



FAILING TO TRAIN EMPLOYEES AND OFFICIALS ABOUT WORKPLACE HARASSMENT CAN BE DISASTROUS

Unless you have been living under a rock for the last six months, you are most certainly aware of the allegations surrounding former San Diego Mayor Bob Filner. After being accused of sexual harassment by dozens of women, Mayor Filner and the City of San Diego finds themselves amid a torrent of civil litigation, criminal charges, and an investigation by the Department of Fair Employment and Housing (“DFEH”).



Kelly A. Trainer, a partner in Burke’s Orange County office, represents and advises employers on matters involving numerous federal and state law claims, including discrimination, harassment,

retaliation, wrongful termination, disability, labor negotiations, wage and hour, freedom of speech and association, and privacy. Ms. Trainer is also an experienced workplace investigator and trainer, who conducts numerous seminars and employee trainings on employment matters.
email: ktrainer@bwslaw.com
direct: 949.265.3416

Incredibly, former Mayor Filner blamed his misconduct in part on the City’s failure to provide him with workplace harassment prevention training.

On December 18, 2013, the DFEH reached a settlement with the City of San Diego which requires the City to provide at least two hours of sexual harassment prevention training to all supervisory employees, including all elected and appointed officials, within six months of their hire, election or appointment date, and every two years thereafter. The City will be required to report to the DFEH every six months for the next five years.

What is AB 1825?

California state law AB 1825, which is part of California’s Fair Employment and Housing Act (“FEHA”), first became effective January 1, 2005. The legislation mandates state-wide sexual harassment prevention training for any employee who performs supervisory functions within a private organization of 50 employees or more. The 50-employee threshold does not apply to public employers, and as such, public agencies are required to provide the training regardless of the number of persons employed. Persons regularly providing services pursuant to a contract are considered “employees” for purposes of this law.

California employers are required to take all reasonable steps necessary to prevent harassment and discrimination. AB 1825 is an important part of that obligation.

What must the training cover?

The training must be interactive and include information and practical guidance regarding state and federal harassment, discrimination, and retaliation laws. Among other things, it must also cover the employer’s anti-harassment policy, complaint and investigation procedures, remedies, strategies for prevention, confidentiality, and resources for victims of harassment.



Traci I. Park is a partner in Burke’s Los Angeles office. She exclusively represents employers in employment litigation matters including wrongful termination,

FEHA, Title VII, ADA, due process and civil rights cases. Ms. Park also has a large counseling practice, which includes drafting employment policies, conducting employment law compliance audits, conducting personnel investigations, and advising on employee discipline and terminations. Ms. Park is an experienced trainer who regularly conducts seminars covering all aspects of employment law.
email: tpark@bwslaw.com
direct: 213.236.2833

The training must also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and it must be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

The training must extend beyond sexual harassment to other forms of prohibited harassment, such as age, gender, race, and disability.

How often must the training be done?

The law requires that the training be repeated once every two years. For new hires and promotions, the training must be completed within 6 months of assumption of the supervisory position, and thereafter, every two years.

How long does the training take?

AB 1825 compliant training must be at least two hours long.

Who should attend the training?

Only supervisory employees are specifically required to attend AB 1825 training. For public agencies, the question of whether elected or appointed officials are “supervisors” has been an open one, as the statute and the regulations do not specifically address the status of elected officials. Following the settlement agreement between the City of San Diego and the DFEH, Phyllis Cheng, the DFEH Director stated, “This agreement serves as a model for other local government agencies to fully comply with the sexual harassment training required of all supervisors, including elected and appointed officials under the Fair Employment and Housing Act.” In order to fully comply with the requirements of the FEHA, public employers should include their elected and appointed officials in all future harassment prevention trainings. Further, as many elected and appointed officials have not previously been included in harassment prevention training, it is in a public agency’s best interest to provide officials training as soon as possible.

While AB 1825 only requires that supervisory employees receive training, providing training all employees about preventing workplace harassment is highly recommended.

Federal case law suggests that both managers and employees must be trained to successfully establish an affirmative defense to harassment claims brought in federal court.

California Government Code §12940(k) requires employers to take “all reasonable steps necessary to prevent discrimination and harassment from occurring.”

In *State Department of Health Services v. Superior Court*, the California Supreme Court held that the FEHA does not allow the federal Faragher/Ellerth defense in harassment claims. Instead, California employers may assert a different defense under the FEHA – the doctrine of avoidable consequences. This defense allows an employer to limit damages by proving that it took appropriate steps to prevent and address harassment.

According to the California Supreme Court, to establish the avoidable consequences defense, a California employer must:

- Show that it adopted appropriate anti-harassment policies and communicated essential information to employees;
- Ensure a strict prohibition against retaliation for reporting alleged policy violations;

- Ensure that reporting procedures protect employee confidentiality as much as is practical; and
- “Consistently and firmly” enforce anti-harassment policies.

The Court further stated that in establishing the avoidable consequences defense, potentially relevant evidence includes “anything tending to show that the employer took effective steps” to encourage individuals to report harassment and for the employer to respond effectively. None of these factors are limited to supervisors. This broader directive strongly supports sexual harassment training for both employees and managers.

What if there are less than 50 employees in my organization?

Even though private employers with fewer than 50 employees or contractors are not required to comply with AB 1825, it will still affect these employers when they are faced with a claim of sexual harassment by an applicant or employee. Regardless of AB 1825, every employer must take “all reasonable steps” necessary to prevent and redress sexual harassment in the workplace. One such “reasonable step” is an effective program to train and educate employees about sexual harassment.

What are the consequences of failing to comply with AB 1825?

Failure to comply opens the door to workplace harassment lawsuits. A claim that an employer failed to provide AB 1825 training does not automatically result in the liability of an employer for harassment. However, plaintiffs will argue that failure to meet the training mandates is evidence of an employer’s failure to take all reasonable steps to prevent workplace harassment and discrimination. Moreover, failure to train a particular individual who is later accused of sexual harassment - or who fails to properly respond to a sexual harassment issue - further exposes employers to potential liability. In addition, employers who fail to comply with AB 1825’s training requirements will be subject to an order issued by the DFEH.

What can we do to help?

Kelly Trainer and Traci Park are seasoned employment attorneys who have conducted hundreds of workplace seminars. Their dynamic AB 1825 training is informative and entertaining, and offers interactive exercises, real life scenarios, and best practices for supervisors and employees. Contact us for further information about harassment prevention training and make sure that your organization is fully compliant with your legal obligations.

Law Offices Throughout California



444 South Flower Street | Suite 2400 | Los Angeles | CA | 90071
800.333.4297 | www.bwslaw.com