



## WHITE PAPER SERIES

# **An Ounce of Prevention : *How Legal Management Training Reduces Litigation Exposure and Helps the Bottom Line***

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With the advent of AB 1825 (the mandatory harassment training statute, also known as Government Code Section 12950.1), some training for all California supervisors is now legally required. But forward looking companies have offered legal training to managers for years, because they know that legal training has a huge return on investment. Also, AB 1825 is a bare minimum and may not protect employers from many of the frequent types of claims brought by employees. This white paper explores how legal training, when done effectively and combined with other good HR practices, reduces litigation exposure and contributes to the bottom line.

### **Reducing Legal Exposure: How Training Can Protect Your Company Against Punitive Damages**

Your company has a 6 in 10 chance of being sued by an employee. You can buy insurance to cover your legal fees. You can buy insurance to pay the employee's back pay and emotional distress if you lose. But you can't buy insurance against punitive damages.

Punitive damages are designed to punish wrong-doers, and can cost you millions of dollars. In one recent discrimination case, the court awarded \$50 million in punitive damages against FedEx, with a \$1 million dollar award against the manager individually.<sup>1</sup>

Fortunately, the courts have given employers a clear, step-by-step strategy for avoiding punitive damages. If you implement it, your company will never have to pay punitive damages – no matter what. The five steps are: (1) have good policies; (2) distribute the policies; (3) train managers; (4) respond to complaints; and (5) management commitment.

While all five steps are essential to show good faith efforts, this paper focuses on the role of training in protecting against punitive damages. See our other article titled "Protecting Your Company Against Punitive Damages" for a complete description of all 5 steps.<sup>2</sup>

The use of subject matter experts has always been an important component of good faith efforts as they relate to training. The regulations interpreting AB 1825 reinforce this requirement.<sup>3</sup> Some companies try to save money on training by showing videos or having line managers do the training. But one federal court upheld a jury verdict for punitive damages where the anti-discrimination training program was a ten-minute video with hand outs.<sup>4</sup>

Another court was not impressed when the manager in charge of harassment training testified he believed it was not sexual harassment if a male supervisor exposed his genitals to a female subordinate or grabbed her breasts – as long as he apologized.<sup>5</sup>

Failure to educate managers about specific employment laws can undermine a good faith defense. Wal-Mart was ordered to pay punitive damages because it didn't train managers about disability discrimination. A manager demoted a hearing-impaired worker who left a training session because there was neither closed-captioning of the videotape nor an interpreter. When the employee sued for disability discrimination, the court said:

Wal-Mart's assertion of a generalized policy of equality and respect for the individual does not demonstrate an implemented good faith policy of educating employees on the Act's accommodation and nondiscrimination requirements.<sup>6</sup>

In another case where the company did not have a training program, a hiring manager testified that he didn't know age discrimination was illegal.<sup>7</sup> The federal appeals court upheld the jury award against the company saying that leaving hiring managers "in ignorance of the basic features of the discrimination laws is an 'extraordinary mistake' for a company to make, and such an extraordinary mistake amounts to reckless indifference."

By contrast, effective training, combined with good policies and management practices, can defeat a punitive damages claim. In one case, the court found that notwithstanding the manager's illegal harassment, the employer should not be subjected to punitive damages where its training, policies and other actions showed a good faith effort to prevent discrimination in the workplace.<sup>8</sup> In another case, a court refused to allow a jury instruction on punitive damages, where the employer conducted harassment training that reviewed the employer's anti-harassment policy and complaint procedure.<sup>9</sup>

### Contributing to the bottom line

In addition to reducing legal risk, good legal training integrates employer policies and values into the process, thereby contributing to a stronger and more productive work environment. This has very real and tangible bottom line results.

It is shortsighted to think that training that just focuses on the law without adequate attention to values and policies is sufficient. The Great Places to Work Organization

— which produces the Forbes list of the 100 best places to work in America — has found through over 20 years of research that trust between managers and employees is the defining characteristic of the best workplaces. According to Great Places to Work, a comprehensive Department of Labor study found that “there is a positive relationship between training, motivating and empowering employees and improvements in productivity, employee satisfaction and financial performance.”<sup>10</sup>

Employers who create great work environments predicated on trust have stellar results. Employers on the Forbes list of 100 best places to work have higher productivity and profitability, experience lower levels of turnover, receive more qualified job applications and experience reductions in health care cost.<sup>11</sup>

Legal training that tries to scare managers and employees into compliance (“do this or else...”) is ineffective at best and divisive at worse. To be effective, legal training should be linked to organizational values and policies, stressing the positive results of creating a respectful workplace, instead of only the negative consequences of failing to comply. When presented in this way, legal training creates a common language for translating values into concrete action, and builds communities of trust and respect in the workplace. And as demonstrated by the great places to work model such mutual respect is at the heart of the most successful enterprises.

Legal training that is thoughtfully designed and well implemented reduces legal exposure and builds a better place to work thereby contributing to the bottom line.

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1 Issa and Rizkallah v. FedEx Ground, Inc., Alameda Superior Ct. No. 841208-9 (2006)

2 “Protecting Your Company Against Punitive Damages”,  
[http://www.fairmeasures.com/ask/print/punitive\\_damages.asp](http://www.fairmeasures.com/ask/print/punitive_damages.asp).

3 Fair Employment and Housing Regulations, 7288.0(a)(6) and (7)

4 Wagner v. Dillard Dept. Stores, 2000 U.S. Dist. LEXIS 20415 (M.D.N.C. 2000)

5 Cadena v. The Pacesetter Corporation, 224 F.3d 1203 (10th Cir. 2000)

6 EEOC v. Wal-Mart Stores, 187 F.3d 1241 (10th Cir. 1999)

7 Mathis v. Phillips Chevrolet 269 F.3d 771 (7th Cir. 2001)

8 Bryant v. Aiken Regional Medical Center, Inc., 333 F.3d 536 (4th Cir. 2003)

9 Hatley v. Hilton Hotels, Corp., 308 F.3d 473 (5th Cir. 2002) rehearing denied, 2002 U.S. App. LEXIS 24504 (5th Cir. Nov. 5, 2002)

10 Great Workplace to Work Institute website - <http://www.greatplacetowork.com/great/results.php>

11 Great Workplace to Work Institute website - <http://www.greatplacetowork.com/great/results.php>