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New California Law Mandates Sexual Harassment Training

On September 30, 2004, California Governor Arnold Schwarzenegger signed into law a bill requiring that private employers conduct sexual harassment training. California now joins Maine and Connecticut as states that statutorily require sexual harassment training for private employers.

The new law imposes a training deadline of January 1, 2006 for all California employers with 50 or more employees. By that date, those employers must provide at least two hours of training and education to all supervisory employees who are employed as of July 1, 2005. Supervisors hired after July 1, 2005, must be trained within 6 months of their assumption of duties. This deadline does not apply to supervisory employees who have received appropriate training on sexual harassment prevention since 2003. After January 1, 2006, affected employers must train their supervisory employees at least once every two years.

The new law specifies the type of training needed to comply. The training must be “effective” and provided in either a classroom setting or some other “interactive” medium. Training must also include information and “practical” guidance regarding the federal and state laws that prohibit sexual harassment, as well as the remedies available to sexual harassment victims. In particular, supervisors must be taught practical methods to prevent harassment, discrimination, and retaliation. Finally, trainers must have knowledge and expertise in the harassment prevention field. In short, the law requires interactive, practical and effective training taught by experienced and qualified trainers.

From the point of preventing harassment, the new law is both an improvement and a potential trap for the unwary. The beneficial aspect of the law is that it provides some guidance as to how employers can fulfill a duty they already have under California law — to take reasonable steps to prevent harassment. Training is one such reasonable step, and the new law provides criteria to help ensure that training is meaningful and not a simple rote recital of company policy or the law.

Yet the law can be misleading, and harmful to employers, if employers come to believe that meeting its requirements will necessarily discharge an employer’s legal obligations with respect to training. In this respect several points bear noting:

- The two hours of sexual harassment training for supervisors is a minimum threshold. Whether two hours of training will be enough to establish a defense to sexual harassment or sexual discrimination claims remains to be seen. In fact, the law specifically states that more elaborate training may be necessary for an employer to take reasonable steps necessary to prevent and correct harassment and discrimination.

- Training to prevent sexual harassment without training to prevent other forms of unlawful workplace harassment is a high-risk proposition. Effective harassment prevention training must be broad-based, touching upon not only issues of sexual harassment, but harassment based on all protected characteristics, including race, national origin, age, sexual orientation, gender identity, religion and disability.
- When implementing a harassment prevention training program, California employers should make certain that its program does meet the **Interactive, Practical and Effective** standards of the new law. Typically, this requires, at minimum, that the training provide realistic exercises wherein participants practice and learn new skills and techniques to combat and eliminate harassment in the workplace. In addition, employers should make certain that its trainers have not only content expertise, but high-level facilitation skills to ensure that the training is in fact **Interactive, Practical and Effective**.
- Training supervisors only, without regard to educating the remainder of the workforce, is also an unnecessary risk. Harassment prevention training should be provided to all employees, not just supervisory or managerial staff. Broad-based training of this sort is particularly important in California, which imposes personal liability for workplace harassment on rank-and-file employees as well as on supervisors.

For many employers the new law will not create any burden that the employers do not already bear through their current training program. For California employers that do not yet have a harassment prevention training program, the new law should be a final wake-up call, for it clarified in more specific terms an obligation these employers already had under existing law.

Please contact the Seyfarth Shaw attorney with whom you work or any other attorney listed on our website at www.seyfarth.com if you have any questions concerning the new law.

For immediate training assistance, please contact Seyfarth Shaw's training subsidiary--Seyfarth Shaw at Work at (877) 828-8683 or www.ssawtraining.com. Seyfarth Shaw at Work has harassment prevention programs in place which deliver **Interactive, Practical and Effective** training, far exceeding the requirements of the new California law.

