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New Legislation Requires Sexual Harassment Training For Supervisors

New legislation (AB 1825) adds a provision to the Fair Employment & Housing Act ("FEHA") requiring employers with 50 or more employees to provide two hours of sexual harassment training and education to all supervisory employees at least once before January 1, 2006 and at least once every two years thereafter. Sexual harassment training conducted between January 1, 2003 and the present qualifies for the pre-2006 training.

The FEHA defines "supervisor" as "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment." The law applies to all such employees who are employed as of July 1, 2005 and all new supervisory employees within six months of their placement as a supervisory employee.

The new law covers employers who regularly employ 50 or more persons, including independent contractors and others who act as an agent of the employer. The training may be in the form of a classroom setting or other effective form of interactive training and education regarding sexual harassment. The training must include practical guidance regarding: (1) the federal and state laws prohibiting sexual harassment; (2) the prevention and correction of sexual harassment and (3) the remedies available to victims of sexual harassment. The training must also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation, and must be presented by individuals with knowledge and expertise in these areas.

The new law also provides that, notwithstanding the requirement under the FEHA to prevent and correct unlawful discrimination and harassment, a claim that a particular individual was not trained in and of itself will not result in liability of the employer in an action for sexual harassment. Likewise, compliance with the training requirement will not insulate an employer from liability for sexual harassment. If an employer violates the training requirements, the Fair Employment and Housing Commission will issue an order requiring the employer to comply.

Finally, the new law makes clear that it is intended as a minimum threshold, and should not discourage or relieve any employer from providing longer, more frequent or more elaborate training and education regarding workplace harassment or other forms of discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

This new law underscores the importance of sexual harassment training. The definition of supervisor may not be easy to apply in practice, and indeed, all employees can benefit from sexual harassment training. Therefore, employers may find it appropriate to train supervisors and other employees, perhaps in separate trainings, to comply with this section, as well as their existing obligations to prevent and correct discrimination and harassment.

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