

EMPLOYMENT LAW UPDATE

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California Law

California Mandates That Certain Employers Provide Supervisors With at Least Two Hours of Sexual Harassment Training.

Assembly Bill 1825

By Jason A. Geller

California Governor Arnold Schwarzenegger signed Assembly Bill 1825, which requires that California employers of 50 or more employees provide supervisors with two hours of sexual harassment training every two years.

For purposes of determining coverage under the law, employers must include temporary service employees and independent contractors in evaluating whether they meet the threshold of 50 employees. AB 1825 does not expressly provide that the employees must be employed within California. Thus, it appears that the bill requires California employers to consider employees who work outside of California for purposes of determining whether the law applies.

AB 1825 requires training for all employees with “supervisory authority.” This generally includes employees who exercise independent judgment in carrying out their duties, including making decisions to hire, fire, and discipline employees; directing the work of employees; resolving grievances; or

recommending any of these actions on which other supervisory employees will rely.

Supervisors who are employed as of July 1, 2005 must receive two hours of training no later than January 1, 2006. Supervisors who are hired or promoted into a supervisory position after July 1, 2005 must receive training within six months of their hire or promotion. Supervisors who have received sexual harassment training after January 1, 2003 do not need to be re-trained before January 1, 2006.

After January 1, 2006, AB 1825 will require training for all supervisors within six months of becoming supervisors and at least two hours of training every two years thereafter. While AB 1825 does not specify the type of training that is required, the training should include procedures for preventing and correcting harassment, providing resolutions for victims and including an “interactive” process among the trainers and the supervisors. The requirement of an “interactive” training suggests that the

employer must provide discussion and role-playing during the training as opposed to presenting a videotape in which there is no discussion. Under certain circumstances, web-based training will meet the requirements of AB 1825.

Finally, AB 1825 does not provide a defense to sexual harassment claims under the California Fair Employment and Housing Act. Certainly, a failure to comply with the law may prejudice an employer before a judge or a jury in a sexual harassment lawsuit.

Indeed, AB 1825 requires training that many California employers have already been providing to mitigate the risk of liability in a lawsuit for sexual harassment. California employers who are covered by the law should identify the supervisory positions for which they must provide the separate training and document the training and the dates on which it was provided.

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