

# Kimball, Tiry & St. John LLP

## Executive Alert

### Sexual Harassment Prevention Expanded in California

*Judy Y. Chiang, Esq.*

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With a recent backdrop of high-profile sexual harassment claims taking front page news, California has greatly expanded its requirements for sexual harassment prevention training in the workplace. Under [Senate Bill 1343](#), employers with 5 or more employees will be required to provide regular sexual harassment prevention training to both supervisory and non-supervisory employees. In 2019, [SB 778](#) changed the deadline for supervisory sexual harassment training (from January 1, 2020) to **January 1, 2021**. Under Government Code §12950.1, the employer must pay for the training and must train employees on company time.

#### What is Sexual Harassment?

California regulations define sexual harassment as unwanted advances, or visual, verbal or physical conduct of a sexual nature.

On its website, the Department of Fair Employment and Housing (DFEH) provides a partial list of prohibited behavior. (<https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/sexual-harassment-faqs/>). This includes:

- Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters.
- Verbal conduct: making or using derogatory comments, epithets, slurs and jokes. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual.
- Physical conduct: touching, assault, impeding or blocking movements.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening retaliatory action after receiving a negative response to sexual advances.

#### Recent Expansion of Training Requirements

Previously California employers with 50 or more employees were required to provide at least 2 hours of sexual harassment prevention training to supervisory employees every two years. [Senate Bill 1343](#) will require employers with **five or more** employees (full-time, part-time, temporary, seasonal and independent contractors) to provide sexual harassment prevention training to both supervisory and non-supervisory employees. The required amounts of training differ for supervisory and non-supervisory employees.

#### Training Requirements for Supervisory Employees

By January 1, 2021, employers (of **five or more employees**), must provide at least **two hours** of interactive sexual harassment prevention training to existing supervisory employees. Training must be provided to new supervisory employees within six months of the date of hire or assumption of a supervisory position. From then on, each supervisory employee must be provided with regular sexual harassment prevention training every two years.

## **Training Requirements for Non-Supervisory, Temporary or Seasonal Workers**

By January 1, 2021, employers (of **five or more employees**), must provide at least **one hour** of interactive sexual harassment prevention training to existing non-supervisory employees every two years. Training must be provided to new non-supervisory employees within six months of hiring, at least once every two years thereafter.

These rules also apply to temporary or seasonal workers, which includes any employee (full-time, part-time, or independent contractor) that is hired to work for less than six months. For temporary, seasonal, or other employees hired to work for less than six months, the employer must provide the required one-hour training within 30 calendar days or 100 hours worked, whichever occurs first.

## **Training Topics & Methods**

Sexual harassment prevention training must include information and practical guidance with examples for prevention of sexual harassment under state and federal law and remedies available to sexual harassment victims. The training must also cover abusive conduct (“bullying”) and harassment based on gender identity, gender expression, and sexual orientation. Employers should review their operations to ensure that their training programs are conducted properly (classroom training, interactive, e-learning, or live webinar) and cover all of the required areas (including but not limited to statutes and case law, types of conduct, remedies, strategies, obligations, etc.).

## **Written Policy**

In addition to the sexual harassment prevention training, current California law requires **all employers** to distribute a written discrimination, harassment and retaliation prevention policy to their employees. These policies must specifically include information regarding: 1) the illegality of sexual harassment; 2) definitions of sexual harassment under state and federal law; 3) a description of sexual harassment, with examples; 3) the employer’s internal complaint process; and 4) legal remedies available through the DFEH with directions on how to contact the DFEH.

Employers should be vigilant in keeping their workplace policies and procedures up-to-date and in taking appropriate measures to prevent harassment from occurring. Providing the required training and distributing an easy to understand, yet comprehensive, written policy will go a long way in assisting employees to understand the rules in their workplace. Employers should document their compliance with sexual harassment prevention training requirements and require employees to date and sign an acknowledgment confirming that they have reviewed and will abide by the written harassment and discrimination policies. Written policies and training materials should also be reviewed at least yearly to stay on top of legislative changes.

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