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SB-1343 Employers: sexual harassment training: requirements. (2017-2018)

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Senate Bill No. 1343

CHAPTER 956

An act to amend Sections 12950 and 12950.1 of the Government Code, relating to employment.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1343, Mitchell. Employers: sexual harassment training: requirements.

The California Fair Employment and Housing Act 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. The act requires employers with 50 or more employees to provide at least 2 hours of prescribed training and education regarding sexual harassment, abusive conduct, and harassment based upon gender, as specified, to all supervisory employees within 6 months of their assumption of a supervisory position and once every 2 years, as specified.

This bill would instead require an employer who employs 5 or more employees, including temporary or seasonal employees, to provide at least 2 hours of sexual harassment training to all supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every 2 years thereafter, as specified. The bill would require the Department of Fair Employment and Housing to develop or obtain 1-hour and 2-hour online training courses on the prevention of sexual harassment in the workplace, as specified, and to post the courses on the department's Internet Web site. The bill would also require the department to make existing informational posters and fact sheets, as well as the online training courses regarding sexual harassment prevention, available to employers and to members of the public in specified alternate languages on the department's Internet Web site.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12950 of the Government Code is amended to read:

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department and the council, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) (1) The department's poster on discrimination in employment shall include information relating to the illegality of sexual harassment. One copy of the poster shall be provided by the department to an employer or a member of the public upon request. The poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall post the poster in a prominent and accessible location in the workplace.

(2) Post a poster developed by the department regarding transgender rights in a prominent and accessible location in the workplace.

(3) Provide sexual harassment training as required by Section 12950.1.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer or a member of the public upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department.

(6) Directions on how to contact the department.

(7) The protection against retaliation provided by Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the council.

(8) A link to, or the Internet Web site address for, the sexual harassment online training courses developed pursuant to Section 12950.1 and located on the Internet Web site of the Department of Fair Employment and Housing.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) The Department of Fair Employment and Housing shall make the poster, fact sheet, and online training courses available in English, Spanish, Simplified Chinese, Tagalog, Vietnamese, Korean, and any other language that is spoken by a "substantial number of non-English-speaking people," as that phrase is defined in Section 7296.2. The department shall make versions of the online training courses with subtitles in each language and shall orally dub the online training courses into each language other than English. Simplified Chinese shall be sufficient for subtitling purposes.

(e) The department shall make the poster, fact sheet, and online training courses required by this section, and the corresponding translations, available to employers and to the public through its Internet Web site in formats that may be streamed or downloaded.

(f) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(g) If an employer violates the requirements of this section, the department may seek an order requiring the employer to comply with these requirements.

SEC. 2. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) By January 1, 2020, an employer having five or more employees shall 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. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee after January 1, 2019, is not required to provide training and education by the January 1, 2020, deadline. After January 1, 2020, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. The training and education required by this section shall

include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

(b) An employer shall also include prevention of abusive conduct as a component of the training and education specified in subdivision (a).

(c) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in subdivision (a). The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

(d) The state shall incorporate the training required by subdivisions (a) to (c), inclusive, into the 80 hours of training provided to all new employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(e) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(f) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(g) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.

(h) (1) Beginning January 1, 2020, for seasonal and temporary employees, or any employee that is hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

(2) Beginning January 1, 2020, sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, et seq.), shall be consistent with training for nonsupervisory employees pursuant to paragraph (8) of subdivision (a) of Section 1684 of the Labor Code.

(i) (1) For purposes of this section only, "employer" means any person regularly employing five or more persons or regularly receiving the services of five or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(j) For purposes of providing training to employees as required by this section, an employer may develop his or her own training module or may direct employees to view the online training course referenced in subdivision (k) and this shall be deemed to have complied with and satisfied the employers' obligations as set forth in this section and Section 12950.

(k) The Department of Fair Employment and Housing shall develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with the provisions of this section. The course for nonsupervisory employees shall be one hour in length and the course for supervisory employees shall be two hours in length.

(l) The department shall make the online training courses available on its Internet Web site. The online training courses shall contain an interactive feature that requires the viewer to respond to a question periodically in order for the online training courses

to continue to play. Any questions resulting from the online training course described in this subdivision shall be directed to the trainee's employer's Human Resources Department or equally qualified professional rather than the department.