


**AB 1825
Train The Trainer
Legal Requirements**

Presented by:
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Requirements of AB 1825

Does my Company Need to Comply?

- Any person engaged in business in California who employs 50 or more employees or contractors or persons acting as an agent for the employer
 - "contractor" = independent contractor who has performed services for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year [NOTE: may be a misclassified individual!]
- Only need to have 50 or more of the above in any 20 consecutive weeks in the current or preceding calendar year

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Which Employees Need to Receive Training?

- Supervisors and Managers
- Only supervisors "located in California" have to receive the training
 - If the Supervisor or Manager does work in California, error on the side of providing the training

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When Does the Training Need to Occur

- **Existing Supervisors:** *Every two years [calendar or "tracking year"]*
- **Tracking Year:**
 - Supervisors must be trained two years from the date of their last training (e.g. December 2005, December 2007)
- **Best Practices - Training Year Tracking**
 - Train all supervisors every two years sometime during a designated training year

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When Does the Training Need to Occur

Brand New Supervisors: *Within 6 months of hire and/or promotion*

- NOTE: Generally, new supervisors should also be included in the next training year cycle even if less than two years from their new hire training

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When Does the Training Need to Occur

- **New-to-the-Company Supervisors:** *These are supervisors who were trained by another employer*
- Two year deadline runs from date of last training – even if at another employer
- Supervisor need only read and acknowledge receipt of the no harassment policy within six months
- YOU MUST **CERTIFY** that the Supervisor was trained elsewhere in compliance with the law within two years
- Burden is on **YOU** to prove prior training complied with AB 1825

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Who can do the training?

- Attorneys
- Human Resource Professionals
- Harassment Prevention Consultants
- Professors or Instructors

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Who can do the training?

Attorneys

- Admitted for two or more years to the bar of any state
- Practice includes employment law under FEHA and/or Title VII

...such as...



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Who can do the training?

Human Resource Professionals or Harassment Prevention Consultants

- Requirement that they have two or more years of experience in:
 - Designing or conducting discrimination, retaliation and sexual harassment prevention training;
 - Responding to sexual harassment complaints or other discrimination complaints;
 - Conducting investigations of sexual harassment complaints;
 - Advising employer or employees regarding discrimination; OR
 - Advising employers or employees regarding discrimination, retaliation and sexual harassment prevention

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Who can do the training?

Professors or Instructors

- Law school professors
- College or university teachers with a post-graduate degree or California teaching credential
- Must have either 20 instruction hours or two or more years of experience in law school, college or university teaching about employment law under FEHA and/or Title VII

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Conducting the Training

How long does the training have to last?

- Must be a total of two hours – *this is excluding breaks*
- Does not have to be two consecutive hours, but each segment must be at least a half-hour if performed in multiple segments

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Conducting the Training

- Must take place in a "Classroom Setting"
 - Typically a Live Training session
 - Can be done remotely **IF** you make it sufficiently interactive
 - The training can be done by "e-learning" or by "webinar"
 - Must be in a "setting removed from the supervisor's daily routine"
 - It is not enough that they are just present. If they are doing other work or not listening they have not been properly trained in compliance with the law

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Conducting the Training
Webinars and "E-Learning"

- E-learning
 - Must provide ability to contact trainers or educators directly to ask questions, with a response in no more than two business days after question submitted
 - Must be interactive
 - Quizzes
 - Polls
 - Interactive games
- Webinar
 - Similar to E-Learning but with a live trainer over the internet

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RECORD REQUIREMENTS

- What records must be maintained?
 - Names of supervisors trained
 - Date of training
 - Type of training
 - Name of trainer
- How long must the records be kept?
 - A minimum of two years
- Best Practices: *provide employees certificates of completion. These should be maintained in the employee personnel file and a "master list" kept with HR*

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RECORD REQUIREMENTS
Anti-Harassment Policies

- Supervisors must receive a copy of the company's anti-harassment policy (or a sample policy), and the supervisors must be required to read and acknowledge receipt of that policy at some point in their employment

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What Needs to Be Covered?

- Information designed to address the learning objectives:
 1. Assist employers in changing or modifying workplace behaviors that create or contribute to sexual harassment as that term is defined in California and Federal law; and
 2. Develop, foster, and encourage a set of values in supervisory employees who complete mandated training and education that will assist them in preventing and effectively responding to incidents of sexual harassment
 3. Teach managers and supervisors how to deal with situations of potential harassment, including investigations and remedial actions

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What Needs to Be Covered?

- A definition of sexual harassment under FEHA and Title VII
 - Remember to explain **BOTH** a hostile work environment **AND** quid pro quo.
- If desired, information about other forms of harassment covered by FEHA and a discussion about how harassment can be other than sexual
 - Important to go through the other protected categories and discuss how they can be a contributing factor to harassment

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What Needs to Be Covered?

- FEHA and Title VII statutory provisions and case law principles concerning the prohibition against and prevention of unlawful sexual harassment
 - Need to discuss how the laws and regulations are interpreted and used in real life
 - Discuss the legal requirements of managers and employers to investigate and handle complaints of harassment
 - Confirm that the goal is to create a harassment free workplace

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What Needs to Be Covered?

