

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Sexual Harassment Prevention Training for Local Agency Officials (AB 1661)

Allison C. Callaghan, Nossaman LLP Julia Botezatu, Nossaman LLP





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What We Will Cover

- Prevalence, Cost and Effect of Workplace Harassment
- Unconscious Bias
- Defining Workplace Harassment and Discrimination

- Liability for Workplace Harassment
- Retaliation and How to Prevent It
- Abusive Conduct
- Workplace Culture

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA



PREVALENCE, COST
AND EFFECT
OF WORKPLACE
HARASSMENT





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- What percentage of women report they have been subjected to unwanted work-related sexual advances?
 - **30-40%**
 - **40-50%**
 - **50-60%**
 - **•** 60-70%
 - **80-90%**



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer:
 - **80-90%**

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- What percentage of men report they have been subjected to unwanted work-related sexual advances?
 - **30-40%**
 - **40-50%**
 - **50-60%**
 - **•** 60-70%
 - **80-90%**



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer:
 - **40-50%**





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Leading EEOC Charge Nos. in 2024

Retaliation	Disability	Race	Sex	Age
42,301	33,668	30,270	26,872	16,223



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Prevalence of Workplace Harassment

- Employees who experience harassment commonly respond by:
 - Avoiding the harasser
 - Denying or downplaying the gravity of the situation
 - Attempting to ignore, forget or endure the behavior



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Prevalence of Workplace Harassment

- The least common response is to take some formal action
 - Roughly 75% of individuals who have experienced harassment never report the conduct
 - Approximately 90% of individuals who have experienced harassment never file an administrative charge or a complaint



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Why do employees commonly fail to report harassing behavior?

- Fear of:
 - Disbelief of their claim
 - Inaction on their claim
 - Receipt of blame for causing the conduct
 - Social retaliation
 - Professional retaliation
- Feelings of shame





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Effects of Workplace Harassment

- Workplace harassment affects not only those who suffer it, but also others in the workplace, leading to:
 - Emotional and physical harm
 - Performance issues
 - Diminished employee morale

- Reduced productivity
- Decreased professional advancement
- Increased absences and turnover



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Why Harassment Allegations Should Matter to Systems & Board Members

- Direct financial costs to the business related to litigation defense, settlements, and/or judgments
 - In fiscal year 2024, the EEOC secured almost \$700 million for victims of discrimination



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Why Harassment Allegations Should Matter to Systems & Board Members

- Indirect financial costs, including:
 - Negative media coverage
 - Reputational damage
 - Recruitment and retention issues
 - Organizational shifts
 - Damage to long-term goals





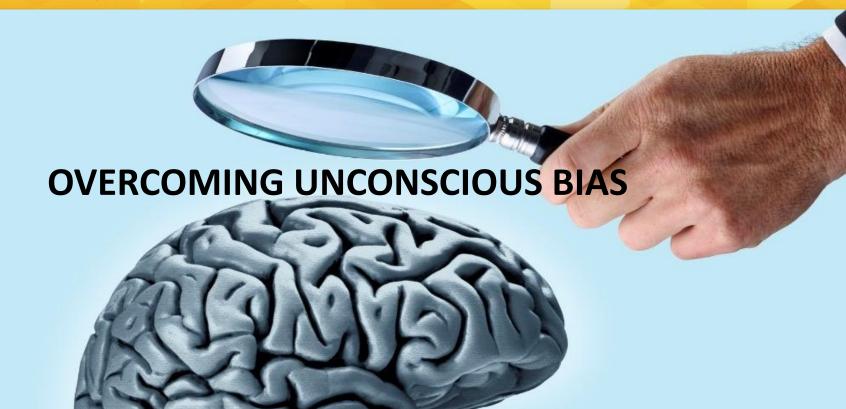
MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Do You Know...?

- Your system's harassment prevention policies?
- When an employer should be informed of any complaints?
- Who handles complaints?

SACRS

MAY 13-16 - OMNI HOTELS & RESORTS, RANCHO LAS PALMAS - RANCHO MIRAGE, CA





MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What is Bias?

 Bias is a prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair





MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Sources of Bias

- Culture
- Environment
- Trauma
- Media
- Marketing



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What is Explicit Bias?

- Explicit bias consists of attitudes and beliefs we have about a person or group on a conscious level
- Intentional, verbally endorsed



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What is Unconscious Bias?

