

CALIFORNIA ANTI-HARASSMENT TRAINING REQUIREMENTS FOR ALL EMPLOYEES

In 2018, California legislation ([SB 1343](#)) enacted in 2018 requires employers with at least **five employees or contractors** to provide sexual harassment training every **two years** to **all employees**. Part-time and temporary workers as well as independent contractors must be included toward the minimum count of five employees. However, employers should not train properly classified independent contractors.

The training must take at least **1 hour for nonsupervisory employees and at least 2 hours for supervisory employees** to complete. In addition, the new law specified certain content that must be included in the training. This new law requires many California employers to provide anti-harassment training, for the first time, in both English and Spanish.

Notably, while in-person training would certainly satisfy the interactive requirement of the statute, the California Department of Fair Employment and Housing (DFEH) has issued guidance permitting "live training in a classroom, online, or in any other effective, interactive format" and which may be completed by "employees individually or as part of a group presentation and ... in segments as long as the total hourly requirement is met."

WHO NEEDS TO BE TRAINED?

If you have five or more employees, you must provide them with sexual harassment prevention training by January 1, 2021. There are different training requirements for different groups of employees - supervisory employees, non-supervisory employees, temporary employees, and temporary employees from a temporary employment agency:

- **Supervisors.** Because of their role, supervisory employees need more training. Any employee who supervises another must complete a minimum of two hours of sexual harassment prevention training and education. A **supervisor** is anyone with authority to hire, fire, assign, transfer, discipline, or reward other employees. A supervisor is also someone with the authority to effectively recommend these actions if exercising that authority requires the use of independent judgment.
- **Non-supervisory employees.** They require one hour of training and education relating to sexual harassment prevention.
- **Temporary employees** (defined as anyone hired to work for fewer than six months). Employers must provide one hour of California sexual harassment prevention training and education to these employees within 30 days after their hire date or within their first 100 hours worked.
- **Temporary employees from an agency.** For employees hired via a temporary service employer, it is the temporary service employer's responsibility to provide the requisite sexual harassment training.
- **Refresher Training** - All employees must be retrained once every two years.

This mandatory training for supervisors (two hours) and nonsupervisory employees (one hour) must also take place within six months of hire or promotion and every two years thereafter.

Employees working outside of California - While employees or contractors who work outside of California DO count when determining if an employer must provide sexual harassment prevention training, the training is NOT mandatory for employees working in other states. For example, if the employer has two California employees, and three employees in Nevada (for a total of five employees), the employer must provide sexual harassment training, but only to the two employees

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who work in California. Note, however, that other states in which employees work may have similar sexual harassment training requirements.

Moreover, prudent employers will recognize that providing training to independent contractors and out-of-state employees who regularly interact with California employees is an essential component of protecting itself from harassment liability in California. As expressly stated in the law, the requirements establish a “minimum threshold” and “should not...relieve any employer” from providing any additional training necessary “to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.” (Cal. Gov. Code § 12950.1(e).)

OTHER REQUIREMENTS FOR TRAINING

- Employers can choose to provide longer, more frequent or elaborate training and education.
- Many California employers are required to provide anti-harassment training in both English and Spanish.
- Training for employees can be scheduled as a group, or individually.
- The training can be completed all at once or broken into shorter segments. For example, you could break training into 30-minute segments.
- **Employees must be paid for the training time.** All training must be provided during paid work hours, and you cannot use an employee’s personal time -- including their break time -- for this training. Employers are also liable for any expenses that may arise from the training.

FREE DFEH TRAINING RESOURCES

Employers in California have a new option for providing legally required anti-sexual harassment training to their employees by the Jan. 1, 2021, deadline.

The free online training. launched May 20 by the Department of Fair Employment and Housing, satisfies the requirement under California law that employers with five or more employees provide at least one hour of sexual harassment prevention training to their **nonmanagerial employees**. Managerial employees require at least two hours of training under the law and are to have completed the training by Jan. 1, 2021, but they are not covered by the DFEH’s online training program.

