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AB-3369 Entertainment industry: minors: discrimination and harassment prevention training. (2019-2020)

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Assembly Bill No. 3369

CHAPTER 227

An act to amend Section 12950.1 of the Government Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2020. Filed with Secretary of State September 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3369, Committee on Arts, Entertainment, Sports, Tourism, and Internet Media. Entertainment industry: minors: discrimination and harassment prevention training.

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. Under existing law, the Department of Fair Employment and Housing administers these provisions. Existing law, by January 1, 2021, requires a specified employer with 5 or more employees to provide at least 2 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 and, after that date, once every 2 years.

Prior to the issuance of an entertainment work permit to a minor, existing law requires the parent or legal guardian of the minor and the age-eligible minors to receive and complete training in sexual harassment prevention, retaliation, and reporting resources. Existing law requires the training to be in a language understood by that person.

This bill would exempt an employer from these California Fair Employment and Housing Act sexual harassment training requirements for an employee who has, within the last 2 years, received the required training from an employer or who was issued a valid work permit by the Labor Commissioner that required the employee to receive the required training within the last 2 years. The bill would require that the employee then be required to receive the training every 2 years after that.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) (1) By January 1, 2021, 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. Thereafter, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. New nonsupervisory employees shall be provided training within six months of hire. New supervisory employees shall be provided training within six months of the assumption of a supervisory 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 in 2019 is not required to provide refresher training and education again until two years thereafter. 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.

(2) An employer shall also include prevention of abusive conduct as a component of the training and education specified in paragraph (1).

(3) 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 paragraph (1). 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.

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

(c) 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.

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

(e) 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.

(f) Except as provided in subdivision (l), beginning January 1, 2021, for seasonal, temporary, or other employees that are 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.

(g) 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.

(h) (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.

(i) For purposes of providing training to employees as required by this section, an employer may develop its own training module or may direct employees to view the online training course referenced in subdivision (j) and this shall be deemed to have

complied with and satisfied the employers' obligations as set forth in this section and Section 12950.

(j) The department 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.

(k) The department shall make the online training courses available on its internet website. 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.

(l) (1) An employer that employs workers pursuant to a multiemployer collective bargaining agreement in the construction industry may satisfy the requirements of subdivision (a) or (f) by demonstrating that the employee has received the training required by subdivision (a) within the past two years under any of the following circumstances:

(A) While the employee was employed by another employer that is also signatory to a multiemployer collective bargaining agreement with the same trade in the building and construction industry.

(B) While the employee was an apprentice registered in a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards.

(C) Through a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards, a labor management training trust, or labor management cooperation committee. For purposes of this subdivision, "labor management cooperation committee" shall mean a committee that is established pursuant to Section 175a of Title 29 of the United States Code.

(2) For purposes of this subdivision, "multiemployer collective bargaining agreement" means a bona fide collective bargaining agreement to which multiple employers are signatory, including predecessor and successor agreements.

(3) An employer shall require verification that an employee has undergone prevention of harassment training pursuant to this subdivision within the past two years. The employer shall provide prevention of harassment training pursuant to subdivision (a) for any employee for whom verification cannot be obtained.

(4) A state-approved apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a certificate of completion of training for each person to whom the entity has provided prevention of harassment training pursuant to this subdivision for a period of not less than four years. The apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a database of journey-level worker and apprentice training that entity has provided and shall provide verification of an employee's or apprentice's prevention of harassment training status upon the request of an employer that is a party to the multiemployer collective bargaining agreement.

(5) (A) A qualified trainer may provide prevention of harassment training on behalf of an apprenticeship program, labor management training trust, or labor management cooperation committee.

(B) A "qualified trainer," for purposes of this subdivision, is any person who, through a combination of training and experience, has the ability to train employees about the following:

(i) How to identify behavior that may constitute unlawful harassment, discrimination, or retaliation under both California and federal law.

(ii) What steps to take when harassing behavior occurs in the workplace.

(iii) How to report harassment complaints.

(iv) Supervisory employees' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware.

(v) How to respond to a harassment complaint.

(vi) The employer's obligation to conduct a workplace investigation of a harassment complaint.

(vii) What constitutes retaliation and how to prevent it.

(viii) Essential components of an antiharassment policy.

(ix) The effect of harassment on harassed employees, coworkers, harassers, and employers.

(C) A "qualified trainer" includes, but is not limited to, an attorney admitted to the State Bar of California with at least two years of experience practicing employment law, a human resources professional with at least two years of practical experience in prevention of harassment training, investigation, and advising employers in the prevention of harassment, or any other person who has received training in the provision of prevention of harassment training from a qualified trainer.

(6) An apprenticeship program, labor management training trust, or labor management cooperation committee may also provide training by use of the online training courses referenced in subdivision (j).

(7) An apprenticeship program, labor management training trust, or labor management cooperation committee shall not incur any liability for providing prevention of harassment training or for maintaining records pursuant to this subdivision.

(m) An employee who has received training in compliance with this section within the prior two years either from a current, a prior, or an alternate or a joint employer, or who received a valid work permit from the Labor Commissioner that required the employee to receive training in compliance with this section within the prior two years, shall be given, and required to read and to acknowledge receipt of, the employer's anti-harassment policy within six months of assuming the employee's new position. That employee shall then be put on a two year tracking schedule based on the employee's last training. The current employer shall have the burden of establishing that the prior training was legally compliant with this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that minors in the entertainment industry receive appropriate training regarding sexual harassment and to avoid enforcing inconsistent policies between the Labor Code and the Government Code, it is necessary for this act to take effect immediately.