

A closer look at AB 1825

Most California employers are aware of AB 1825 that requires all employers that conduct business in California with 50 or more employees, to provide their supervisors and managers with two hours (excluding breaks) of sexual harassment prevention training every two years. However, many questions remain with regard to AB 1825's specific requirements, its applicability to managers and supervisors outside California, and employers' training options and obligations. Below, MLR addresses some of employers' most frequently asked questions (FAQ's), in an attempt to provide clarity on these issues:

Question #1:

I know employers with "50 or more employees" are required to provide AB 1825 Harassment Prevention Training to their supervisors and managers based in California. However, how is the term "employee" defined?

Answer #1:

Compliance with AB 1825 is required by all employers that conduct business in California that have 50 or more employees **or contractors** working each day in any 20 consecutive weeks in the current calendar year or preceding calendar year. A "contractor" is defined as a person performing services pursuant to a contract with the employer for each working day in 20 consecutive weeks in the current or preceding calendar year. The employees/contractors are not required to work at the same location, nor are they all required to work or reside in California. Also, the State of California, its counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees, are subject to AB 1825's requirements.¹

Question #2:

Are supervisors and/or managers who oversee California-based employees but reside outside of California also required to attend AB 1825 Harassment Prevention Training?

Answer #2:

Only those supervisors located in California need to receive AB 1825 Harassment Prevention Training.² However, we recommend that managers and supervisors outside

¹ See generally, Cal. Code Regs., tit. 2, § 7288.0, subd. (a).

² See, *Sexual Harassment Training In California*, Ann M. Noel, California Fair Employment & Housing Commission, <http://www.fehc.ca.gov/act/harass.asp>

of California who supervise employees based in California receive AB 1825 Harassment Prevention Training.

Question #3:

Who is qualified to conduct AB 1825 Harassment Prevention Training?

Answer #3:

Three categories of persons are qualified to deliver AB 1825-compliant training:

- Attorneys
- Professors or instructors
- Human resources professionals or harassment prevention consultants

For AB 1825 purposes:

“Attorneys” are defined as attorneys admitted for two or more years to the bar of any state in the United States whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.

“Professors or instructors” are defined as professors or instructors in law schools, colleges, or universities who have a postgraduate degree or California teaching credential and either 20 instruction hours or two or more years of experience in a law school, college, or university teaching about employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.

“Human resources professionals” or “harassment prevention consultants” are defined as persons working as employees or independent contractors with a minimum of two or more years of practical experience in one or more of the following:

- (a) designing or conducting discrimination, retaliation, and sexual harassment prevention training;
- (b) responding to sexual harassment complaints or other discrimination complaints;
- (c) conducting investigations of sexual harassment complaints; or
- (d) advising employers or employees regarding discrimination, retaliation, and sexual harassment prevention.

Individuals who do not meet the qualifications outlined above because they lack the requisite years of experience may “team teach” with a trainer in classroom or webinar trainings, provided that the trainer supervises these individuals and the trainer is available throughout the training to answer questions from training attendees.³

Question #4:

What types of training options are available to employers for providing supervisors and managers with AB 1825 Harassment Prevention Training?

³ See generally, Cal. Code Regs., tit. 2, § 7288.0, subd. (a)(9)(A)-(B).

Answer #4:

Employers have three options for providing their supervisors and managers with AB 1825 Harassment Prevention Training:

- Classroom, or in-person training;
- Web-based seminars, or “webinars”; and
- Online computer-based training, called “e-learning.”

“Classroom training” is in-person trainer instruction. The content is both created and provided to a supervisor by a trainer, in a setting removed from the supervisor’s daily duties.

“Webinar” training is an Internet-based seminar whose content is created and taught by a trainer and transmitted over the Internet or an intranet in real time. An employer utilizing a webinar for its supervisors must document and demonstrate that each supervisor who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training’s interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities. The webinar must provide the supervisors an opportunity to ask questions, to have them answered, and otherwise to seek guidance and assistance.⁴

“E-learning” training is individualized, interactive, computer-based training created by a trainer and an instructional designer. An e-learning training session must provide a link or directions on how to contact a trainer, who must be available to answer questions and to provide guidance and assistance about the training within a reasonable period of time after the supervisor asks the question, but no more than two business days after the question is asked.

Question # 5:

Are there specific requirements with which these different training formats must comply?

Answer # 5:

Yes. In order to meet the requirements of AB 1825, each of the different training formats must:

- Be interactive;
- Challenge the attendees with questions that assess learning;
- Provide skill-building activities that assess the attendee’s application and understanding of content learned; and
- Provide numerous hypothetical scenarios about harassment; each hypothetical must have one or more discussion questions so that attendees remain engaged in the training.

Question #6:

I know that newly hired or promoted supervisors and managers must receive AB 1825 Harassment Prevention Training within six months of obtaining supervisory/ managerial

⁴ See *id.*, subd. (a)(2).

status. However, what if my newly hired supervisor or manager recently received training by his or her former employer?

Answer #6:

If the current employer is satisfied that the new supervisor attended training within the last two years that was AB 1825-compliant, then retraining is not required. This new supervisor or manager would nonetheless be required to read and to acknowledge receipt of the employer's antiharassment policy within six months, and must be put on a two-year tracking schedule based on the last training. **However**, it is important to note that the current employer bears the burden of establishing that the prior training was legally compliant with AB 1825!

Question #7:

What consequences might an employer face for failing to provide AB 1825 Harassment Prevention Training to its California-based supervisors and managers?

Answer #7

An employer who fails to provide Harassment Prevention Training to its supervisors and managers in compliance with AB 1825 may face liability for breach of its duty to "take all reasonable steps to prevent harassment from occurring."⁵

Question #8:

Are employers required to train supervisors about all types of unlawful harassment during the two-hour training?

Answer #8:

No. The California Fair Employment and Housing Commission's regulations allow, but do not require, an employer to include other types of harassment in its two-hour mandatory training.⁶

⁵ Cal. Gov. Code § 12940, subs. (j) & (k).

⁶ Cal. Code Regs., tit. 2, § 7288.0, subd. (c)(1).