

Working Remotely Yet Appropriately, Ensuring Employees Act Professionally Behind the Computer Screen

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The year is 2019. Its Monday morning 8:30 a.m. and employees are pouring into the office building coffees in tow ready to start the workday. Fast forward to 2021, and employees across the world are working on their dining table with their dogs barking in the background, ready to get on a Zoom meeting. The COVID-19 pandemic changed the workforce as we know it. While the traditional workday changed locations, the laws pertaining to everyday interactions have stayed the same. This is especially true with respect to inappropriate conduct in the workplace including sexual harassment. This begs the question; how can you avoid sexual harassment liability when your employees are working remotely?

First it is important to identify the standard in California for sexual harassment. Sexual harassment refers to both unwelcome sexual advances, or other visual, verbal or physical conduct of a sexual nature and actions that disrupts the employee's emotional tranquility in the workplace and based on an employee's sex. See *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal. App. 3d 590, 608 and California Government Code Section 12923.

With remote capabilities, sexual harassment looks different than the traditionally offensive sexual touching in the office. For example, remote sexual harassment can include:

- Sexual jokes, comments, or conduct during a video conference with other employees.
 - For example, during a weekly Monday morning Zoom meeting, Harry tells Sally she looks sexy this morning.
- Utilizing messaging apps such as Slack or Teams to send employees sexual images, comments, or jokes
 - For example, after a conference call, Harry messages Sally and asks whether she would like to grab drinks after work.

While these instances seem logical to avoid, there are real world examples which highlight how these issues have undoubtedly permeated the remote workforce. For example, most recently, an employee of the New Yorker was fired from his position after he exposed himself on a Zoom conference but believed to have turned off his camera.

There are several actions an employer can take to protect itself from sexual harassment liability. First, ensure that all employees regardless of title complete sexual harassment training¹. The Department of Fair Employment and Housing provides free online training courses on preventing sexual harassment in the workplace. Another course of action is to remind employees of the company's sexual harassment

¹ It is important to note that California employers who employ five or more employees are required to ensure that their employees complete at least one hour of sexual harassment training for non-supervisor employees and 2 hours for supervisory employees.

policies and protocol for reporting the same. Importantly, with respect to company policies, it is imperative to implement a policy that reminds employees the use company property, such as a laptop, should only be used for professional communications. For example, employers should make it clear to employees that the usage of messaging applications or social media platforms should be limited to professional communications with their coworkers.

Lastly, encourage employees to report any conduct they perceive as sexual harassment and assure them that the company will not take retaliatory action against them for doing so. These preventative measures can help insulate your business from sexual harassment claims. While working remotely has presented challenges for all types of businesses, it is especially important to enforce these policies given the new work from home culture that does not allow for the traditional monitoring of day to day activity while in the office.

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