 Implicit or unconscious bias is bias in judgment, assessments, and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) and is absorbed or influenced by background and experience

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Impact of Unconscious Bias & Diversity on the Workplace

- Studies have shown how unconscious bias impacts business decisions
 - Who gets hired, promoted
 - Compensation
- Research demonstrates that inclusive workplaces reap benefits
 - Higher revenue
 - Greater employee productivity and retention



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Combating Unconscious Bias

- Recognize that you (like all of us) have biases
- Be well informed and continue educating yourself
- Be motivated identify and challenge your biases through critical reflection
- Seek diverse contacts, support inclusion, expand your circle
- Avoid stereotypes, practice perspective

MAY 13-16 OMNI HOTELS & RESORTS RANCHO LAS PALMAS - RANCHO MIRAGE CA

DEFINING WORKPLACE HARASSMENT







MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What Is Sexual Harassment?

 Sexual harassment is unwelcome sex-based conduct or advances in the workplace



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Is Sexual Harassment?

 Sexual harassment is a form of discrimination based on sex or gender, which is unlawful under Title VII of the Civil Rights Act of 1964 (Title VII) and the California Fair Employment and Housing Act (FEHA)



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Is Sexual Harassment?

 Under California law, sexual harassment includes harassment based on sex (including pregnancy, childbirth or related medical conditions), gender (including gender stereotypes), gender identity, gender expression and sexual orientation

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What Is Sexual Harassment?

- Individuals of any gender may be the target of sexual harassment
- Harassment may involve harassment by a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity



 Sexual harassment does not have to be motivated by sexual desire to be unlawful



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What Is Sexual Harassment?

- There are two forms of actionable sexual harassment:
 - Quid pro quo harassment
 - Hostile work environment harassment



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Quid Pro Quo Harassment

 Quid pro quo harassment occurs when the grant or denial of job benefits – for example, getting or retaining a job, receiving a promotion, transfer or raise – is implicitly or explicitly conditioned on submission to conduct of a sexual nature

SACRS.

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Quid Pro Quo Harassment

- Examples:
 - "Sleep with me and you'll be promoted"
 - "Unless you sleep with me, you'll be demoted"





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Hostile Work Environment Harassment

 Occurs where unwelcome comments or conduct based on sex is so severe or pervasive that it unreasonably interferes with a victim's work performance or creates an intimidating, hostile, or offensive work environment



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Hostile Work Environment Harassment

- The offensive comments or conduct may be:
 - Directed at a specific employee
 - Directed at others
 - Widespread sexual favoritism



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Hostile Work Environment Harassment

 Offensive conduct by a supervisor – such as shouting, using foul language, ridiculing, invading personal space, making threatening gestures – may constitute sexual harassment if directed at one group more than another, even if the conduct is not sexual in nature



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Unwelcome Conduct

- Conduct is not invited and is regarded as undesirable or offensive by the victim
- Subjective standard
 - Remember, different people have different sensibilities informed by their background and experiences



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Unwelcome Conduct

- Individuals do not have to verbally object or tell the harasser to stop for the conduct to be unlawful sexual harassment
 - Remember, people may be afraid or too embarrassed to object
 - Be alert for non-verbal signals that a person is uncomfortable or that the conduct is unwelcome



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

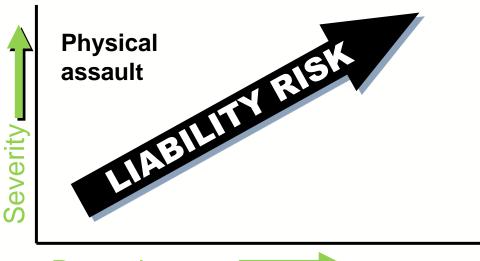
Severe or Pervasive Requirement

- Objective and subjective standard
- Determined by looking at all of the circumstances, including:
 - Nature, frequency, and severity of the conduct;
 - Context;
 - Whether it is physically threatening or humiliating; and
 - Whether it unreasonably interferes with an employee's work performance
- No single factor is required



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Framework for Assessing Risk of Liability



SACRS.

SACRS SPRING CONFERENCE 2025

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Work-Related Conduct

- The conduct complained of must be workplace related, even if it involves acts occurring elsewhere
- Even while working from home, employees are entitled to a workplace free of discrimination and harassment





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Who Is Protected?

