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July 29, 2019

Re: **Legally Required Sexual Harassment Prevention Training for all Employees**

To our clients:

In 2018, former California Governor Jerry Brown signed into law Senate Bill 1343, which expands existing sexual harassment training requirements for many California employers.¹ The law became effective January 1, 2019. To assist you in understanding the new law and how it may apply to you or your business, this letter provides a brief overview of an employer's obligations with respect to such required training.

REQUIREMENTS TO BE SATISFIED BY JANUARY 1, 2020

The new law applies to every California employer with five or more employees ("Covered Employer(s)"). Full time employees, part time employees and temporary employees are all included for purposes of determining whether you are a Covered Employer. An employer that is not a Covered Employer (that is, has less than five employees) is not obligated to provide the training described below. However, it may still be prudent to do so.

Covered Employers must provide full time² employees with training and education regarding sexual harassment in the workplace. Employees hired in 2019 must receive the training within six months of their date of hire and existing employees must receive the training by January 1, 2020.

All "supervisory employees" must receive at least two hours of training and all "nonsupervisory employees" must receive at least one hour of training. The training may be completed in shorter segments so long as the applicable hourly requirement is satisfied.

¹ Senate Bill 1343 was codified in California Government Code section 12950.1. In addition, the California Department of Fair Employment and Housing, the state agency charged with enforcing California's civil rights laws, has issued guidance on the statute. See Sexual harassment FAQs, CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, <https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/sexual-harassment-faqs/>.

² Generally, a full-time employee works between thirty to forty hours a week, and an employee working less than thirty hours a week is considered a part time employee.

A supervisory employee is a person with the authority to hire, fire, assign, transfer, discipline, or reward other employees. A supervisory employee is also any person with the authority to effectively recommend, but not necessarily take, these actions provided that the employee's exercise of authority requires the use of independent judgment. A nonsupervisory employee is a person without such authority.

REQUIREMENTS TO BE SATISFIED AFTER JANUARY 1, 2020

After January 1, 2020, Covered Employers must provide sexual harassment prevention training to all full-time employees once every two years.

In addition, beginning January 1, 2020, for seasonal and temporary employees, or any employee hired to work for less than six months, a Covered Employer must provide training within thirty calendar days after the hire date or within one hundred hours worked, whichever occurs first.

REQUIRED TRAINING FORMAT

A Covered Employer must provide sexual harassment prevention training in a classroom setting, through interactive E-learning, or through a live webinar.³

Training in a classroom setting means the employees gather together in a conference room or other equivalent and an in-person "qualified trainer" provides the required training. Information on who constitutes as a qualified trainer is provided below. Training through E-learning means an employee watches a recorded video online.⁴ If the training is provided through E-learning, the employer must provide instructions on how the employee can contact a qualified trainer who can answer the employee's questions within two business days. Training through a live webinar means an employee watches a presentation by a qualified trainer online in real time. The live webinar must provide an employee with the opportunity and means to ask questions, to have them answered and to otherwise seek guidance and assistance.

The training format requirement is intended to provide employees with interactive training, which typically leads to better knowledge retention.

REQUIRED TRAINING CONTENT

The training must explain the following:

- The definition of sexual harassment;
- The types of conduct that can be sexual harassment;

³ The training may be completed by employees individually or as part of a group presentation. In addition, an employer may provide this training in conjunction with other training provided to employees.

⁴The Department of Fair Employment and Housing will post two online training courses in late 2019 on its website, which Covered Employers may use to provide the required training. The Department of Fair Employment and Housing's website can be found at <https://www.dfeh.ca.gov/>.

- The remedies available for victims of sexual harassment;
- Strategies to prevent sexual harassment;
- Supervisors' obligation to report harassment;
- Practical examples of harassment;
- 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;
- What to do if a supervisor is personally accused of harassment;
- The elements of an effective anti-harassment policy and how to use it;
- The definition of abusive conduct; and
- Harassment based on gender identity, gender expression, and sexual orientation.

QUALIFIED TRAINERS

The content of classroom and online training programs must be created and taught by a "qualified trainer." There are three types of qualified trainers:

(1) Attorneys who have been members of the bar of any state for at least two years and whose practice includes employment law under the Fair Employment and Housing Act ("FEHA") or Title VII of the federal Civil Rights Act of 1964 ("Title VII");

(2) Human resource professionals or harassment prevention consultants with at least two years of practical experience in, among other areas, designing or conducting training on discrimination, retaliation, and sexual harassment prevention and responding to sexual harassment or other discrimination complaints; and

(3) Law school, college or university instructors with post-graduate degrees or California teaching credentials and at least twenty hours of instruction on employment law under FEHA or Title VII.

CONCLUSION

To help our clients fulfill the requirements of this new law, Blanchard, Krasner & French offers to host E-learning and webinar sessions in our conference room with a qualified trainer available at the conclusion of the session to answer any questions. Additionally, should you wish to host E-learning or webinar sessions at your own office, we can make a qualified trainer available to you to answer any questions your employees may have.

In addition to the expanded requirements for sexual harassment prevention training, employers should keep up to date about changes in other areas of employment law, including wage and hour laws, as the failure to comply with such laws may have significant consequences.

July 29, 2019

Page 4 of 4

Employers should seek legal advice from competent counsel to ensure compliance with all applicable workplace laws.

Should you need additional information concerning the required sexual harassment prevention training or wish to discuss other employment issues, please contact us.

Sincerely,

Blanchard, Krasner & French

DISCLAIMER

The information contained in this letter is intended solely for the individual listed above. While deemed reliable, the information contained herein is not guaranteed and is purely for informational purposes. Readers should not act on the information contained in this letter without first consulting competent legal counsel.