



HARASSMENT PREVENTION TRAINING

Effective January 1, 2019, California businesses with five (5) or more employees **MUST** provide harassment prevention training to **ALL EMPLOYEES** every two (2) years ([SB 1343](#)). Non-managerial employees are required to have one (1) hour of training. Supervisors and managers are required to have two (2) hours of training. All employees, including supervisors and managers, must be trained in 2019. Employees trained in 2018 or before **must be retrained**.

The law defines what information must be included in a training, the requirement that the training be “interactive” as well as the credentials of a “qualified trainer” who can facilitate and lead this mandatory training.

California Employers Association is pleased to provide [compliant harassment prevention training](#) to help California businesses meet these new requirements!

Here are some answers to frequently asked questions.

How Do I Know If I Must Provide Training?

Your business is required to provide harassment prevention training if you employ five (5) or more persons – part-time, temporary and independent contractors are counted toward this minimum count.

When Should Employees Be Trained?

All employees, managers and non-managers, must receive training by January 1, 2020 -- in other words training must be done sometime in calendar year 2019. After January 1, 2020, employees must be trained once every two (2) years. That means all employees statewide will need to be retrained by January 1, 2022.

It’s important to get on this regular schedule in order to demonstrate compliance with the law and reasonable steps in preventing harassment.

How Long Do I Have to Train a New Hire or a Promoted Supervisor?

New hires must be trained within six (6) months of hire. Supervisors must receive the two (2) hour training within six (6) months of assumption of the position.

What if I Provided Training Last Year?

The law requires that all employees – managers and non-managers – be trained during calendar year 2019. Employees trained in 2018 or before must be retrained, according to the Department of Fair Employment and Housing.

What about Temporary Employees Who Only Work for Us for a Short-Time?

For 2019, the training for temporary employees must be completed within six (6) months of hire - some employees might not be with your company that long.

However, starting on January 1, 2020, seasonal and temporary employees, or any employee that is hired to work for less than six (6) months must be trained within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first.

Temporary workers employed by a temporary agency must be trained by the temporary agency, not the client.

Can I Provide the Training to My Staff?

Only specific qualified individuals with knowledge and expertise in the prevention of harassment, discrimination, and retaliation can provide the training.

There are three types of qualified trainers:

- **Attorneys.** Licensed attorneys who have been admitted for two or more years to the bar of any state in the United States and whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.
- **Human resource professionals or harassment prevention consultants with at least two years of practical experience in:**
 - Designing or conducting discrimination, retaliation and sexual harassment prevention training;
 - Responding to sexual harassment complaints or other discrimination complaints;
 - Conducting investigations of sexual harassment complaints; or
 - Advising employers or employees regarding discrimination, retaliation and sexual harassment prevention.
- **Law school, college, or university instructors** with a post-graduate degree or California teaching credential and either 20 hours of instruction about employment law under the FEHA or Title VII.

In order to be qualified to provide harassment prevention training, the individual also must, through a combination of training and experience, have the ability to communicate effectively the following:

- How to identify behavior that may constitute unlawful harassment, discrimination, and/or retaliation under both California and federal law;
- What steps to take when harassing behavior occurs in the workplace;
- How to report harassment complaints;
- Supervisors' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware;
- How to respond to a harassment complaint;
- The employer's obligation to conduct a workplace investigation of a harassment complaint;
- What constitutes retaliation and how to prevent it; 8) essential components of an anti-harassment policy; and
- The effect of harassment on harassed employees, co-workers, harassers and employers.

Individuals who do not meet the qualifications of a trainer because they lack the requisite years of experience may “team teach” with a qualified trainer, as defined above, in classroom or webinar trainings provided that the qualified trainer supervises these individuals and the trainer is available throughout the training to answer questions from training attendees.

How Do I Decide Which of My Workers Need the 2-Hour Supervisor Training?

California law provides a specific definition of “supervisor” for purposes of harassment prevention laws.

