

New California Regulations Continue to Challenge California Employers

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On April 1, 2016, California will enforce revised regulations designed to protect employees from illegal harassment, retaliation and discrimination. The design and the impact, however, may not intersect. Here are some of the changes that expand an employer's potential liability:

Changes

- **Burden Is On The Employer:** The new regulations make clear the employer has the burden to (i) create a workplace free from harassment and discrimination, and (ii) to develop effective harassment, discrimination and retaliation prevention policies, including a complaint process that works. Note: Good policies, effective HR functions (including skillful investigations) and experienced anti-harassment/ bullying training are now critical.
- **“Meaningful Training”:** The new regulations require the training to include quizzes, small group discussions or interactive analyses of hypothetical workplace scenarios. Training must focus on applying the anti-harassment/bullying techniques taught. Anti-abusive conduct training should be “meaningful.” Note: Use effective trainers that inspire discussion and learning. They help to prevent lawsuits.
- **Temporary Workers Are Your Employees:** Presently, a worker compensated by a temp agency may be considered an employee. Under the new regulations, a temp worker is your employee. Note: If you are using temporary or leased workers, you are probably the employer.
- **A Word About Independent Contractors:** An independent contractor (as defined by statute) is not an employee. However, an employer can be liable if an independent contractor harasses an employee. Note: The use of independent contractors, particularly the extensive use, is a spotlight on your business for state regulators. Use independent contractors correctly.
- **When Does The FEHA Apply To Your Business:** Presently, the FEHA does not apply to businesses with less than five employees. Under the new regulations, “employees” include those located outside of California. Note: This makes it easier for workers to file discrimination and retaliation claims. Contrast this with harassment claims that require only one employee, not five.

Is There Any Good News?

- **Minor Limitation On Lawsuits:** Lawsuits claiming the employer “failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring” may be pursued only by the



Department of Fair Employment and Housing. Unless, of course, the employee can prove harassment or discrimination.

Where Can You Get Help?

Employers can use these new regulations to inspire and motivate employees, while protecting the business from lawsuits. Contact me to learn how.

Phillip R. Maltin is a partner in the Employment and Business Litigation groups in the Lathrop Gage Los Angeles Office. He is known locally and nationally as an outstanding litigator and exceptional questioner. Mr. Maltin frequently speaks on investigation and questioning techniques across North America, specifically on identifying liars.

If you have any questions about the above client alert, please reach out to Phillip Maltin or your Lathrop Gage attorney.