

California's New Mandate Law: Preventing Sexual Harassment Training

The basics of AB 1825

California's new law mandates all employers with 50 or more employees will be required to provide at least two hours of sexual harassment prevention training to all supervisors and managers, effective January 1, 2005.

The author of the AB 1825 is Assemblywoman Sarah Reyes and it is her belief that this was necessary due to sexual harassment cases comprising of 22 percent of all cases filed with the Department of Fair Employment and Housing.

Prior to AB 1825, the Department of Fair Employment and housing required that employers take "all reasonable steps" to prevent sexual harassment from occurring in the workplace. The courts interpreted "reasonable steps" to include some form of sexual harassment training, but the training was not mandated and the specifics (of training) was left up to the employer. In fact, mandated included on the following: 1.) Displaying a FEHA poster on sexual harassment; 2.) Distributing information about sexual harassment; 3.) Set up an internal complaint procedure for receiving complaints of sexual harassment, and providing employees with contact information.

Today the average jury settlement for a sexual harassment complaint is \$1.8 million, and the average out of court settlement for a sexual harassment case is \$300,000.00.

The law requires the following:

- Employers with 50 or more workers have at least two hours of preventing sexual harassment training.
- Supervisor and managers required to be trained by January 1, 2006.

*The law does not define the term "supervisor", however, FEHA defines a "supervisor" to be a person: Having the authority, on behalf of the employer, 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 to effectively recommend that action, if...the exercise of that authority is not merely routine or clerical ...but requires the use of independent judgment." (Government Code # 12926(r).) This defines a faculty member as well.

- Supervisors that have already received training in 2004 will be exempt from this initial two hours requirement. Any supervisory employees hired or promoted after January 1, 2005 must be trained within six months of their hire or promotion date. After January 1, 2006 two hours of preventing sexual harassment training will need to be conducted once every two years.
- The training must be conducted via "classroom or other effective interactive training and include the following topics:

- I. Information and practical guidance regarding federal and state statutory laws about sexual harassment.
- II. Information about the correction of sexual harassment and the remedies available to victims of sexual harassment.
- III. Practical examples aimed at instructing supervisors in the prevention of sexual harassment, discrimination, and retaliation.

What if a supervisor is not trained?

Should a supervisor somehow fail to receive the preventing sexual harassment training there is no automatic liability. However, failure to train someone who is accused of sexual harassment - or who fails to properly respond to a sexual harassment issue-further exposes the University to potential liability. Or the University could be subject to an order issued by the FEHA Commission requiring compliance.