



## WHITE PAPER SERIES

# **It's Not Just Sexual Anymore: *Training Requirements for California Employers***

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*If you work in California, by now you know supervisors must receive sexual harassment training every two years. But perhaps you don't know that new regulations expanded the law and now require training to prevent not only sexual harassment, but all forms of harassment, discrimination and retaliation. Here are the highlights.*

## Required Subjects of Training

The regulations require that the learning objectives of the training shall be: 1) to assist California employers in changing or modifying workplace behaviors that create or contribute to harassment; and 2) to develop, foster and encourage a set of values in supervisory employees that will assist them in preventing and effectively responding to incidents of harassment.

Specifically, training must cover the following:

**harassment, discrimination and retaliation** Not only sexual harassment is required to be covered. Training must include the definition of harassment, legal principles concerning the prohibition against and the prevention of unlawful harassment, discrimination and retaliation, and the types of conduct that constitute harassment.

**remedies for victims of harassment**

**strategies to prevent harassment**

**effect of harassment** Explain the effect of harassment on harassed employees, coworkers, harassers and employers.

**practical examples** Include factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources. Role plays, case studies and group discussions are recommended.

**obligation to investigate** Training must include the employer's obligation to conduct an effective workplace investigation, but not how to conduct an investigation, since that is outside the scope of most supervisor's responsibilities.

**anti-harassment policy** Supervisors must learn about the employer's own policy, or the essential elements of a sample anti-harassment policy. Either way, the employer must give each supervisor a copy of its anti-harassment policy, not a link to a policy, but a physical copy. Each supervisor must read the policy and acknowledge receipt. This acknowledgement should be kept in the supervisor's personnel file.

**retaliation** Clarify what is retaliation and how to prevent it.

**limited confidentiality** Inform employees of the limited confidentiality of the complaint process.

**resources for victims** Supervisors must know the resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.

**supervisors personally accused of harassment** Training on what to do if the supervisor is personally accused of harassment.

## Training Formats

Although classroom training is most effective, the regulations allow for e-learning, both by webinars and self-study methods. This training must meet all the requirements listed above. In addition:

**answer questions** Self-study and e-learning programs must provide a link or directions on how to contact a trainer to answer questions. The trainer must answer the question within two business days. The trainer must be qualified as stated below, but in addition, the trainer must be able to provide guidance and assistance on harassment issues under the employer's policy. Therefore, your own HR or Legal Department should be answering these questions, although the trainer may draft an initial response and may have templates for frequently asked questions.

Webinars must either provide an opportunity to ask questions and have them answered during the program, or a link as above.

**length of time** Self-study programs must actually take each participant at least two hours to complete, although the two hours can be broken into segments if desired. The two hours can and should include training on all forms of harassment, discrimination and retaliation, not just sexual harassment.

**documented participation** Webinars must document that each supervisor attended the entire training and actively participated. The regulations require employers to "document and demonstrate that each supervisor who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training's interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities."

That is why the webinar or e-learning must be structured to have continuous interaction.

## Training Must be Interactive

All programs must include questions that assess learning, skill-building activities that assess the supervisor's application and understanding of content learned, and numerous hypothetical scenarios, each with one or more discussion questions so that supervisors remain engaged in the training. Straight lecture or stand-alone video is not enough. Nor is a web-based or e-learning program considered interactive if it merely requires the supervisor to click "next" to get a new page view.

Participants also must be able to ask questions during the training, as outlined above.

"Our competitors say they have interaction every 5 to 7 minutes. We do it every 1 to 3 minutes. Which one do you think is more fun?"

## Training Must be Delivered by Qualified Trainers

Although training can be developed and even delivered by non-expert instructional designers and trainers, they must work with qualified trainers.

Qualified trainers are attorneys, HR professionals, or teachers or professors who have two years of professional experience in sexual harassment or discrimination.

A trainer must be qualified to train about:

- ◆ How to recognize unlawful harassment discrimination and retaliation under California and federal law
- ◆ What to do when harassing behavior occurs in the workplace
- ◆ How to make harassment complaints
- ◆ How to handle a harassment complaint
- ◆ Why and how employers investigate complaints
- ◆ What is retaliation and how to prevent it
- ◆ Elements of an effective anti-harassment policy
- ◆ How harassment affects employees, co-workers, harassers and employers

Trainers also should be good as trainers. They should use hypotheticals or examples that illustrate the course content and involve the participants through questions, problem solving, and quizzes to insure that the information is understood; and have the ability to answer questions from the participants about the course content.

“Our instructors are attorneys with years of experience in harassment cases, and each has trained hundreds of managers. We’re known for our entertaining educational programs.”

## Employers With 50 or More Workers Must Comply

**contractors count towards the 50** The law applies only to employers with 50 or more employees or contractors. Employees include full time, part time, and temporary workers. “Contractors” are people who work each working day in 20 consecutive weeks in the current calendar year or preceding calendar year.

**out-of-state employees count towards the 50** Employers are covered if they have 50 employees anywhere, not just in California. The prior regulations required even a large company with a single sales person in California to train the supervisor of that person, even if the supervisor was not in California. This has changed, so that only supervisors in California must receive the training. The training must meet the requirements of California law – a course in federal harassment law will not meet California requirements.

**seasonal employees** If your company has seasonal employees, you are deemed to have 50 or more employees if you employ "fifty or more employees or contractors for each working day in any twenty consecutive weeks in the current calendar year or preceding calendar year."

**new or newly covered businesses** New businesses and businesses that expand to 50 employees, must provide training within six months of their eligibility and thereafter every two years.

## Record Keeping

Employers must keep records including each supervisor's name, date of training, type of training, and the name of the training provider. These records must be kept for at least two years.

## Training New Supervisors

New supervisors must be trained within six months of assuming their positions, and once every two years thereafter. The regulations allow an employer to “carry over” a supervisor’s training from a previous employer. However, if the previous employer’s training does not meet the legal requirements, the new employer will be held liable. Therefore, it is recommended that all new supervisors receive the training.

If the carry over provision is used, the new supervisor must be provided a copy of the employer's harassment policy and be required to read and acknowledge it within the six-month time frame.

## Tracking the training

The law requires re-training supervisors every two years. Employers may monitor the training deadlines for each supervisor or use a “training year” method. See the DFEH website for the definition of training year.

<http://www.fehc.ca.gov/act/harass.asp>

## What to do today to prepare

1. Start thinking today about blocking out the dates in your next training year by which all training must be completed. Avoid seasonal rushes, quarter-ends, popular vacation periods, holidays and other times when training is difficult to schedule.
2. Determine whether last year’s solution meets your new needs. For example, if you purchased e-learning or video, it must be updated to take into account new case law. Plus, keep in mind that people learn more if you mix up the training methods. Try a webinar one year, e-learning another, and live training for those supervisors (and you know who they are) who need a little extra help.
3. Research new ways to meet your training requirements. Start by going here: <http://www.fairmeasures.com/training/harassment>.

**Call us to talk about various ways we can help you solve  
your training needs: 1-800-458-2778**