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## **“SEXUAL HARASSMENT TRAINING - FEHC REGULATIONS ARE ALMOST HERE”**

There are many compelling reasons to implement sexual harassment training at the workplace:

- Promote a better work environment through awareness;
- Reduce claims by educating employees in permissible conduct; and
- In the event of a litigated claim, limit or avoid damages by showing effective sexual harassment policies and communication of those policies to employees.

(*See, e.g., State Dept of Health Services v. Sup. Court* (2003) 31 Cal.4<sup>th</sup> 1026; *White v. Ultramar, Inc.*, (1999) 21 Cal.4<sup>th</sup> 563, *citing Kolstad v. American Dental Assn.* (1999) 527 U.S. 526.)

Not to mention, it is the law! Every employer certainly became aware in 2006 that pursuant to AB 1825 (California Government Code § 12950.1), sexual harassment training became mandatory for employers having 50 or more employees. Specifically, it provides:

By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by January 1, 2006, deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. . . .

Although the statute made clear that training was required, it failed to provide detail on many salient issues, including what type of training would qualify as compliant training. Regulations that will provide further clarification, however, are not far away – or at least that is what we have been told. The Fair Employment and Housing Commission (FEHC) has adopted Sexual Harassment Training Regulations, currently before the Offices of Administrative Law (OAL) for review and final approval. **Assuming approval occurs; the FEHC indicates that these regulations will go in effect approximately February 14, 2007.**

What are some of the highlights? First, it clarifies that the requirement of “having 50 or more employees” means employing or engaging 50 or more employees or contractors for each working day in any 20 consecutive weeks in the current calendar year or preceding calendar year. Employers whose personnel numbers hover at the near 50 level now can more accurately determine whether they must comply. Obviously, this may draw in some employers and eliminate others.

Second, it clarifies that to be a “supervisor” subject to this training requirement, you must be located in California (not the entire Company, just the supervisor). Supervisor is further clarified by adopting the definition in Government Code § 12926(r) which includes “any individuals having the authority, in the interest 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 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.

Third, the regulation provides that the training can occur in any of the following formats:

- Classroom training;
- Webinar training; or
- E-learning program.

While classroom training needs little explanation, the other options are certainly welcome alternatives. “**E-learning**” programs are defined as

“[I]ndividualized, interactive, computer-based training whose content is written developed and approved by an instructional designer(s), qualified trainer(s) or subject matter expert(s). An e-learning program shall provide a link or directions on how to contact directly trainers or educators, either working for the employer or retained by the e-learning provider. These trainers or educators shall be available to answer questions and to provide guidance and assistance on harassment training issues within a

reasonable period of time after the supervisor asks the question, but no more than two business days after the question is asked.

The other option, a “**Webinar**,” is defined as

[A]n internet-based seminar created and taught by a qualified trainer and transmitted over the internet or intranet in real time. An employer utilizing a webinar for its supervisors must 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. The webinar must provide the supervisors an opportunity to ask questions, to have them answered and otherwise to seek guidance and assistance.

The statute further explains that the two-year training requirement can be tracked at the individual level, by requiring an individual to take further training within 2 years of his/her last training session. Alternatively, the “training year” approach can be adopted whereby all supervisors must be trained within a designated year and then again two years later and so on.

New businesses and existing businesses that expand to 50 employees must provide training to supervisors within six months and thereafter biennially.

The regulations further provide detail regarding what constitutes a complete curriculum and who is qualified to providing training under these regulations.

The changes answer many questions and are a welcome clarification to the rudimentary mandate of AB 1825. **But don’t forget – they are not expected to go into effect until approximately February 14, 2007**, assuming they are approved.

Irrespective of AB 1825 and the impending regulations, continuing training on sexual harassment issues should be a priority for all employers. The benefits simply outweigh any cost associated with a training policy.