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October 2010

In 2011, most employers with California operations will have to retrain their supervisory employees on preventing unlawful harassment as required by A.B. 1825. This article reviews the legal environment in which employers find themselves as they make decisions about the 2011 training year, along with best practices to help ensure that the retraining is most valuable to employees.

How Legal Trends Will Impact Mandatory Harassment Training for 2011 in California

By David Goldman

In 2011, most employers with California operations will have to retrain their supervisory employees on preventing unlawful harassment. California passed A.B. 1825 in 2004, requiring that employers provide harassment prevention training every two years.¹ Since the law's training mandate became effective in 2005, odd-numbered years have become the "retraining years" for most employers. Abetting this trend is the fact that A.B. 1825's regulations allow employers to avoid individually tracking their employees' re-training dates if the employer designates a "training year." Using this method, an employer must train all of its supervisors regardless of when those employees were last trained.² Given the overwhelming burden of tracking the two-year period for each employee individually, the training year is (or should be) used by most employers.

This article reviews the legal environment in which employers find themselves as they make decisions about the 2011 training year, along with best practices to help ensure that the retraining is most valuable to employees.

The Legal Landscape—The Numbers Don't Lie

Employers are facing an unprecedented number of discrimination and harassment claims. As the annual charge statistics published by Equal Employment Opportunity Commission (EEOC)³ show, 2008 and 2009 are the two years with the greatest number of discrimination claims filed with the EEOC since they began keeping statistics in 1992, with claims rising 23% since 2006. The EEOC has also been obtaining more money from employers through the litigation process, almost doubling the amount it received in 2009 compared with 2006. The statistics from charges filed under California's Fair Employment and Housing Act paint a slightly different picture. Disability-related issues take up nearly 30% of claims filed under state law.

What These Numbers Mean for A.B. 1825 Training

These "headline" numbers are scary enough without any embellishment. However, peering beyond the surface of the statistics reveals several interesting insights that are highly relevant to employers' A.B. 1825 efforts in 2011. The overall number of sexual

harassment charges filed with the EEOC has risen 5% since 2006. This is a significant rise, but well below the increase in overall charges (23%) and the increase in other types of charges under federal antidiscrimination laws (49% increase in retaliation charges and 33% increase in national origin charges over the same period). In a similar vein, there were only about one-third as many sexual harassment charges as there were race discrimination charges during 2009.

The message for employers conducting A.B. 1825 training is clear—employers who focus their training efforts solely on sexual harassment are not training their managers how to avoid many of the key compliance risks. Similarly, programs that mention retaliation as a mere “add on” are not focusing on the fastest growing area of EEO charges.

How Employers Address the Risk *and* Meet A.B. 1825 Requirements

The good news is some of the most critical compliance topics can be taught under A.B. 1825's mandate. The statute allows for (and arguably requires) discrimination and retaliation to be covered within the two-hour minimum length. However, it is clear that sexual harassment is the key focus of the law. Adequately teaching supervisors the skills they need to avoid discrimination and retaliation in hiring, performance, and termination within a two-hour program dedicated to sexual harassment is likely not possible. Employers should strongly consider adding time or developing separate courses to cover equal employment decision making and retaliation more broadly than just within the context of sexual harassment.

Training Checklist

A.B. 1825 training is a great opportunity to teach supervisors the skills they need to manage in today's complicated and complex workplace. With a little planning, compliance training efforts can bolster both a company's compliance efforts and management development efforts. Here are some factors to consider to make these twin goals a reality:

- Analyze your needs: Every good training program begins with a goal in mind. Ask yourself the tough questions—
 - Looking at the national and state trends, are my managers prepared for the most likely risks?
 - What types of discrimination complaints (formal and informal) do I get most often?
 - What issues do my supervisors struggle with?
 - What problems are causing the greatest amount of distraction in the workforce?
- Plan your curriculum around the subjects most important to your organization.
- Pick a delivery method (or methods): There are many ways to conduct effective, compliant training (in a classroom setting by external or internal experts; on-line; live, distance learning via webinar or satellite). When selecting the methods that work best for you, price and ease of implementation are certainly factors. However, training that fails to meet your most crucial objectives is not a value at any price.
 - Consider live training—particularly classroom training—for your high-priority topics; for example, when your goal is to:
 - Change people's behavior and/or make a lasting impression
 - Teach skills to supervisors versus merely imparting information
 - Create consensus around difficult issues
 - Get a read on how supervisors are reacting to the message and identify potential problem managers
 - Answer questions in an interactive format
 - For lower priority topics or those where there is no special issue and you need to “check the box,” use the format that is the

most economical and easy to manage. For example, many organizations with very large numbers of supervisors or who are geographically dispersed will likely need to use some type of distance learning, such as e-learning, to train some or all supervisors.

- No matter what topic or method you use, make sure that your training complies with A.B. 1825. Although prudent employers may want to go beyond the strict mandates of A.B. 1825, the statute still must be followed and there are many traps for the unwary. Request a White Paper.

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¹ See CAL. GOV'T CODE § 12950.1.

² *Id.* § 12950.1(b)(1)(B).

³ See <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>.