- The types of conduct that constitute sexual harassment
 - Provide real life examples of conduct that can be sexual harassment
 - It is important that these are not just the "obvious" harassment
 - Need to include examples of conduct that can occur on a daily basis that may lead to litigation
 - Jokes
 - Discussing "sexual conquests"
 - Comments after working hours
 - Public Facebook Posts
 - Etc.

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What Needs to Be Covered?

- Remedies available for sexual harassment
 - Discuss monetary and non-monetary remedies including injunctions
 - Potentially most important to drive the point home to managers, you need to discuss strict liability for managers and how they are agents of the company.

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What Needs to Be Covered?

- Strategies to prevent sexual harassment in the workplace
 - Reiterate open door policies
 - Discuss taking all complaints seriously
 - Provide rules and guidelines for how to report issues to upper management and human resources
 - Keep the channels of communication open so that manager do not feel like they have to "do it alone"
 - HOWEVER: YOU must discuss how the investigation process CANNOT be kept completely confidential

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What Needs to Be Covered?

- Practical examples, such as factual scenarios taken from case law, news, and media accounts
- Hypotheticals based on workplace situations which illustrate harassment, discrimination, and retaliation

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What Needs to Be Covered?

- Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment
 - You need to discuss and/or mention the Fair Employment and Housing Act and the Department of Fair Employment of Housing
 - Walking the line between alerting managers to the rights and INSTRUCTING managers on how to file complaints against the Company
 - Discuss any differences between Title VII and FEHA
 - The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed

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What Needs to Be Covered?

- What to do if the supervisor or manager is accused of harassment
 - Recusing themselves from the process
 - Being open to the investigation process
 - Must go over the anti-retaliation policy to ensure they understand they cannot take any adverse employment actions against the person complaining or individuals participating in the investigation

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Reg. 7288.0(c)(10)



The Transgender Work Opportunity Act (New)

What Needs to Be Covered?

- SB396: Requires sexual harassment training to include harassment based on *gender identity, gender expression, and sexual orientation*.



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The Transgender Work Opportunity Act (New)

What Needs to Be Covered?

- Only applies to employers with 50 or more employees.
- This is the nation's first statewide policy requiring training to address disparities in the transgender and gender non-conforming community regarding harassment and unemployment rates.

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The Transgender Work Opportunity Act (New)

What Needs to Be Covered?

- The training and education shall include practical examples inclusive of harassment based on: *gender identity, gender expression, and sexual orientation*.

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The Transgender Work Opportunity Act (New)



What Needs to Be Covered?

- The training and education must be presented by trainers and/or educators with knowledge and expertise about harassment based on *gender identity, gender expression, and sexual orientation*.

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The Transgender Work Opportunity Act (New)



What Needs to Be Covered?

- The training and education must be presented by trainers and/or educators with knowledge and expertise about harassment based on *gender identity, gender expression, and sexual orientation*.
▪ The training and education must be presented by trainers and/or educators with knowledge and expertise about harassment based on *gender identity, gender expression, and sexual orientation* within six months of the assumption of their position and repeated once every two years.

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No Bully Zone



- Governor Brown signed legislation that adds a new component to the required AB 1825 sexual harassment training for supervisors. Starting January 1, 2015, AB 1825 anti-harassment training must also include training on the "prevention of abusive conduct."
- The new law defines "abusive conduct" as:
"[C]onduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious."

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What is Workplace Bullying?



- Actions (by an individual or group) that are:
 - Repeated
 - Unreasonable (out of context for situation)
- And cause:
 - An intentional impact on the target (i.e., humiliation, degradation, offense, intimidation) or
 - Dangerous results to the target (i.e., risk to safety and/or mental or physical health issues)

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Addressing Bullying



- Commitment from leadership
 - Make it clear to all employees that a bullying management style is not consistent with the organization's mission and values
- The bully must embrace becoming a part of the solution
 - Solicit feedback and be open to change
 - Identify Action Plan
 - Make meeting expectations a part of performance review; hold accountable.

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Presentation Style



- Humor
 - Humor is a powerful learning tool. However, maintain control of the humor to avoid turning the training into a form of harassment.



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Presentation Style

- Questions
 - Avoid fielding questions that involve current examples or complaints of harassment
 - However, as an in-house trainer, you must follow-up on such questions after the session
 - Take questions during the presentation rather than waiting until the end if you can

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Presentation Style

- Liability Discussion
 - When discussing liability you have a tightrope to walk
 - You want to get their attention, but do not sound alarmist
 - You want to educate them, but do not do it in such a way that you cause them to ignore the internal mechanism you have to address complaints

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Do You Know The Law?



For Example...

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Do You Know the Law

What are the key California and Federal laws prohibiting unlawful harassment and discrimination in the workplace?

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Do You Know the Law

What are the primary differences between the California and Federal harassment and discrimination laws?



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Do You Know the Law


If California and Federal law are different, how do you decide which one to follow?



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Do You Know the Law

What are the names of the California and Federal agencies which enforce the harassment and discrimination laws?



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Do You Know the Law



What does the law require of an employer who becomes aware of a potential harassment situation in the workplace?

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Final Questions

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Thank You

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