

# When Is Bullying and Harassment a California Labor Law Violation?

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*Sacramento, CA:* Although California was the first state to introduce anti-bullying legislation (2003), it is still prevalent in the workplace. "The most common forms of illegal harassment are from workplace bullies," says employee attorney Donna M. Ballman, P.A., "and they will stay a bully from playground to workplace." So when is harassment from your employer a violation of the [California Labor Law](#)?



"When the people these bullies pick on are in a protected category (e.g., gender, race, religion or pregnancy) that is when they step over the line," says Ballman. "Those are the categories that bullies tend to latch onto. They will also sometimes pick on someone in an emotional situation, someone in a delicate mental state and can torment them to death. You see how bullying affects kids and it happens in the workplace—people can become suicidal or have a nervous breakdown." However, even if an employee believes he or she is being bullied or harassed by their employer, a supervisor, or a co-worker or they are in a "hostile work environment," they may not have a California labor law claim.

"If we don't accept bullying in schools, why is it acceptable at work?" says Ballman. When is bullying "unacceptable" and how do you determine whether you have a claim and what should you do about it? Ballman advises the following:

## ***Report it:***

One statement I hear of too much is "I was harassed, so I quit and then I told them why." This is a frequent mistake. The United States Supreme Court says that, where an employer has a published sexual harassment/discriminatory harassment policy, the employee must report it under that policy and give the employer the opportunity to fix the

situation. If you did not avail yourself of the employer's policy before quitting, you are giving up your right to sue for a violation.

***Employer's duty:***

Appropriate remedies may be to discipline or warn the harasser, to move the harasser, under some circumstances to move the victim, to do training, or in extreme cases, to terminate the harasser. But they don't have to take any action at all. They only have a duty to maintain a safe workplace. You might still have to work with the harasser.

***What to put in the report:***

General harassment, hostile environment, bullying and other disruptive behavior that is not addressed to an employee for a protected status or activity is not illegal. So before you write the long letter airing all your grievances against your boss, you may want to have an attorney look at it, or just make sure you are addressing your protected status. If you do complain, put it in writing and call it "FORMAL COMPLAINT OF SEXUAL HARASSMENT" or "FORMAL COMPLAINT OF RELIGIOUS HARASSMENT," or whatever category you fit into. Set forth the harassment due to your protected status, and be businesslike. This is not the time to air all your complaints about the business or your boss, only to air the specific complaint about the illegal behavior.

If you are harassed or are in a hostile work environment, make sure you understand your rights and responsibilities. Report it to the employer and give them a chance to address the situation. If they allow the harassment to continue or if they retaliate, contact an employment attorney to discuss your legal options.

***Here are some tips from Ms. Ballman:***

a. Many employees simply refuse to go back to work, even where the employer has warned or disciplined the harasser. Sometimes, the fear is justified. But it is the employer's duty to create a safe workplace. If you return and are retaliated against or continue to be harassed, report it again. If the employer allows retaliation or continued harassment, that is the time to get an attorney involved.

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b. Employers will usually take accusations of this type of conduct seriously. Once they are on notice, they will be held liable if they allow it to continue, and they know it. And

most employers know that this behavior is disruptive, has nothing to do with making money, and can adversely affect morale. Even if the employer takes no action, by reporting their inaction to the EEOC or your state agency, you have put these agencies on notice that this behavior is occurring. The employer will have no excuse when the harasser does it to the next employee. And in some cases, you may have a remedy.

c. While a long letter stating that your supervisor is incompetent or a jerk can and should get you fired, the formal complaint addressing illegal behavior should get a serious response.

d. While bullying isn't illegal, harassment due to race, age, sex, national origin, disability, color and religion are illegal.

e. If the bully is targeting certain age, sex, ethnic or other groups, they've probably crossed over into illegal harassment.

f. Bullies are a huge drain on corporate time and assets. Employers should adopt zero tolerance policies regarding bullies.