

## Publications

### *Labor and Employment Alert: No Joke: California Continues to Micromanage Required Sexual Harassment Training*

#### Related Attorneys

Michael C. Griffaton

#### Related Services

Labor and Employment

#### CLIENT ALERT | 4.1.2016

Since 2005, California employers with 50 or more employees have been required to provide at least two hours of interactive sexual harassment training to all supervisory employees once every two years. In 2015, California added “abusive conduct” (or bullying) to that mandatory harassment training. And now, beginning April 1, 2016, California employers will need to update their anti-discrimination and harassment training and policies to meet extensive new requirements imposed by California’s Fair Employment and Housing Council (FEHC).

The FEHC adds a new regulation (section 11023) to the California Code of Regulations – which “was written to give employers guidance based on consensus best practices that are easy to comply with and do not impose any new burdens for employers already in compliance.” Most employers should already have written anti-discrimination, harassment, and retaliation policies. Now, the employers’ policies must:

- Be written.
- Specifically identify the protected categories under California’s Fair Employment and Housing Act (FEHA): race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over 40 years of age, military and veteran status, and sexual orientation.
- State that coworkers, third parties, supervisors, and managers are prohibited from discriminatory, harassing, and retaliatory conduct. (In addition, the policies should state that unpaid interns and volunteers are protected from such conduct because the new regulations extend protection to these individuals.)
- Establish a complaint procedure that ensures complaints of harassment, discrimination, or retaliation are: (1) confidential, to the extent possible; (2) responded to in a timely manner; (3) timely and impartially investigated by qualified personnel; (4) documented and tracked; (5) given appropriate remedial options and resolutions; and (6) closed in a timely fashion.

- Create a complaint procedure that does not require an employee to directly complaint to an immediate supervisor (such as a complaint hotline or human resources).
- Require supervisors and managers to report complaints to a designated company representative.
- State that complaints will be investigated fairly, timely and thoroughly.
- Indicate that confidentiality will be maintained to the extent possible, but that confidentiality cannot be promised.
- Provide that appropriate remedial measures will be taken if misconduct during an investigation.
- Make clear that employees will not be retaliated against for lodging a complaint or participating in an investigation.
- Be translated into languages spoken by at least 10% percent of the workforce.

In addition to revising their policy, the new regulations require that employers disseminate the policy by providing a copy to employees (with an acknowledgement for the employees to sign); by posting the policy on a computer network and tracking that employees have read and acknowledged receipt of the policy; or by discussing the policies upon hire.

With respect to the required sexual harassment training, the new regulations require the training to explain a supervisor's or manager's responsibility to report sexual harassment, discrimination, and retaliation. The training must further detail the negative impact of abusive (i.e. bullying) conduct in the workplace and on the victim. Employers are required to document the sexual harassment training, such as with sign-in sheets, and retain those records for at least two years. In addition, employers must retain copies of the written training materials, questions, and answers.

The FEHA regulations make clear that employers have "an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct" and "an affirmative duty to create a workplace that is free from the employment practices prohibited by the Act." Revising the sexual harassment/discrimination/retaliation policy, ensuring proper training, and documenting those efforts aid employers in their affirmative duties. Contact your Vorys lawyer if you have questions about California's new sexual harassment regulations or other equal employment opportunity requirements.