



# COMPLIANCE BULLETIN

## CALIFORNIA EXPANDS SEXUAL HARASSMENT TRAINING LAW

### OVERVIEW

On Sept. 30, 2018, California enacted a series of laws that strengthen the state's protections against workplace harassment. **Effective Jan. 1, 2019**, these new laws:

- + Require employers with **five or more employees** in the state to provide sexual harassment prevention training to all employees;
- + Expand and clarify employer liability
- + Prohibit employers from entering certain agreements related to sexual harassment and other unlawful acts in the workplace.

### ACTION STEPS

All California employers should become familiar with the new laws. Those with five or more employees should review the new training requirements and monitor the California Department of Fair Employment and Housing's (DFEH) [website](#) for training courses and additional guidance.

### HIGHLIGHTS

- + California has enacted a new law that requires employers with five or more employees to provide sexual harassment training.
- + Training is required within six months of when each employee assumes a position.
- + The state has also enacted other new laws addressing workplace harassment.

### IMPORTANT DATES

#### January 1, 2019

First day that employers may provide the required training to meet the initial compliance deadline. Other new workplace harassment provisions also become effective.

#### January 1, 2020

Deadline to provide initial training.



# COMPLIANCE BULLETIN

## BACKGROUND

The California Fair Employment and Housing Act (FEHA) broadly prohibits workplace harassment. All employers in the state are prohibited from harassing individuals or allowing harassment based on any of the protected traits listed below. Employees, applicants, unpaid interns, unpaid volunteers and anyone providing services under a contract in the workplace are all protected under the law.

FEHA Protected Traits		
Race	Disability/medical condition	Sex
Color	Genetic information	Gender
Religion	Marital status	Gender identity
National origin	Age (40 and older)	Gender expression
Ancestry	Military/veteran status	Sexual orientation

Under the FEHA, any employer, regardless of size, may be held liable for sexual harassment committed in its workplace, even if the harasser is not an employee. The FEHA also requires employers with 50 or more employees in the state to provide sexual harassment prevention training to all supervisory employees every two years.

## OVERVIEW OF CHANGES EFFECTIVE JAN. 1, 2019

Effective Jan. 1, 2019, the FEHA is expanded as follows:

- + The current requirements for supervisor training on sexual harassment are expanded to employers with five or more employees. These employers must also provide one hour of sexual harassment training to all nonsupervisory employees.
- + Employers may be held liable for workplace harassment that is based on any protected trait (not just sexual harassment) committed by nonemployees in the new workplace. The rules on what an employee must prove in a harassment claim have also been clarified.
- + Employers may not require an employee to sign any agreement that waives a claim or right for workplace discrimination or harassment, or that prevents disclosure of any information about unlawful acts in the workplace.

California law has also been changed to prohibit confidentiality requirements in sexual harassment claim settlements and sex discrimination.

## NEW TRAINING REQUIREMENTS

Effective Jan. 1, 2019, every California employer with **five or more employees** must provide:

- + Each **supervisory** employee with at least **two hours** of sexual harassment training; and
- + Each **nonsupervisory** employee with at least **one hour** of sexual harassment training.

# COMPLIANCE BULLETIN

The appropriate training must be completed by each employee within **six months** of assuming his or her job. Each employee must receive the appropriate training once **every two years**. The deadline for initial compliance with these requirements is **Jan. 1, 2020**. Employers must provide the initial training after Jan. 1, 2019, in order to meet this deadline.

As of Jan. 1, 2020, special requirements will apply for seasonal employees, temporary employees and any employees who are hired to work for less than six months. For these employees, employers must provide the required training within 30 calendar days after the employees' hire dates or before the employees have worked 100 hours, whichever comes first.

The DFEH plans to develop two online training courses that employers may use to satisfy the training requirements. Employers should monitor the DFEH [website](#) for these courses and additional guidance.

## EXPANDED EMPLOYER LIABILITY FOR WORKPLACE HARASSMENT

The FEHA allows an employer to be held liable for acts of workplace sexual harassment committed by nonemployees under certain circumstances. **Effective Jan. 1, 2019**, employers may also be held liable for **nonemployees' acts of any type of unlawful workplace harassment**. An employer may be held liable if:

- + A nonemployee commits harassment against any of the employer's employees, applicants, unpaid interns, unpaid volunteers or people providing services pursuant to a contract in the workplace;
- + The harassment is **based on any FEHA-protected trait**;
- + The employer (or its agents or supervisors) knows or should have known of the conduct; and
- + The employer fails to take immediate and appropriate corrective action.

## PROHIBITED WAIVERS AND CONFIDENTIALITY AGREEMENTS

An employer may not require an employee to sign either of the following in exchange for a raise or bonus, or as a condition of employment or continued employment:

- + A release of a claim or right against the employer for employment practices that violate the FEHA; or
- + A non-disparagement agreement or other document that prevents the employee from disclosing information about unlawful or potentially unlawful acts in the workplace.

These rules apply to agreements executed **on or after Jan. 1, 2019**.

These rules do **not** apply to agreements to settle claims involving unlawful acts in the workplace that have been filed by an employee either in court, with an administrative agency, in an alternative dispute resolution forum or through an employer's internal complaint process. However, there are new restrictions on settlement agreements involving claims of:

- + Workplace sexual harassment;

# COMPLIANCE BULLETIN

- + Employment discrimination based on sex; or
- + Retaliation related to claims of sex discrimination or sexual harassment in the workplace.

**Effective Jan. 1, 2019**, these settlement agreements may not include any provision that prevents the disclosure of factual information related to the underlying claim. Settlement agreements executed **on or after Jan. 1, 2019**, that violate this prohibition are void and unenforceable. The bill also prohibits courts from issuing any order or stipulation that restricts this type of disclosure in sex discrimination or sexual harassment cases.

However, settlements for sex discrimination or sexual harassment may shield the claimant's identity and all facts that could lead to the discovery of his or her identity (including pleadings filed in court), as long as the claimant is the one who requests it (and as long as no government agencies or public officials are parties to the settlement agreement). In addition, settlement provisions may prevent parties from disclosing the amount paid for a claim settlement.