

WACA ALERT

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Expanded Sexual Harassment Prevention and Abusive Conduct Training Requirements SB 1343 Compliance

The highly-publicized #MeToo movement made a significant cultural impact in 2018, not only on workplaces and individuals across all industries, but also on California state lawmakers who responded by introducing and passing legislation aimed at curbing harassment in the workplace. The most significant new law in this area was SB 1343, which expanded California's existing sexual harassment prevention training requirements from supervisory employees to all employees and reduced the employee threshold triggering the training requirement for employers from 50 employees to 5 employees. Due to the climate surrounding the #MeToo movement, SB 1343 received no opposition.

SB 1343 amended existing California sexual harassment training laws to require that, as of January 1, 2019, all employers with five or more employees are now required to provide two hours of sexual harassment prevention training to supervisors and one hour to nonsupervisory employees within six months of hire or promotion, and every two years thereafter. All employees must complete their training before January 1, 2020. The California Department of Fair Employment and Housing (DFEH) has determined that this means training must be done during the 2019 calendar year. This includes supervisors trained in 2018 under existing law.

Existing posting requirements have not changed, employers must still post the required DFEH discrimination and harassment workplace poster and all employers must also distribute the DFEH pamphlet on sexual harassment to all employees.

The new law also requires the DFEH to develop, and make available on its website, online sexual harassment prevention training courses with a method for employees who have completed the training to print out a certificate of completion. DFEH expects to have the online trainings available by late 2019. The law also permits an employer, in order to comply with the training requirement, to develop a training module instead of the online training course developed by DFEH, if they so choose.

In addition, DFEH is offering a sexual harassment and abusive conduct prevention toolkit, including a sample sexual harassment and abusive conduct prevention training program. Employers may use the training in conjunction with an eligible trainer to provide sexual harassment and abusive conduct prevention training.

The toolkit can be found here:

<https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/12/SexualHarassmentandAbusiveConductPreventionTrainingToolkit.pdf>

Summary of Training Deadline:

Beginning January 1, 2019, employees must receive training by the first mandated deadline on January 1, 2020, meaning all employees must be trained in the 2019 calendar year. To comply with the January 1, 2020 deadline, all employees trained in 2018 must retrain in 2019. Training must take place within six months of hire or promotion and every two years thereafter.

Beginning January 1, 2020, seasonal and temporary employees, or any employee hired to work for less than six

months, must be trained within 30 calendar days after the date of hire or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, the training must be provided by the temporary services employer, not the client.

Enforcement:

DFEH will accept complaints from employees regarding employer noncompliance with the law. Complaints filed with DFEH after January 1, 2020, regarding an employer's failure to provide the required sexual harassment and abusive conduct prevention training will be reviewed in light of the totality of the circumstances, which may include the availability of DFEH's online training courses or the availability of qualified trainers. If DFEH finds that the law has been violated, it will work with employers to obtain compliance with the law.

Responsibility to Provide the Training:

Existing California law specifies that, "An employer . . . shall provide" sexual harassment and abusive conduct prevention training [Gov. Code 12950.1(a)-(b)]. In addition, the DFEH is authorized to seek a court order that "the employer" has not and must comply with this requirement [Gov. Code 12950.1(f)]. This language makes clear that it is the employer's—not the employee's—responsibility to provide the required training, including any costs that may be incurred. This language also makes clear that employees may not be required to take such training during their personal time; the training must be "provided" by the employer as part of an individual's employment.