead. When I told him to leave me alone, he started to kiss me and grope me. I tried to push him off, but I could not. Eventually, Brian J., who works in a different department, came to the parking lot. When Charlie T. saw Brian J., Charlie T. let me go, and I escaped into my car.**

The harassment has made me feel **extremely afraid at work, especially on shifts that Charlie T. manages**, and makes it difficult for me to do my job. **I'm afraid that he will threaten me again or will cut my hours.**

Under the law, an employer must take all reasonable steps necessary to promptly correct harassment and prevent its recurrence. In order to stop the harassment, prevent its recurrence, and remedy the situation, **I would like you to discipline Charlie T. and ensure that he does not retaliate against me for rejecting him or making this report.**

Thank you for your attention to this matter, and I expect to hear from you by **next Friday, July 27.**

Sincerely,

Rosa B.



## Sample Employer Notification Letter 2: Reporting Continued Sexual Harassment or Retaliation to Your Employer

After you report the sexual harassment to your employer, whether in person or in writing, your employer is supposed to quickly and effectively end the harassment. However, sometimes employers either do not try to fix the harassment or the employer's efforts are not enough. And, sometimes, an employer will retaliate against an employee for reporting sexual harassment even though retaliation is illegal. If the harassment did not end after you reported it or if you have been retaliated against, you may want to report to your employer again. Or, if you initially complained to your supervisor but your supervisor has not fixed the problem, you may want to complain to Human Resources or another manager.

Your complaint should include a description of the sexual harassment, who you have complained to about it, and what their reaction was. You also should include any steps you have taken to try to fix the situation. Then, be sure to describe any harassment that happened after you reported, including who the harasser was, what happened, when it happened, and where it happened.

If anyone has mistreated you or retaliated against you after you reported, it is important to include specific information about who was involved, what happened, when it happened (even approximately), and where it happened.

Do not forget to keep a copy of your complaint!

The Sample Letter Reporting Continuing Sexual Harassment and/or Retaliation is a fill-in-the-blank example of how to report continued sexual harassment and retaliation to your employer. There is also an example letter that uses the Sample Letter to report further harassment after the employee's initial complaint and retaliation by her supervisor.

**First, answer these questions to collect the information that you should include in your letter to your employer. Next, you will use your answers to fill in the letter on the following pages.**

---

### **Your First Complaint**

- 1) When did you first complain? \_\_\_\_\_
- 2) Who did you originally complain to? \_\_\_\_\_
- 3) What is your harasser's name? \_\_\_\_\_
- 4) Who are you now writing your complaint to? \_\_\_\_\_

### **Responses to the Harassment So Far**

5) How did the person to whom you originally complained respond? Describe any promises to investigate the harassment or provide accommodations. Describe any unacceptable responses, such as victim-blaming comments, telling you to "work it out" with the harasser, or saying the company couldn't do anything.

---

---

---

6) How have you tried to fix the problem? Describe any steps you have taken to resolve the situation, such as filing a complaint with your employer, participating in your employer's investigation, etc.

---

---

---



## Continued Harassment

Has your harasser continued to harass you after you first reported the harassment?

YES    NO

7) If no, please go to the next section. If yes, please describe what happened. Describe any verbal comments, visual harassment, or physical conduct. For examples, see "Sample Letter to Report Sexual Harassment" on pages 36-39. Please be as detailed as possible.

---

---

---

8) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

## Retaliation

In this section, you will describe any retaliation you have experienced since you complained about the harassment. Please be as specific as possible about what happened and when it happened. For an explanation of retaliation, see page 49.

Have you been retaliated against?    YES    NO

It is ok if you have not yet told your harasser to stop. However, if you have, that information is important.

Have you asked your harasser to stop?    YES    NO

9) If no, please go to the next section. If yes, please describe what happened. Who retaliated against you? What did they say or do? (For example: "My supervisor reduced my number of shifts per month from 10 to 2;" "I was issued a performance warning two days after reported the sexual harassment;" or "[Harasser's name] told our co-workers that I'm a 'slut,' that I'm 'just bitter' and that HR needed to look into 'my office relationships.'")

---

---

---

10) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---

## Resolving the Problem

You have the opportunity to describe what you would like to happen to fix this problem. For example, you can request that your employer investigating the harassment, scheduling your harasser on different work shifts than you, disciplining the harasser, assigning you a new client or work team, implementing anti-harassment trainings for all employees, and/or correcting a negative performance evaluation you received due to the harassment.

