

Latest Guidance About California's New Sexual Harassment Training Requirements

January 16, 2019

As we previously shared in our October 17, 2018, [client alert](#), amendments to Government Code Section 12950.1 require that all California employers having five or more employees are required to provide sexual harassment and abusive conduct training for supervisors as well all non-managerial employees.

Managers and supervisors must receive two hours of training. Non-managerial employees, which includes temporary, seasonal, and any employee hired to work for less than six months, must receive one hour of training.

Because of ambiguous statutory language, there has been confusion regarding when such training must begin and be completed, especially for those employers who already provided training in 2018. The Department of Fair Employment and Housing (“DFEH”) recently issued [Frequently Asked Questions](#) which provide clarification, as discussed below.

Content of Training Materials Remains Unchanged

The required content of the harassment prevention training remains the same. The training must include practical examples of sexual harassment and should be provided by trainers or educators with knowledge and expertise in those areas.

The training must consist of classroom or other “interactive training” and education (e.g., interactive online videos). The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met.

The new law requires the DFEH to develop or obtain two online training courses on the prevention of sexual harassment in the workplace (a two hour video for supervisors and a one hour video for non-supervisors). However, the FAQ’s indicate that the materials will not be available until “late 2019.” In the interim, the DFEH is issuing a sexual harassment and abuse prevention training toolkit: <http://bit.ly/2VYvlpd>. This toolkit must be used in conjunction with a qualified trainer to fulfill the training requirement.

Required Timing for Completing Training

The expected late issuance of the DFEH videos is unfortunate since training for all but seasonal and temporary employees must be completed by January 1, 2020. In other words, employers must provide the training during 2019.

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Temporary and seasonal employees, beginning on January 1, 2020, must be trained within 30 days after the hire date, or within 100 hours worked, whichever occurs first. Temporary employees who are employed by a temporary services employer (e.g. a “temp agency”) to perform services for clients must be trained by the temporary services employer, not the client.

Re-training Required Even for Recently Trained Employees

The DFEH’s interpretation of the amended statute is that employers are required to provide training to all employees (other than temporary and seasonal employees) in 2019 even if the employees already received training in 2018. Training must thereafter be provided every two years, or within 6 months of an employee starting a position. The FAQ’s state, “all employees statewide must be retrained by January 1, 2022.”

Notwithstanding the DFEH instruction to re-train even recently trained employees, employers may want to hold off on retraining until later this year, as a number of public agency groups, such as the League of California Cities, are actively working to seek clarification from the Legislature and the DFEH as to why employees who were trained in 2018 must be retrained in 2019. The public reaction against this “requirement” may lead to it being rescinded. We will keep you updated on future developments.

We encourage you to reach out to a member of Employment Law Group with any questions or concerns.

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