

Required Harassment Prevention Training FAQs

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As you all remember, a new California law went into effect on January 1, 2019, that made substantial changes to mandatory sexual harassment prevention training. Under SB 1343, all employers with five or more employees must provide sexual harassment prevention training to all employees — supervisors must receive two hours of training and nonsupervisory employees must receive one hour. Training must take place within six months of hire or promotion and every two years thereafter.

Shortly after SB 1343's passage, many questions arose about how to coordinate the newly imposed training requirements with earlier provided trainings. The Department of Fair Employment and Housing (DFEH) took the position that in order to comply with the January 1, 2020 deadline, employers who trained their employees in 2018 would need to train them again in 2019, resulting in those employees being trained twice within a two-year period.

SB 778 gives employers until January 1, 2021 to provide sexual harassment prevention training.

Legislators and Governor Gavin Newsom listened to employers' concerns about this law's unintended consequence, and on August 30, 2019, the governor signed SB 778 — emergency "clean-up" legislation that took effect immediately, extending the sexual harassment prevention training deadline under SB 1343 from January 1, 2020, to January 1, 2021. SB 778 also clarifies that employers who train their employees in 2019 aren't required to provide refresher training until two years from the time the employee was trained. Lastly, SB 778 doesn't impact the portion of the law addressing seasonal and temporary workers. This means that beginning January 1, 2020, seasonal and temporary employees hired to work for less than six months, must be trained within 30 calendar days after their hire date or within 100 hours worked, whichever occurs first.

Many other questions about SB 1343 remain, so read on for answers to the ones asked most frequently.

If we trained employees in 2018, do we need to train them again in 2019?

Thankfully, the answer to this is now no. Emergency clean-up legislation SB 778 clarifies that employers who train in 2019 aren't required to provide refresher training again until two years thereafter, which would be in calendar year 2021. If you trained employees in 2018, SB 778 allows you to maintain your two-year cycle and provide training in 2020.

Under the law, all employees — supervisory and non-supervisory — must be trained by January 1, 2021. Here's a quick breakdown for employers who've trained employees this year or in previous years:

Year you last trained	Next required training year	Explanation
2019	2021	SB 778 clarifies that employers who train their employees in 2019 aren't required to provide refresher training until two years from the time the employee was trained.
2018	2020	SB 778 allows those employers who trained employees in 2018 to maintain their two-year cycle and still comply with the new January 1, 2021, deadline.
2017	2019	Employers who trained supervisors in 2017 under prior law, known as AB 1825, should still train those employees this year in order to maintain their two-year cycle.

Employers must pay their employees for the time spent training.

Who is considered a “qualified trainer”? Can HR perform the required training?

The regulations from prior law (AB 1825's supervisory training requirements) and the DFEH's Sexual Harassment FAQs identify three types of qualified trainers:

- Attorneys** who have been members of the bar of any state for at least two years and whose practice includes employment law under California's Fair Employment and Housing Act (FEHA) or Title VII of the federal Civil Rights Act of 1964.
- Human resource professionals or harassment prevention consultants** with at least two years of practical experience in:
 - Designing or conducting training on discrimination, retaliation and sexual harassment prevention;
 - Responding to sexual harassment or other discrimination complaints;
 - Investigating sexual harassment complaints; or
 - Advising employers or employees about discrimination, retaliation and sexual harassment prevention.
- Law school, college or university instructors** with a post-graduate degree or California teaching credential and either 20 hours of instruction about employment law under the FEHA or Title VII.

While the Fair Employment and Housing Council has made some pending revisions that address who a “trainer” may be, it's unclear when those regulations will be formally approved and made effective by the Office of Administrative Law, or whether they will be changed any further.

Do I need to pay my employees for the time spent training?

Yes, employers must pay their employees for the time spent training. The cost of the training itself also falls on employers, not the employees.

What if a current employee already received training from a prior employer?

A supervisor who's received compliant training within the prior two years either from a current, previous, or alternate or joint employer must only be given — and be required to read and acknowledge receipt of — the employer's anti-harassment policy within six months of assuming the supervisory position or within six months of the employer's eligibility, according to regulations from prior law.

The supervisor should then be put on a two-year tracking schedule based on the supervisor's last training. And remember that if that employee trained in 2018, based on the DFEH's current interpretation, you may need to retrain this year.

It's important to note that as of right now, existing regulations only address supervisory training; it remains to be seen if new regulations will be implemented to address duplicate training of nonsupervisory employees.

Keep in mind that the burden of establishing that prior training was legally compliant remains with you as the current employer. And if there's any doubt as to whether training from a previous employer meets requirements, a best practice is to provide training to that employee yourself so you're sure that requirements are met.

When counting your number of employees to determine whether you're subject to the training requirements, temporary employees are counted.

Do I have to train employees who work remotely in other states?

