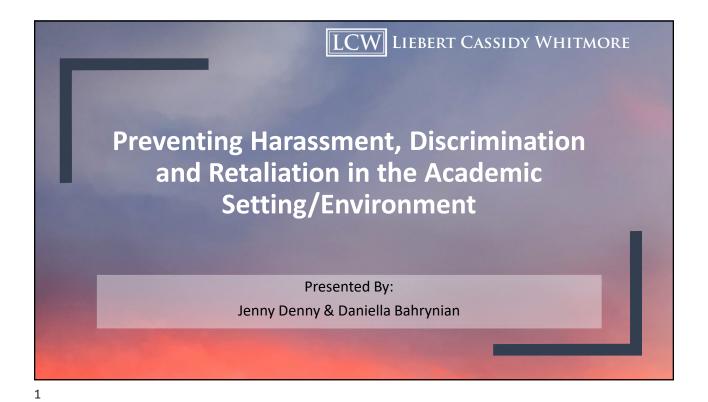
LCW Consortium | August 25, 2023

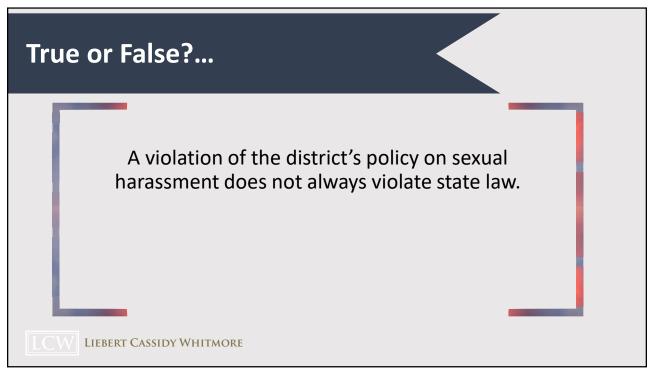
Presented by: Jenny Denny & Daniella Bahrynian



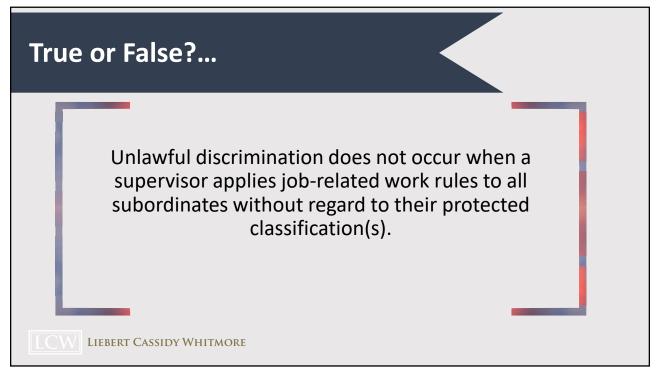
1. Overview of Laws and Policies Related to Discrimination, Harassment, and Retaliation
2. Protected Classifications
3. What is Unlawful Discrimination, Harassment, and Retaliation?
4. Duties of a Supervisor
5. Addressing Unlawful Discrimination, Harassment, and Retaliation in the Workplace
6. Title IX and Cal. Education Code Requirements
7. Abusive Conduct

LCW Consortium | August 25, 2023

Presented by: Jenny Denny & Daniella Bahrynian

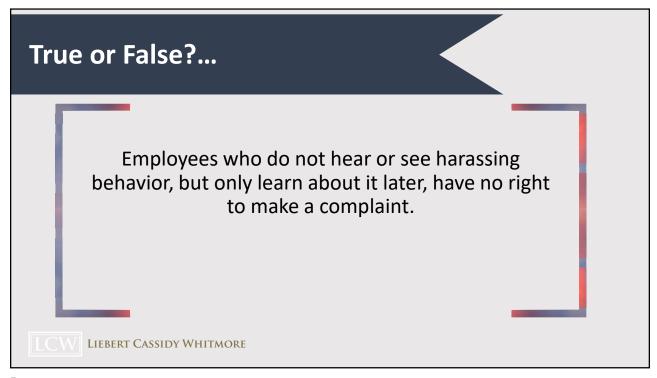


3

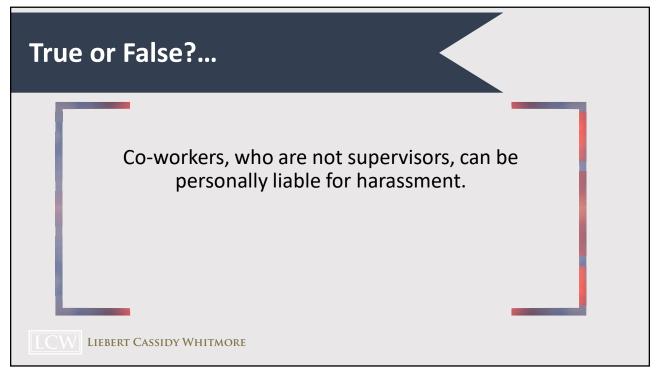


LCW Consortium | August 25, 2023

Presented by: Jenny Denny & Daniella Bahrynian



5





Presented by: Jenny Denny & Daniella Bahrynian

Overview of Laws and Policies Related to Discrimination, Harassment, and Retaliation



Sources of Law

Federal Law

- Title VI and VII of the 1964 Civil Rights Act
- Title IX of the Education Amendments of 1972
- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Genetic Information Nondiscrimination Act of 2008 (GINA)
- Section 1981 of United States Code
- Section 1983 of United States Code

LIEBERT CASSIDY WHITMORE



Presented by: Jenny Denny & Daniella Bahrynian



• Title VII and ADA - U.S. Equal Employment Opportunity Commission
 • FEHA - California Civil Rights Department
 • Title VI and Title IX — Office for Civil Rights
 • Your District's Policy — Human Resources/Personnel