16) What would you like your employer to do to fix the problem?

---

---

---

---

17) When would you like your employer to respond to your letter? (For example: "soon" or "in 1 week").

---



## Sample Letter 2:

### Reporting Continued Sexual Harassment and / or Retaliation

Using your answers to the questions above, write your letter using this template. When you see *blue italicized text*, replace it with the answers you wrote.

Re: Reporting Continued Sexual Harassment [and/or Retaliation]

*Today's date*

To *#4 Name of Human Resources director, supervisor, program director, or other manager*.

On or around *#1 Date that you reported the harassment (or your best estimate)*, I notified *#2 Name of the company employee you reported the harassment to [in person/by email/by phone]* that I was sexually harassed by *#3 Harasser's Name(s)*.

*#2 Name of the company employee you reported the harassment to* told me that *#5 Describe the response of the person you reported to, including any promises to fix the problem and any negative responses*.

Since then, I have attempted to resolve the situation by *#6 Describe any steps you have taken to resolve the situation*.

However, *#3 Harasser's Name(s)* continues to harass me such that it is difficult for me to do

my job. Under the law, an employer must take all reasonable steps necessary to promptly correct and remedy harassment and prevent its recurrence.

***#7 & 8 Describe any continued harassment.***

On or around ***#10 Date that retaliation occurred (or your best estimate)*** I was subjected to retaliation for my sexual harassment complaint when ***#9 Describe the retaliation.***

Under California law, it is unlawful for an employer to retaliate or discriminate against an employee for reporting sexual harassment. Please tell me what **Company Name** will do to comply with the law by stopping the harassment [and retaliation], ensuring the harassment does not reoccur in the future ***[if applicable: "and remedying the retaliation"]***. ***#11 Describe any actions you wish your employer to take.***

I expect to hear from you ***#12 List when you would like a response.***

Sincerely,

**Your name**



## Example Letter 2: Reporting Continued Sexual Harassment and Retaliation

This is an example of a completed second complaint.

---

Re: Reporting Continued Sexual Harassment and Retaliation

**August 20, 2019**

To **Human Resources Director:**

On or around **July 10, 2019**, I notified **my supervisor, Jose D., in person** that I was sexually harassed by **Charlie T. and David S.**

**Jose D.** told me that **he would make sure that I did not have any shifts with Charlie T. and David S. He also told me that it was ultimately my responsibility to work it out with Charlie T. and David S.**

Since then, I have attempted to resolve the situation by **filing a complaint with Human Resources on July 19, 2019.**

However, **Charlie T.** continues to harass me such that it is difficult for me to do my job. Under the law, an employer must take all reasonable steps necessary to promptly correct and remedy harassment and prevent its recurrence.

**Since I reported, Charlie T. saw me in the employee parking lot as I was coming in for my shift. He came over to my car and blocked me with his body from being able to get out of my car. He said that he missed me and that he dreams about me naked. I was scared he**

was going to hurt me.

On or around **August 15, 2019**, I was subjected to retaliation for my sexual harassment complaint when **my supervisor, Jose D., said that he had to cut my shifts from 6 per week to 3 per week to make sure that I did not work with Charlie T. and David S.. This does not make sense because he was able to keep our shifts separate for one month without cutting my shifts. Jose D. also did not cut Charlie T. and David S.'s shifts to make sure that we do not overlap, only mine.**

Under California law, it is unlawful for an employer to retaliate or discriminate against an employee for reporting sexual harassment. Please tell me what **XYZ Store** will do to comply with the law by stopping the harassment and retaliation, ensuring the harassment does not reoccur in the future, and remedying the retaliation. **I would like you to discipline Charlie T. and David S. and ensure that Jose D. is no longer my supervisor.**

I expect to hear from you **by the end of the week.**

Sincerely,

Rosa B.



## Sample Employer Notification Letter 3: Resigning From Your Job

If you are enduring sexual harassment or retaliation, you may eventually feel forced to resign because of it is too hard to continuing working for your employer. If you decide to resign due to an intolerable work environment, you should consider giving your employer a resignation letter explaining why you have to quit.

In your resignation letter, it is important to explain 1) what was happening at work to make you have to quit and 2) what you did to try to fix the situation before you finally quit.

Try to be as specific as possible and include details like who you reported the sexual harassment to, when you reported it, and what the response to your complaint was. It is also important to state anything you did to try to deal with the harassment. Be sure to describe any harassment that happened after you reported, including who the harasser was, what happened, when it happened, and where it happened. If anyone has mistreated you or retaliated against you after you reported, include specific information about who was involved, what happened, when it happened (even approximately), and where it happened.

