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New Bill Reflects California's Desire to Change Outdated Workplace Norms

Sexual harassment in the workplace isn't a novel issue. But in conjunction with the fall of Harvey Weinstein and the rise of the #metoo movement, researchers are finding out just how much it happens. Everywhere.

A 2017 ABC News-Washington Post poll found that 33 million U.S. women have been sexually harassed in work-related episodes—that's more than the population of the entire state of Texas. And workplace harassment doesn't stop there: the EEOC has seen a steady increase of reported allegations of sex discrimination related to sexual orientation and gender identity.

In October 2017, Governor Brown signed Senate Bill 396 into law, requiring employers in California with 50 or more employees to provide training on policies that prohibit harassment specifically based on gender identity, gender expression, and sexual orientation. This new training is an additional obligation under California's Fair Employment and Housing Act, which already requires sexual harassment training for supervisory employees once every two years, within six months of an employee's assumption of a supervisory position.

In providing this additional training, it is important to understand the vocabulary associated with these protections. The California Fair Employment and Housing Council defines **gender expression** as "a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth." **Gender identity** is defined as a person's internal understanding of their gender, "or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender." Gender is separate and distinct from a person's **sexual orientation**, which is also a protected characteristic included in the new training requirements outlined in SB 396.

While some people still view sexual harassment training requirements as a mechanism to simply check a box for legal protection, the California laws reflect an attitude supporting the necessary cultural shift toward legitimate equality in the work place. SB 396 training

“shall include **practical** examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.” (Emphasis added.) The days of online click-click-next trainings are over, and for good reason: those trainings didn’t work.

California law recognizes several protected characteristics: (1) race; (2) national origin; (3) religion/creed; (4) age (over 40); (5) disability (mental and physical); (6) sex/gender (including pregnancy, childbirth, breastfeeding or related medical conditions); (7) sexual orientation; (8) gender identity/expression; (9) medical condition; (10) genetic information; (11) marital status; and (12) military and veteran status.

The goal behind requiring practical and regular sexual harassment training is to ensure that supervisors know the standards of conduct expected in the workplace and the disciplinary consequences that follow if those standards are not met. It is so important to create thoughtful and relevant AB 1825 and SB 396 compliant trainings. The ultimate goal is for these trainings—as well as related policies and practices—to support a respectful and comfortable work environment for all employees, and to emphasize education related to gender and LGBTIA employee matters.