

## Five reminders about a few of the training obligations facing California employers

### 1. Employers with 5 or more employees must provide sexual harassment prevention training to all employees (even nonsupervisory employees) by January 1, 2020.

SB 1343 is a bill that was passed in 2018 that requires employers with 5 or more employees, including temporary or seasonal employees, to provide at least 2 hours of sexual harassment training to all supervisors and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every 2 years thereafter.

### 2. Harassment prevention training must cover certain topics.

The DFEH says employers can provide sexual harassment prevention training through interactive eLearning courses, in a classroom setting or through a live webinar. Regardless of the format, the training should cover a range of topics, including:

- A definition of sexual harassment under the Fair Employment and Housing Act (FEHA), and Title VII of the federal Civil Rights Act of 1964
- Types of conduct that constitute sexual harassment
- Strategies to prevent sexual harassment
- Remedies and resources available to targets of sexual harassment, including to whom they should report the misconduct
- Practical examples to help supervisors recognize and prevent harassment, discrimination and retaliation
- A discussion of harassment (and examples) based on gender identity, gender expression and sexual orientation
- Supervisors' obligation to report harassment
- The obligation of employers to correct harassing behavior
- The limited confidentiality of the complaint process
- Guidance for supervisors who have been personally accused of harassment
- Abusive conduct

Finally, any training must include questions that assess learning, skill-building activities to assess understanding and application of content, and hypothetical scenarios about harassment with discussion questions.

### **3. Talent agencies required sexual harassment training and educational materials.**

AB 2338 requires talent agencies to provide educational materials about sexual harassment prevention, retaliation, and reporting to its artists. At a minimum, the materials shall include the information listed in the DFEH's Form 185. Materials may be provided electronically, such as a website or other means. The bill also requires talent agencies to make available educational materials regarding nutrition and eating disorders available to adult artists within 90 days of agreeing to representation. Talent agencies must keep records for three years confirming it has made the required information available.

### **4. Hotel and motel operators must provide training on human trafficking awareness.**

SB 970, passed in 2018, requires hotel and motel operators to provide at least 20 minutes of "interactive training and education" regarding human trafficking awareness to employees who are likely to interact or come into contact with victims of human trafficking.

The require training must take place by January 1, 2020 and must be provided to employees within six months of employment in such a covered position. Training is required once every two years thereafter.

Training is required for, but is not limited to, the following positions: "an employee who has reoccurring interactions with the public, including, but not limited to, an employee who works in a reception area, performs housekeeping duties, helps customers in moving their possessions, or drives customers."

### **5. Employers need to develop an anti-harassment policy that includes a complaint procedure.**

All employers should have an anti-harassment policy of their own developed and distributed to all employees. Employers are required to develop a harassment, discrimination, and retaliation prevention policy that meets the following requirements:

1. Is in writing;
2. Lists all current protected categories covered under the Act;

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3. Indicates that the law prohibits coworkers and third parties, as well as supervisors and managers, with whom the employee comes into contact from engaging in conduct prohibited by the Act;
4. Creates a complaint process to ensure that complaints receive:
  - An employer's designation of confidentiality, to the extent possible;
  - A timely response;
  - Impartial and timely investigations by qualified personnel;
  - Documentation and tracking for reasonable progress;
  - Appropriate options for remedial actions and resolutions; and
  - Timely closures.
5. Provides a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor, including, but not limited to, the following:
  - Direct communication, either orally or in writing, with a designated company representative, such as a human resources manager, EEO officer, or other supervisor; and/or
  - A complaint hotline; and/or
  - Access to an [ombudsperson](#); and/or
  - Identification of the Department and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints.
6. Instructs supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment prevention training, pursuant to section 11024 of these regulations.
7. Indicates that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
8. States that confidentiality will be kept by the employer to the extent possible, but not indicate that the investigation will be completely confidential.
9. Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures shall be taken.
10. Makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation.

In addition, employers are required to distribute the pamphlet, [Sexual Harassment Is Forbidden by Law \(DFEH-185\)](#), to all employees. Employers should also routinely discuss the sexual harassment policy with employees at meetings and remind them of the complaint procedures and document these additional steps. This additional training will show that the company is serious about preventing harassment and took affirmative steps to protect its employees.