Do not forget to keep a copy of your resignation letter!

The Sample Resignation Letter After Harassment and the Sample Resignation Letter After Retaliation are fill-in-the-blank examples of resignation letters to your employer. There are also two example letters. The first example uses the first Sample Letter to explain that the employee is resigning because of unaddressed sexual harassment, and the second example uses the second Sample Letter to explain that the employee is resigning because she was retaliated against after her report of sexual harassment.



Use this worksheet if you are resigning because of continued harassment. First, answer these questions to collect the information that you should include in your letter to your employer. Next, you will use your answers to fill in the letter on the following pages.

---

### Your Resignation

- 1) Who are you now writing your resignation letter to? \_\_\_\_\_
- 2) What is your position? \_\_\_\_\_
- 3) What is the name of your employer? \_\_\_\_\_
- 4) When are you resigning? \_\_\_\_\_

### Your Harassment Complaint

- 5) When did you first complain? \_\_\_\_\_
- 6) Who did you originally complain to? \_\_\_\_\_
- 7) What is your harasser's name? \_\_\_\_\_

8) How did the person to whom you originally complained respond? Describe any promises to investigate the harassment or provide accommodations. Describe any unacceptable responses, such as victim-blaming comments, telling you to "work it out" with the harasser, or saying the company couldn't do anything.

---

---

---

9) How have you tried to fix the problem? Describe any steps you have taken to resolve the situation, such as filing a complaint with your employer, participating in your employer's investigation, etc. It is ok if you have not yet told your harasser to stop. However, if you have, that information is important.

---

---

---

Did you have any further conversations with your employer about the harassment?

YES    NO

10) If no, please go to the next section. If yes, please describe what happened. Describe any promises to investigate the harassment or provide accommodations. Describe any unacceptable responses, such as victim-blaming comments, telling you to "work it out" with the harasser, or saying the company couldn't do anything.

---

---

---

## Your Response to the Harassment

11) How has the harassment made you feel? (*For example: scared, embarrassed or humiliated*).

---

---



## Sample Letter 3A: Resignation Letter After Harassment

Using your answers to the questions above, write your letter using this template. When you see *blue italicized text*, replace it with the answers you wrote.

---

Re: Resignation

*Today's date*

To *#1 Name of Human Resources director, supervisor, program director, or other manager.*

I am resigning from my position as *#2 Name of Position* for *#3 Name of employer* effective *#4 Date you are resigning.*

On or around *#5 Date that you reported the harassment (or your best estimate)*, I notified *#6 Name of the company employee you reported the harassment to [in person/by email/by phone]* that I was sexually harassed by *#7 Harasser's Name(s).*

*#6 Name of the company employee you reported the harassment to* told me that *#8 Describe the response of the person you reported to, including any promises to fix the problem and any negative responses.*

Since then, I have attempted to resolve the situation by *#9 Describe any steps you have taken to try to fix the situation.*

Even though I reported the harassment, **#7 Harasser's Name(s)** continues to harass me.  
**#10 Describe any further conversations you had with your employer about the continued harassment.**

The harassment makes me feel **#11 Describe how the harassment made you feel. For example: "scared," "embarrassed," or "humiliated."** Due to this harassment and **#3 Name of employer's** failure to promptly correct and remedy the harassment and prevent its recurrence as California law requires, I feel forced to quit.

*[Include the last paragraph if you are afraid your employer will retaliate against you by giving you a bad reference:]*

It is illegal under California law for an employer to retaliate against an employee by providing a poor reference or otherwise harming an employee's reputation or prospects for new work. An employer, and its employees, may not make false statements about a former employee to prevent the former employee's reemployment; suggesting through innuendo, omitting positive facts, making false statements, or reporting rumor all could be grounds for legal liability.

If contacted, please only disclose my former job title and dates of employment.

Sincerely,

**Your name**



## Example Letter 3A: Resignation Letter After Harassment

This is an example of a completed resignation letter because of harassment and retaliation.

---

Re: Resignation

**August 30, 2019**

To **Human Resources Director:**

I am resigning from my position as **shelving clerk** for **XYZ Stores** effective **September 1, 2019**.

