



New Cal Law—All Supervisors Must Get Harassment Training

BY RITA RISSER, ATTORNEY AT LAW

On September 30, 2004, California Governor Arnold Schwarzenegger signed AB 1825, requiring many California employers to provide supervisors with two hours of sexual harassment training every two years.

An "employer" is one that employs 50 or more persons, including temporary employees and independent contractors. The 50 employees do not have to be within California; an employer with 50 total employees is covered, even if just a few workers are in California.

The training must include "information and practical guidance" about federal and state laws that prohibit sexual harassment, including prevention and correction of harassment, and remedies available to victims. The training must use "practical examples" aimed at preventing harassment, discrimination and retaliation. It must be presented by "trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation."

The training must be in a class-

room or an equally effective interactive environment. Because of the term "interactive," a video presentation alone without questions and answers and other interactive methods is not enough.

The law covers any employee with supervisory authority. "Supervisor" is defined broadly to include "any individual having the authority . . . 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." Therefore, even employees who merely recommend the above personnel actions may be deemed "supervisors" who must receive training.

Supervisors employed as of July 1, 2005, must complete the initial two hours of training by January 1, 2006. Supervisors hired or promoted after July 1, 2005, must receive training within six months of hire or promotion, and every two years thereafter.

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Winter 2005

Ask the Lawyers

- *How do I fire a manager who was encouraged to falsify expenses?*
- *Can we force employees to donate to charity?*
- *Manager telecommuted from prison – do we have to pay her?*
- *Can we refuse to hire a convicted felon in an executive position?*
- *We fired an employee for sleeping at work – is he protected by the ADA?*
- *Can employer allow beards but not goatees?*
- *Sick employee sent home has accident – are we liable?*

Get the answers to these and other questions at www.FairMeasures.com/ask/default.asp

Big Money for 2004



FARMERS
INSURANCE
EXCHANGE
AGREED TO PAY
UP TO **\$210**

MILLION FOR FAILING TO PAY
OVERTIME TO 2,400 CLAIMS
ADJUSTERS.

ABERCROMBIE & FITCH
AGREED TO PAY **\$50 MILLION**
TO SETTLE A CLASS ACTION
LAWSUIT FILED BY THE EEOC.
UNDER THE TERMS OF THE
CONSENT DECREE, THE
COMPANY AGREES NOT TO
DISCRIMINATE IN HIRING AND
PROMOTIONS AGAINST WOMEN,
AFRICAN AMERICANS, LATINOS
AND ASIAN AMERICANS.

NEW YORK CITY HAS AGREED
TO PAY UP TO **\$20 MILLION** TO
SETTLE A CLASS-ACTION SUIT
CHARGING THAT THE NYPD
DISCRIMINATED AGAINST
MINORITY OFFICERS IN ITS
HIRING AND EMPLOYMENT
PRACTICES.

THE **U.S. DEPARTMENT OF
JUSTICE** AGREED TO PAY
\$11.5 MILLION TO SETTLE
ALLEGATIONS OF REVERSE
DISCRIMINATION BROUGHT ON
BEHALF OF AS MANY AS 550
WHITE MALE APPLICANTS WHO
WERE DENIED POSITIONS AS
IMMIGRATION JUDGES IN 1994
AND 1995.

**CRACKER BARREL OLD
COUNTRY STORE** AGREED TO
PAY **\$8.7 MILLION** TO SETTLE
LAWSUITS THAT ACCUSED
IT OF SEGREGATING BLACK
CUSTOMERS, SUBJECTING
THEM TO RACIAL SLURS AND
GIVING BLACK WORKERS
INFERIOR JOBS.

WACHOVIA CORP. HAS
AGREED TO PAY **\$5.5 MILLION**
TO SETTLE ALLEGATIONS BY
THE U.S. DEPARTMENT OF
LABOR THAT IT DISCRIMINATED
IN PAYING 2,021 CURRENT AND
FORMER FEMALE EMPLOYEES
OVER SIX YEARS.



