



California Policies Against Harassment Face New Regulations

Insights

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California employers will need to comply with a new set of regulations from California's Fair Employment and Housing Council that go into effect April 1, 2016. Among other things, these regulations require employers with five or more employees to have a written policy against unlawful harassment, discrimination, and retaliation in the workplace, and the regulations require the policies to meet certain requirements.

List Of Protected Categories

In order to comply with the new law, your policy must list all of the protected categories under the Fair Employment and Housing Act: 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.

Prohibition On Conduct

Your policy must prohibit unlawful harassment, discrimination, and retaliation by supervisors, managers, coworkers, and third parties such as vendors or customers. It must also state that contractors, unpaid interns, and volunteers are protected under the policy.

Examples Of Prohibited Conduct

While the regulations do not specifically require it, your policy should provide examples of conduct that would be considered unlawful sexual harassment. For example, you should specify that unwanted advances, offering an employment benefit in exchange for sexual favors, threatening negative consequences if an employee declines a sexual advance, physical, visual and verbal conduct, and sending sexually related emails or text messages are all prohibited. You should also make clear that other types of prohibited harassment such as racial, ethnic, or religious slurs, jokes, or remarks, including on social media, are likewise forbidden.

Complaint Process

Your 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 complaint process must not require employees to complain to their immediate supervisor. Rather, there must be a means for employees to complain to Human Resources or other neutral manager, to complain via a hotline, to a designated ombudsperson, or to the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission.

Your policy must also direct supervisors to report any complaints of violations to Human Resources or another person in your company so that a prompt internal investigation may occur.

Zero Tolerance For Retaliation

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.

Distribution

You must provide a copy of the policy to each of your employees. You can provide it to them in a written document with an acknowledgement for them to sign and return, or via email with an acknowledgement return form. It may also be posted on your intranet site with a tracking system to ensure your employees read and acknowledge it, and it may be presented to and discussed with new hires during the onboarding process.

If your workforce at any location contains 10 percent or more persons who speak a language other than English as their spoken language, your policy must be translated into every language that is spoken by at least 10 percent of the workforce.

Conclusion

While the new law itself does not contain a penalty provision, you may be subject to additional damages if a claim of harassment, discrimination, or retaliation is pursued against you in court or before an enforcement agency and your policy does not meet these standards. For this reason, you should review your policies and update them as necessary to satisfy the new regulations.

If you have any questions about these new regulations or how they may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our California offices:

Irvine: 949.851.2424

Los Angeles: 213.330.4500

San Diego: 858.597.9600

San Francisco: 415.490.9000

This Legal Alert provides an overview of specific new regulations. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



James J. McDonald, Jr.

Partner

949.851.2424

Email

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