On or around **July 10, 2019**, I notified **my supervisor, Jose D., in person** that I was sexually harassed by **Charlie T. and David S.**

**Jose D.** told me that **he would make sure that I did not have any shifts with Charlie T. and David S. He also told me that it was ultimately my responsibility to work it out with Charlie T. and David S.**

Since then, I have attempted to resolve the situation by **filing a complaint with Human Resources on July 20, 2019.**

Even though I reported the harassment, **Charlie T. and David S.** continue to harass me. **I told my supervisor two weeks ago that Charlie T. threatened me in the parking lot, and my supervisor said that it was not his problem.**

The harassment makes me feel **unsafe, scared, and humiliated.** Due to this harassment and

**XYZ Stores'** failure to promptly correct and remedy the harassment and prevent its recurrence as California law requires, I feel forced to quit.

It is illegal under California law for an employer to retaliate against an employee by providing a poor reference or otherwise harming an employee's reputation or prospects for new work. An employer, and its employees, may not make false statements about a former employee to prevent the former employee's reemployment; suggesting through innuendo, omitting positive facts, making false statements, or reporting rumor all could be grounds for legal liability.

If contacted, please only disclose my former job title and dates of employment.

Sincerely,

Rosa B.

Use this worksheet if you are resigning because of harassment and retaliation. First, answer these questions to collect the information that you should include in your letter to your employer. Next, you will use your answers to fill in the letter on the following pages.

---

### Your Resignation

- 1) Who are you now writing your resignation letter to? \_\_\_\_\_
- 2) What is your position? \_\_\_\_\_
- 3) What is the name of your employer? \_\_\_\_\_
- 4) When are you resigning? \_\_\_\_\_

### Your Harassment Complaint

- 5) When did you first complain? \_\_\_\_\_
- 6) Who did you originally complain to? \_\_\_\_\_
- 7) What is your harasser's name? \_\_\_\_\_

8) How did the person to whom you originally complained respond? Describe any promises to investigate the harassment or provide accommodations. Describe any unacceptable responses, such as victim-blaming comments, telling you to "work it out" with the harasser, or saying the company couldn't do anything.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9) How have you tried to fix the problem? Describe any steps you have taken to resolve the situation, such as filing a complaint with your employer, participating in your employer's investigation, etc.

---

---

---

## Retaliation

In this section, you will describe any retaliation you have experienced since you complained about the harassment. Please be as specific as possible about what happened and when it happened. For an explanation of retaliation, see page 13.

10) Describe what happened. Who retaliated against you? What did they say or do? (For example: "My supervisor reduced my number of shifts per month from 10 to 2;" "I was issued a performance warning two days after I reported the sexual harassment;" or "[Harasser's name] told our co-workers that I'm a 'slut,' that I'm 'just bitter' and that HR needed to look into 'my office relationships.'")

---

---

---

11) When did this happen? Did it happen once, more than once, or often? Do you remember the date or approximate date(s) that it happened?

---

---

---



## Your Response to the Harassment

12) How has the harassment made you feel? (*For example: scared, embarrassed or humiliated*).

---



## Sample Letter 3B: Resignation Letter After Harassment

Using your answers to the questions above, write your letter using this template. When you see *blue italicized text*, replace it with the answers you wrote.

---

Re: Resignation

*Today's date*

To *#1 Name of Human Resources director, supervisor, program director, or other manager.*

I am resigning from my position as *#2 Name of Position* for *#3 Name of employer* effective *#4 Date you are resigning.*

On or around *#5 Date that you reported the harassment (or your best estimate)*, I notified *#6 Name of the company employee you reported the harassment to [in person/by email/by phone]* that I was sexually harassed by *#7 Harasser's Name(s).*

*#6 Name of the company employee you reported the harassment to* told me that *#8 Describe the response of the person you reported to, including any promises to fix the problem and any negative responses.*

Since then, I have attempted to resolve the situation by *#9 Describe any steps you have taken to try to fix the situation.*

I was subjected to retaliation for my sexual harassment complaint even though under California law, it is unlawful for an employer to retaliate or discriminate against an employee for reporting sexual harassment. On or around **#11 Date that retaliation occurred, #10 Describe the retaliation, including who retaliated against you, what they did, and when they did it.**

The harassment makes me feel **#12 Describe how the harassment made you feel.** Due to this harassment and illegal retaliation, I feel forced to quit.

It is illegal under California law for an employer to retaliate against an employee by providing a poor reference or otherwise harming an employee's reputation or prospects for new work. An employer, and its employees, may not make false statements about a former employee to prevent the former employee's reemployment; suggesting through innuendo, omitting positive facts, making false statements, or reporting rumor all could be grounds for legal liability.

