

Client Alert

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of the firm

December 2005

California Issues Proposed Harassment Training Regulations

On December 16, 2005, the Fair Employment & Housing Commission of the State of California issued its long-awaited Proposed Regulations on Harassment Training. (The Proposed Regulations will not take effect until after members of the public have had an opportunity to comment and make recommendations for changes — the public has until February 10, 2006 to submit comments.)

The Proposed Regulations interpret the requirements of California's new mandatory harassment training law (California Government Code § 12950.1), the first requirements of which will take effect on January 1, 2006. The law requires all employers doing business in California that have 50 or more employees (regardless of where those employees are located) to train their California supervisors in harassment prevention before January 1, 2006.

Importantly, the Proposed Regulations provide that employers that have made a "substantial, good faith effort to comply" with the requirements of Section 12950.1 by completing training prior to the effective date of the regulations shall be deemed to be in compliance with the statute even if the training differs from that required by the regulations.

Key Definitions

The Proposed Regulations, which will be codified in the California Code of Regulations, title 2, § 7288.0, contain the following key definitions:

- "Employee" includes full-time, part-time, temporary and contract workers. The 50 employees (the threshold number for applicability of the law) need not work at the same location or all reside in California

- "Employer" includes any person engaged in any business or enterprise in California who employs 50 or more employees, contract workers, or agents, directly or indirectly
- "Having 50 or more employees" means employing 50 or more employees for each working day in any 20 consecutive weeks in the current or preceding calendar year
- Permissible "interactive training and education" includes instruction using audio, video, or computer technology, with an opportunity to obtain feedback, ask questions and have the questions answered, and testing that measures progress and the acquisition of knowledge. E-training and "webinars" shall incorporate feedback or a participation component at least once every 15 minutes so that employees are "measurably engaged in the training"
- "Supervisory employees" need not be physically located in California so long as they supervise California employees; attending harassment training does not create an inference that the employee is a supervisor
- "Training" includes "classroom" (in-person, instructor-led training in a setting removed from the supervisor's usual work environment); "e-learning" (individualized, computer-based training created by a qualified instructional designer); and "webinar" (a web-based seminar created by a qualified instructional designer)

Training and Trainers

Supervisory employees must be trained within six months of their becoming a supervisor and thereafter at least once every two years. Employers can monitor compliance either by way of "individual tracking" or "training-year" tracking. Individual tracking is measured from the date of training of the individual supervisor. Training-year tracking requires an

employer to complete the training of all of its supervisors every two years (*e.g.*, by December 31, 2005 and again by December 31, 2007), regardless of when an individual supervisor was last trained.

New businesses created on or after January 1, 2006 must provide training within six months of their establishment and biennially thereafter, measured either by the individual or training-year tracking method.

The training need not be provided in two consecutive hours. The minimum duration of a segment of classroom training and of a webinar shall be 30 minutes; the minimum duration of a segment of e-training shall be 15 minutes.

Trainers and educators who are qualified to provide training include California licensed attorneys, human resource professionals, psychologists or others, provided they have legal education or practical experience in harassment training and knowledge of California laws prohibiting unlawful harassment. (The regulations also list certain “desirable” and “undesirable” qualities of an effective trainer or educator.)

Training Content and Requirements

The training shall include, but is not limited to, a definition of unlawful harassment under state and federal law. In

addition to the definition of sexual harassment, the employer may provide definitions of other forms of illegal harassment and discuss how harassment of an employee can cover more than one basis.

In addition, the training shall include a discussion of statutory provisions and case law concerning the prohibition against and the prevention of unlawful harassment; the type of conduct that constitutes harassment; available remedies; strategies to prevent harassment; “practical examples,” including role playing, case studies, and group discussions; the confidentiality of the complaint process; resources for victims of harassment; training on how to conduct an effective investigation and on what to do if the supervisor is personally accused of harassment; and training on the contents of the employer’s anti-harassment policy and how to utilize it.

What you should do now . . .

Before January 1, 2006, employers with California operations should carefully review the requirements of Government Code § 12950.1 in conjunction with the newly issued Proposed Regulations and confirm that they are in compliance. (The Proposed Regulations are posted on the FEHC’s website at: www.fehc.ca.gov.)

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For more information about California’s new mandatory harassment training law, including the “e-training” solution offered by Proskauer’s training partner, WeComply, please contact any of the attorneys listed below.

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