



## **AICP Statement and Policy Guidelines Regarding: Unlawful Workplace Discrimination, Harassment or Retaliation**

AICP is committed to providing its member companies with the tools to help make sensible decisions that will lead to fostering work environments that are free from unlawful discrimination, harassment (sexual or otherwise) or retaliation. **AICP Member companies should not accept, condone, or tolerate actions of discrimination or harassment by any person, whether any of the following: a crew member, manager, supervisor, vendor, agent, brand/advertiser representative, advertising agency representative, customer or any other third-party working in any company-controlled environment including production/post production office or set.** The law prohibits discrimination or harassment on the basis of legally protected characteristics including but not limited to:

- Race
- Color
- National origin
- Religion
- Sex
- Pregnancy
- Sexual orientation
- Age
- Disability
- Caregiver status
- Marital status
- Veterans' status
- Genetic predisposition or carrier status
- Or any other condition or status which is protected by applicable federal, state or local law

### **What Constitutes Harassment**

Harassment involves behavior that is unwelcome and offensive, fails to respect the rights of others, lowers morale, and, therefore, interferes with work performance. Harassment may take different forms and may involve, but is not limited to any of the following:

- Visual displays
- Suggestive remarks, comments, jokes, or pictures
- Gestures
- Sexual demands
- E-mails, text messages or other interoffice communications displaying inappropriate materials
- Propositions, or unwanted physical contact



Whatever form it takes, all harassment stems from activities that are perceived by the recipient as unwanted, insulting and/or demeaning and should not be tolerated in the workplace. Harassment becomes unlawful where:

- 1) Enduring the offensive conduct becomes a condition of continued employment (“quid pro quo harassment”), or
- 2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive (“hostile work environment”)

See EEOC Guidance at <https://www.eeoc.gov/laws/types/harassment.cfm>

As employers, it is recommended that AICP member companies adopt a written policy prohibiting discrimination, harassment and retaliation in the workplace. Having a written policy ensures that a company has the protocols in place for employees to understand how and whom to report instances of harassment.

For guidance on drafting workplace policies on harassment, see <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm> Such policies should be distributed to employees upon hire, including freelancers, and can be included in employee handbooks or manuals or distributed by attaching the same to employee paychecks or in any other means of communication including e-mail.

One type of harassment is sexual harassment. Sexual harassment is unwelcome, unsolicited conduct of a sexual nature or because of one’s sex. It includes unwelcome sexual advances, requests for sexual favors, and other conduct of a physical, verbal or non-verbal nature where:

- Submission to such conduct is either an explicit or implicit condition or term of employment.
- Submission to and/or rejection of such conduct impacts upon or is used as a basis for employment decisions affecting the individual in question.
- Such conduct unreasonably interferes with an individual’s work performance; or such conduct has the effect of creating an intimidating, hostile, or offensive work environment.

Sexual harassment of an individual by a member of the opposite sex or by an individual of the same sex are both prohibited and unlawful forms of sexual harassment.

Any employee (freelancers included) who believes he or she has been the subject of harassment should immediately report the situation (preferably as soon as possible after the alleged harassment occurs) to his or her employer (the production or post production company where the discrimination or harassment occurred) in accordance with the employer’s policy. It is recommended that each AICP member company devise a reporting policy that identifies the management individuals at the company to whom any reports should be made. Such reporting



structure should be clearly outlined in the employer's written anti-harassment policy and should be distributed to all employees, including freelancers.

Employers are required to conduct a thorough, objective and complete investigation, interviewing all persons whom it believes may possess knowledge of the alleged incidents. The employer is expected to take corrective action to stop the discrimination or harassment and to otherwise remedy the situation. Often the individuals responsible for taking reports of any alleged harassment are the same individuals that conduct the investigations, but that is not a requirement; your company should specifically designate who will do so. Investigations include interviewing all possible witnesses to the alleged conduct and documenting the same, reviewing video footage if any, and any other relevant information or material. If an employee is employed in a union capacity and is a member of the union, the interview should be conducted with more than one member of management and the union member should have an opportunity to choose to also have union representation present. AICP member companies are encouraged to seek labor and employment counsel regarding harassment investigations. Depending on the AICP member company's insurance policy, an employer should put its carrier on notice when a claim of harassment is made.