LCW LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian

Essential Elements of a District Policy

- Prohibits employees and non-employees from engaging in discrimination, harassment and retaliation based on any protected status (all must be listed)
- Protects applicants, independent contractors and employees, interns, and volunteers
- Provides examples of prohibited conduct
- Requires supervisors to report



LIEBERT CASSIDY WHITMORE

11

Essential Elements of a District Policy

- Provides a thorough, prompt, objective and nonjudgmental investigation procedure
- Provides confidentiality to the greatest extent possible
- Identifies Civil Rights Department/EEOC resources including website or link to training

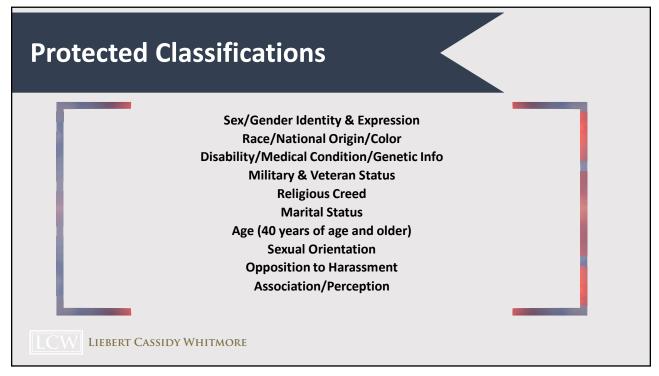
LCW

LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian

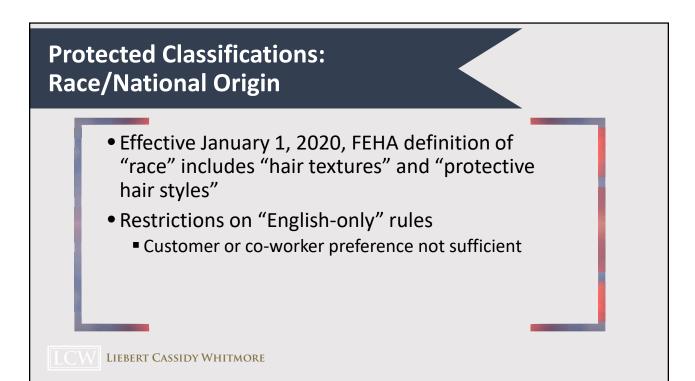


__

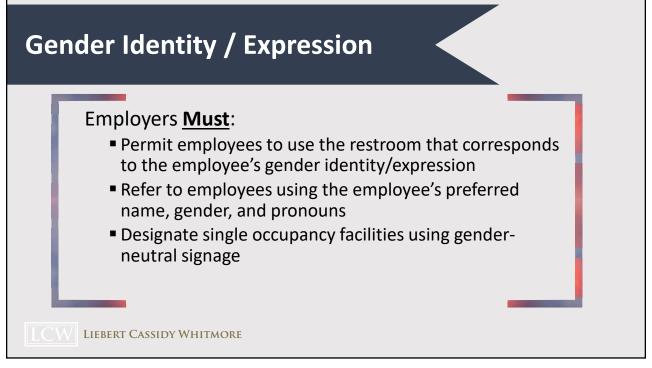




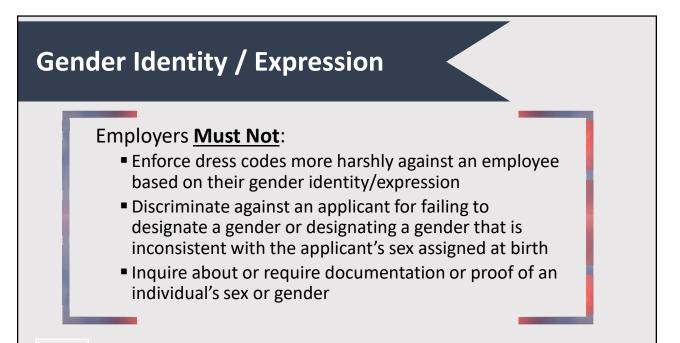
Presented by: Jenny Denny & Daniella Bahrynian



15



Presented by: Jenny Denny & Daniella Bahrynian



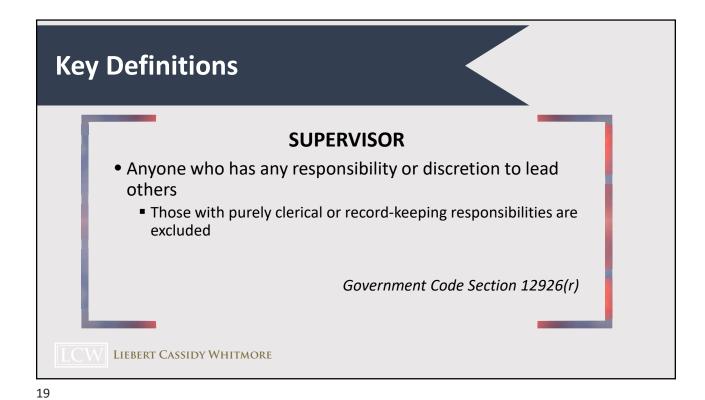
17

ADVERSE ACTION • Any action with material effect on "employment" or education taken within course and scope of "employment" or education • Includes actions which impact: • Job Performance • Grades or Student Status • Opportunity for Advancement

18

LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian



Case Study

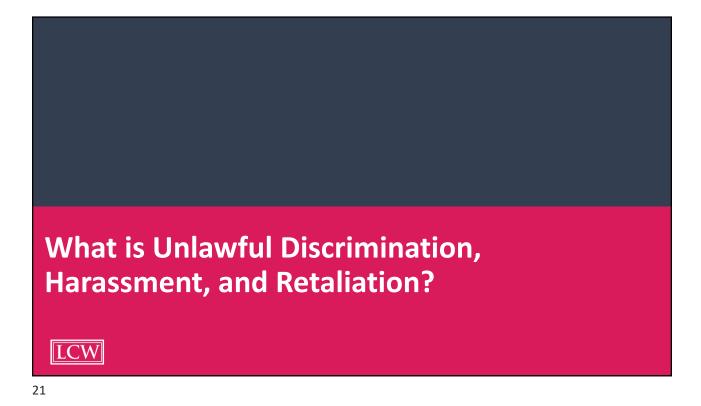
Julia, a Grounds Worker, is pregnant. Her doctors told her not to lift more than 20 pounds and to avoid prolonged standing during her pregnancy. Her position, however, requires that she be able to lift up to 50 pounds. Grounds Workers also spend the majority of their working hours standing.

