

New York & California Employers: Don't Forget Your Annual Sexual Harassment Training

Most companies realize the value of providing training focused on preventing sexual harassment in the workplace. Quality training programs help reduce exposure to sexual harassment and discrimination lawsuits, and they are often invaluable safeguards when lawsuits do arise.

However, anti-harassment training is not just a prudent measure - in the last two years, some states have made it a legal requirement. Both California and New York recently passed laws requiring companies to provide sexual harassment training to workers. As the end of the year approaches, now is the perfect time to ensure your company's compliance with these statutes.

1. California

California law requires companies to provide sexual harassment training to all employees. The statute was written to apply very broadly, and affects all companies with five or more workers. The training requirement applies to a broad section of workers. Companies cannot satisfy California's training requirement simply by providing training to managers and supervisors. Instead, the law requires that all California employees must receive sexual harassment training. However, there are differences in the amount and extent of training that must be provided to a supervisor versus an employee.

a. Training Hours Required

i. Supervisors

Under California's sexual harassment training law, supervisory employees in California must receive two hours of sexual harassment training before January 1, 2021. After that, they must be provided with two hours of training every two years. Any time a new supervisor is hired or promoted, he or she must also undergo the mandatory two hours of training within six months of assuming supervisory responsibilities.

ii. Non-Supervisors

Non-supervisory employees must also receive one hour of sexual harassment training before January 1, 2021. Like supervisors, this hour of training must be provided thereafter at least once every two years. Newly hired non-supervisory employees must also receive one hour of sexual harassment training within six

months.

iii. Other Workers

Even seasonal and temporary employees in California must undergo the requisite amount of sexual harassment training, and the training must be provided "expediently". Therefore, if an employee works less than six months, the employee must still complete sexual harassment training. The training must take place within thirty days of the seasonal worker's hire or before the worker provides one-hundred hours of service, whichever comes first.

In this vein, agricultural employees in California are also subject to the training requirement. There is no exception excusing migrant or agricultural employees from receiving compliant sexual harassment training. The training for migrant and agricultural employees is governed by a slightly different legal provision, and the required training contents are addressed in greater detail below.

b. Training Content Requirements

The contents of the mandatory anti-harassment training in California are quite particular. At a minimum, the training must include practical guidance on the state and federal laws that prohibit sexual harassment in the workplace, as well as the remedies available when harassment occurs. Training must also include information about the prevention of abusive conduct and harassment based on gender identity, gender expression, and sexual orientation. These topics must be taught by instructors with specific knowledge and expertise. Compliant training programs will provide practical illustrations of sexual harassment, discrimination, and retaliation. Those illustrations should be focused on teaching employees how to prevent such unlawful actions from occurring in the workplace.

As mentioned above, migrant and seasonal agricultural employees are subject to slightly different training requirements. These employees must receive training that covers: 1) the illegality of sexual harassment, 2) the definition of sexual harassment under state and federal law, 3) a description of sexual harassment that provides examples, 4) the company's internal complaint processes, 5) the legal remedies and complaint processes available through the Department of Fair Employment and Housing, 6) instructions for contacting the Department of Fair Employment and Housing, and 7) the protections against retaliation provided under current law.

c. Training Logistics

Fortunately, companies with employees in California have a decent amount of flexibility in providing the newly-required sexual harassment training. The training does not have to stand alone, and can be provided in connection with other training that employees receive. Furthermore, the training need not be individualized. This means instruction can be provided to groups of employees. Finally, there is no requirement that all training be completed in one session. Companies can provide training in portions or segments - so long as those segments add up to satisfy the overall length requirement for all employees involved.

Given the COVID-19 pandemic, it may not be prudent to gather employees in person for sexual harassment training. Fortunately, California permits trainings to be completed remotely. California's law allows companies to satisfy the training requirement by having employees view online trainings published by state authorities. However, the law requires that companies provide workers with access to human resources officials who can answer any questions workers have about the online or virtual sexual harassment training.

2. New York

Companies operating in New York should also be aware of their sexual harassment training obligations. In late 2018, New York state law rendered sexual harassment training mandatory. See Labor Law § 201-g(1)-(4). The anti-harassment instruction must be provided to all employees very year.

a. Training Hours Required

The New York state statute concerning sexual harassment training requirement does not differentiate between supervisors and non-supervisors. The law does not impose a set number of required hours of training, but does require that any training meet certain content requirements, discussed in more detail below. Additionally, all new employees must be provided with a written notice containing the company's anti-harassment information at the time of their hire. This notice must include the company's sexual harassment prevention policy, along with a copy of the information presented at the company's annual sexual harassment prevention training.

b. Training Content Requirements

Any training program implemented by a New York employer must satisfy the specific requirements of the Minimum Standards for Sexual Harassment Prevention Training created by the New York State Department of Labor ("NYSDOL"). According to the Minimum Standards, training will only be sufficient if it: 1) is interactive, 2) correctly explains what is considered sexual harassment by NYSDOL, 3) includes examples of unlawful sexual harassment, 4) explains state and federal laws governing sexual harassment and the remedies available under those laws, 5) provides information about an employee's rights to sue for sexual harassment and the forums available for such complaints, and 6) contains information about the responsibilities and obligations associated with supervisory power.

c. Training Logistics

Companies must clear a final hurdle to comply with New York's new anti-harassment training requirement. Namely, during the annual training, employees must be provided with a written notice that includes a copy of the company's sexual harassment policy and a copy of the information presented during the training. There may also be a duty to provide translated copies of the notice, policy, and training materials for any employee who speaks certain primary languages other than English. New York permits the sexual harassment training

required by law to be presented individually or in groups; in person, via phone or online; via webinar or via recorded presentation. This flexibility allows employers to tailor their training to the changing dynamics caused by the COVID-19 pandemic while ensuring compliance. However, in connection with the requirement that the training be "interactive", New York's law requires employers to: ask employees questions, accommodate employee questions and answer those questions in a timely manner, and / or require employee feedback about the information and materials provided during training.

California and New York employers - Chamberlain Hrdlicka's employment law group is ready to assist you with updating policies, creating and delivering compliant training, and answering your questions in light of these new state laws. Please do not hesitate to contact us so that we may be of assistance.

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