



Get Ready For 2019: The Year Of Harassment Prevention

In response to the #metoo movement, the California Legislature passed a number of new sexual harassment laws that are effective January 1, 2019. Many employers have questions about their obligations to train employees in the prevention of sexual harassment. This alert addresses some of the more common questions.

Which Employers Are Obligated to Provide Harassment Prevention Training?

Since 2005, AB 1825 required private employers with 50 or more employees to provide harassment prevention training to supervisory employees. Public employers were required to provide the training regardless of the number of employees. Effective January 1, 2019, [SB 1343](#) will require all public employers and private employers with five or more employees, including temporary or seasonal employees, to provide harassment prevention training to all employees.

The Department of Fair Employment and Housing (“DFEH”) issued an [FAQ sheet](#) for employers as well as a [Sexual Harassment and Abusive Conduct Prevention Training Toolkit](#) to provide guidance and resources for employers. The FAQ sheet notes that “there is no requirement that the 5 employees or contractors work at the same location or that all work or reside in California.” The FAQ sheet further reminds employers that the DFEH regulations define “employee” to include full-time, part-time, and temporary employees.

When Do Employers Have to Provide the Training?

Government Code section 12950.1, as amended by SB 1343, requires that all employees must receive training by January 1, 2020. After that, employees must be retrained every two years. Employees must also be trained within six months of hiring or assuming a supervisory position.

What if Employees Were Trained in 2018?

It is unclear whether any employees trained in 2018, including supervisors trained pursuant to AB 1825 obligations, will be required to be retrained in 2019.

While the language of *Government Code* section 12950.1 could be read to require that every employee be trained in 2019, regardless of an employer's prior training efforts, many believe that this "retraining" was not the intent of the legislature in adopting SB 1343, which focused primarily on expanding training obligations to smaller employers and to non-supervisory employees. However, the DFEH FAQ sheet states: "The law requires that employees be trained during calendar year 2019. Employees who were trained in 2018 or before will need to be retrained." We are aware that employer groups are seeking clarification from the DFEH and the Legislature about this issue. Employers may want to consider delaying the training of anyone trained in 2018 until later in 2019, which will allow time for the Legislature to clarify this issue.

What are the Substantive Requirements for Training?

SB 1343 did not change the requirements that AB 1825 and subsequent statutes and regulations enacted for supervisory training (including obligations to train on the prevention of abusive conduct, as well as on gender identity, gender expression, and sexual orientation). It is likely that the same basic content requirements, which are set forth in [2 CCR section 11024](#), will continue to apply to supervisory training. Until the DFEH provides further guidance, employers would be wise to use these same guidelines in developing the content of non-supervisory training.

Employers should also remember that [SB 1300](#), the Sexual Harassment Omnibus Bill, authorizes, but does not require, bystander intervention training. Such training would include information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behaviors.

What about Temporary and Seasonal Employees?

SB 1343 requires that *beginning* January 1, 2020, employers provide seasonal and temporary employees, or any employee hired to work for less than six months, with harassment prevention training within the first of 30 calendar days from hire date, or 100 hours worked.

Does SB 1343 Change Training Obligations for Local Government Officials?

AB 1661, which has mandated harassment prevention training for local government officials since January 1, 2017, is not affected by SB 1343. Local Government Officials training obligations are contained in *Government Code* section 53237.1, separate from the training obligations for employees in *Government Code* section 12950.1.

How Can Burke Help?

In June 2016, the EEOC issued the [Report of its Select Task Force on the Study of Harassment in the Workplace](#). In it, the Task Force makes many recommendations on the prevention of workplace harassment. Specific to training, it notes that “Live trainers who are dynamic, engaging, and have full command of the subject matter are the most likely to deliver effective training.” The EEOC also notes the value of training that is industry/workplace-specific, and to addressing issues beyond strict legal compliance, such as workplace civility and bystander intervention training.

Burke provides a variety of training to assist employers in both meeting their legal obligations and fostering a respectful workplace. Burke can provide fully compliant harassment prevention training for supervisors, non-supervisors, and local government officials that is specifically tailored to your workplace. For employers that want to provide additional educational opportunities, Burke offers a number of training options, including:

- Advanced Harassment Prevention Training for HR Professionals or Supervisors
- The New Norm: Cultural Changes in the #MeToo Era Workplace
- Think Before You Act: Diversity and Unconscious Bias in the Workplace
- Working in the Fishbowl: Practical Challenges for Public Sector Employees
- Creating Effective Documentation

While Burke always encourages live, in-person training as a best practice, we understand that sometimes technology can be a useful tool. As such, we also provide live webinars for employers. Our webinars are legally compliant with all harassment prevention standards in California, and can also be offered for any of our other training topics.

Please contact Timothy Davis at 650.681.8317 or tdavis@bwslaw.com or Kelly Trainer at 949.265.3416 or ktrainer@bwslaw.com to discuss your training needs and to schedule your upcoming trainings.