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## It's Not Just Sexual Anymore: Training Requirements for California Employers

by Rita Risser, Attorney at Law

**I**f you work in California, by now you know supervisors must receive sexual harassment training every two years. But perhaps you don't know that new regulations expanded the law and now require training to prevent not only sexual harassment, but all forms of harassment, discrimination and retaliation. Here are the highlights.

### Overall Required Training Objectives

The regulations require that the learning objectives of the training shall be:

1. To assist California employers in changing or modifying workplace behaviors that create or contribute to harassment.
2. To develop, foster and encourage a set of values in supervisory employees that will assist them in preventing and effectively responding to incidents of harassment.

### Eleven Required Content Areas

1. **Harassment, discrimination, and retaliation:** Not only sexual harassment is required to be covered. Training must include the definition of harassment, legal principles concerning the prohibition against and the prevention of unlawful harassment, discrimination and retaliation, and the types of conduct that constitute harassment.
2. **Remedies** for victims of harassment.
3. **Strategies** to prevent harassment.
4. **Effect of harassment:** Explain the effect of harassment on harassed employees, coworkers, harassers and employers.
5. **Practical examples:** Include factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources. Role plays, case studies, and group discussions are recommended.
6. **Obligation to investigate:** Training must include the employer's obligation to conduct an effective workplace investigation, but not how to conduct an investigation, since that is outside the scope of most supervisors' responsibilities.
7. **Anti-harassment policy:** Supervisors must learn about the employer's own policy, or the essential elements of a sample anti-harassment policy. Either way, the employer must give each supervisor a copy of its anti-harassment policy, not a link to a policy, but a physical copy. Each supervisor must read the policy and acknowledge receipt. This acknowledgement should be kept in the supervisor's personnel file.
8. **Retaliation:** Clarify what is retaliation and how to prevent it.
9. **Limited confidentiality:** Inform employees of the limited confidentiality of the complaint process.
10. **Resources for victims:** Supervisors must know the resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
11. **Supervisors personally accused of harassment:** Training on what to do if the supervisor is personally accused of harassment.

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## Six Required Training Attributes

### 1. The Training must be Interactive

All programs must include questions that assess learning, skill-building activities that assess the supervisor's application and understanding of content learned, and numerous hypothetical scenarios, each with one or more discussion questions so that supervisors remain engaged in the training. Straight lecture or stand-alone video is not enough. Nor is a web-based or e-learning program considered interactive if it merely requires the supervisor to click "next" to get a new page view. Participants also must be able to ask questions during the training.

### 2. The Training must be Delivered by Qualified Trainers

Although training can be developed and even delivered by non-expert instructional designers and trainers, they must work with qualified trainers. Qualified trainers are attorneys, HR professionals, or professors who have two years of professional experience in sexual harassment or discrimination. A trainer must be qualified to train about:

- How to recognize unlawful harassment discrimination and retaliation under California and federal law
- What to do when harassing behavior occurs in the workplace
- How to make harassment complaints
- How to handle a harassment complaint
- Why and how employers investigate complaints
- What is retaliation and how to prevent it
- Elements of an effective anti-harassment policy
- How harassment affects employees, co-workers, harassers and employers

Trainers also should be good as trainers. They should use hypotheticals or examples that illustrate the course content and involve the participants through questions, problem solving, and quizzes to insure that the information is understood; and have the ability to answer questions from the participants about the course content.

### 3. Employers with 50 or More Workers Must Comply

#### ▪ **Contractors count towards the 50**

The law applies only to employers with 50 or more employees or contractors. Employees include full time, part time, and temporary workers. "Contractors" are people who work each working day in 20 consecutive weeks in the current calendar year or preceding calendar year.

#### ▪ **Out-of-state employees count towards the 50**

Employers are covered if they have 50 employees anywhere, not just in California. The prior regulations required even a large company with a single sales person in California to train the supervisor of that person, even if the supervisor was not in California. This has changed, so that only supervisors in California must receive the training. The training must meet the requirements of California law—a course in federal harassment law will not meet California requirements.

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- **Seasonal employees**

If your company has seasonal employees, you are deemed to have 50 or more employees if you employ "fifty or more employees or contractors for each working day in any twenty consecutive weeks in the current calendar year or preceding calendar year."

- **New or newly covered businesses**

New businesses and businesses that expand to 50 employees must provide training within six months of their eligibility and thereafter every two years.

#### 4. Record Keeping

Employers must keep records including each supervisor's name, date of training, type of training, and the name of the training provider. These records must be kept for at least two years.

#### 5. Training New Supervisors

New supervisors must be trained within six months of assuming their positions, and once every two years thereafter. The regulations allow an employer to .carry over. a supervisor's training from a previous employer. However, if the previous employer's training does not meet the legal requirements, the new employer will be held liable. Therefore, it is recommended that all new supervisors receive the training. If the carry over provision is used, the new supervisor must be provided a copy of the employer's harassment policy and be required to read and acknowledge it within the six-month time frame.

#### 6. Tracking the Training

The law requires re-training supervisors every two years. Employers may monitor the training deadlines for each supervisor or use a .training year. method. See the DFEH website for the definition of training year: <http://www.fehc.ca.gov/act/harass.asp>.

### What to Do Today to Prepare

1. Start thinking today about blocking out the dates in your next training year by which all training must be completed. Avoid seasonal rushes, quarter-ends, popular vacation periods, holidays and other times when training is difficult to schedule.
2. Determine whether last year's solution meets your new needs. For example, if you purchased elearning or video, it must be updated to take into account new case law. Plus, keep in mind that people learn more if you mix up the training methods. Try a webinar one year, e-learning another, and live training for those supervisors (and you know who they are) who need a little extra help.
3. Research new ways to meet your training requirements. Start by going here: [http://www.lsa-global.com/business\\_solutions/manage\\_within\\_the\\_law.shtm](http://www.lsa-global.com/business_solutions/manage_within_the_law.shtm).

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### Who we work with

Our clients are typically mid-market business leaders who believe that investing in people is vital to their success. The majority come from the high-tech, life-sciences, and service industries and often lack the internal resources or expertise to get the job done. They want more than what traditional training and consulting approaches can deliver.

### What we do

We get results. Our one-stop-shop offerings range from creating a high performance culture, to outsourcing the training function, to designing and delivering targeted learning solutions. We excel in seven key practice areas: assessment, sales, loyalty, leadership, management, project management, and measurement.

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We partner with our clients in a way that makes sense for their unique situation. First we identify the key metrics they want to improve. Then we assemble a dedicated team of experts who have successfully solved similar problems with similar clients. Our expertise and flexibility allow us to move the performance needle faster and farther than anyone else in our industry.

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We are fiercely devoted to the success of our clients and guarantee results.



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### Our customer loyalty clients

confirm that their customer revenue per household increased by 18%, repeat calls decreased by 48.4%, single contact resolution increased by 6.1% and their overall customer satisfaction increased by 10%.

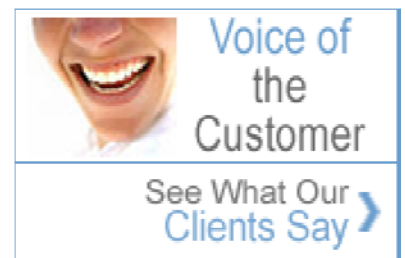
### Our leadership and management clients

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