Should the College tell Julia that she cannot work during her pregnancy because of her lifting restriction?

LCW LIEBERT CASSIDY WHITMORE



Presented by: Jenny Denny & Daniella Bahrynian



Unlawful Discrimination

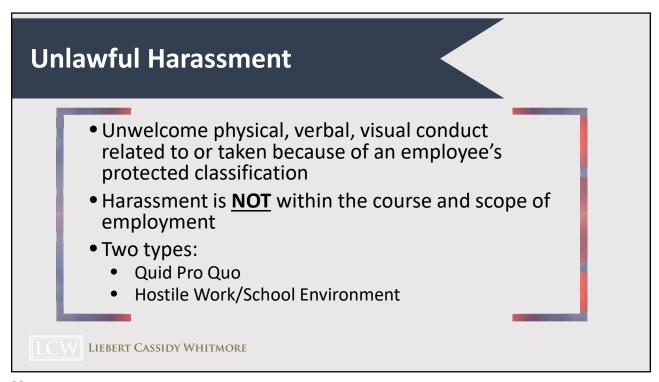
An adverse employment action taken because of

- A protected classification
- A perceived protected classification
- Association with another person of a protected classification
- Unpaid volunteers and interns are now protected from discrimination
- Adverse Employment Action = Action Taken Within the Course and Scope of Employment (e.g. Hiring, Firing, Demotion, Failure to Promote, Assignment of Job Duties, etc.)

LIEBERT CASSIDY WHITMORE



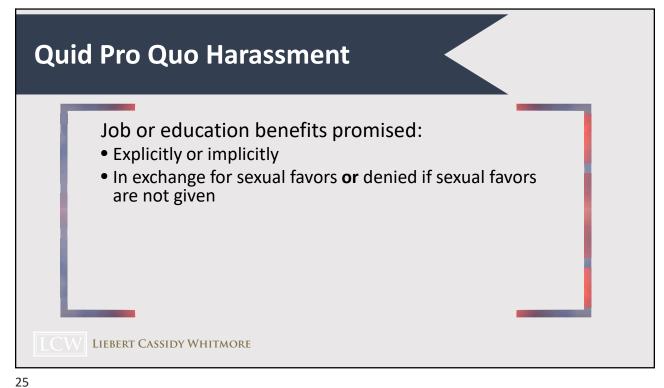
Presented by: Jenny Denny & Daniella Bahrynian

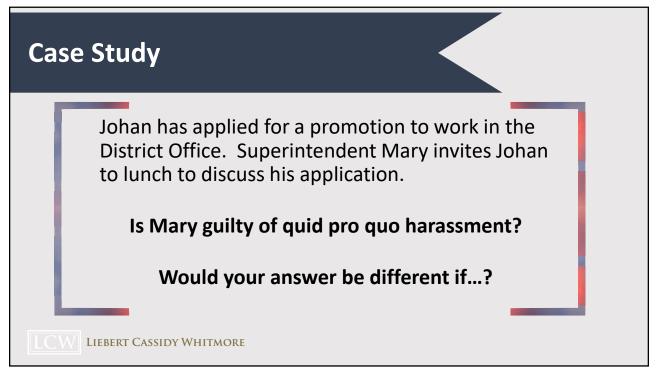


23



Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian

Hostile Work/Education Environment

- Physical, Verbal or Visual Conduct
- Based on a Protected Classification
- Objectively and Subjectively Offensive (Unwelcome)
- Severe **or** Pervasive
 - Single Incident May Establish Liability Under FEHA
- Unreasonably interferes with work or learning opportunities



LIEBERT CASSIDY WHITMORE

27

Hostile Work Environment ("Environmental" Harassment)

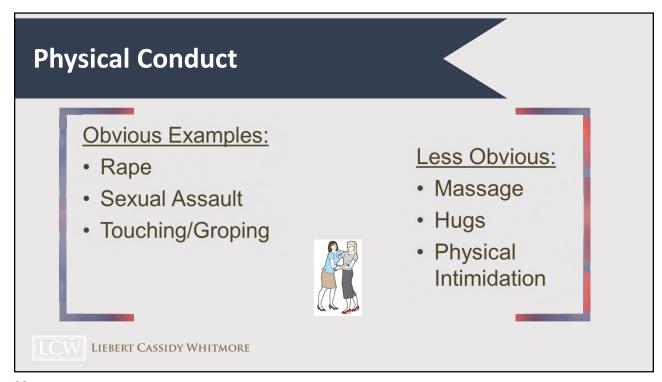
Changes After "Me Too" Movement:

- Decline in productivity not required to establish harassment it is sufficient that the conduct "so altered working conditions as to make it more difficult to do the job"
- A single incident of harassing conduct may be sufficient to create a hostile work environment
- Totality of the circumstances matter, including "stray remarks" by nondecisionmakers
- Standards do not vary by workplace
- Rarely determinable "on paper" alone

