

Why workplace harassment persists despite the rules

Despite more than 20 years of mandatory harassment training in California, workplace sexual harassment complaints have risen sharply, highlighting that compliance-focused programs fail to change culture and that effective prevention requires ongoing, interactive, and inclusive approaches emphasizing bystander intervention, relevance and psychological safety.

By Leonid M. Zilberman

It's been twenty years since AB 1825 was signed into law by Governor Schwarzenegger. At that time, California was the first state to require sexual and other anti-harassment training for supervisors in companies with 50 or more employees. A significant expansion occurred fourteen years later with SB 1343, lowering the employee threshold to five and extending the requirement to include non-supervisory employees. Millions of Californians have now been trained on how to "not harass" each other in the workplace. All good, right? Wrong.

What's happened over the last 20 years with respect to harassment claims in California? They've gone up by over 159%! Statistically speaking, in 2005 the California Department of Fair Employment and Housing (renamed the California Civil Rights Department) logged 3,535 complaints of sexual harassment from California employees. In 2023, the last year CRD published full statistics, the CRD logged 9,155 sexual harassment complaints. A 2024 national study by the Center on Gender Equality and Health indicates that roughly 1 in 4 U.S. adults (26%) experienced sexual harassment or assault in the workplace, with women (32%) reporting higher rates than men (15%).

On a national level, in fiscal year 2023, the EEOC reported the highest number of sexual harassment claims in 12 years and up nearly 25% from the previous year. Between FY 2018 and FY 2021, the EEOC re-



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ceived a total of 98,411 charges alleging harassment under any basis and 27,291 charges alleging sexual harassment. Why the dramatic increase? First, sexual harassment complaints are increasing due to heightened public awareness fueled by movements like #MeToo, which empowers victims to come forward, coupled with more robust reporting mechanisms. Also, the shift from remote to hybrid and back-to-office work models makes it harder for misconduct to go unnoticed, unlike the anonymity offered by remote setups.

Is the current training working? I suggest it is not. Let's look at a common training example: It was 3:00 p.m. on a Tuesday when the so-called "mandatory" annual harassment training wrapped up. As the trainer from "HarassNoMoreRUs" closed her laptop, one manager whispered to his buddy, "Well, that's another two hours of my life I'll never get back." The morning after the well-scripted compliance seminar, an employee overheard an offhand comment in the kitchen, which was legally questionable, ethically uncom-

fortable, and met with silent awkward nods and rolled eyes. While the certificates from the prior day's training were freshly emailed out, what was the lived reality? A company culture that remains as risk-prone as a ticking FMLA litigation clock. Compliance does not equate with mindset or actual practice and nothing actually changed after the training was completed.

For far too long, employers have been stuck in this annual déjà vu: training is delivered, boxes checked, but the subtle, corrosive, persistent

feel of inappropriate behavior survives and even flourishes. Decades of mandatory harassment prevention training have produced more checked-boxes than cultural progress. Though HR professionals and lawyers alike have valiantly clicked through slides and passed quizzes, the modern workplace remains plagued by harassment's stubborn persistence. Like trying to fix a leaky faucet by painting the sink, conventional training methods look impressive to outsiders but rarely stop the underlying drip of disrespect and abuse.

Why are current training models not working? To understand why these efforts mostly fail, imagine sending every driver to traffic school once a year, but ignoring potholes, broken lights, and road rage. No matter how effective the PowerPoints or how stern the policies, traffic accidents will continue unless the environment and driver culture change.

Many harassment training programs flourished post-1998, after the U.S. Supreme Court's decisions in *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, established an employer's affirmative defense against sexual harassment claims by supervisors, making it essential for employers to prove they exercised reasonable care to prevent and correct harassment. While these cases didn't mandate training, they made it practically necessary for employers to implement policies, offer training, and provide effective channels for reporting harassment to avoid vicarious liability.

These precedents made them the corporate equivalent of an insurance policy: produce a record of training, and if misconduct arises, point to those records to minimize liability. Too often, companies fixated on showing they "did something," regardless of whether the content resonated, inspired, or even informed. The result? Training became a ritual that protected companies on paper but not people in practice – an umbrella that worked only when it wasn't raining.