- Under California law, anti-harassment laws apply to all workplace relationships, including:
 - Employees
 - Applicants for jobs
 - Volunteers

- Paid or unpaid interns
- Independent contractors



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Harassment by Third Parties

 Employers may be responsible for harassing conduct of third parties with whom employees have a work-related relationship, if the employer knew or should have known about the harassment and failed to take prompt corrective action to stop the harassment



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Other Types of Harassment

- California law prohibits harassment on the basis of:
- Race, including traits
 historically associated with race
- Religious creed, including religious dress and grooming practices
- Color
- National origin
- Ancestry
- Physical or mental disability

- Medical condition
- Genetic information
- Marital status
- Sex
- Gender
- Gender identity
- Gender expression
- Sexual orientation
- Military or veteran status

- Age
 - Pregnancy, childbirth, breastfeeding or related medical conditions
- Reproductive health decisionmaking
- Family caregiver status



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Possible Remedies

- *Economic damages*: lost wages, medical expenses, job search expenses
- Non-economic damages: emotional distress, loss of enjoyment
- Punitive damages: award of monetary damages intended to punish the offender
- *Injunctive relief*: training, changes to policies, procedures



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

Hypothetical

• Tim, a supervisor, constantly yells at his staff and calls them incompetent. This occurs in front of other employees, causing the employee being yelled at great embarrassment. Sharon, one of Tim's subordinates, complains that she is the victim of "harassment" and demands that the company do something.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Could this be unlawful harassment?

- Yes
- No
- Maybe



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: No, this is not likely unlawful harassment.
 - Harassment is only unlawful if it is based on gender or some other protected characteristic.
 - Best practice: Take action to remedy the situation, even though the conduct may not be unlawful.
 - However, possible disparate impact.



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

Hypothetical

 Dan is recently widowed. A co-worker, an attractive woman named Linda, asks him out on a date. He declines. Linda persists, sending Dan notes of an increasingly sexual nature, despite his requests that she stop. Dan complains to the manager, who does ask Linda to stop, but she continues. Dan then sues the company for sexual harassment.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Could Dan establish a claim for sexual harassment?

- Yes
- No
- Maybe



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer: Likely, yes.
 - A man is entitled to protection from sexual harassment by a woman. In this case, it is improper to presume that a reasonable man would necessarily welcome overtures from an attractive woman.
 - Best practices: Avoid making judgments based on stereotypes.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Hypothetical

 Alan is a manager with a strange sense of humor. He frequently tells offensive jokes to all of his subordinates, including a couple who are husband and wife. The husband and wife sue for sexual harassment. The company argues that because Alan is equally offensive to men and women, the alleged harassment is not "because of" gender, and therefore it is not unlawful.



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Is there a defense because Alan was equally offensive to men and women?

- Yes
- No
- Maybe



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer: No.
 - Offensive conduct of a sexual nature can give rise to liability for harassment, even if it is directed at both genders. The "equal opportunity offender" is not excused.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Hypothetical

 Monica complains of sexual harassment because of sexual jokes, comments, and actions by co-workers. However, this conduct is not directed towards Monica.



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Does Monica have a right to complain when the conduct was not directed towards her?

- Yes
- No
- Maybe



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: Yes.
 - An employee can be subjected to a "hostile work environment" even if the sexual harassment is not directed at him or her.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Hypothetical

 A company is regularly visited by a delivery person, who consistently makes inappropriate sexual comments to the receptionist. The receptionist complains to her manager, who tells her there is nothing he can do because the delivery person is not a company employee.



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

Could the employer be liable to the employee for the actions of the delivery person, a nonemployee?

- Yes
- No
- Maybe



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer: Yes.
 - An employer is liable to an employee for known sexual harassment by nonemployees such as clients, customers, contractors, vendors, or anyone with whom employees have contact as part of their job.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Forms of Harassing Conduct

- Visual conduct
 - Making sexual gestures or bodily movements
 - Displaying sexually suggestive or lewd objects, photographs, cartoons, drawings, posters, or websites



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Forms of Harassing Conduct

- Verbal conduct
 - Derogatory comments or slurs
 - Unwelcome remarks about an individual's body, physical characteristics, or appearance
 - Sharing sexual stories or fantasies
 - Jokes or teasing about sexual matters
 - Repeated requests to date or socialize



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Forms of Harassing Conduct

- Physical conduct
 - Uninvited touching of any sort
 - Impeding or blocking movements
 - Staring or leering
 - Invading personal space
 - Assault



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What if?

