

ATTACHMENT F

**Fair Employment & Housing Council
Proposed Text of the Housing Regulations Regarding Retaliation,
Harassment, Sexual Harassment, and Liability for Unlawful Harassment**

CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Div. 4.1. Department of Fair Employment & Housing
Chapter 5. Fair Employment & Housing Council
Subchapter 3. Discrimination in Housing

TEXT

Article 1. General Matters

§§ 11098.1. – 11098.4 [Reserved]

Article 2. Discriminatory Housing Practices

§ 11098.5. Retaliation.

(a) It shall be unlawful for any owner of a housing accommodation to take adverse action against any person for engaging in a protected activity when the dominant purpose for the adverse action is retaliation.

(b) “Adverse action” includes, but is not limited to, harassment, eviction, a change in the terms and conditions, or any other discrimination made unlawful by the FEHA.

(c) “Protected activity” includes, but is not limited to, opposition of practices made unlawful under the FEHA, informing law enforcement agencies of practices believed unlawful under the FEHA, testifying or assisting in a proceeding regarding unlawful activity, assertion of rights protected by the FEHA, aiding or encouraging a person to exercise their rights under the FEHA, or making a request for a reasonable accommodation.

(d) “Dominant purpose” means a purpose that is a substantial motivating factor in the harassment, eviction, or other adverse actions challenged as retaliatory. A substantial factor motivating the adverse action is a factor that a reasonable person would consider to have contributed to the action. It must be more than a remote or trivial factor. It does not have to be the only cause of the adverse action.

§ 11098.6. Harassment.

(a) It shall be unlawful for a landlord or owner to harass any person in connection with the sale or rental of a dwelling on account of a person’s membership in a protected class. Harassment includes any hostile or unwelcome conduct which deprives or interferes with the right to live in a discrimination-free housing environment.

(1) Deprivation of a discrimination-free housing environment is established if the unwelcome conduct alters the terms, conditions, privileges, facilities, or services in connection with a complainant's housing accommodation so as to create a hostile, unsafe, or offensive housing environment or otherwise interferes with the quiet enjoyment of the complainant's housing environment.

(2) Harassment in housing includes but is not limited to:

(A) Verbal harassment, e.g. epithets, derogatory comments or slurs on a protected basis;

(B) Physical harassment, e.g. assault, impeding or blocking movement, or any physical interference with normal movement, when directed at an individual on a protected basis;

(C) Visual forms of harassment, e.g., derogatory posters, cartoons, drawings or other documents on a protected basis;

(D) Unwelcome sexual conduct, or other unwelcome conduct linked to the person's sex;

(E) Any coercion, intimidation, threats, or interference with an individual's exercise or enjoyment of a housing benefit, on a protected basis;

(F) Imposing different terms, rules, conditions, privileges, facilities, or services in connection with a housing benefit or accommodation because of a protected basis;
or

(G) Revealing private information about an individual to a third party.

(b) Harassment may be established by showing that the conduct was sufficiently severe or pervasive to alter the aggrieved person's conditions of residency or to create an environment which a reasonable person in the aggrieved person's position would find intimidating, hostile, offensive, or otherwise significantly less desirable in the provision of housing accommodations or benefits. The severity of the harassment is judged from the perspective of a reasonable person in the victim's position, considering all the circumstances. One act or omission may be sufficient to establish conduct that is sufficiently severe under this section.

§ 11098.7. Sexual Harassment.

(a) Harassment because of sex violates the prohibitions against discrimination found in the FEHA. Sexual harassment includes both:

(1) Quid pro quo harassment: When submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is made a term or condition, whether explicitly or implicitly, to the provision of a housing

accommodation, service, or benefit; and

(2) Hostile housing environment: When unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct has the effect of creating an environment which a reasonable person in the aggrieved person's position would consider intimidating, hostile, and/or offensive.

(b) Whether unwelcome sexual conduct constitutes actionable sexual harassment will depend upon the totality of the circumstances, including the nature of the conduct and the context in which the conduct occurred. Critical factors to examine include, but are not limited to, the context, nature, severity, scope, frequency, duration, and location of the conduct, as well as the identity, number, relative ages and relationships of the persons involved. A single incident of conduct if sufficiently severe may constitute actionable sexual harassment.

§ 11098.8. Liability for Unlawful Harassment

(a) A landlord, owner, or manager is liable for his or her own harassing acts.

(b) A property owner or manager who directs his or her employees, agents, or contractors to engage in sexual harassment, or who knows or should have known about sexual harassment perpetuated by such persons but fails to take action to stop it, is directly liable for any resulting harm.

(c) A landlord, owner, or manager shall be vicariously liable for harassment by his or her agents or employees if the harassment is committed within the scope of the agent or employee's employment.

(1) Whether harassment occurs within the scope of employment is a question of fact. However, harassing conduct can be found to occur in the scope of employment even if it violates an employee's official duties, does not benefit the employer, is willful or malicious, or disregards the employer's express orders.

(2) An agent or employee shall be considered to be acting within the course and scope of the employment relationship if his or her harassing conduct occurs incidental to an employee's job-related tasks. This includes, but is not limited to, being on the premises for work-related reasons such as conducting repairs.

(d) A property owner or manager is liable for third party acts of harassment where the property owner or manager, or his or her agents or employees, knew or should have known of the third party's conduct and did not take immediate and appropriate corrective or remedial action.

(e) A harasser may be personally liable for the harassment, regardless of whether the landlord, owner, or other covered entity knew or should have known of the conduct and/or failed to take appropriate corrective action.