legal briefs

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Is Your Business Compliant With Sexual Harassment Training Requirements?

California businesses with over 50 employees must provide sexual harassment training for their supervisory employees every two years. Government Code §12950.1 spells out requirements for sexual harassment training programs. This article generally reviews sexual harassment claims and the training requirements under G.C. 12950.1.

Under current law, there are two types of sexual harassment in the workplace: 1) quid pro quo, which occurs when a term of employment is conditioned on the submission to unwelcome sexual advances; and 2) a hostile work environment, which occurs when the harassment is so severe or pervasive that it alters the conditions of employment and creates an abusive work environment.

Sexual harassment includes many forms of offensive behavior, including:

- Unwanted sexual advances;
- Offering employment benefits in exchange for sexual favors;
- Actual or threatened retaliation;
- Making sexual gestures or displaying sexually suggestive materials;
- Using derogatory or sexual comments, epithets, slurs, or jokes; and
- Physical touching or assault, as well as impeding or blocking movements.

If the harasser is a supervisor empowered to take tangible, adverse actions against the worker, such as demotion, firing or cutting pay, then proving employer liability for harassment is easier. However, if the harasser is a co-worker, then the claimant has to prove that that the company was negligent in handling the matter. If an employee is responsible for overseeing another employee, it is good practice to make sure that supervisor is up to date and compliant with the training requirements.

The training provided must consist of two hours of classroom or other effective interactive training and education regarding sexual harassment prevention to supervisory employees. New supervisors must be trained within six months of being promoted or hired to a supervisory position. The process must be repeated every two years for all employees, and employers may track the training in a number of ways.

Employers can use individual tracking, training-year tracking or a combination of the two methods. First, an employer may track the last training date of each employee to ensure that retraining occurs no more than two years later. So, a supervisory employee hired in 2013 would need to be trained again by 2015. Second, tracking by training year permits an employer to designate a training year in which it trains its supervisory employees, so employees trained in 2013 would need to be retrained in 2015.

AB 1825 training can be provided by attorneys, professors, instructors, human resources professionals or harassment prevention consultants. Training options include classroom, or in-person training; web-based seminars, or "webinars"; and online computer-based training or "e-learning."

If an employer does not train its staff properly, the California Department of Fair Employment and Housing can force the employer to undertake a training program. While the statute makes it clear that compliance with the statute is not a defense to a sexual harassment claim and, conversely, a supervisor's failure to receive training is not a basis for establishing liability, it is prudent to make sure that training is done to help reduce limit liability.

If you have any questions regarding the above or prevention training, feel free to contact me at 510-832-7770 or jmauck@ericksenarbuthnot.com. Andrew Kozlow in the Oakland office developed material for this article.

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