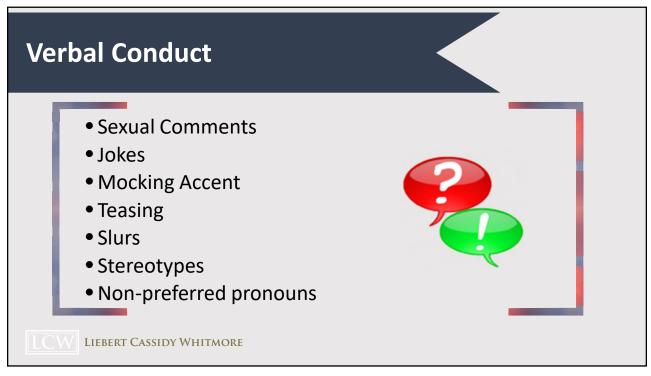


LIEBERT CASSIDY WHITMORE

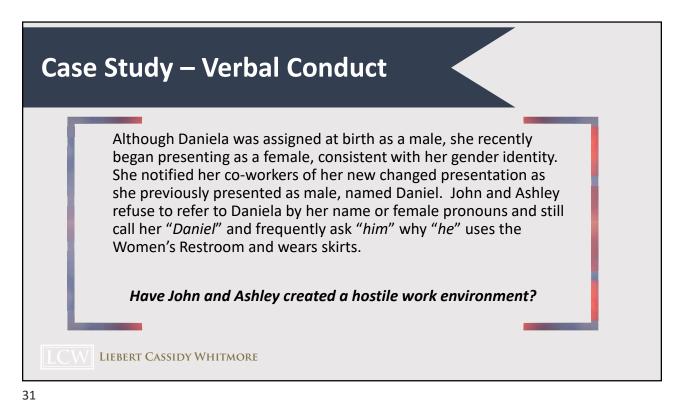
Presented by: Jenny Denny & Daniella Bahrynian

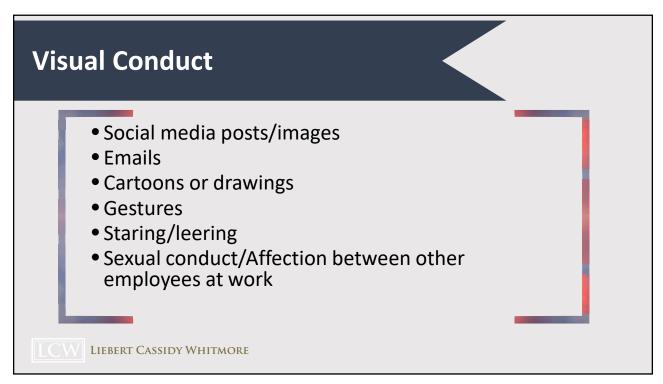


29

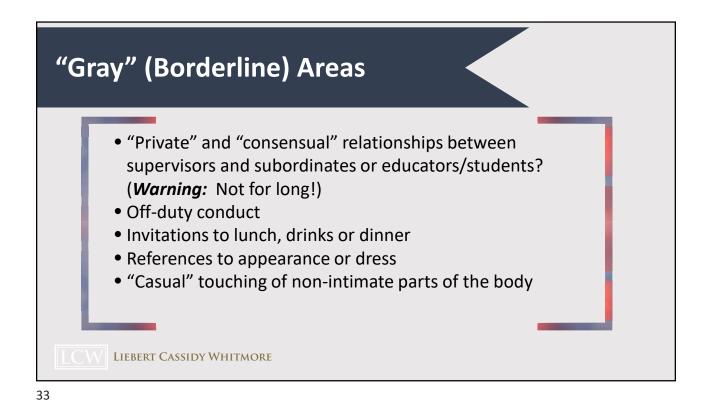


Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian



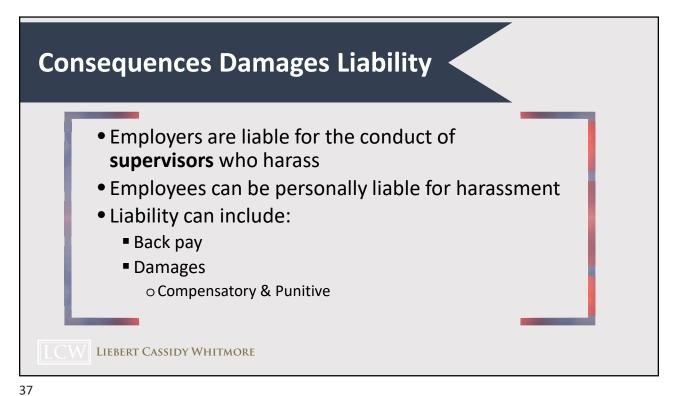


- Any employee can be held individually liable for harassment, discrimination, or retaliation, depending on the statute at issue:
 - California FEHA: Individuals may be liable for harassment only, not for discrimination or retaliation
 - Federal laws: Individuals can be liable for harassment and discrimination and retaliation, depending on the statute

LCW LIEBERT CASSIDY WHITMORE



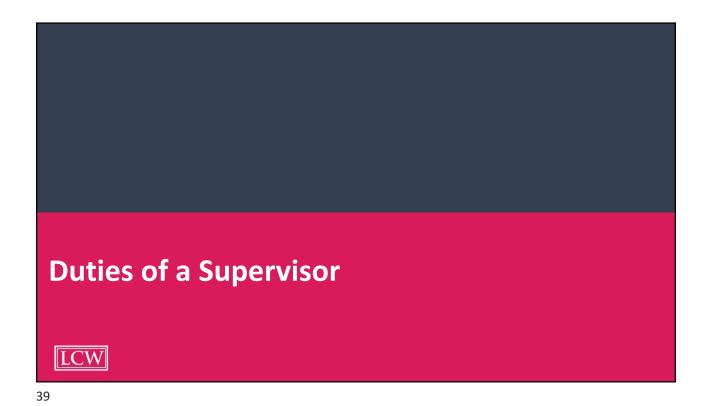
Presented by: Jenny Denny & Daniella Bahrynian



