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FINALLY! THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION ISSUES FINAL HARASSMENT TRAINING REGULATIONS

After four bites at the apple, the California Fair Employment and Housing Commission (FEHC) has issued its Final Proposed Sexual Harassment Training and Education Regulations. The final regulations were issued on November 14, 2006, and, if approved by the Office of Administrative Law, will become effective in early February 2007.

The final regulations clarify several aspects of the sexual harassment training law (Government Code, Section 12950.1), which became effective on January 1, 2005, with the passage of AB1825. Section 12950.1 requires that covered employers provide at least two hours of harassment training to all supervisory employees every two years.

Fortunately, the final regulations do not include some of the more burdensome provisions of previous versions. Overall, the final regulations are user friendly and do not create significant additional obligations for employers.

It is important to note that the final regulations will apply prospectively, which means that employers who conducted harassment training in accordance with the statutory requirements of Government Code, Section 12950.1, prior to the effective date of the regulations will be deemed currently in compliance with the mandatory training law.

The final regulations provide that all employers who employ or engage 50 or more employees or independent contractors anywhere in California or elsewhere are covered by the mandatory training law. However, with the recent passage of AB 2095, the California Legislature has limited the training requirement to only those supervisors physically located in California.

In addition, the final regulations reaffirm that training must be interactive and conducted by a trainer who has legal and/or extensive practical experience in the prevention of unlawful harassment, discrimination, and retaliation. Training can be conducted in a classroom setting or through e-learning and webinars, provided the attendees can effectively participate in the discussions, hypotheticals, and questions and answers.

CLIENT ALERTS

The final regulations allow employers to track the mandatory training for each supervisor on either an individual basis or by using a training year, by designating the time during which all covered supervisors will be trained. These supervisors must receive the next round of training by the end of the next training year two years later. For example, if supervisors received training sometime during the 2005 training year, they must receive training again by the end of 2007.

Employers must maintain accurate records of who was trained, when the training took place, the type of training (classroom, e-learning, or webinar), and who conducted the training. These records must be kept by the employer for a minimum of two years. The final regulations state that mandatory training must include the following:

- Definition of unlawful sexual harassment under both state and federal law. The training may also include other forms of unlawful harassment.
- Discussion of state and federal statutes and relevant case law principles concerning prevention of and prohibition against sexual harassment.
- Description of the type of conduct that constitutes sexual harassment, including practical examples of sexual harassment.
- Remedies available for sexual harassment.
- Prevention strategies for supervisors and a discussion of what a supervisor should do if he or she is accused of sexual harassment.
- Resources available to raise complaints of sexual harassment and to whom employees should report it.
- Discussion of the employer's obligation to investigate complaints of harassment, including the limited confidentiality of an investigation.
- Discussion of the essential elements of a harassment policy. Employers *must* distribute copies of their harassment policy to supervisors during training.

Impact: The proposed final regulations provide a road map for development and implementation of an anti-harassment training program. Employers should bear in mind that compliance with the training requirements set forth in Government Code, Section 12950.1, and in the proposed final regulations may provide only minimum protection against liability for unlawful harassment.

Employers should consider expanding their training programs to include training on all forms of unlawful harassment (not just sexual harassment) and for all supervisors who have direct reports in California, since these individuals can create employer liability if they engage in inappropriate behavior toward California employees. Employers should also consider providing some training to all employees in order to maintain a workplace free from all forms of unlawful harassment.

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If you have any questions about the information contained in this Alert, please contact [Betsy Johnson](mailto:Betsy.Johnson@ebglaw.com) at 310.556.8861 or ejohnson@ebglaw.com in our [Los Angeles](#) office, or [Steven R. Blackburn](mailto:Steven.R.Blackburn@ebglaw.com) at 415.398.3500 or sblackburn@ebglaw.com in our [San Francisco](#) office.

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