WHAT YOU SHOULD DO:

Supervisors and managers who have completed our Managing within the Law program have met the California requirement for the first year. Fair Measures has developed a two-hour California Harassment Compliance program that meets and exceeds all the new requirements. Call 1-800-458-2778.

Promoting Harasser to Management Leads to Retaliation Case

Employers who resolve internal harassment complaints by disciplining the harasser often are faced with a difficult decision in the future: should the discipline prevent the harasser from being promoted to management? On the one hand, if the harasser has learned from his mistake it should not be held against him forever. On the other hand, if he has not learned, and uses his new position of authority to retaliate, the company can be sued for retaliation.

But how can a company protect itself when it promotes someone they don't know is a harasser? That's what happened in a recent Court of

Appeals case. A woman was harassed by a manager, and filed an internal complaint. While the complaint was being investigated, she was harassed by a co-worker. She mentioned the second harassment to the person investigating the first complaint, but did not file another complaint.

About a month later, the co-worker was promoted to a position in the Personnel Office where he had control over the woman's job assignments and vacation leaves. Over the next five years, he denied her many requests for assignments, transfers, and leave. In almost every situation, either a subordinate of the harasser, one of his peers, or his supervisor was aware that he was taking an adverse action against the woman for no apparent reason. Finally, she filed a complaint against him, went to trial, and won on appeal for retaliation.

WHAT THIS MEANS TO YOU:

On the surface, this may seem an unfair result since she didn't file a complaint when the harassment first happened. However, there were many people who knew about the situation: the investigator of the first complaint knew about the harassment, and many people in the Personnel Office were aware of the adverse personnel actions. That's why ALL employees should be trained in harassment prevention, including retaliation. If just one of the employees had "blown the whistle," the employer could well have avoided suit.



Multiple Harassment Policies Can Hurt Company

Every employer knows it needs to have a policy and procedure against sexual harassment. But if you have two or three policies intended for different audiences, you may end up losing a case. That's what happened to Eckerd drug stores.

The case involved a woman employee in the photo lab who was being sexually harassed by her male supervisor. She complained several times to her female supervisor. The supervisor spoke to the offender once. The harassment did not stop, and the employee continued to complain to the female supervisor, but the supervisor did not talk to the man again, nor did she contact the Human Resources Department or her own manager.

The employee filed suit. The company defended itself on the grounds that the employee had not followed the proper procedure to file a harassment complaint. What was the proper procedure? According to the company, the "official" company policy was in the Policy and Procedures Manual, which provided that employees must file with the employee's manager or Human Resources. However, employees were not given copies of this manual.

Instead, employees received an Associate Handbook, which stated complaints must be filed with "management." Employees also saw a policy posted in the break room,



which said complaints could be filed with "any supervisor" with whom they felt comfortable.

Since the employee in this case did not file a complaint according to the official manual, the company said she did not follow company procedure.

As you can imagine, the Court of Appeals was not impressed with this argument. Nor was the Court impressed with the fact that the person who did get the complaint – who was a supervisor – did not follow company policy to report the complaint to HR. As a result, the company lost the appeal.

Natson v. Eckerd (Florida Court of Appeals, Oct. 2004)
<http://www.4dca.org/Oct2004/10-27-04/4D03-4191.pdf>

WHAT THIS MEANS TO YOU:

All supervisors should be trained on the proper way to handle harassment complaints.



Fair Measures specializes in training executives, managers, human resources professionals and individual contributors in practices that prevent costly employee lawsuits, and create respectful workplaces for all employees. Since 1982, we have trained over 50,000 managers and employees at over 250 of the most respected corporations in America.



Sexual harassment claims filed by men with the Equal Employment Opportunity Commission (EEOC) have grown from 9% of all charges in fiscal 1992 to 15% in 2003. Many of those claims involve male-on-male harassment. Harassment of men by women is rarer, but still exists. Make sure your anti-harassment program covers ALL types of discriminatory harassment.

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