

New Anti-Harassment and Discrimination Regulation Sends California Employers Scrambling to Revise Policies and Practices by April 1

March 31, 2016

Just as we thought it was safe to put away our handbooks and policies until 2017, California lawmakers threw a last minute zinger at employers.

Effective APRIL 1, 2016, a new regulation under California's Fair Employment and Housing Act ("FEHA") requires California employers to write or possibly revise their existing harassment policies to comply with the new regulation.

California employers have already been obligated to distribute a pamphlet authored by the Department of Fair Employment and Housing ("DFEH") or a policy that contained similar components and complied with Government Code Sec 12950. However, this new regulation goes much further in both content and implementation.

If employers have only provided the DFEH - 185 Brochure, they will now have to develop a separate policy. For those employers who already have a separate policy, the regulation provides detailed specification that may well require revision to their existing individual policy. Below are the main requirements of the new regulation and, under it, the policy should:

- List ALL protected categories under FEHA;
- Make clear that harassment and discrimination includes conduct by supervisors and managers, as well as co-workers and third parties;
- Establish a complaint procedure (with more details set forth below);
- Provide that appropriate remedial measures and resolutions will be taken if misconduct is established by the evidence collected; and
- Reassure employees that the company will not allow retaliation against an employee for filing a complaint or participating in an investigation.

Within the policy, there should be a more developed complaint procedure, which should include the following:

- An employee should feel free to file a complaint with someone other than his or her direct supervisor, such as Human Resources or even an outside hotline or ombudsman if the person is not comfortable with current options;
- All complaints will be fully, fairly and timely investigated, that all parties will receive due process, and that conclusions are based upon evidence collected;
- Investigations will be conducted timely and by an impartial person;
- There will be a timely response to the investigation, with an appropriate remedy;
- The complaint process and progress will be documented and tracked; and
- The procedure will be kept confidential.

One of the bigger issues contained in the new regulation is the requirement to translate the policy if greater than 10% of the employer's workforce speaks another language.

The regulation also discusses the method of distribution, which must be done to ensure that employees receive a copy. It suggests one or more of the following methods: printed copies, company intranet, posted copies and discussion upon hire and again annually.

Finally, the policy must also contain a provision that every employee acknowledges written receipt of the new policy.

Supervisor and manager training is also targeted within this new regulation. Managers must be fully trained on complaint procedures, and be familiar with the contents of the policy. Their obligation to report must be clearly delineated. A question and answer session is even discussed. Every employer should revisit its existing method of providing the required AB 1825 training and, indeed, pre-recorded training may no longer be sufficient. At a minimum, any training should now cover all of the new aspects of the new regulation.



WHAT TO DO ABOUT YOUR EXISTING POLICY??

All California employers need to review their current policies for compliance with this new regulation. Most policies may need to be revised.

FOR THOSE WHO SUBSCRIBE TO OUR EMPLOYEE HANDBOOK PROGRAM:

Many of you have started asking us what to do with your newly revised handbooks. If you subscribe to our Employee Handbook Update program and have already received your final Employee Handbook for 2016, we will be immediately sending you a separate policy that you can distribute to your employees. We will have a Spanish version available shortly; just let us know if you have a workforce which requires that version. If you have already paid and are in the process of receiving an updated or new handbook, a compliant policy will be included with your 2016 updated handbook.

If you would like your policy or handbook reviewed, we are always willing to do an overview of your policies to determine if your policy or handbook needs an update, and will provide a quote on what that update would entail.

We will be hosting a webinar covering this new regulation on May 10, so stay tuned for the details. In the meantime, please feel free to contact Beth Schroeder listed above or your Lathrop Gage attorney with any questions.