Retaliation against employees who bring good faith harassment charges or assist in investigating charges is also strictly prohibited by law. An employee bringing a good faith harassment complaint or assisting in the investigation of a complaint in good faith may not be adversely affected in terms and conditions of employment, nor discriminated against or terminated because of bringing such a complaint or assisting in an investigation.

### **Legal Requirements – New York & California**

There is no federal law requiring training at this time. Training is currently legally required on a state-by-state or municipality basis, and employers are strongly advised to consult their attorneys about requirements in the jurisdictions where they operate.

An employer's failure to comply with training requirements is a violation of the labor law and employers may be subject to fines and other penalties.

In New York, both the state and city laws have recently been amended to strengthen workplace harassment prevention. ([Here](#) is a memo from Kane Kessler, AICP's Legal Counsel, outlining the new requirements.) Effective September 6, 2018, NYC employers will be required to conspicuously display an anti-sexual harassment rights and responsibilities poster ([found here](#)) and distribute an information sheet on sexual harassment to new hires ([found here](#)), both of which will be promulgated by the NYC Commission on Human Rights. A memo from Kane Kessler outlining this requirement is found [here](#). Effective October 9, 2018, New York State is requiring all private employers to have a written policy and provide annual, interactive training to all employees. A model policy and training program is currently being developed by the New York State Department of Labor and the New York State Division of Human Rights. Finally, effective April 1, 2019, NYC law will also require employers with fifteen (15) or more employees (this includes full and part-time workers, whether staff or freelance) to conduct annual anti-sexual harassment training. To the extent requirements under the state and city laws overlap, employers must ensure they are meeting the requirements of both laws.



In California, state law requires employers with fifty (50) or more employees to provide supervisors with anti-sexual harassment training at least every two years. When it comes to the training in California, an employer must have 50 employees each working day for at least 20 weeks - either in the current or preceding calendar year. It does not matter if the employees are fulltime, part-time or temporary. If a California company has employees out of state working during the same time period, they must also count them towards the 50-employee threshold.

New supervisors must receive training within six (6) months of employment. Employers must provide sexual harassment training in a classroom setting, through interactive E-learning, or through a live webinar and the training must last at least two-hours. E-learning training must provide instructions on how to contact a trainer who can answer questions within two business days. The law has requirements regarding required content. The two-hour harassment training must include components on harassment based on gender identity, gender expression, and sexual orientation. Employers are required to display a poster regarding transgender rights that is prepared by the California Department of Fair Employment and Housing. The law also defines who can conduct the training: (i) attorneys who have been admitted to the bar for 2 or more years and practice employment law, (ii) human resources professionals or “harassment prevention consultants” with at least two years of relevant practical experience or (iii) professors or college instructors with relevant experience.

In Connecticut, all employers with 50 or more employees must provide two hours of sexual harassment training to all supervisory employees within six months of the assumption of a supervisory position. Maine has a requirement that all employers with 15 or more employees provide sexual harassment training.

**Laws are constantly evolving in this area. AICP recommends that member companies consult with counsel in the state(s) where they operate. It is recommended that all employees and supervisors receive training to prevent workplace harassment, regardless of whether the law in your jurisdiction requires it.**

*This memo is provided for informational purposes only. It is not intended as legal advice. AICP member companies, and not AICP, are responsible for compliance with anti-harassment in the workplace laws and specifically with handling and investigating any claims of harassment by employees or freelancers. Readers should consult legal counsel to discuss how these matters relate to their individual circumstances.*