

California's New Sexual Harassment Training Law

California recently passed a new law, AB 1825¹, which requires employers with 50 or more employees to provide at least two hours of interactive sexual harassment prevention training to all supervisory employees. This employment law alert provides a brief overview of the new law and the requirements it imposes on employers.

Employers Affected by AB 1825

The training requirements imposed by AB 1825 apply to all employers with 50 or more employees. The statute broadly defines "employer;" therefore, employers with fewer than 50 permanent employees still may have to comply with AB 1825 if they employ over 50 people taking into account independent contractors and temporary employees.

Supervisory Employees — Who Must be Trained

AB 1825 requires that all "supervisory employees" receive two hours of interactive training. While AB 1825 does not define "supervisory employee," "supervisor" is defined broadly elsewhere in the Fair Employment and Housing Act as "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment."² Presuming that the new law incorporates this broad definition of supervisor, employees with any supervisor functions, even if they are not characterized as managers or supervisors, should receive training to ensure compliance with the law.

Training Requirements

AB 1825 mandates that the two-hour training be "classroom or other effective interactive training." Therefore, video training will not suffice. Additionally, the trainer must have "knowledge and expertise in the prevention of harassment, discrimination, and retaliation." The contents of the training

must include "information and practical guidance regarding the federal and state statutory provisions" regarding sexual harassment prevention.

Compliance Deadlines

All supervisors who were employed as of July 1, 2005 must receive training by January 1, 2006, unless they were provided with comparable training after January 1, 2003. Any supervisors hired or promoted after July 1, 2005 must be trained within six months of assuming the position of supervisor. After January 1, 2006, all supervisors must receive the two-hour training at least once every two years.

Repercussions for Non-Compliance

If an employer fails to comply with the new training requirements, AB 1825 provides that the Fair Employment and Housing Commission "shall issue an order requiring the employer to comply with these requirements." More importantly, however, failure to comply with AB 1825 may affect the strength of an employer's defense in a sexual harassment lawsuit – failure to provide sexual harassment training mandated by law may serve as evidence that an employer did not take all reasonable steps necessary to prevent discrimination and harassment from occurring, as is required by the Fair Employment and Housing Act.³

If you would like further information about AB 1825, or would like to schedule an individual or group training for your employees, please contact any of the following attorneys:

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¹ AB 1825 amends the Fair Employment and Housing Act and will be codified as Section 12950.1 of California's Government Code.

² Cal. Gov't Code §12926(r).

³ Cal. Gov't Code §12940(k).

Case Alert