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Mandatory Sexual Harassment Training in California: Are You Ready?

Recent regulation changes in California affect the way you're required to train your staff regarding workplace violence and sexual harassment, with a looming deadline of January 1, 2021 to put the changes into place. By being aware of the new requirements and planning for the upcoming changes, you can stay ahead of the curve, both in terms of compliance and in helping create a safe and healthy workplace.

This isn't the first change to these training requirements. In 2018, California's SB 396 expanded the requirements regarding sexual harassment prevention training for supervisors, including the topics of gender expression, gender identity, and sexual orientation for the first time. And on January 1, 2019, the new requirement went into effect requiring that any employer with five or more employees to provide sexual harassment prevention training to all workers.

What Does the Mandatory Training Cover?

The training required by SB 1343, an amendment to Government Code 12950, mandates that you educate your employees about federal and state statutes regarding sexual harassment prevention. You must also provide information about remedies that sexual harassment victims have available to them.

The training must include practical examples that speak to a wide variety of harassment and discrimination-related topics relating to the prevention of the following:

- Harassment based on gender identity
- Harassment based on gender expression
- Harassment based on sexual orientation
- Discrimination based on any of these categories
- Retaliation based on any of these categories

What's the Deadline for the Required Sexual Harassment Prevention Training?

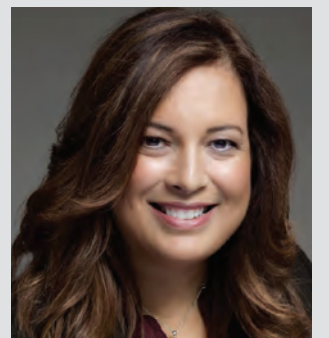
All non-managerial employees must receive one hour of training in the prevention of sexual harassment and abusive conduct before January 1, 2021 — Managerial employees require twice the amount of training: two hours, employer who has provided this training and education in 2019 is not required to provide it again until 2 years thereafter.

After that first round of training, employees must receive repeated sexual harassment prevention training every two years. That means the next round of sexual harassment and abusive conduct prevention training must occur before January 1, 2023.

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Claudia Perez Sr. Vice President of Operations

As the Sr. Vice President of Operations, Claudia oversees day-to-day strategic operations, including spearheading marketing projects, employee training and development programs for Marquee Staffing's contingent workforce. With her strong background in business development, she continuously strives to build lasting partnerships with clients and candidates. As a result, her team focuses on quality, customer service, compliance and strategic placements.



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Can Independent Contractors Still Exist in California?

On September 18, 2019, Governor Newsom signed into law what has been called a landmark bill for workers – California Assembly Bill 5 (AB 5). AB 5 adopts the ABC Test for classifying a worker as an independent contractor. Under this test, workers are presumed to be employees unless the hiring entity can prove that: (a) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the terms of the contract and in fact; (b) the person performs work outside the usual course of the hiring entity's business; and (3) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Further, beginning on July 1, 2020, the ABC test will also apply to the determination of whether an individual is an employee for purposes of workers' compensation requirements.

Many industries fought for exemptions from the ABC Test, and as a result, numerous revisions have been made. In fact, more of AB 5 is taken up by addressing the exemptions rather than the test itself.

These exemptions include, among others, licensed insurance agents, certain California licensed professionals (lawyers, architects, etc.), real estate licensees, commercial fishermen, licensed barber or cosmetology workers, and others performing work under a contract for "professional services" as defined in AB 5, with another business entity, or pursuant to a subcontract in the construction industry.

However, even for some of the exemptions, there are factors that must be met for the worker to be deemed exempt from the ABC Test. In addition, the applicability of an exemption does not mean each of these individuals is automatically an independent contractor. Rather, for workers in most of the job categories, when evaluating whether they are an employee or independent

contractor, AB 5 still requires the application of the decades-old balancing test previously utilized.

An industry that did not receive an exemption from the ABC Test is the gig economy. Uber, Lyft, and several other gig companies have announced a new statewide ballot measure known as the Protect App-Based Drivers & Services Act that is due for the November 2020 ballot to create a third category of worker to address gig companies. The Act is aimed at allowing these workers to keep their flexibility and independence while also providing them with certain benefits and protections.



Erin Leach

While AB 5 was intended to create more clarity around the classification of workers, unfortunately, it seems to have created more confusion, including how the exemptions will be applied. Although questions remain, now is the time for companies to analyze whether their currently classified independent contractors will pass this new test, and if they don't, take proactive steps to re-classify them as employees.