-

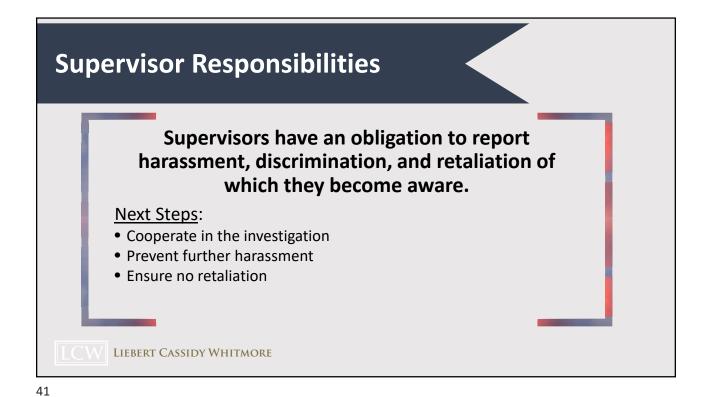


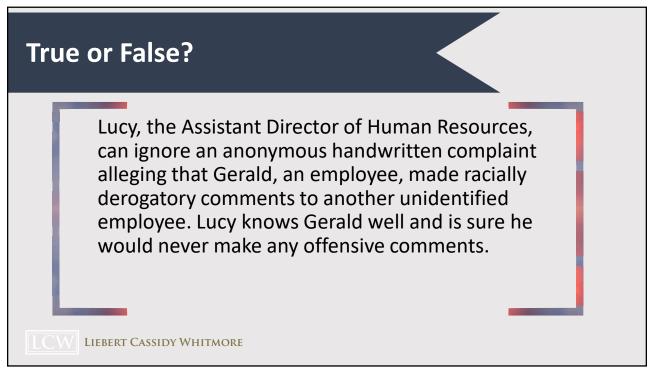
Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian

Addressing Unlawful Discrimination, Harassment, and Retaliation in the Workplace



43

Appropriate Corrective Action

- Conduct prompt and thorough investigation
 - (Confidentiality is limited)
- Discipline perpetrator appropriately
- Counseling for Victim
- Preventative training to prevent policy violations from recurring
- Republish/update District's Policy

LCW

LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian



- Provide notice of investigation results
- Provide for appeal to governing board and State Chancellor
- Provide required information to State Chancellor
- Establish timelines for completion of investigation



LIEBERT CASSIDY WHITMORE

requirements

45

What If You Are Accused?

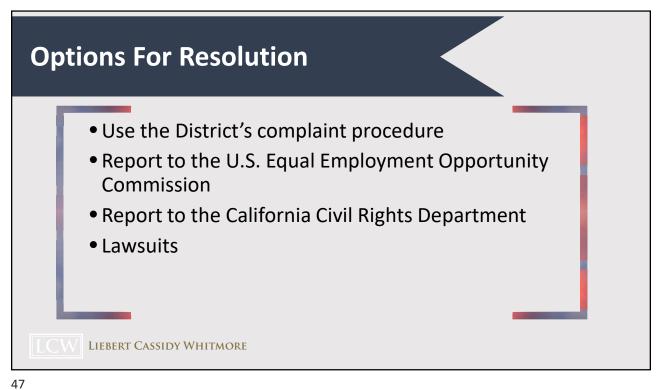
- Refer the accuser to a superior, Human Resources, legal advisor
- Report the accusation to your supervisor and to Human Resources
- Refrain from <u>ANY</u> action that could be interpreted as retaliation
- Seek constructive counseling from Human Resources
- Cooperate in the investigation
- Follow your district's policy



LIEBERT CASSIDY WHITMORE

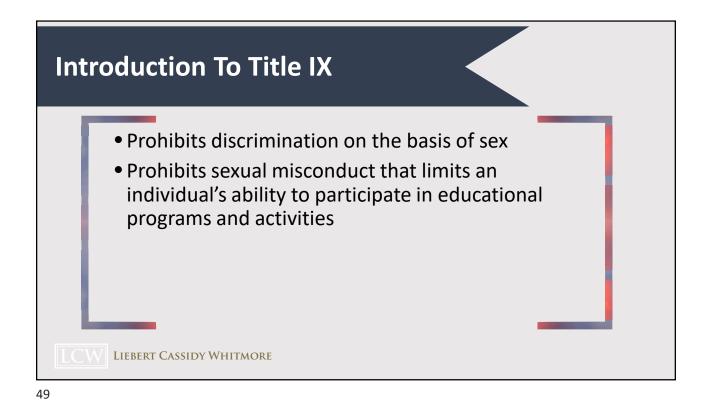


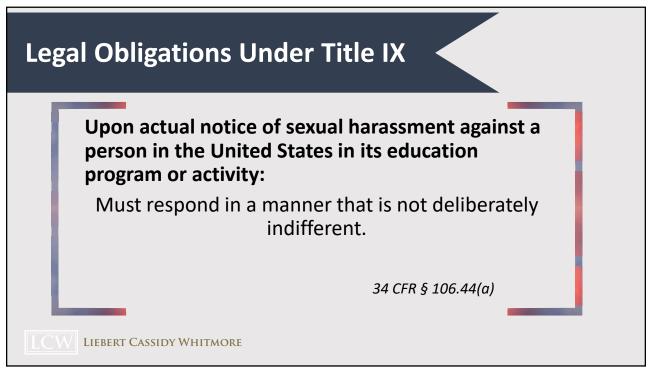
Presented by: Jenny Denny & Daniella Bahrynian