 Some co-workers went for drinks after work with their boss, Adam. At the restaurant, Adam sat next to Jane, rubbed her leg under the table, and reminded her that management was doing annual reviews. Jane felt uncomfortable but did not want to say anything. Is this harassment?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What if?

• Female staff at a retirement system make crude comments and gestures about male visitors and their bodies and talk about their own sex lives. Tom, a male employee, feels uncomfortable and asks his female coworkers to stop. His co-workers tell him to "man up" and "grow a pair." Is this harassment? Does it matter that the comments were not about Tom?





MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

GENDER IDENTITY AND EXPRESSION, AND SEXUAL ORIENTATION



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Federal Law: Title VII

- Discrimination based on sex stereotypes (i.e., assumptions or expectations about how persons of a certain sex should dress or behave) is unlawful sex discrimination
- Transgender based discrimination and same-sex harassment are unlawful



MAY 13-16 - OMNI HOTELS & RESORTS, RANCHO LAS PALMAS - RANCHO MIRAGE, CA

California Law: FEHA

 California's Fair Employment and Housing Act explicitly prohibits discrimination and harassment on the basis of gender identity, gender expression, and sexual orientation



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Definition of Gender Identity

 A person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Definition of Gender Expression

 A person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

Definition of Transgender

- A general term that refers to a person whose gender identity differs from the person's sex assigned at birth
- A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Gender in the Workplace

- Employees have the right to be identified by a preferred gender, name, and/or pronoun, including gender-neutral pronouns
- Employees have the right to use the restroom that identifies with their gender identity or gender expression



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Rachel is a transgender women. She has repeatedly asked her supervisor to call her Rachel and to refer to her with the feminine personal subject and object pronouns "she" and "her." Rachel's supervisor continues to refer to her as Robert and uses the masculine pronouns "him" and "he."
 - Is this unlawful?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: It is evidence of a potentially hostile work environment.
 - No tangible employment action was taken against Rachel, but does this conduct, with or without other conduct, unreasonably interfere with job performance?
 - Whether liability is created or not, supervisor should be counseled and receive training.



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Alex is a transgender woman and wants to use the women's bathroom. Alex's employer has a policy that employees must use the bathroom that corresponds with their sex assigned at birth.
 - Is the employer's policy lawful?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: No. Employees have the right to use a restroom that corresponds to the employee's gender identity regardless of the employee's sex assigned at birth.
 - Where possible, an employer should provide genderneutral or "all-gender," single user facilities for use by any employee. However, the use of single user facilities should always be a matter of choice.

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Nancy has worked for a company for three years. When she first began her job, she laughed when her co-workers and supervisors shared dirty jokes. However, in the last few months, Nancy has avoided these co-workers. After overhearing a co-worker making a joke, she goes to HR and complains about harassment.
 - Does it matter that Nancy used to make jokes herself?



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

- Answer: No.
 - Employees may have many legitimate reasons for "going along" or not complaining about conduct.
 That does not mean it was wanted.
 - E.g., Fear of isolation or retaliation, fear for job security especially for a new employee



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

- Megan complains to her supervisor about sexually suggestive comments made to her by a male co-worker, but demands that the information be kept strictly "confidential."
 - Should the supervisor promise to keep the information confidential?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: No.
 - Supervisor's are required to report complaints and observations for follow-up and possible further investigation. Once the supervisor is aware of the complaint or conduct, that information is assumed to be information that the employer now has.

SACRS

SACRS SPRINGCONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- While Megan's supervisor ponders what to do, she knows that Megan and the male co-worker sit right next to each other. Megan's supervisor tells Megan to move to the empty office down the hall while she sorts out Megan's allegations.
 - Was this appropriate?
 - What else could the supervisor have done?

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Bill receives from a close friend an e-mail attachment containing a sexually explicit joke. Bill forwards it to his coworker, Josh, who he has shared such jokes within the past. Bill knows with certainty that Josh will not be offended. Josh sees the joke and laughs. Jessica comes to Josh's desk to see what is so funny, and she is offended by the joke she sees on the computer.
 - Does Jessica have a claim for harassment? What about Josh?

SACRS.

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Melissa tells HR that her supervisor made unwelcome sexual advances toward her while they were alone in the office. The supervisor denies the allegation and no one witnessed the alleged advances.
 - What should HR do?
 - Does Melissa's inability to produce a witness end the inquiry?



