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New AB 1825 California Training Regulations: What Do They Mean for Your Organization?

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Agenda

- Who Is a Covered Employer?
- Who “Must” Be Trained?
- Who “Must” Provide the Training?
- What Are the Training Options?
- How Can You Track Compliance?
- Best Practices

Training Statute & Regulations

- California Government Code § 12950.1
(added 01/01/05, AB 1825; rev'd 2006)
- Title 2 California Code of Regulations § 7228.0
(added 08/17/07)

Who Is a Covered Employer?

- Businesses or persons operating in California that have employed or engaged
- 50 or more people as an employee, contractor, or other agent within in the United States
 - Regular, temporary, full-time, part-time, agency temporaries, seasonal, consultants, or contractors
 - For each day during 20 consecutive weeks in the last or current calendar year

Who “Must” Be Trained?

- “Supervisory” personnel who have the authority:
 - to hire, transfer suspend, recall, promote, assign, direct, adjust grievances, reward, discipline, layoff, or terminate or
 - to recommend any such action

with respect to one or more “workers” located in California

- Regardless of classification and status or title:
 - Exempt vs. non-exempt, employee vs. contractor, full- vs. part-time, regular vs. temporary
 - Lead, supervisor, manager, executive, contract employee, contractor, or consultant

Who “Should” Be Trained?

- Any manager or supervisor (including executive) who has supervisory authority – directly or indirectly – over any employee located within any state of the United States
 - California FEHA imposes strict liability on employers for sexual or other unlawful harassment by its supervisory personnel
 - Government agencies, judges, and juries expect that an employer will have trained supervisory personnel as part of its obligation to prevent unlawful harassment

Who “Should” Be Trained? (cont’d)

- All employees
 - **Faragher** (Title VII): An employee’s failure to avail herself/himself of the employer’s corrective policy and procedures can be an employer’s defense to liability
 - **McGinnis** (FEHA): An employee’s failure to avail herself/himself of the employer’s corrective policy and procedures can be an employer’s defense to damages

Who “Must” Provide the Training?

- “Trainers or educators with *knowledge and experience* in the prevention of harassment, discrimination, and retaliation.”
 - Must have capabilities to train supervisors in specified subjects
 - Must have specified credentials

Qualified Trainer – Capabilities

A qualified trainer will know:

- How unlawful harassment, discrimination, and retaliation are defined under both California and federal law
- What steps to take when harassing behavior occurs in the workplace
- How to report harassment complaints
- How to respond to a harassment complaint
- The employer's obligation to conduct a workplace investigation of a harassment complaint
- What constitutes retaliation and how to prevent it
- Essential components of an antiharassment policy
- Effect of harassment on harassed employees, co-workers, harassers, and employers

Qualified Trainer – Credentials

- Attorney
- Human resource professional or harassment prevention consultant
- Professor or instructor
- Someone who does not possess any of the above credentials if certain conditions are met

Qualified Trainer – Credentials (cont'd)

- “Attorney”
 - Has been admitted to a state bar practice law for at least two years
 - Practice includes employment law under the FEHA and/or Title VII

Qualified Trainer – Credentials (cont'd)

- “Human resource professional” or “harassment prevention consultant”:
 - Has at least two years of practical experience in
 - *Designing or conducting discrimination, retaliation, and sexual harassment prevention training*
 - *Responding to sexual harassment complaints or other discrimination complaints*
 - *Conducting investigations of sexual harassment complaints*
- or
 - *Advising employers or employees regarding discrimination, retaliation, and sexual harassment prevention*

Qualified Trainer – Credentials (cont'd)

- Professor or instructor in a law school, college, or university
 - Has a postgraduate degree or California teaching credential
 - Has at least 20 instruction hours or two years of experience in a law school, college, or university
 - *Teaching about employment law under the FEHA and/or Title VII*

Qualified Trainer – Credentials (cont'd)

- Someone who does not meet the definition of a qualified trainer due to lack of “years of experience”
 - Can “team teach” with a qualified trainer
 - Can conduct classroom or webinar trainings, as long as
 - *The qualified trainer supervises the session*
 - *The qualified trainer is available throughout the training to answer questions from attendees*

Who “Should” Provide the Training?