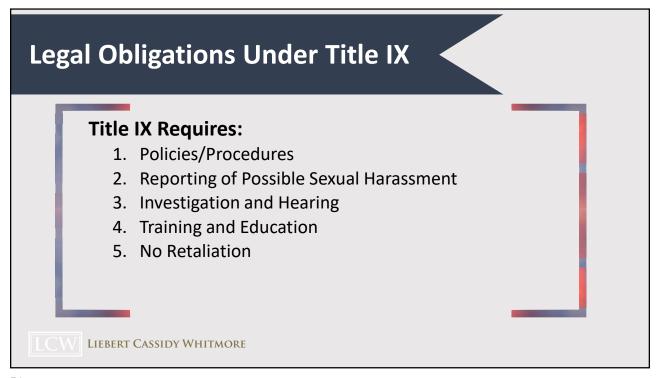


Presented by: Jenny Denny & Daniella Bahrynian

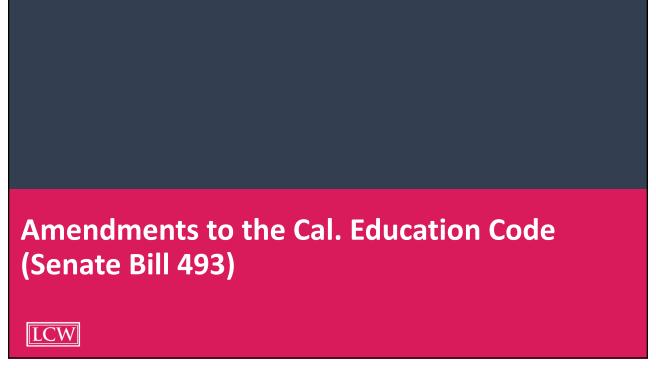




Presented by: Jenny Denny & Daniella Bahrynian



51



Presented by: Jenny Denny & Daniella Bahrynian

Senate Bill 493: Effective Jan. 1, 2022

- Applies to institutions receiving state financial assistance including California Community Colleges
- Added additional protections re sexual harassment
- Amended the definition of "sexual harassment" (Cal. Ed. Code § 66262.5.)
- Added procedural requirements for responding to notice of sexual harassment (Cal. Ed. Code § 66281.8.)



LIEBERT CASSIDY WHITMORE

53

Identification of Sexual Harassment

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- a) Made a term or condition of employment, academic status, or progress
- b) Used as the basis of employment or academic decisions affecting the individual
- Has the purpose or effect of having a negative impact on the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment
- d) Used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution

(Cal. Ed. Code § 212.5.)



LIEBERT CASSIDY WHITMORE



Presented by: Jenny Denny & Daniella Bahrynian

Identification of Sexual Harassment

"Sexual harassment" includes sexual battery, sexual violence, and sexual exploitation

- "Sexual violence" means physical sexual acts perpetrated without affirmative consent (including rape and sexual battery)
- "Sexual battery" means the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent
- "Sexual exploitation" means a person taking sexual advantage of another person without that person's consent, including, but not limited to:
 - Prostituting, trafficking, recording or distribution of images or audio of another person's sexual activity or intimate parts, viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy

(Cal. Ed. Code § 66262.5.)



LIEBERT CASSIDY WHITMORE

55

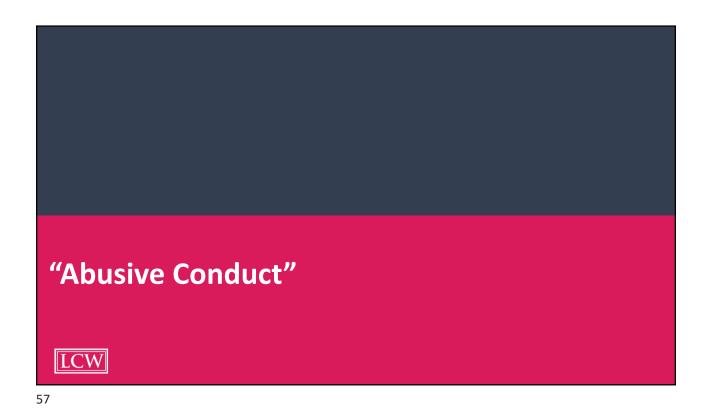
Procedural Requirements for Responding to Notice of Sexual Harassment

- Districts are required to have grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against an employee or another student
 - All students must be provided notice of these procedures
- District's adopted rules and procedures must provide for certain elements in addition to the policies required by Title IX
 - E.g., A district must promptly investigate alleged conduct or otherwise respond if the district knows, or reasonably should know, about possible sexual harassment involving individuals subject to the district's policies, regardless of whether or not a complaint has been filed



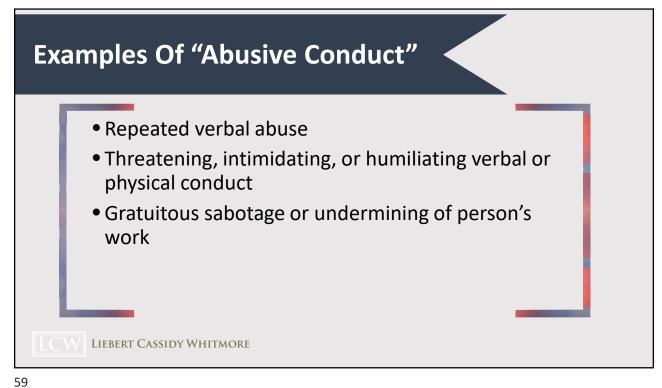
LIEBERT CASSIDY WHITMORE

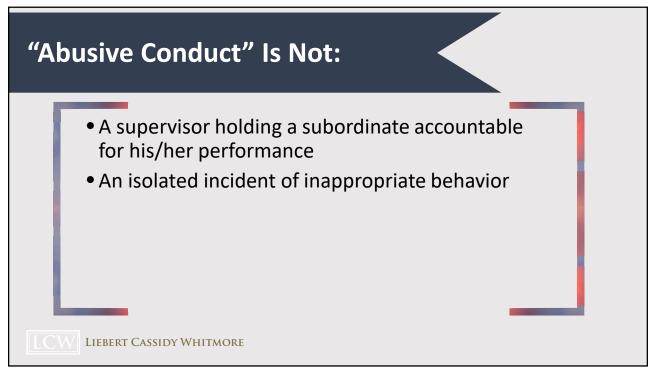
Presented by: Jenny Denny & Daniella Bahrynian



