

WACA ALERT

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Sexual Harassment Prevention Training and Education Legislative Update

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.

SB 1343 amended existing California sexual harassment training laws to require that, as of January 1, 2019, all employers with five or more employees be 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. Further, beginning January 1, 2020, for any employee that is hired to work for less than six months an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. The new law also required that all employees must complete their training before January 1, 2020. After the passage of SB 1343, the California Department of Fair Employment and Housing (DFEH) determined that all training must be done during the 2019 calendar year. This includes supervisors trained in 2018 under existing law. In addition, the DFEH was charged with developing, and make available on its website, online sexual harassment training courses with a method for employees who have completed the training to print out a certificate of completion. DFEH has yet to make the online trainings available.

All of the above created confusion and chaos for construction employers attempting to comply with the new requirements within the one-year window provided. In addition, the application of training short term employees within 30 calendar days if they do not work six months for the employer, within the multiemployer union construction industry presented a unique and large challenge.

The union construction industry is a multiemployer setting in which collective bargaining agreement (CBA) covered employees work for multiple employers throughout their career. Over the span of a two-year period, these employees could change employers a half dozen times or more. Pursuant the new requirements, a worker who is dispatched by the union hall to multiple employers over a two-year period would need to receive sexual harassment training each time they go to work for a new employer. This creates both a burden for construction workers who would be required to receive sexual harassment prevention training and education multiple times over a two-year span and for employers who would have to provide redundant training.

Due to the importance of this issues, we have been working to pass legislation this year to provide specific industry relief and an overall delay in implementation, so employers have more time to meet the new requirement. We recently amended **SB 530** to be an industry focused bill, that would provide comprehensive construction industry training options, and portability of an employee's certification of having taken the requisite training between employers' signatory to the same CBA. **SB 778** is a broader measure that extends the deadline for employers to provide sexual harassment prevention training and education and clarifies when refresher training must be provided.

Enclosed is summary of each measure. We anticipate that both will make their way to Governor Newsom for consideration and we will ask for contractor support letters to the Governor when appropriate.

SB 530 – Union construction industry: discrimination and harassment prevention policy

- Rather than requiring retraining of a new employee, the bill authorizes a construction industry employer that employs workers pursuant to a multiemployer CBA to satisfy the Fair Employment and Housing Act's sexual harassment training and education requirement by demonstrating that the worker has received the requisite amount of sexual harassment prevention training and education within the past two years by the employer itself, another employer signatory to the same CBA or an associated apprenticeship program, labor management trust, or labor management cooperation committee.
- Provides that a state-approved building and construction trades apprenticeship program, labor management training trust, or labor management cooperation committee may provide sexual harassment prevention training and education to covered workers on behalf of an employer.
- Should an apprenticeship program, labor management training trust, or labor management cooperation committee provide the sexual harassment prevention training and education, the bill requires a certificate of completion of training to be maintained by the apprenticeship program, labor management trust, or labor management cooperation committee for a period of not less than four years.
- Requires an apprenticeship program, labor management trust, or labor management cooperation committee, that provides the sexual harassment prevention training and education to maintain a database of journey-level worker and apprentice training and to provide verification of an employee's training status upon the request of an employer that is a party to the associated multiemployer collective bargaining agreement.
- Requires the Division of Labor Standards Enforcement (DLSE) to develop an industry specific harassment and discrimination prevention policy and training standard for use by employers, apprenticeship programs, labor management trusts, or labor management cooperation committees in the construction industry that is tailored to best serve the industry.

SB 778 - Employers: sexual harassment training: requirement extension

- Extends the deadline for covered employers to provide sexual harassment prevention training and education to January 1, 2021.
- Clarifies that covered employers who have provided sexual harassment prevention training and education to an employee in 2019 may provide refresher training to that employee two years thereafter.