If contacted, please only disclose my former job title and dates of employment.

Sincerely,

**Your name**



## Example Letter 3B: Resignation Letter After Retaliation

This is an example of a completed resignation letter because of harassment and retaliation.

---

Re: Resignation

**August 30, 2019**

To **Human Resources Director:**

I am resigning from my position as **shelving clerk** for **XYZ Stores** effective **September 1, 2019**.

On or around **July 10, 2019**, I notified **my supervisor, Jose D., in person** that I was sexually harassed by **Charlie T. and David S.**

**Jose D.** told me that **he would make sure that I did not have any shifts with Charlie T. and David S.** He also told me that it was ultimately my responsibility to work it out with **Charlie T. and David S.**

Since then, I have attempted to resolve the situation by **filing a complaint with Human Resources on July 20, 2019.**

I was subjected to retaliation for my sexual harassment complaint even though under California law, it is unlawful for an employer to retaliate or discriminate against an employee for reporting sexual harassment. On or around **July 22, 2019, Human Resources said that I could not come in to work for a week while they investigated my complaint against Charlie T. and David S. XYZ Stores did not pay me during the week they forced me to take off. When I returned**

on July 29, 2019, my supervisor, Jose D., said that he had to cut my shifts from 6 per week to 3 per week to make sure that I did not work with Charlie T. and David S.. Jose D. did not cut Charlie T. and David S.'s shifts to make sure that we do not overlap, only mine. At least three times since I have been back at work, Jose D. has made comments about me and my sexual history. He said that I am "loose" and that he did not know why Charlie T. and David S. would be interested in having sex with me anyway.

The retaliation makes me feel **uncomfortable, and I have nightmares every night before going to work. I feel like XYZ Stores cares more about Charlie T. and David S. than they do about me.** Due to this harassment and illegal retaliation, I feel forced to quit.

It is illegal under California law for an employer to retaliate against an employee by providing a poor reference or otherwise harming an employee's reputation or prospects for new work. An employer, and its employees, may not make false statements about a former employee to prevent the former employee's reemployment; suggesting through innuendo, omitting positive facts, making false statements, or reporting rumor all could be grounds for legal liability.

If contacted, please only disclose my former job title and dates of employment.

Sincerely,

Rosa B.

**V.**

# **How to Find a Lawyer**



## V. How to Find a Lawyer

Although you may file administrative complaints without a lawyer, if you have more questions or face additional challenges, the following resources can provide additional help.

### Legal Aid at Work

Legal Aid at Work provides information sheets and resources online. It also provides phone-in and walk-in workers' rights clinics throughout the state of California. Review our website or call us for more information:



<https://legalaidatwork.org/clinics-and-helplines/>



(415) 864-8848

### The Time's Up Legal Defense Fund administered through the National Women's Law Center



<https://nwlc.org/legal-assistance/>



(202) 319-3053

## National Employment Lawyers Association

Find employment lawyers in your area:



<https://exchange.nela.org/memberdirectory/findalawyer>

You may also request a list of employment lawyers in your state, if available, by sending a self-addressed, stamped envelope to:



National Employment Lawyers Association  
Attorney Listing  
2201 Broadway  
Suite 310  
Oakland, CA 94612

## California Employment Lawyers Association

Find employment lawyers in California:



<https://cela.org/index.cfm?pg=FindAMember>



(818) 703-0587



## Other Resources

### Rape, Abuse, and Incest National Network (RAINN)



National Sexual Assault Hotline: (800) 656-HOPE (4673)



Online Sexual Assault Hotline: <https://hotline.rainn.org/online>

En Español: La Línea de Ayuda Online: <https://hotline.rainn.org/es>

Local In-Person Centers: <https://centers.rainn.org/>

### National Domestic Violence Hotline



(800) 799-SAFE (7233)



[www.thehotline.org](http://www.thehotline.org)

### Domestic Violence Shelters



<https://www.domesticshelters.org/>

# Acknowledgements

The creation and distribution of this toolkit were made possible by a Flom Incubator Grant awarded through the Skadden Foundation and by a California Lawyers Association Labor and Employment Section grant.



For free legal information and advice about sexual harassment and other workplace issues, call Legal Aid at Work's Workplace Sexual Harassment helpline at **844-269-0146**.

## Disclaimer

This toolkit is intended to provide accurate, general information about the legal rights of workers in California. Yet because laws and legal procedures often change and are subject to differing interpretations, Legal Aid at Work cannot ensure the information in this toolkit is current or applicable to your particular situation. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.