"Abusive Conduct"
• Malicious conduct
• Objectively and Subjectively Hostile or Offensive
• Unrelated to employer's legitimate business interests
• BUT it is not harassment

Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian

"Abusive Conduct" v. Unlawful Harassment

- Harassing conduct is directed at someone's membership in a protected classification
 - Harassment is illegal
- "Abusive Conduct" is NOT directed at someone's membership in a protected classification
 - NOT illegal, but should be addressed internally



LIEBERT CASSIDY WHITMORE

61

Case Study

You, a supervisor, overhear Diane (another supervisor) say to two other employees that Jessica is "too ditsy to ever get promoted." Two days later, you overhear Diane telling Jessica directly that she is an "idiot." Another day, during a team meeting, you witness Diane say to Jessica after giving a presentation, "I can't believe how lazy you were about that presentation, it was completely stupid." Other employees were within hearing distance when Diane made this comment.

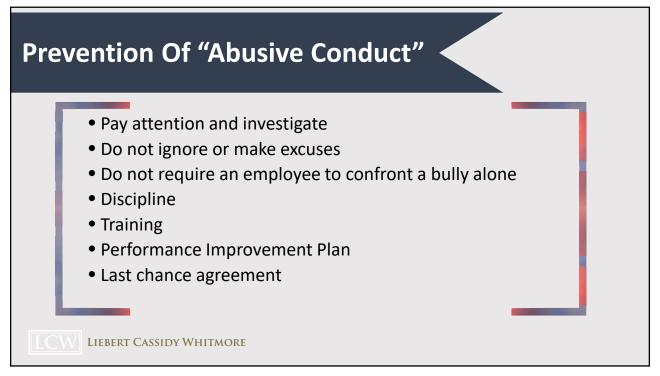
What should you do?



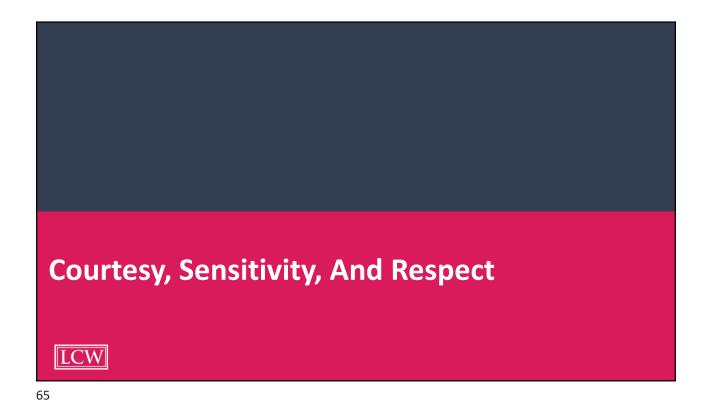
LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian





Presented by: Jenny Denny & Daniella Bahrynian



Case Study #1

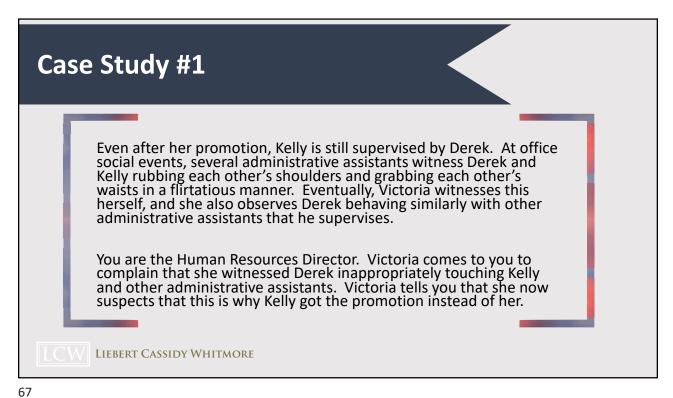
Kelly and Victoria are both administrative assistants for Tralee Bay Community College District. Kelly has been having an affair with the Administrative Director, Derek, for months. Derek has also been having affairs with other administrative assistants in the department. As Administrative Director, Derek supervises all administrative assistants.

Victoria and Kelly both apply for the same promotion. Victoria is qualified for the position and has been at the department longer than Kelly has. However, Kelly gets the promotion, becoming an Administrative Manager.

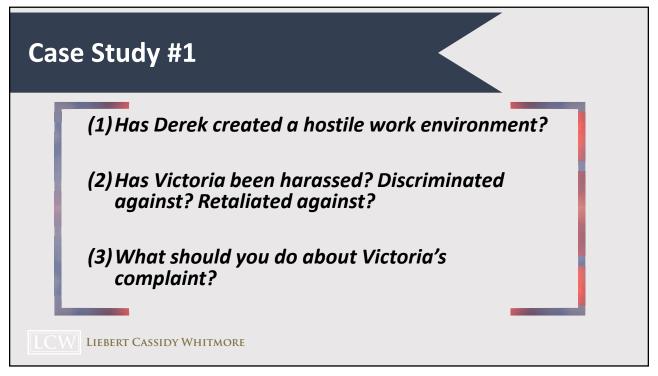
LCW LIEBERT CASSIDY WHITMORE



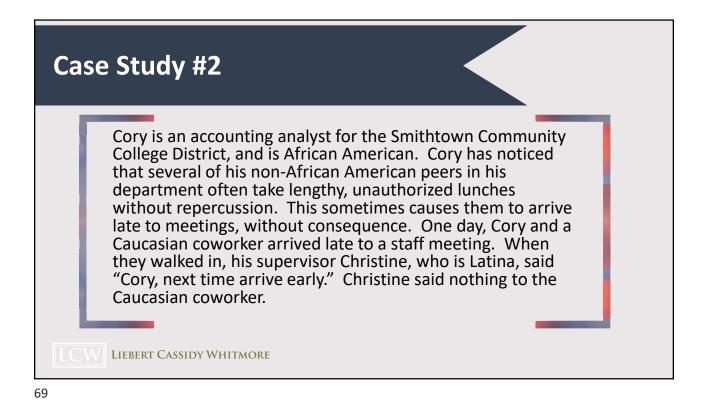
Presented by: Jenny Denny & Daniella Bahrynian

