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## **Employer Alert! Compliance Deadline with AB 1825 is Rapidly Approaching by**

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As if employers in California don't already have enough regulatory compliance issues to contend with, our lawmakers in Sacramento have saddled companies with yet another unfunded government mandate: sexual harassment prevention training of supervisors.

### What the Law Requires of Employers

SB 1825 effective January 1, 2005 (Government Code section 12950.1; full text available at [www.leginfo.ca.gov](http://www.leginfo.ca.gov)) requires employers with 50 or more employees to provide two hours of training and education by January 1, 2006 to all supervisory employees employed as of July 1, 2005. All new supervisors have to be trained within six months of their promotion to a supervisory position. The initial training must be repeated every two years. The statute does not include a definition of "supervisor" but existing law already enforced by the Fair Employment and Housing Act provides that a "supervisor" is any individual who has the authority to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action... if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgement." (Government Code section 12926(r) According to this language, officers, managers, department heads or other executives of corporations; partners in general partnerships, general partners of limited partnerships, managing members of limited liability companies, managing shareholders of professional corporations, trustees of trusts or other businesses with 50 or more employees would require sexual harassment training.

### Specifics of the Training Requirement

AB 1825 represents a pro-active approach to reducing sexual harassment. It also sets specific content, quality and instructor standards for the required training which must be conducted via "classroom or other effective interactive" method and must cover the following topics:

- Information and practical guidance regarding federal and state statutory provisions concerning the prohibition against and the prevention of sexual harassment in the workplace.
- Information about the correction and the remedies available to victims of sexual harassment in employment.
- Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation.

The training must be presented by "trainers or educators with knowledge and expertise" in preventing harassment, discrimination, and retaliation. According to these rigid requirements, it is no longer adequate to provide the supervisor with a book or a video ("show and go") or other non-interactive product to learn about sexual harassment and its prevention. The statute requires the trainer to be someone who understands both the legal requirements and had practical experience in preventing harassment, discrimination and retaliation.

### Consequences of Compliance and Noncompliance

On the positive side, although AB 1825 mandates training and education of supervisors, a claim that the training and education required by the law did not reach a particular individual or individuals does not in and of itself result in employer liability for sexual harassment.

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Nevertheless, a strong argument can be made that failure to comply with the statute is evidence of employer neglect and failure to take all reasonable steps to prevent harassment. In certain situations non-compliance with a statutory mandate is considered negligence per se. The DFEH follows a negligence standard for harassment by an employee other than an agent or supervisor, so plaintiffs' lawyers can add a negligence count to the complaint without any downside risk to the case. Further, if an employer violates any of the statute's mandates, the DFEH Commission must issue an order requiring compliance. On the negative side, compliance with the statute does not automatically insulate or shield the employer from liability for sexual harassment claims brought by a current or former employee or job applicant. Yet it must be done! The December 31, 2005 deadline is rapidly approaching. Prudent managers of covered companies will not leave this task to the last minute.

#### **About the Author**

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**Sexual Harassment Prevention Training- AB 1825 compliance - California**

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