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Amanda is passed over for a promotion, which is instead given to Beth, who is objectively less qualified than Amanda. Amanda finds out that Beth is carrying on a sexual relationship with their mutual supervisor.
 - Does Amanda have a claim for harassment?
 - Does it matter if Beth's relationship with the supervisor is consensual and she does not feel coerced?

SACRS.

SACRS SPRINGCONFERENCE 2025

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- A supervisor frequently hugs female employees chest-tochest and kisses them on the cheek. The supervisor occasionally hugs male employees. Most employees "grin and bear it," but one employee gets fed up and goes to HR, claiming harassment.
 - Is there any basis for the claim?
 - What should HR do?



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Tom has had his eye on Bridget, a co-worker. He asks her out on a date, and Bridget says no. Not to be deterred, Tom asks her again three days later and explains that he thinks they would have a really beautiful evening, and she should give him a shot because he's a nice guy. She says no again and asks him to stop asking her. Bridget goes to HR and complains she's being harassed.
 - What should HR do?
 - What if Tom asks Bridget out again?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What if?

 Alice has been regularly working on a project with Mike, a client who is based out of town. One afternoon while they are working in Mike's office, Mike asks Alice to have dinner with him. Alice is caught off guard by this request, which makes her uncomfortable.

SACRS

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Alice calls her boss and tells him she is not comfortable accepting Mike's invitation, because she thinks Mike may have a romantic interest in her. Alice's boss tells her that entertaining clients is part of the job, and that she must accept. At the dinner, Mike rubs Alice's leg, and she gets up and leaves.
 - Does Alice's company have exposure for sexual harassment?
 - Does the fact that there was a legitimate business purpose to the dinner matter?

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA







MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

The Employer's Liability

 Employers who fail to take action to prevent or stop harassment in the workplace can be held financially liable



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

The Employer's Liability

- Where a supervisor engages in harassment, the employer is strictly liable
 - But, damages may be limited if the employer proves it exercised reasonable care to prevent and correct the harassment, and the employee unreasonably failed to complain or avoid the harm



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

The Employer's Liability

 Where a non-supervisory employee or nonemployee engages in harassment, the employer is liable if it knew, or should have known, about the harassment and failed to take prompt and appropriate corrective action



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Personal Liability for Harassment

 As an employee, you can be held personally liable for monetary damages if sued for sexual harassment, whether or not you are a supervisor



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Personal Liability for Harassment

 If your employer concludes that you engaged in sexual harassment, it will most likely not defend you nor pay any damages









MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

The Employer's Obligations

- California law requires that employers take "all reasonable steps necessary to prevent discrimination and harassment from occurring." Gov. Code § 12940(k)
 - Failure to prevent discrimination and harassment is an independent basis for legal liability



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

The Employer's Obligations

- Employers must:
 - Have a policy
 - Have a complaint procedure
 - Post notices and distribute information
 - Train all employees (additional training for supervisors)
 - Take prompt corrective action that is reasonably calculated to end the harassment



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Corrective Action

- An employer's obligation to take prompt corrective action requires that the employer:
 - Take temporary steps to address the situation until the employer determines whether the complaint is justified
 - Implement permanent remedial steps to prevent future harassment once the investigation is completed



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Workplace Investigations

 An employer is required to promptly and thoroughly investigate claims of harassment, discrimination or retaliation, which, if true, would violate its rules or the law.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Workplace Investigations

- Complaints must be:
 - Kept confidential, to the extent possible
 - Investigated impartially by qualified personnel
 - Documented and tracked for reasonable progress
 - Given appropriate options for remedial action designed to prevent future harassment
 - Closed in a timely manner
 - Results reported to complainant and respondent

SACRS SPRING







MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Retaliation

 Both Title VII and the FEHA make it unlawful for an employer to retaliate against an employee (or an applicant) who reports or otherwise opposes prohibited discrimination or harassment



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Is Retaliation?

 Retaliation occurs when an employee suffers some negative consequence – such as being terminated, demoted, receiving a poor evaluation or work assignment – after making a report of harassment, opposing harassment, filing a complaint, or participating in a workplace investigation



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Avoiding Retaliation Claims

- Never disparage individuals for engaging in protected activities, even as a joke
- Treat all employees fairly and equitably under the circumstances
- Hold all employees to fair, reasonable, and consistent standards
- Carefully monitor employee performance and behavior, and document your observations
- Promptly address any performance problems or misconduct and document your actions



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Alice is a receptionist in an office. Alice complains to the office manager that she is being harassed by Bob, her coworker. The office manager tells Alice that he will only schedule her to work on Bob's days off so that Alice and Bob do not have to interact. However, this means Alice's hours will be significantly reduced.
 - Is this retaliation?



