

Client Alert

A report
for clients
and friends
of the firm **October 2004**

California Amendment Requires Harassment Training

Governor Arnold Schwarzenegger has signed a bill (AB 1825) amending the California Fair Employment & Housing Act. The new law adds section 12950.1 to the Act and will take effect January 1, 2006. The law is a companion piece of legislation to Government Code Section 12950, which since 1993 has mandated that employers post in the workplace and distribute to employees information defining and describing sexual harassment, its illegality and the means by which it can be reported and remedied. (The sexual harassment information sheet can be downloaded from the Department of Fair Employment and Housing website at www.dfeh.ca.gov.) Notable for its simplicity, the law requires employers having 50 or more employees to provide at least two hours of classroom or other effective interactive training and education on the subject of sexual harassment to supervisory employees.

The new statute defines an "employer" as "any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities." Since the law does not require that the 50 or more employees or contractors be located in California, it presumably applies even if there is only one employee located in the state, and 49 or more are located elsewhere.

A recent California Court of Appeal decision left no question about it: California employers are strictly liable if a supervisor engages in sexual harassment or creates a hostile, offensive working environment.

While some may view the new law as yet another burden to be borne by California employers, we trust that most will consider that an ounce of prevention is worth a pound of cure. The obligations imposed by the law may well enable an employer to save hundreds of thousands of dollars in legal costs resulting from each lawsuit that never happens because of the training.

The requirements are:

Training Schedule:

July 1, 2005 to December 31, 2005

Train all supervisors who have had no training since January 1, 2003.

January 1, 2006 to June 30, 2006

Train any new supervisory employees.

January 1, 2006 December 31, 2007

Train all supervisors.

New supervisors must be trained within six months of assuming a supervisory position.

Training Frequency

Employers must provide training of at least two hours every two years. This does not mean that each training session must last for two hours. Indeed, most employers will elect to provide training of one hour once per year in order to ensure that they are in compliance with this law.

There is not much in the statute specifically defining the curriculum of the mandated "training and education" other than the requirement that it shall consist of at least two hours of "classroom or other effective interactive training and education regarding sexual harassment" and shall include information

and practical guidance regarding "the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment." Also, it shall include "practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation."

Training Content and Method

The sexual harassment training and education must include information and practical guidance about federal and state law prohibitions against harassment, how to prevent it, how to correct it, and the damages that are available to victims. Practical examples to aid in preventing harassment, discrimination, and retaliation must be presented by trainers and educators with knowledge and expertise in preventing harassment, discrimination, and retaliation.

While training does not insulate an employer from potential liability if harassment occurs, it will minimize the likelihood of objectionable conduct and, in the event of litigation, persuade a jury that the employer made every effort to do the right thing.

The statute's express approval of "effective interactive training" suggests that online training via the Internet or a company's own intranet, offered in conjunction with live training, may be an efficient and effective means of complying with the requirements of the new law.

The training and education must be presented by "trainers or educators with knowledge and expertise in the prevention of harassment, discrimination and retaliation." This requirement doubtlessly will encourage employment lawyers (plaintiff's side and defense), human resources professionals and others to offer their services to employers as appropriate "trainers and educators" with the requisite expertise to do the training.

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Client Alert

Proskauer's Labor and Employment Department includes 200 attorneys with significant and diverse labor and employment law experience. The following Los Angeles attorneys welcome any questions you might have.

Harold M. Brody

310.284.5625 – hbrody@proskauer.com

Anthony J. Oncidi

310.284.5690 – aoncidi@proskauer.com

Arthur F. Silbergeld

310.284.5624 – asilbergeld@proskauer.com

Mark Theodore

310.284.5640 – mtheodore@proskauer.com

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