If you have questions about how AB 5 could affect your company, reach out to Erin Leach at: https://www.swlaw.com/people/erin_denniston_leach.

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What's Behind Visa Application Challenges/Denials?

In September 2017, American Immigration Lawyers Association (AILA) requested records from USCIS showing how an employer's offered salary to a foreign national employee impacts how an officer adjudicates an H-1B classification filing. In August 2018, AILA submitted a second request to clarify how an officer determines whether or not a case qualifies as "specialty occupation." After receiving no response, a lawsuit filed in June 2018 compelled USCIS to respond. USCIS finally released documents that showed a significant increase in denials and Requests for Evidence (RFE) set forth by the "Buy America, Hire America" Executive Order, which aims to reduce the number of high-skilled foreign workers in hopes that U.S. workers fill the positions.

The now released documents shed light on how the denials and RFEs have increased. The two main documents titled, *I-129 H1B AC21 Denial Standards* and *H-1B RFE Standards*, evidence that the standards for issuing a RFE or denial are extremely low.

Explained in these documents is that USCIS officers are no longer bound by previous petition approvals when reviewing visa extension requests, a policy known as "deference." Consequently, many of the documents and evidence that were previously submitted and approvable are now questioned and denied for unwarranted reasons. The overall H-1B approval rate fell to 79.5% in the first half of FY 2019, which is down from 92.6% in FY 2017. The RFE rate increased to 47.7% for FY 2018 from the 21.4% in FY 2017. This evidence indicates that USCIS has severely increased the burden on U.S. companies trying to fulfill positions. Sadly, this new adjudication guidance does not appear to have any end in sight. All applications for an immigration benefit must be prepared with significantly more evidence than previously requested in order to obtain more favorable decisions.



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Tough Love: You're not perfect. Now what?!

By Kathi Guiney, GPHR, SPHR SCP President **YES!**
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Have you achieved perfection? Nope, none of us has! That means there is always something to learn from a mentor, whose experience can sharpen your future. But it's not enough to say, "I need a mentor!" You must take the initiative to find one, and you must become a desirable mentee. Here's how.

- **Define your goal.** Do you need to improve your performance, fill skills gaps, or expand your network? Be honest with yourself! Setting the right goal will help you choose the right mentor. Identifying a few mentors can help you meet multiple goals.

- **Make a low-cost ask for time.** High-caliber mentors are on everyone's wish list, so they're likely to shoot down a vague, open-ended drain on their time. Try a simple, finite mentorship request: monthly meetings for one year . . . and be punctual!

- **Set an agenda.** Many mentees mistakenly expect the mentor to run the show. Don't expect to show up with a cup of coffee and receive a weekly lesson plan. Prepare specific questions, areas of feedback, and requests for support. Send your agenda in advance.

- **Listen and evaluate.** Your job during your mentorship meeting: listen, engage, and take notes. And remember, your mentor is there to offer advice and perspective, not to make decisions for you. It's wise to weigh their words and apply the things you've learned.

Nobody is perfect, not even your mentor. But together, you can make each other sharper than you were before. And who knows? Maybe someday you'll hear the vague, open-ended cry of, "I need a mentor," and you'll know exactly how to answer: "I am available, but no lesson plans included."

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Who Must Receive Sexual Harassment Training?

If your company has five or more employees, you must provide the required sexual harassment prevention training. What constitutes an employee for the purposes of this training? The definition is pretty broad, including not just all full-time employees but also part-time and temporary employees. Your employees don't have to all live or work in California for the requirement to apply, and they don't have to work at the same location. If your company is based in California, the requirement kicks in.

How Can You Provide the Required Training?

While employment law attorneys and appropriately trained college professors are qualified to provide the required sexual harassment prevention training, the easiest way to accomplish it is to turn to HR professionals with at least two years of experience in handling sexual harassment complaints or designing and conducting appropriate training.

You have quite a few options when it comes to the type of training you choose, including:

- **Classroom training.** This is provided in person by a qualified trainer.
- **E-learning training.** This type of training connects the employee to a trainer online, with the training providing guidance and assistance regarding the training program.
- **Webinar training.** These internet-based seminars, which include interactive content and quizzes, allow employees to undergo training on their own time frame, with electronic documentation that the employees received and responded to the required content.

In all cases, training must include assessment to determine that the employees understand the content they've learned, as well as discussion questions and skill-building activities.