When you count your number of employees to determine whether the training requirements apply to you, employees located anywhere, as well as independent contractors, must be included. However, whether you must train supervisors/employees who work remotely out of state will depend on whether they supervise or otherwise interact with employees located in California. For those remote supervisors located out of state who do supervise any of your California employees (or remote employees interacting with California employees), you'll want to make sure those supervisors/employees take a compliant harassment prevention training course. Of course, it's always a best practice to train all of your employees everywhere, regardless of whether they fall under California's specific mandate.

Do temporary or seasonal employees have to be trained?

Beginning January 1, 2020, seasonal and temporary employees, or any employee hired to work for less than six months, must be trained within 30 calendar days after their hire date or within 100 hours worked, whichever occurs first.

If I hire a temporary employee from a staffing agency, do I need to provide the training to that individual or is it the staffing agency's responsibility?

If you utilize temporary or seasonal employees from a staffing agency, it is the staffing agency's responsibility — not yours as the client — to provide the harassment prevention training.

Keep in mind, however, that with joint-employer liability issues potentially at play, it's always a best practice to make sure the staffing agency you choose to work with is aware of the new training requirements and has explicitly agreed to provide such training to any employees provided to you for employment. For example, a client could require the staffing agency to certify that they train all of their employees before the temporary assignment begins.

Also keep in mind that when counting your number of employees to determine whether you're subject to the training requirements, temporary employees are counted, even if provided by a staffing agency.

Total length of training is two hours for supervisory employees and one hour for nonsupervisory employees.

Do I need to provide training to independent contractors?

Even though independent contractors are counted toward the number of employees that would subject an employer to the new training requirements, you aren't required to provide harassment prevention training to them, as the language of the statute specifically refers to "supervisory employees" and "nonsupervisory employees" (Gov. Code sec. 12950.1(a)). This, however, assumes that your independent contractors are properly classified.

What are the various types of training that comply with the requirements?

Harassment prevention training falls into three categories: in-person, e-learning and webinars.

- **In-Person Training** is a more traditional, classroom-like training featuring content created by a trainer. Existing regulations specifically define the credentials that a qualified trainer must possess.
- **E-Learning** involves online training that features individualized, interactive and computer-based training created by a trainer and an instructional designer. Trainees must have the opportunity to ask a trainer questions and receive a response within two business days after asking the questions.
- **Webinars** are Internet-based seminars featuring content created and taught by a trainer, and transmitted over the Internet or an intranet in real time. Employers must document that each trainee who is not physically present in the same room as the trainer actually attended the training. They also must document that the trainee actively participated in the interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities. Lastly, webinars must provide trainees with the opportunity to ask questions and receive answers to those questions or otherwise seek guidance and assistance.

How long must the training be, and does it need to be taken all at once?

The total length of training is two hours for supervisory employees and one hour for nonsupervisory employees. The training can be broken up into shorter segments, so long as each supervisor/employee completes the minimum training requirements over the course of their training year.

CalChamber's online Harassment Prevention Training courses meet the mandatory training requirements and help simplify training for employers.

What kind of training-related documentation do we need to keep?

Existing regulations state what training documentation must be retained, some of which varies depending on the type of training that you choose to use. At a minimum, all types of training must include the following training documentation to be compliant:

- The name of the person trained;
- The date of the training;
- The type of training (live/classroom, e-learning, webinar or other interactive training);
- The name of the training provider;
- The sign-in sheet;
- A copy of all certificates of attendance or completion issued; and
- A copy of all written or recorded materials that comprise the training.

Employers must keep a copy of all the above information for a minimum of two years.

Additional information must be retained for the following training methods:

- **E-Learning:** A trainer must maintain all written questions received and all written responses or guidance provided for two years after the date of the responses. Employers are advised to confirm with their training provider that this information is being properly maintained.
- **Webinar:** For two years after the date of the webinar, the employer must maintain:
 - » A copy of the webinar;
 - » A copy of all written materials used by the trainer; and
 - » All written questions submitted during the webinar and all responses or guidance the trainer provided during the webinar.

What about CalChamber's Sexual Harassment Prevention Training?

We have also received a lot of questions about CalChamber's Sexual Harassment Prevention Training and whether it complies with the new law. The short answer is YES!

Here are some additional details about what CalChamber's Harassment Prevention Training has to offer:

- CalChamber's online California Harassment Prevention Training courses for both supervisors and employees meet the mandatory training requirements and help simplify training for employers.
- CalChamber's convenient self-paced courses let trainees start and stop anytime so they can train when it best fits their schedules.
- CalChamber's online training courses provide an interactive learning experience through use of scenarios, quizzes and more.
- CalChamber's training lets trainees take the courses in English and Spanish.
- CalChamber's "Ask the Expert" feature allows trainees to email questions directly to CalChamber's training experts.
- CalChamber's training complies with recordkeeping requirements to maintain training documentation.
- CalChamber's training includes a wide range of administrative functions and features that make it easy to track each trainee's progress and completion.
- CalChamber's training includes a harassment, discrimination and retaliation prevention policy that employers are required to distribute to employees.

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Mandatory Harassment
Prevention Training



Checklist for Developing a
Harassment Prevention Policy

To learn more about CalChamber resources, please call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT, and Friday from 8 a.m. to 4 p.m. PT.