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

- Answer: Likely, yes.
 - The office manager changed Alice's schedule, which led to a reduction in her compensation, as a direct result of her making a complaint about sexual harassment.



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

- Adam complains to management that he believes he has been the victim of discrimination. An investigation determines that there has been no discrimination. One month later, Adam's wife is laid off. Adam's wife claims that her layoff was in retaliation for Adam's complaint.
 - Is there any basis here?



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

- Answer: Maybe.
 - Retaliation is any conduct or action that might prevent an employee from reporting a complaint or participating in an investigation.
 - One's spouse being fired after you reported a complaint might send the message to keep complaints to yourself.



MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

- Pam screwed up a major deal, losing her company tens of thousands of dollars. Knowing she is about to be written up, or worse, she tells HR that her supervisor has been making sexual advances toward her.
 - Can the company still go through with the discipline?
 - What if the supervisor admits that he has made sexual advances towards Pam?

MAY 13-16 - OMNI HOTELS & RESORTS RANCHO LAS PALMAS - RANCHO MIRAGE CA







MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Abusive Conduct

- Abusive conduct is defined as "[c]onduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."
 - Gov't. Code § 12950.1.



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Examples of Abusive Conduct

- Language or behavior that frightens, humiliates, belittles, or degrades
 - Repeated infliction of verbal abuse
 - Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating
 - Gratuitous sabotage or undermining of a person's work
- A single act does not constitute abusive conduct, unless especially severe and egregious



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Examples of Abusive Conduct

- Behavior that undermines a person's work performance, working relationships, or perceived value in the workplace
 - Repeatedly discounting a person's opinion
 - Assigning tasks beyond a person's skill level, or setting unrealistic deadlines
 - Excluding, isolating or marginalizing a person from work activities
 - Denying access to information or resources

SACRS.

SACRS SPRING CONFERENCE 2025

MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Abusive Conduct

- However, there is a difference between abusive conduct and appropriate supervision
 - Supervisors may appropriately:
 - Provide performance appraisals and constructive feedback, and set goals
 - Monitor or restrict access to information for legitimate business reasons
 - Counsel or discipline an employee for misconduct or poor work performance
 - Remember to document interactions!



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Abusive Conduct

- Abusive conduct can have a negative effect on productivity and morale, as well as increase absenteeism and employee turnover
- There is a difference between tenacious management and abusive workplace conduct

MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA







MAY 13-16 · OMNI HOTELS & RESORTS, RANCHO LAS PALMAS · RANCHO MIRAGE, CA

Organizational Climate

 A study from the National Academies of Sciences, Engineering and Medicine found that the single most important factor in predicting sexual harassment is organizational climate



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Organizational Climate

- Where a company promotes a climate of respect, harassment is less likely to occur
- How we treat each other matters



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Workplace Culture

- What creates an organization's culture?
 - Values
 - Leadership
 - Accountability



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Can You Do?

- Always be professional
- Treat your co-workers, patients, and other third parties with respect – and make sure everyone at your workplace does the same



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Can You Do?

 Be aware that your remarks and conduct may be offensive and make your co-workers uncomfortable – even if you would not feel the same way yourself



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Can You Do?

- It's best to keep compliments work-related at work
- If you compliment someone's appearance, make sure you are not crossing a line



MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

What Can You Do?

- Be careful and conscious of your words
- Consider what you share
- Think carefully about touching in the workplace



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

What Can You Do?

 Report any conduct you believe is inappropriate or harassment, discrimination, or retaliation



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

It's On Us

 It's on all of us to stop workplace harassment by stepping in and speaking up when we observe problematic behaviors, and to treat every employee with dignity and respect



MAY 13-16 OMNI HOTELS & RESORTS, RANCHO LAS PALMAS RANCHO MIRAGE, CA

Questions?





MAY 13-16 • OMNI HOTELS & RESORTS, RANCHO LAS PALMAS • RANCHO MIRAGE, CA

Thank You!



Allison C. Callaghan
Attorney at Law
Sacramento
916.930.7701
acallaghan@nossaman.com



Julia Botezatu
Attorney at Law
Los Angeles
213.612.7837
jbotezatu@nossaman.com