

AB 1825-Compliant Trainings on Sexual Harassment Required in 2011

Since 2004, all California employers with 50 or more employees are required to provide *two hours* of sexual harassment prevention training to supervisors and managers *every two years*. Because required training began in 2005, every odd year (i.e. 2007, 2009) has been deemed as a “retraining year.” 2011 is not different.

Employers are not required to ascertain each individual employee’s training history as long as the employer specifies a particular year as one for “retraining.” This is known as “Training Year Tracking” and it allows the retraining process to be less complicated for employers as they can simply train all of their supervisors together during a designated year. Still, newly hired supervisors or individuals who are promoted to supervisor or management positions need to be trained within six months of achieving supervisory status.

Comprehensive bi-annual training meets only the minimum standard under the law. It is incumbent on employers to ensure that supervisors understand and adhere to the law of prohibited harassment.

It is also important to note that the California Fair Employment and Housing Commission (“FEHC”) recently promulgated regulations interpreting the training requirements embodied in [Gov. Code section 12935, subd. (a)]. These new regulations became effective on August 17, 2007. These regulations include a listing of the subjects to be covered in AB 1825-compliant training, such as the “essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed.”

As part of its routine investigation of any discrimination complaints filed, the Department of Fair Employment and Housing (“DFEH”) now questions every employer in employment discrimination cases whether it has provided its supervisors the requisite training according to these

FEHC regulations. The DFEH also asks for qualifications of the applicable trainer and the pertinent training material.

There are three categories of personnel who are qualified to present sexual harassment prevention training: attorneys, harassment prevention consultants /human resource professionals, and instructors/professors. However, the FEHC has declared that all trainers must have a minimum of two years of experience. For attorneys, this means they must be admitted to the bar of any state for two years; and their practice must include employment law under the Fair Employment and Housing Act (“FEHA”) or Title VII of the federal Civil Rights Act of 1964.

Under the FEHC’s regulations, there are also three categories of acceptable training: classroom training; online, computer-based training (“E-Learning”); and web-based seminars (“Webinars”). Each of the training methods must provide hypothetical scenarios about harassment and every hypothetical should have discussion questions so that supervisors stay involved in the training. Other requirements include skill-building activities that evaluate the supervisor’s application and understanding of subject matter. Discrimination and retaliation should also be included in -compliant training; but sexual harassment prevention is expected as the focus. Therefore, employers may wish to increase the time of their trainings in order to address topics outside of sexual harassment.

There are potentially expensive consequences for employers that fail to comply with AB 1825 and fail to train their employees. Failure to prevent harassment by not conducting requisite training can lead to enhanced liability. On the other hand, sexual harassment training can help limit damages for employers in prospective lawsuits.