Traditional modules often feature "Don't do this!" vignettes, awkward legal jargon, and blame-laden narratives. Unsurprisingly, these backfire by:

- Inspiring defensiveness and disengagement, especially among those typecast as "the problem" group.

- Focusing on definitions and reporting mechanics instead of everyday interactions, workplace climate, or subtle drivers of misconduct.

- Ignoring that many people leave with less trust, more cynicism, or even new avoidance behaviors that create deeper workplace divides ("I'll just never mentor women-problem solved!").

- Satisfying the letter of compliance while missing the spirit-culture is unchanged, but every employee can quote "quid pro quo" under duress.

Classic training barks loudly – "zero tolerance!" – yet those empowered with knowledge rarely use it, and the pack dynamics keep changing while the bark remains the same. Effective training must bite into real issues: culture, accountability, and shared responsibility. Early harassment training indirectly reinforced the "not my problem" attitude, like fire drills that only teach you to save yourself. Co-workers witnessed bad conduct and assumed the HR team would intervene (eventually), never realizing everyone is the on-site fire brigade.

Just as nobody expects seatbelts alone to eliminate all car accidents, no single act or intervention will end all harassment. But employing new tools and shifting mindsets can make a change for the better and begin to change the culture in most workplaces. Here are three ways employers can modify their existing anti-harassment programs to work better:

Make bystander intervention everyone's business

Stop treating harassment as a game only between "harasser" and "harassed." Instead, treat every employee as a referee with both the authority and the accountability to throw the challenge flag. Recently adopted bystander intervention training gives employees concrete scripts and strategies to interrupt toxic behavior, support the affected, and reinforce cultural norms in real-time.

- Role-play "see something, say something" techniques, even for microaggressions or ambiguous situations.

- Normalize small, non-confrontational interruptions ("Hey, not cool," or "Let's take that offline" or "Are you trying to be funny? It's not funny") so the burden doesn't land only on targets of the misconduct.

- Celebrate intervention, not just reporting – when colleagues know stepping up is valued, everyday courage becomes contagious.

Redesign training for relevance and engagement

Instead of "set it and forget it" content, the most impactful programs are:

- Tailored for different seniority levels, featuring real-world, relatable scenarios.

- Delivered in small, regular doses, interactive discussions, and refresher nudges – rather than once-a-year 2-hour programs designed to bore instead of inspire.

- Focused on skills: recognizing bias, navigating awkward moments, and having authentic conversations about respect and boundaries.

- Led by people who understand the complex realities of work culture, not just outside consultants reading scripts.

Elevate psychological safety and everyday civility

Harassment flourishes in silence and ambiguity. Now, more than ever when the workplace values candor, humility, and inclusiveness, people are more likely to speak up and less likely to let misconduct slide.

- Build team rituals (e.g., start meetings by reaffirming positive work norms).

- Leadership modeling: when managers own up to their own missteps, they signal that all feedback is welcome and retaliation is off the table.

- Recognize and reward everyday acts of inclusion, not just punitive accountability.

Harassment prevention fails when it treats only certain people as fixers and others as passive beneficiaries. As with community policing, the whole neighborhood thrives when every member – no matter their role or rank – participates in vigilance and repair. This democratization of responsibility helps dismantle the power imbalances that allow harassment to fester

Practical steps every employer can take:

- Replace or supplement annual training with interactive scenarios and lunch-and-learn style workshops and engage in roll playing to get more involvement.

- Publicize easy, non-retaliatory paths for reporting concerns, and check in proactively with teams rather than waiting for crises.

- Audit the work environment for risk factors just as proactively as you'd audit cybersecurity threats.

- Actively solicit feedback on what's working and what isn't, adapting policy to meet real needs, not just regulatory boxes.

Ending workplace harassment is less about printing longer policies or slicker videos and more about shifting daily behavior. Like converting a "paper tiger" policy into a living, breathing part of your company's DNA, true prevention starts with honest conversations, collective responsibility, and a culture where everyone feels both safe and expected to step in. If current anti-harassment trainings were medicine, the diagnosis would be "ineffective: needs a different delivery system." Prescribe bystander power, ongoing relevance, and a healthy culture. After over 20 years of doing it the same way, it is past time we revamp our harassment training methods, and should use metrics, proven psychological research and technology to see what works and what doesn't.

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