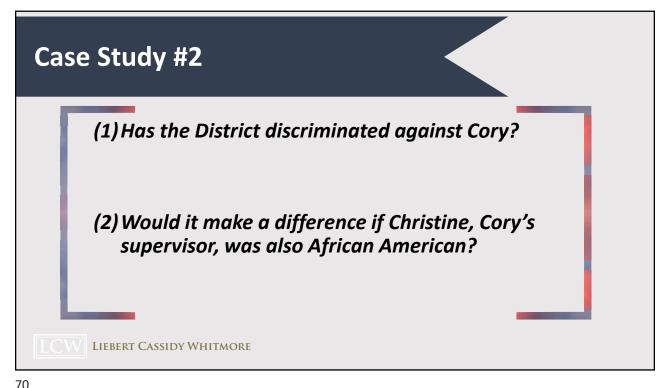


0,



Presented by: Jenny Denny & Daniella Bahrynian





Case Study #3

Tom is a basketball player for Green Hills Community College. He is in the starting lineup for the varsity team, and is generally viewed as having a good chance at a scholarship to a four-year university. However, Tom and his father have met with the Athletic Director, Vince Andrews, to tell him that Tom is quitting the team because of rampant sexual harassment.



LIEBERT CASSIDY WHITMORE

71

Case Study #3

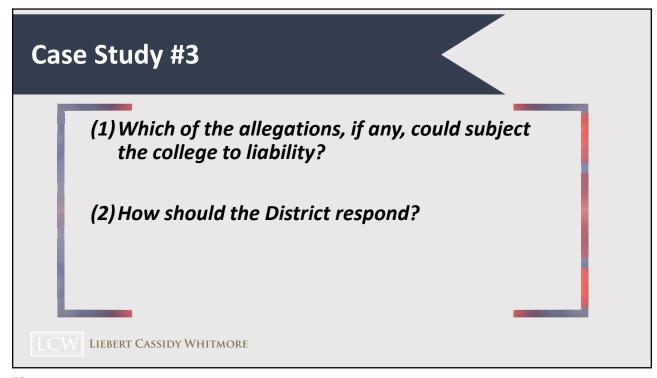
Tom and his father report the following conduct:

- Coach puts his arms around players' shoulders when giving them directions and puts them on the buttocks when sending them out on the court.
- Other members of the basketball team tease Tom about engaging in sexual activity. When Tom complained to the coach, he laughed and said, "What do you expect when you look the way you do?"
- Members of visiting teams often shout sexually explicit insults at the team in an effort to break their concentration.

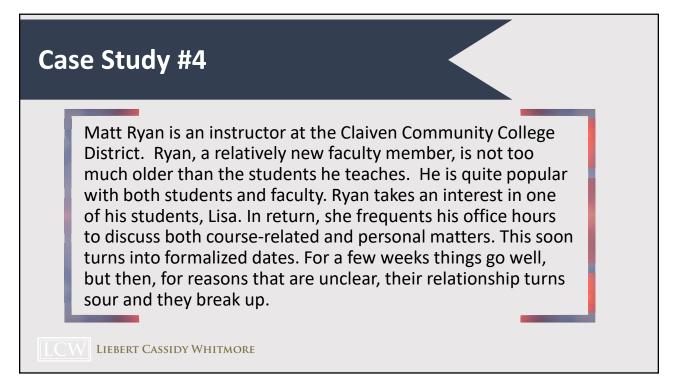


LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian



73



Case Study #4

Ryan is visibly agitated when he must interact with Lisa. He begins making snide remarks to her in class, which sometimes border on insults. Lisa believes that her grades have declined as a result of their break up and is unable to get the academic guidance she needs from Ryan. On campus, Lisa sometimes catches Ryan staring at her from across campus and bumps into him unexpectedly on various parts of campus. Lisa, feeling uncomfortable, paranoid, and concerned about her grades, meets with Gloria Thomson, the area dean.



LIEBERT CASSIDY WHITMORE

75

Case Study #4

Thomson listens to Lisa's concerns carefully and asks detailed questions about the history of the relationship and specific incidents. Thomson then tells Lisa that she is over-reacting and may just be wishing that Ryan still had feelings for her. She advises Lisa that it is normal to fantasize about a teacher and that if she studies enough her grades will be fine.

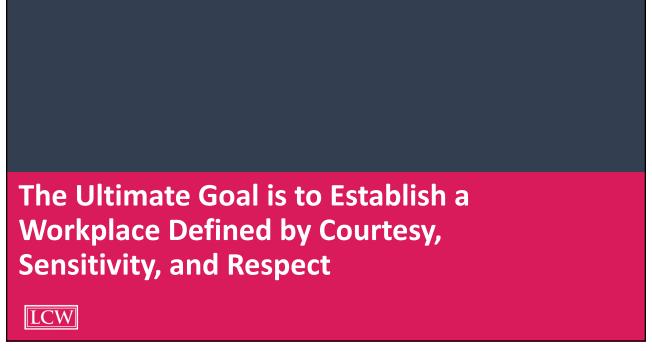
LCW

LIEBERT CASSIDY WHITMORE

Presented by: Jenny Denny & Daniella Bahrynian



77



LCW Consortium | August 25, 2023

Presented by: Jenny Denny & Daniella Bahrynian

