

Training the Workforce – It's the Law

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The California law requiring training of supervisors on harassment prevention, Government Code Section 1950.1, was enacted more than two years ago. Employers in California have worked diligently since then to ensure compliance with not only the statutory deadlines, but the requisite course content. Entire industries have sprung up to meet the demand for training – offering options from audiotapes to lectures to on-line webinars.

In light of the attention by both employers and vendors on supervisor training, the training of the remainder of the work-force, that is, the bulk of the workforce, has in many instances, been neglected. Yet, notwithstanding the lack of any express mandate addressing non-supervisors, California's employers – both large and small – are urged to train all their employees to avoid harassment.

Unlike Section 1950.1, which requires training every two years and specific training methods, the training of non-supervisors is left to the discretion of employers. But without a doubt – the training should be done and it must be effective.

The need for training of the workforce at large dates back to the enactment of harassment legislation. Specifically, Section 12940(j) of the Government Code provides that employers must “take all reasonable steps to prevent harassment.” That mandate has been interpreted by the courts to require education of all employees – from the most subordinate employee to the most senior executive.

Certainly, attorneys representing victims of harassment are well aware of this standard. Company representatives can expect to be grilled – whether at deposition or at trial – on

the steps taken by the company to educate its workforce on preventing offensive conduct. Questions such as “Do you have an anti-harassment policy at this company?” or “Where is your policy posted,” or “How do your employees know of the policy?” are typical. In cases where training has been lax, companies can expect questions such as, “So, to your knowledge, non-management employees do not receive any training on the company's harassment policy” and “Has any non-supervisor received any anti-harassment training whatsoever in the last five years? California's regulations reinforce the importance of a comprehensive training program. Specifically, Section

7287.6 of the Administrative Code addresses claims against employers accused of negligently failing to prevent harassment of employees by non-supervisory co-workers. (Note that employers are strictly liable for harassment by supervisors.)



It provides that employers can rebut such claims by demonstrating ongoing efforts to inform employees “of their right to raise and how to raise the issue of harassment under California law, and developing methods to sensitize all concerned.”

Many employers find the task of training the workforce daunting. Employees come and go. Training becomes expensive and disruptive. For some employers, finding effective programs designed to address the practical realities of the workplace is a challenge. For others, language barriers and costs stall progress.

But employers should not let these challenges overcome their training efforts. Rather, ironically such challenges should be incorporated into the employer's training

program. The law, after all, requires “reasonable” efforts, not Herculean efforts. As such, ideally an employer interested in meeting the legal obligation (as well as insulating the company from claims the training is insufficient) should document the challenges and adopt a plan that specifically addresses them.

By way of example, an employer with high turnover may find formal training sessions unproductive. But rules can be explained and reinforced without the formalities of a classroom. Such employers may find that posters in lunch rooms or on bulletin boards are more effective. Messages such as “California forbids harassment at work,” and “Keep the workplace productive for everyone – harassment hurts everyone.” are simple and accurate.

The bottom line is that California law requires reasonable efforts to educate the workforce on harassment prevention. No company is exempt and no employee – whatever his or her position and responsibilities – should be overlooked.

Reminder Regarding Deadlines on Supervisor Training:

Since 2005, companies with more than fifty employees in California have been required to train supervisors on harassment prevention. The Government Code required all companies to complete such training by January 1, 2006 and to conduct additional training every two years. The training sessions must be interactive and must last two hours.

As many employers endeavored to complete their first training sessions in the few months prior to the initial deadline, many are now running up against the deadline for completing the next training session. If you are one of these companies, remember to schedule your next round of supervisor training. As this will be repeat training for your supervisors, vary the course content with hypotheticals or legal updates. Supervisors may also benefit from a discussion of the company’s anti-harassment policies – both written and unwritten or a candid evaluation of current prevention efforts.

Finally, don’t forget the ongoing deadlines for new supervisors. Any new supervisor must be trained within six months of starting his or her position.■

