Harassment Prevention TRAINING

Governor Gavin Newsom recently signed Senate Bill 778 into law, extending by one year the deadline for employers to implement new harassment prevention training requirements.

The California Fair Employment and Housing Act (FEHA) makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Under existing law, the Department of Fair Employment and Housing administers these provisions. Existing law, by January 1, 2020, requires an employer with five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California within six months of their assumption of a position. Existing law also specifies that an employer who has provided this training to an employee after January 1, 2019, is not required to provide sexual harassment training and education by the January 1, 2020, deadline.

This bill would instead require an employer with five or more employees to provide the above-described training and education by January 1, 2021, and thereafter once every two years. The bill would require new nonsupervisory employees to be provided the training within six months of hire and new supervisory employees to be provided the training within six months of the assumption of a supervisory position. The bill would also specify that an

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employer who has provided this training and education in 2019 is not required to provide it again until two years thereafter. The bill would make other related changes to those provisions requiring sexual harassment training.

This bill would declare that it is to take effect immediately as an urgency statute.

What Are the New Training Requirements?

By January 1, 2021, California employers with five or more employees must provide:

- At least two hours of harassment prevention training to all supervisory employees once every two years
- At least one hour of harassment prevention training to all non-supervisory employees once every two years
- At least two hours of harassment prevention training to new supervisory employees within six months after assuming the supervisory position
- At least one hour of harassment prevention training to new non-supervisory employees within six months after the hire date

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2019 SAFETY/LOSS PREVENTION AWARD RECIPIENTS

At the 2019 CSDA Annual Conference and Exhibitor Showcase held in Anaheim, the SDRMA Board of Directors awarded the following SDRMA members the Earl F. Sayre Excellence in Safety Award and McMurchie Excellence in Safety Award.

Earl F. Sayre Excellence in Safety Award – Property/Liability Program:

- North County Cemetery District (small member category)
- Templeton Community Services District (large member category)

McMurchie Excellence in Safety Award – Workers' Compensation Program:

- Fresno Westside Mosquito Abatement District (small member category)
- West Kern Water District (large member category) *(pictured above)*

Congratulations to the award recipients! For additional information on the safety awards, please contact Dennis Timoney, SDRMA Chief Risk Officer.

SDRMA Board and Staff

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Beginning January 1, 2020, at least one hour (non-supervisory positions) or two hours (supervisory positions) of harassment prevention training to seasonal, temporary, or other employees hired to work for less than six months, by the time whichever event occurs first — 30 calendar days after the hire date or 100 hours worked.

What Should Employers Do Now To Prepare?

Though the one-year extension grants temporary relief, all employers are required to implement training of their supervisors and employees during calendar year 2020. The new legislation also clarifies that employees who completed the requisite harassment prevention training in 2019 are not required to receive refresher training courses until 2021.

The myriad of new California anti-harassment laws make clear that employers must take affirmative steps to prevent harassment in the workplace and failure to do so can lead to increased liability. Employers should not simply "check the box" when it comes to training. Instead, training must meet the needs of each employer's unique workplace, as well as the type of employees being trained.

INDEPENDENT CONTRACTOR OR EMPLOYEE?

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Existing law, as established in the case of Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the "ABC" test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines "employee" for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would also redefine the definition of "employee" described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity's business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation.

The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill's provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill's enactment.