

Don't Be Fooled! Employers Need to Update Their Policies and Practices by April 1!

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Effective **April 1, 2016**, more California employers will have to comply with even more employment law requirements. The newly promulgated regulations significantly expand the reach of the California Fair Employment and Housing Act (“FEHA”) and impose new requirements on California employers. In order to ensure compliance with the new regulations, employers should review their policies and practices and make the necessary updates.

Small Businesses Beware: Increased Coverage of FEHA

Any business that employs 5 or more employees **anywhere**—regardless of whether the employees are in California, are part-time, or are on a leave of absence—are now subject to all FEHA laws and regulations as long as one of those employees is in California. This change has huge ramifications for those employers that were not previously covered by FEHA. Employers that are now subject to these laws should check with an attorney to make sure they are complying with their legal obligations.

Update Policies on Harassment, Discrimination, and Retaliation

The amended FEHA regulations that go into effect on April 1 expand the legal requirements for written policies against harassment, discrimination, and retaliation. Among other things, California employers should review their current policies against unlawful conduct to ensure that they meet the following requirements:

- The policy must be translated into each language spoken by 10% or more of the employees at a given facility or worksite. **This may require many California employers to translate these FEHA policies into Spanish or other languages before April 1.**
- It must list all current protected categories covered under FEHA:
 - Race, religious creed (which includes religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (which includes pregnancy, childbirth, breastfeeding, and related conditions), gender, gender identity, gender expression, age, sexual orientation, and military or veteran status.
- It must have a complaint process that provides for:
 - confidentiality, to the fullest extent possible;
 - a timely response to the complaint;
 - an impartial and timely investigation by qualified personnel;

- documentation and tracking for reasonable progress;
 - appropriate remedies and resolutions; and
 - timely conclusion.
- It must provide a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor. In addition, it must require supervisors to report all complaints to a designated company representative.
 - It must require the employer to conduct a fair, timely, and thorough investigation upon receipt of a complaint and to reach a reasonable conclusion by using appropriate due process based on the evidence collected.

Heightened Record-Keeping Requirements for “E-Learning” and Webinar Sexual Harassment Training

Only employers with 50 or more employees need to provide training aimed at preventing sexual harassment. However, employers who use “e-learning” or webinars to satisfy this training requirement should be aware of the following:

- E-learning: The individual conducting the training must maintain all written questions received, and all written responses or guidance provided, for two years.
- Webinar: The employer must maintain a copy of the webinar, all written materials used by the trainer, all written questions submitted during the webinar, and document all written responses or guidance the trainer provided during the webinar, for two years.

In addition, for at least two years after any required training, an employer must maintain significantly more records, including, but not limited to, the names of all supervisors who attended, the sign-in sheet, copies of all certificates of attendance/completion issued, and copies of all written or recorded materials that were used to conduct the training.

Because in-person training is often more effective, employers should consider transitioning to this method to avoid these onerous record-keeping requirements.

If you have questions about the new FEHA regulations, please contact Wendy Tucker or Annie Macaleer or any other member of the Firm's Labor and Employment Group.



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