

WACA ALERT

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Governor Newsom Signs Important Industry Reforms

Governor Newsom signed two important industry bills relating to sexual harassment training, **SB 778** and **SB 530**. These measures deliver needed time, clarity and flexibility to union construction employers attempting to complying with the State's expanded sexual harassment training requirements.

Background

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 sexual harassment in the workplace. The most significant law on this topic passed in 2018 was SB 1343, which expanded California's existing sexual harassment prevention training requirements from only 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.

Under SB 1343 California employers, with five or more employees, are required to provide two hours of sexual harassment prevention training to supervisors and one hour of sexual harassment prevention training to nonsupervisory employees by January, 1 2020. New employees or employees receiving a promotion to a supervisory position are required to be trained within six months of hire or promotion. Training is also required to be provided every two years thereafter and must be provided by each new employer. In addition, the Department of Fair Employment and Housing (DFEH) is required to develop, 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.

The implementation of the new law brought two specific challenges to our industry. First, the DFEH has yet to provide the mandated online training course, leaving no time to get employees trained by the January 1, 2020 deadline. Second, the union construction industry is a multi-employer 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 to the law, a worker who is dispatched by the union hall to multiple employers over a two-year period would need to receive sexual harassment prevention training each time they go to work for a union signatory construction employer. This is obviously burdensome to union construction workers who would be required to receive sexual harassment training multiple times over the two-year span and it is also inefficient for employers who would be required to provide redundant training.

Solution

To addresses these issues, we worked to pass two bills this year, **SB 778** which provided an extension to the deadline for employers to train their existing employees from January 1, 2020 to January 1, 2021 and **SB 530** to clarify that the training can follow the CBA covered employee in the union multiemployer construction setting when they change employers. SB 530 also authorized Joint labor management apprenticeship training committees and other labor management committees to provide the requisite training.

Addressing these issues for the industry was a top priority, **a summary with specifics on each bill is enclosed below and a copy of each measure is attached.** Please don't hesitate to contact our office with any questions.

SB 778 - Employers: sexual harassment training: requirement extension

- Extends the deadline for covered employers to provide sexual harassment prevention training and education to their existing supervisory and nonsupervisory employees to January 1, 2021.
- Clarifies that covered employers who have provided sexual harassment prevention training and education to an employee in 2019 or 2020 may provide refresher training to that employee two years thereafter.

Please note that there are a few provisions that SB 778 did not change. Government Code Section 12950.1(a) still requires employers to provide the sexual harassment prevention training to new nonsupervisory employees within six months of hire and to new supervisory employees within six months of hire or the assumption of a supervisory position. The option to verify that a CBA covered employee has undergone training within the past two years rather than provide the training, per SB 530, still applies.

SB 530 – Union construction industry: discrimination and harassment prevention

- 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 new law 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 apprentice and journeyman sexual harassment prevention 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.