



## ***KD Alert: “You Don’t Need a Weatherman to Tell You Which Way the Wind Blows”: What Your Supervisors Don’t Know Can Hurt You***

**By Pamela E. Woodside, Esq.**  
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On February 10, 2014, the City Council of San Diego agreed to pay \$250,000 to Irene McCormack-Jackson, the ex-communications director for embattled former San Diego Mayor Bob Filner. As some may recall, this past July 2013, Ms. McCormack-Jackson sued Mayor Filner and the City of San Diego for sexual harassment. Ms. McCormack-Jackson wasn't alone – at least seven other women eventually stepped forward to accuse Filner of subjecting them to crude and disgusting comments and inappropriate touching.

Filner's attorney focused on the City's failure to provide his client with sexual harassment training. In a “novel” legal argument, Filner's attorney, Harvey Berger, tried to convince the San Diego City Council that the City should be responsible for paying the Mayor's legal fees and costs because Filner had never received sexual harassment training. According to Mr. Berger, “While, to paraphrase Bob Dylan, ‘you don't need a weatherman to tell you which way the wind blows,’ and an adult male should not need sexual harassment training, I would point out that in his decades of public service for the people of the City of San Diego as a U.S. representative, [and mayor], Mayor Filner never received sexual harassment training.”

California law, requires, supervisors to receive sexual harassment training every two (2) years. Mayor Filner was actually scheduled to receive the state-mandated training, but it was allegedly cancelled and never rescheduled. The Mayor's defense was not trying to excuse his client's inappropriate behavior, but rather pointed to the City as the liable culprit because it failed to prevent the Mayor's behavior. California law may hold employers strictly liable for the harassing and/or discriminatory conduct of their supervisory employees.

Awakened to the failings of the City of San Diego, the Department of Fair Employment and Housing (DFEH) filed a complaint against the City of San Diego for failing to provide sexual harassment prevention training to its supervisory employees, including elected and appointed officials even though there had been no finding that Filner actually did sexually harass Ms. Jackson. The City of San Diego determined that settling with the DFEH was in its best interests and agreed to provide the necessary sexual harassment training to all supervisory employees and report its sexual harassment training compliance to the DFEH every six (6) months for five (5) years.

In 2013, sex discrimination, including sexual harassment and pregnancy discrimination accounted for nearly 30% percent of all charges filed with the Equal Employment Opportunity Commission (EEOC). Further, the EEOC obtained the highest monetary recovery in its history through its administrative process in 2013, increasing by \$6.7 million to \$372.1 million.

**WHAT SHOULD EMPLOYERS DO?** Of course, the answer is rather simple: **comply with the law. Don't be the next statistic or victim of an agency investigation and charge. The Filner sexual harassment lawsuit and the ensuing DFEH investigation should serve as a wake-up call to all employers –private and public alike – that steps must be taken to prevent harassment and discrimination in the workplace. Contact Pamela Woodside, Esq. in KD's Los Angeles Employment Law department to train your employees, including supervisory employees, on prevention of harassment, discrimination and retaliation.**