Access or learn more here: [**DFEH’s new online sexual harassment prevention training.**](#)

TRAINING PROGRAM CONTENT AND HANDOUT REQUIREMENTS

California regulations state that the learning objectives of the training must be designed to:

- Assist employers in correcting workplace behaviors that create or contribute to harassment based on sex, gender identity, gender expression, and sexual orientation.
- Provide employees with information about the negative effects of abusive conduct.
- Develop, foster, and encourage values in employees that will help them prevent, effectively respond, and develop methods to promptly address and correct harassing, or other wrongful workplace behavior in the workplace.

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California employers **must ensure** the training includes **information and practical guidance** and include the following:

- Information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment.
- Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and must be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.
- The sexual harassment prevention training must be inclusive of harassment based on gender identity, gender expression, and sexual orientation.

As a part of the training, employers must distribute a written harassment, discrimination, and retaliation prevention policy, which must contain specific information set forth in the **regulations** and must ensure that every employee receives a copy of and understands the policy. See **2 CCR § 11023(b)** for more information.

In the training, employers are also required to distribute a Sexual Harassment Poster or fact sheet issued by the DFEH to all employees. An employer may choose to distribute individual copies of the poster (**DFEH-185P**) or the fact sheet (**DFEH-185**) to meet the “brochure” requirement. The employer may choose the distribution manner as long as all employees receive the brochure.

HARASSMENT TRAINING RECORDKEEPING REQUIREMENTS

To go along with training, you must keep documentation of the training you provided to your employees. Here’s a list of everything you’ll need to show proof of compliance with California sexual harassment prevention training requirements:

- Names of the employees trained
- The date the employee received training
- The sign-in sheet
- A copy of all certificates of attendance or completion issued
- The type of training conducted
- A copy of all written or recorded materials that comprise the training
- And the name of who led the training

Employers must retain a record of all employees’ training for a minimum of two years.

ADDITIONAL INFORMATION FOR EMPLOYERS

Employers must display required workplace posters: All employers must post the **California Law Prohibits Workplace Discrimination and Harassment** poster (DFEH-E07P). Employers with at least five employees must post (a) the **Transgender Rights in the Workplace** poster (DFEH-E04P) and (b) the **Your Rights and Obligations as a Pregnant Employee poster**, poster (DFEH-E09P). Employees with at least 20 employees must post the **Family Care and Medical Leave and Pregnancy Disability Leave** poster (DFEH-100-21).

To learn more about this, please see the DFEH **Frequently Asked Questions** available on-line.

- If you are an employee: **DFEH - Employee FAQ**
- If you are an employer: **DFEH - Employer FAQ**

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DON'T DELAY: START YOUR PLAN TO COMPLY WITH THE LAW TODAY

Here's the bottom line of what do you need to do to be in compliance with the new law:

- Schedule training for all employees.
- Update your employment policy manual as well as all relevant policies and procedures to include a written harassment, discrimination, and retaliation prevention policy that reflects the current law.
- Post all required notices from DFEH.
- Keep accurate records from all iterations of training.

If you haven't completed training your employees by the Jan. 1, 2021, deadline, you need to get started now. You are likely to be better off doing the training voluntarily even if you missed the deadline, then you will be if you are found to be out of compliance by DFEH.

Employers should take the following steps immediately:

Step 1: Determine if California sexual harassment training laws apply to your organization.

- Do you have at least five workers, counting both employees and independent contractors? If no, you are not required to provide training.
- If Yes: Do you have any employees working in California? If no, you are not required to provide training.
- If Yes: You must provide training to your California employees:

Ensure your harassment training is updated to address the content requirements of California law.

Ensure your harassment training meets the California "interactive" requirement. If using online training, determine who will answer questions submitted by users.

Step 2: Confirm that you are meeting the California policy, poster, and brochure requirements:

- Review your discrimination and harassment prevention policy to ensure that it complies with the specific content requirements set forth under California law and that you are distributing it, as required.
- Confirm that you have posted the most current required harassment-related workplace posters.
- Confirm that you are distributing the most current required sexual harassment fact sheet/brochure.

Step 3: Review your arbitration, NDA, and settlement agreement templates to ensure that they do not contain any non-disparagement or release of claims provisions prohibited by California law.

If you have questions, please contact your Poms & Associates broker or risk services professional.

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