

Insight

IN-DEPTH DISCUSSION

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The Continuing Expansion of Sexual Harassment Training Requirements in California

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A dozen years ago, California's passage of Assembly Bill (AB) 1825¹ began required sexual harassment prevention training for supervisors in companies with 50 or more employees. Since then, California has led the nation in the scope and depth of required sexual harassment training of private-sector supervisors and managers. New bills passed in 2016 expand the scope of required sexual harassment training to an estimated 570,000 additional private-sector workers, the vast majority of whom will be rank-and-file, non-supervisory employees.

Earlier this year, new regulations took effect aimed at clarifying employers' already-existing obligations to prevent and correct harassing conduct in the workplace.² More recently, California enacted provisions requiring three categories of employers to institute sexual harassment training for employees. As summarized below, new training requirements have been imposed to cover property services workers (janitors), farm laborers, and local government agency officials.³ The California legislature suggested that janitorial and agricultural employees remain vulnerable to sexual harassment and assault due to their frequently isolated working conditions, or their inability to complain effectively of harassment without fear of reprisal. Employers in these industries should familiarize themselves with the new requirements and prepare for compliance.

1 Codified as California Government Code § 12950.1.

2 See Denise Visconti, Shannon Going, and Marissa Dragoo, *Don't be Fooled: Significant New Anti-Discrimination and Harassment Policy Requirements Start April 1 for California Employers*, Littler Insight (Mar. 4, 2016), <http://www.littler.com/publication-press/publication/dont-be-fooled-significant-new-anti-discrimination-and-harassment>.

3 The third category of employees required to receive sexual harassment prevention training include paid members of local governmental bodies, and any paid elected local governmental official. See Government Code §§ 53237(b), 53237.1-53237.2.

Farm Laborers

California farms typically employ over 350,000 workers a year, with most these workers supplied by labor contractors. California recently revised Labor Code section 1684, governing the licensing of farm labor contractors, to add training requirements for contractors, their supervisors, and all of the contractors' agricultural employees. Amended section 1684 took effect on June 27, 2016, because this amendment was made part of the annual budget bill, which becomes effective when signed by the Governor.

As amended, Section 1684 provides that farm labor contractors may not obtain or renew their licenses unless they satisfy several conditions:

- The applicant must pass a written exam, demonstrating that he or she understands current laws and regulations pertinent to the industry, including those concerning “the identification and prevention of sexual harassment in the workplace.”⁴
- The contractor must also provide a written certification that its supervisory employees, including crewleaders, mayordomos,⁵ and forepersons, have been trained “for at least two hours each calendar year in the prevention of sexual harassment.”
- In addition, all nonsupervisory employees—including agricultural laborers—must receive training at the time of hire, as well as “at least once every two years in identifying, preventing, and reporting sexual harassment in the workplace.” The statute describes what topics should be addressed by the training, such as the definition of and examples of sexual harassment, its illegality, the “internal complaint process of the employer available to the employee,” potential legal remedies, and the protection against retaliation. Contractors must document all training sessions, including the names of the trainer and attendees, and maintain such records for three years.
- Besides the testing and employee training requirements, applicants for a farm laborer contract license must “also enroll and participate in at least nine hours of relevant educational classes each year.” Of these nine hours, at least one hour of class time must be devoted to sexual harassment prevention training.

Property Services Staff

California has approximately 220,000 persons working in the property services industry.

Unlike the farm laborer training requirements, the new law mandating anti-harassment training for janitors, passed as AB 1978, is not effective immediately. Rather, the law imposed the training requirements by first establishing a registration and recordkeeping process for janitorial employers. This registration requirement mirrors the regulations already imposed on other industries that operate predominantly through contracting and subcontracting, such as farm labor contractors and garment manufacturers.

Beginning July 1, 2018, janitorial employers must register with the Division of Labor Standards Enforcement (DLSE) annually, and they cannot continue to conduct business without complying with that obligation.⁶ The act also requires employers to make and keep records with basic employee data for three years, including names and addresses, daily hours worked, wage information, and other conditions of employment. DLSE can revoke registrations in certain circumstances. DLSE also will maintain, on its website, a public database of registered property service employers.

4 Cal. Lab. Code § 1684(a)(5). The code provides an exemption from the testing requirement if the applicant meets set criteria. Cal. Lab. Code § 1684(d).

5 A Spanish term originally meaning “chief of the household” or “mayor of the palace,” but more recently meaning a person in charge of a group or project, such as the manager of a hacienda, ranch, or estate.

6 New Labor Code §§ 1423, 1428, 2015–16 Reg. Sess., available at http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160ABI978.

Once the registration requirement takes effect in 2018, all covered employers must educate their employees about the unlawfulness of sexual harassment and how to combat it. Initially, employers will need to give employees a copy of a pamphlet addressing the subject.⁷ Meanwhile, DLSE will create an in-person sexual violence and harassment prevention training program. DLSE will convene an advisory committee to help develop the program, by July 1, 2017. DLSE must propose the required elements of the training on or by January 1, 2018, and must formally establish the program's standards by January 1, 2019. Both employees and employers must complete the sexual violence and harassment prevention training every two years. Effective January 1, 2020, janitorial employers seeking new, or renewal, registrations must satisfy this training requirement.

Considerations

These expanded requirements for training of managers and employees in sexual harassment prevention suggest that the Legislature may continue to expand the mandatory training of this kind to other groups of employees in other fields.

The responsible agencies have yet to determine the requirements for delivering the training. Accordingly, employers in the affected industries will have to remain flexible and innovative in their approaches to accomplishing the required training objectives, particularly for employees. Employers will need to assess the most appropriate training method for their workforces. Some employers may be able to use large-scale, in-person training, perhaps broken up into time segments. Other employers may be able to use online training, assuming a significant enough portion of their affected workforce has access to a computer. Still other employers may choose to adopt a manual training approach, in which the individuals read through and certify completion of written materials. Alternatively, a blended solution might turn out to work best—one in which several training approaches are used.

⁷ New Labor Code § 1424. The approved pamphlet is DFEH-185, entitled "Sexual Harassment," promulgated by the Department of Fair Employment and Housing.