

CITY OF PERRIS

MINUTES: Special Work Session of the City Council
Date of Meeting: 30 January 2006
Time of Meeting: 4:00 p.m.
Place of Meeting: City Council Chambers

1. CALL TO ORDER:

The Honorable Mayor Busch called the Special Meeting of the City Council to order.

4:00 p.m. Called to Order

2. ROLL CALL:

Council Members Present: Yarbrough, Landers, Motte, Busch
Councilmember Rogers absent

4 Council Members present.

Staff Members Present: City Manager Apodaca, Human Resources and Risk Manager Lugo, and City Clerk Rey.

Staff Members Present

3. WORK SESSION:

A. Sexual Harassment Training in Compliance with AB 1825.

Sexual Harassment Training in Compliance with AB 1825.

Introduced by: Kristine Kwong, Hinshaw & Culbertsons, LLP

Mayor Busch introduced Kristine Kwong, an experienced labor and employment law attorney who represents both private and public sector employers in federal and state courts throughout California in counseling and litigation, to give a presentation on identifying and preventing harassment in the workplace.

Ms. Kwong gave a presentation on identifying and preventing harassment in the workplace.

Ms. Kwong stated that harassment in the workplace can result in hundreds of thousands of dollars being spent on attorneys' fees and monetary damages, as well as creating a negative public image for the company. In addition to that, harassment in the workplace can give rise to absenteeism, turnover, diminished morale, and low productivity. Fortunately lawsuits can be prevented with proper training and supervision of employees.

The cost of harassment in the workplace

Harassment is physical, verbal and/or visual behavior that is offensive and violates an employee's rights to be protected from prejudices relating to his/her sex or gender, race or national origin, disabilities and medical conditions, and religious beliefs. Annoying behavior in the workplace is only prohibited, however, if based on certain protected categories, as defined in federal and state statutes prohibiting workplace harassment:

Definition of harassment

1) Federal law - 1965 Civil Rights Act, which makes it unlawful for an employer to discriminate against any individual with respect to terms, conditions or privileges of employment because of the individual's race, color, religion, sex, or national origin. Sexual harassment is prohibited by this statute because it is harassment on the basis of sex.

Federal law prohibiting harassment

2) California State law - Fair Employment & Housing (FEHA), which prohibits discrimination based on sex, race, religion, color, national origin, age, marital status, physical or mental disability, and medical conditions. (Article I, Section 8 of the California Constitution also protects employees against employment discrimination and harassment on the basis of sex, race, creed, color, and national or ethnic origin.

California law prohibiting harassment

Examples of prohibited workplace harassment:

Examples of workplace harassment

1) Quid Pro Quo Harassment ("This for That"), which occurs when submitting to some form of sexual conduct is made a condition of receiving a favorable job benefit. This harassment can include request for sexual favors, unwanted sexual comments and advances, and verbal comments regarding the employee, and a determination regarding this must be balanced with several factors:

Quid Pro Quo Harassment

- ◆ Whether the sexual conduct was unwelcome;
- ◆ Whether a reasonable person would believe that he or she was a victim of quid pro quo harassment;
- ◆ Whether the harasser intended to subject the victim to such harassment; and
- ◆ The closeness of time between the discussion about favorable job benefits and the request for sexual favors.

Hostile work environment

2) Hostile work environment, involving different forms of verbal and physical conduct based on certain protected categories under both Federal and State laws. The following must be proven:

- ◆ The employee received unwelcome conduct;
- ◆ The harassment was based on a protected category; and
- ◆ The harassment was so severe and pervasive that it altered the conditions of the employee's employment and created an abusive working environment.

The harasser

The harasser can be almost anyone in the work environment, including the employee's supervisors, co-workers, subordinates, and even customers and vendors of the employer.

Harassing conduct

Examples of harassing conduct: Derogatory comments, jokes, teasing; lewd gestures, touching, massages, physical gestures; calendars, posters, e-mails or pictures with sexual overtones; unsolicited sexual advances, requests for favors of a sexual nature. In order for such conduct to be actionable, the conduct must be "severe" or "pervasive." Factors used by courts to determine this include: Frequency of the conduct; severity of the conduct; whether the conduct is physically threatening or humiliating; whether the conduct interferes with an employee's performance. Single isolated incidents may not be enough to support a hostile work environment claim unless such conduct is sufficiently pervasive.

Ms. Kwong pointed out that dating co-workers, making “off-the-cuff” remarks, and participation in prohibited remarks or conduct during off-duty activities could also be interpreted as harassment.

Other types of harassment

An employer has a duty to prevent and remedy any instances of harassment, including initiating an investigation to determine whether or not the complaint is justified.

Employer’s duty

Ms. Kwong stated that all employees are personally liable for acts of harassment, and in a harassment lawsuit, a prevailing victim is entitled to back pay, front pay, reinstatement, emotional distress and medical damages.

Employees’ personal liability

Ms. Kwong also spoke of the employer’s liability in not taking action when he knew, or “should have known” of an incidence of harassment. She exhorted supervisors to take action immediately upon notice of any incidents, and pointed out that any notice requires a response, whether formal or informal. Internal policy should be followed, and the victim should be followed up, with an assurance that there will be no retaliation for their reporting the incident.

Employer’s liability

A checklist for supervisors was presented, and it was noted that supervisors can help prevent harassment in the workplace by:

Preventing harassment

- ◆ Being a good role model.
- ◆ Consistently reinforcing the anti-harassment policy.
- ◆ Following up on all complaints.

Ms. Kwong pointed out that a healthy work environment is all about respect:

A healthy work environment is engendered by respect.

- ◆ Establishing respect with someone who is different from you;
- ◆ “Including” someone who is different from you;
- ◆ Valuing differences in others;
- ◆ Accepting new ideas;
- ◆ Keeping an open mind.

Following a time of questions, answers and discussion, Mayor Busch thanked Ms. Kwong for her presentation.

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4. ADJOURNMENT:

By unanimous consent, the Special City Council Work Session was adjourned at 6:00 p.m.

6:00 p.m. Special City Council Work Session was adjourned.

Respectfully submitted,

Margaret Rey, City Clerk