Look for resources to help with training from organizations such as the Society for Human Resource Management (SHRM), California's Department of Fair Employment and Housing, or the U.S. Occupational Safety and Health Administration (OSHA). You can also expect compliance when you come to Marquee Staffing for your recruiting and staffing needs, as we're here to help you stay up-to-date on all HR issues.

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What Does a Data Privacy Program Look Like?

For a long time, when asked about data privacy or cybersecurity, small businesses would say “I have a guy.” That response is not sufficient. Businesses need to be sure privacy is a design element of their culture. But, where to start?

A business should first identify its threats. When thinking of ‘data breaches,’ outside hackers typically come to mind. But, risk usually comes from internal threats, such as employee negligence, phishing emails, malware, lost devices, or social engineering.



It is crucial that businesses incorporate privacy into their culture. The business needs to have C-suite buy-in, appointed a non-IT person (a ‘data protection officer’), identified outside counsel, established security protocols, revised HR and “bring your own device” policies, established vendor management rules, and most importantly – is testing and training. Making employees aware of their role is crucial. Every employee should take ownership over privacy and cyber-security: “if you see something – say something!”

Lastly, companies need a “turn-key” data breach response policy. Should a breach occur, first responders will know their exact obligations and who to call to ensure an efficient response to limit damage and liability.

Until now, lawsuits over breaches were difficult to pursue given speculative and limited damages. The new California Consumer Privacy Act is a game changer. Starting January 1, 2020, covered businesses may be subject to \$100-\$750 per person for a data breach of unredacted and unencrypted sensitive information caused by a failure to implement reasonable policies and procedures to avoid the data breach. Businesses still have time to beef up their security procedures and practices to prevent such breaches.

Genevieve Walser-Jolly (CIPP/US) is a partner and Scott Hyman (CIPP/US, CIPP/E, CIPP/M) is a shareholder at Severson & Werson, APC. They help clients setup data privacy programs, turn-key data breach responses, and CCPA compliance. They can be reached at grw@severson.com and sjh@severson.com.

ARE YOU READY?

The California Consumer Privacy Act is enforceable on January 1, 2020 and carries class action statutory penalties for data breaches of \$100 and \$750 per consumer per incident.

Contact our Data Privacy and CCPA Compliance Team.



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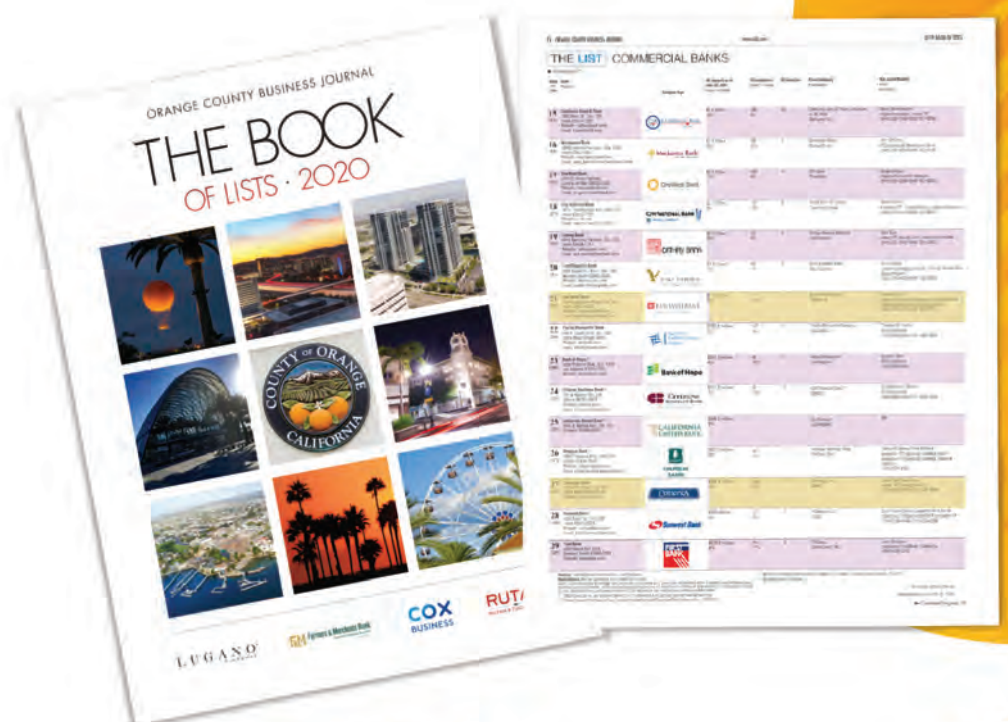
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