



Kari J. Brown

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**California Workplace Harassment Training &
Investigations:**

How to Protect Your Business

California Craft Brewers Association

CCBA 2021 Winter Conference

When is an Investigation Required and What Should I Do?



Identifying the Need for an Investigation

- The obvious complaint
- The not-so-obvious complaint
 - Stray remarks
 - Squabbles
- The anonymous or “confidential” complaint
- Complaints by terminated/former/departing employees
- The importance of a good faith investigation

Does an Investigation Require a Third Party Investigator or Can It Be Done Internally?

- Time, resources, complexity
 - How many witnesses are there?
 - What kinds of allegations are involved?
 - Who is trained to handle an investigation?
- Conflicts of interest
 - Your attorney
 - The accused wrongdoer
 - HR consultants

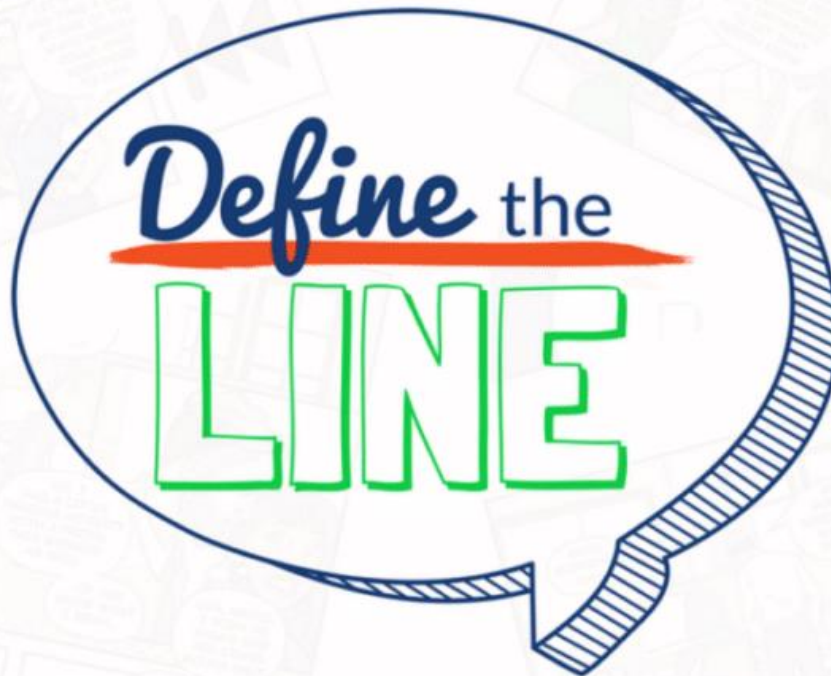
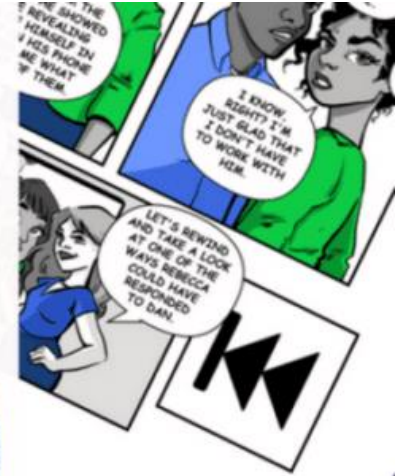
How Should an Investigation Be Conducted?

- Ascertain the allegations
- Identify witnesses and information that are needed
- Notify participants of investigation and policy against retaliation and confidentiality concerns
- Interview the complainant, accused, and all relevant witnesses
 - Document questions and answers
 - Gather documentary evidence if applicable

How Should an Investigation Be Conducted?

- Make findings based on the facts gathered
- Determine if unlawful conduct or conduct in violation of policy occurred and if so, the possible consequences
- Analyze legal consequences of options
- Take action – circle back with complainant and accused
 - Anti-retaliation and confidentiality obligations

Harassment Training



Harassment Training: Who, What, When, Where, & Why?

- **Who** Must Train and Be Trained?
- **What** Does a Training Look Like?
- **When** Should the Training Take Place?
- **Where** Should the Training Be Conducted?
- **Why** Should Employers Comply?

Who Must Train and Be Trained?

Employers with 5 or more employees* are required to provide training to:

- Supervisory employees - 2 hours
 - Supervisor is defined as anyone with authority to hire, fire, assign, transfer, discipline, or reward other employees. Supervisor also means anyone with the authority to recommend these actions if such authority requires the use of independent judgment.
- Non-Supervisory employees - 1 hour
- Temporary and Seasonal employees - 1 hour

* Independent contractors, volunteers, and unpaid interns count!!!

Who Should Conduct the Training?

Approved Options:

- **Internal HR Professional** or **Outside Consultant** – must have 2 years of practical experience in handling certain aspects of harassment investigations
- **Attorneys** who have been a member of the State Bar for 2 years and whose practice includes employment law under FEHA or Title VII of Civil Rights Act of 1964.
- **Law School, College, or University Instructors** with a post-graduate degree or CA teaching credential and 20 hours of instruction regarding employment laws under FEHA or Title VII.
- **Virtual/Online courses.** See: <https://www.dfeh.ca.gov/shpt/>

What Must Be Included?

- Types of conduct that constitute harassment
- Remedies available for harassment victims, including individual liability/exposure
- Strategies to prevent harassment in the workplace
- Supervisors' obligation to report
- Practical examples

What Must Be Included?

- Limited confidentiality of complaint process
- Resources for victims of unlawful harassment (reporting structure)
- Steps necessary to take appropriate remedial measures to connect harassing behavior (*e.g.*, obligation to conduct effective workplace investigation)
- Specific training on company's policy against harassment

When Must the Training Occur?

- Within 6 months of hire or assuming a supervisory position and every 2 years thereafter
- Seasonal, temporary and employees hired to work less than 6 months must be trained within 30 calendar days of hire or within 100 hours worked, whichever is first
- Compliance deadline was 1/1/21 so if you haven't done this yet, do it now!

Why Do the Training?

- It's required by law
- Training provides a defense to claims such as:
 - Discrimination, Harassment, Retaliation, Failure to Prevent, Assault/Battery, Defamation, Wrongful Termination
- Provides a defense in any DFEH investigations and lawsuits
- Opportunity to set the tone with your employees

Go Beyond

- Ensure compliance by enforcing your policies
- Train your supervisors to identify complaints and how to initiate an investigation
- Develop a compliant written policy that is distributed to and acknowledged by all employees
- Have resources (attorneys, HR consultants) available to consult to determine best steps if a complaint is made

Extra Protection







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