



New Requirements for Policies Against Harassment, Discrimination and Retaliation

Insights

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New regulations from California's Fair Employment and Housing Council went into effect April 1, 2016 and among other things, these regulations require employers of five or more employees to have a written policy against unlawful harassment, discrimination and retaliation in the workplace. This policy must contain certain provisions.

- The policy must list all of the protected categories under the Fair Employment and Housing Act, which are race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and veteran status.
- The policy must prohibit unlawful harassment, discrimination and retaliation by supervisors, managers, co-workers and third parties such as vendors or customers. It must also state that contractors, unpaid interns and volunteers are protected under the policy.
- While the regulations do not specifically require it, the policy should provide examples of unlawful sexual harassment (such as unwanted advances, offering an employment benefit in exchange for sexual favors or threatening negative consequences from an employee's declining a sexual advance, physical, visual and verbal conduct, and sending sexually-related e-mails or text messages) as well as other types of prohibited harassment such as racial, ethnic or religious slurs, jokes or remarks, including on social media.
- The policy must establish a complaint process that includes confidentiality to the extent possible, a timely response to complaints, a timely and impartial investigation by a qualified person, documentation and tracking for reasonable progress, appropriate due process, a reasonable conclusion based on the evidence collected, appropriate options for remedial actions and resolutions, and timely closure.
- The policy must contain a complaint process that does not require an employee to complain to his or her immediate supervisor. Rather, there must be a means for employees to complain to Human Resources or other another neutral manager, via a complaint hotline, to a designated ombudsperson, or to the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission.
- The policy must direct supervisors to report any complaints of violations of the policy to Human Resources or another person in the company so that a prompt internal investigation may occur.

- The policy must specify that employees and others who complain of violations of the policy shall not be exposed to retaliation for bringing a complaint or participating in an investigation.

A copy of the policy must be provided to each employee. It can be provided in a written document with an acknowledgement for the employee to sign and return, or via e-mail with an acknowledgement return form. It may also be posted on a company intranet site with a tracking system to ensure employees read and acknowledge it. Where the workforce at any location contains 10 percent or more persons who speak a language other than English as their spoken language, the policy must be translated into every language that is spoken by at least 10 percent of the workforce.

While there is no penalty for not having a compliant policy in itself, if a claim of harassment, discrimination or retaliation is pursued in court or before an enforcement agency, an employer may be subject to additional damages for failing to have a compliant policy. Employers, therefore, should review their policies and update them as necessary to satisfy the new regulations.

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