- Someone who has the capabilities and credentials specified by the regulations
- Someone who has:
 - The ability to provide accurate and practical legal advice
 - The credibility to testify as to the training
 - The flexibility and capacity to meet your logistical needs
 - The experience to make the training a positive and valuable event for the participants

What Are the Training Options?

- "Two hours of classroom or other effective interactive training and education regarding sexual harassment"

What Qualifies as “Effective Interactive Training”?

- Classroom, e-learning, webinar, or other?
- Classroom
 - “Created” and “provided” by a qualified trainer as defined in the regulations
 - “In a setting removed for the supervisor’s daily duties”

What Qualifies as “Effective Interactive Training”? (cont’d)

- E-learning
 - “Individualized”
 - Created by a “Trainer and Instructional Designer”
 - Provides a link to Trainer to ask questions and get answers to questions within two business days
- Webinar
 - “Created and taught by a Trainer” as defined by the regulations
 - “Transmitted in real time”
 - *Cannot be recorded*
 - Must document and be able to demonstrate that each supervisor “actively participated”

What Qualifies as “Effective Interactive Training”? (cont’d)

- “Other effective interactive training” includes: ***audio, video, or computer technology in conjunction with classroom, webinar, and/or e-learning.***

Poll for the Audience

- Which method does your organization use to deliver training?
 - A – Classroom
 - B – E-learning or Webinar
 - C – Other

Please select the best option that represents your organization's training method by using the poll tool on the right side of your screen.

Does ACME Comply with AB 1825?

- ACME Manufacturing and Distribution has 122 facilities in California with 10 managers per facility. It doesn't have sufficient room to conduct classroom training and lacks the necessary technology to connect to the Internet. It chooses to broadcast a live course to all facilities via videoconference. Does this comply?

ACME Manufacturing and Distribution

- Challenges:
 - Training is not “in conjunction with” classroom, e-learning, or webinar training
 - Training is not “in-person” unless another trainer is present (classroom)
 - Training is not “individualized” (e-learning)
 - Training will have to demonstrate that supervisors “actively participated” (webinar)

Design Requirements

- Instruction must include:
 - Questions that assess learning
 - Skill-building activities
 - Numerous hypothetical scenarios
- E-learning courses must be designed by an Instructional Designer (with expertise in current instructional best practices)

How to Track Compliance?

- First compliance date was 01/01/06
- New supervisory personnel located in California must be trained within six months of assuming supervisory authority
- Once every two years
 - Individual tracking
 - Training-year tracking

Individual Tracking

- Two years from the last date the supervisory personnel was trained
- *Example:* If trained on December 12, 2005, must be retrained by December 12, 2007

Training-Year Tracking

- “Training Year” is designated by employer
- *Example:* Assume employer designates odd calendar years as its training years for all supervisory personnel.
 - A supervisor who was trained on September 12, 2005, must be retrained by the end of 2007
 - A supervisor hired in 2006 was trained within six months of hire, also during 2006. This supervisor must be retrained by the end of 2007

Proof of Compliance

- Document Creation
 - Name of the supervisory personnel trained
 - Date of training
 - Type of training (classroom, webinar, e-learning, etc.)
 - Name of the training provider
- Document Retention
 - Minimum of two years

Best Practices

- Know the qualifications of your trainers and instructional designers
- Teach on your policy, FEHA, and Title VII
 - **Allow your policy to be stricter than the law**
- Don't wait until the end of the year

Best Practices (cont'd)

- Train on all forms of unlawful harassment, not just sexual harassment
- Remember to train on the remedies allowed under FEHA and Title VII
- Use “practical examples” that relate to your workforce culture
- Build skills around management reporting and requests for confidentiality

Best Practices (cont'd)

- Teach supervisors what they should do if they are accused of harassment
 - No retaliation
 - Self reporting
- Make sure to specify your company's complaint procedures
- Include management strategies for preventing harassment

For More Information



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