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Final California Sexual Harassment Training Regs

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On July 18, 2007, California's Office of Administrative Law adopted final regulations on Assembly Bill 1825 which states that employers with 50 or more employees or independent contractors must provide sexual harassment training to all supervisors.

In addition, new hires and newly-promoted supervisors must be trained within six months of their hire date and/or promotion.

Effective August 17, 2007, final regulations were published, titled "Sexual Harassment Training and Education" (California Code of Regulations §7288.0), to clarify employers' obligations.

The new regulations define various forms of effective interactive training as including classroom training, e-learning, and webinars.

The training must be interactive; if a trainer is not present, one must be available to answer questions within two business days after the question is asked.

Training must include questions that assess learning, skill-building activities that assess the supervisor's application and understanding of the content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that supervisors remain engaged in the training.

The regulations also define the qualifications for a trainer as meeting one of the following descriptions:

- 1) an attorney with at least two years experience and whose practice includes employment law;
- 2) a human resource professional or harassment prevention consultant with a minimum of two years practical experience designing harassment/discrimination prevention training, responding to harassment complaints, conducting investigations of sexual harassment complaints or advising employers on these issues; or
- 3) a law school, college or university professor with twenty instruction hours or two or more years experience teaching employment law under the Fair Employment and Housing Act and Title VII.

Individuals who do not fit the definition of a trainer as described above may still conduct the training so long as a trainer supervises and is available to answer questions.

The regulations contain a list of 11 nonexhaustive topics required by the training.

These include: the types of conduct that constitutes sexual harassment; strategies to prevent sexual harassment in the workplace; "practical examples," such as factual scenarios taken from case law, news and media accounts; resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment; and the employer's obligation to conduct an effective workplace investigation of a harassment complaint.

Although at least two hours of training is required, the regulations state the training need not be completed in two consecutive hours, so long as the minimum duration of a training segment is no less than half an hour for classroom training or webinars. Employers must retain documentation of the training for a minimum of two years.

The finalized regulations are not retroactive. Accordingly, until the new regulations become effective, employers who made a good faith effort to meet the AB 1825 requirements will be deemed compliant.

After August 17, 2007, however, "good faith efforts" are not sufficient.

Under AB 1825, the first training deadline was December 31, 2005. Training must be repeated every two years.

Thus, for many organizations 2007 is a "training year." Employers who trained their supervisors in 2005 must retrain in 2007, and must now comply with the new, stricter – though better defined – guidelines.

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