A supervisor is anyone with authority to hire, fire, assign, transfer, discipline, or reward other employees. A supervisor is also anyone with the authority to effectively recommend (but not necessarily take) these actions if exercising that authority requires the use of independent judgment.

When in doubt, provide the two (2) hour training.

Does Training Have to Be In-Person Or Can I Use On-Line Training or Attend a Webinar?

There are a few different options for employers - - although experts, including the Equal Employment Opportunity Commission, have found that in-person training is most effective.

No matter which training method your company chooses, the training must include questions that assess learning, skill-building activities to assess understanding and application of content, and hypothetical scenarios about harassment with discussion questions. Training must be geared toward interactive participation.

Employers can satisfy their training requirement by offering in-person classroom training, online e-learning or webinars. [CEA provides all of these options](#).

- **In-Person Training:** Live, in-person classroom training that features content presented by a qualified trainer as described above.
- **E-learning:** Individualized, interactive and computer-based training that was created by a trainer and an instructional designer. Employees must have the opportunity to ask a trainer questions and receive a response within two business days.
- **Webinar:** An internet-based seminar that features content created and taught by a trainer and that is transmitted over the internet in real time. Employers who use a webinar for training must document that each employee who is not physically present in the same room as the trainer attended the training. They must also document that the employee actively participated in the training's interactive content, discussion questions, hypothetical scenarios, polls, quizzes or tests and activities. Webinars must provide employees with the opportunity to ask questions and receive answers.

What Topics Does the Training Have to Cover?

Any harassment prevention training must explain:

- The definition of sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964;
- The statutes and case-law prohibiting and preventing sexual harassment, discrimination and retaliation;
- The types of conduct that can be sexual harassment;
- The remedies available for victims of sexual harassment and potential employer/individual liability;
- Strategies to prevent sexual harassment;
- Supervisors' obligation to report harassment, discrimination and retaliation;
- Practical examples of harassment, retaliation and discrimination, such as factual scenarios, role plays and group discussions based on cases, news accounts or hypotheticals;
- The limited confidentiality of the complaint process;
- Resources for victims of sexual harassment, including to whom they should report it;
- How employers must correct harassing behavior and take other remedial measures, including the duty to investigate;
- What to do if a supervisor is personally accused of harassment;
- The elements of an effective anti-harassment policy and how to use it;
- Information on bullying or "abusive conduct," as defined by California Government Code section 12950.1.
- A discussion of harassment based on gender identity, gender expression, and sexual orientation, including practical examples.

Under a new law for 2019, employers also have the option to provide bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action. The training and education may include exercises to provide bystanders with the skills and confidence to intervene as appropriate and to provide bystanders with resources they can call upon that support their intervention.

Do I Need to Keep any Records?

To track compliance, employers must keep documentation for a minimum of two (2) years and be able to provide copies upon request.

The training record must include all of the following minimum information:

- The name of the employee who received training
- The training type and date
- The attendance sign-in sheet
- A copy of all certificates of attendance or completion issued
- A copy of all written or recorded materials that comprise the training
- The training provider's name

In addition to the above, specific documentation requirements for both trainers and employers are mandated for e-learning and webinar training:

- E-learning: The trainer must maintain all written questions received and all written responses or guidance provided for a period of two years after the date of the response.
- Webinars: The employer must maintain a copy of the webinar, all written materials used by the trainer and all written questions submitted during the webinar. The employer must also document all written responses or guidance the trainer provided during the webinar.

Do I Have to Pay Employees During Training Time? Can I Charge Them for the Cost of Training?

Employees may not be required to take the training during their personal time. The training is a job requirement - - the employees should be paid for the training time and the cost of the training should be paid for by the employer.

What if the Employee Was Trained by a Former Employer?

All employees – managers and non-managers – must be trained in 2019 regardless of any prior training received.

Employees hired after January 1, 2020, who were provided training by a previous employer, are only required to read and acknowledge receipt of the employer's anti-harassment policy within six (6) months of assuming the new position.

The burden of establishing that any prior training was legally compliant is on the current employer. Thus, while not mandatory, a best practice would be to re-train and familiarize the new employee with your company's policy.