

# SCHOOL AND COLLEGE LEGAL SERVICES of California

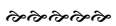
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A Joint Powers Authority serving school and  
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## LEGAL UPDATE

September 19, 2014

**To:** Superintendents/Presidents/Chancellors, Member Community  
College Districts

**From:** Carl D. Corbin, General Counsel 

**Subject:** Sexual Harassment Prevention Training – Abusive Conduct  
Memo No. 15-2014(CC)

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Existing law requires that districts provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment prevention to all supervisory employees (including members of the governing board who have the ultimate power to discipline employees up to and including termination) within six months of their assumption of a supervisory position and then at least every two years thereafter.

Assembly Bill (“AB”) 2053 was signed by the Governor into law on September 9, 2014. Effective January 1, 2015, it requires that the training include the prevention of abusive conduct:

For purposes of this section, “abusive conduct” means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.<sup>1</sup>

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<sup>1</sup> Government Code section 12950.1(g)(2).

Our office will ensure that any sexual harassment prevention trainings conducted on or after January 1, 2015, include a discussion of the prevention of abusive conduct. For your convenience, attached is a copy of AB 2053.

Please contact our office with questions regarding this or any other legal matter.

# Assembly Bill No. 2053

## CHAPTER 306

An act to amend Section 12950.1 of the Government Code, relating to employment.

[Approved by Governor September 9, 2014. Filed with  
Secretary of State September 9, 2014.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 2053, Gonzalez. Employment discrimination or harassment: education and training: abusive conduct.

Existing law makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Existing law further requires every employer to act to ensure a workplace free of sexual harassment by implementing certain minimum requirements, including posting sexual harassment information posters at the workplace and obtaining and making available an information sheet on sexual harassment.

Existing law also requires employers, as defined, with 50 or more employees to provide at least 2 hours of training and education regarding sexual harassment to all supervisory employees, as specified. Existing law requires each employer to provide that training and education to each supervisory employee once every 2 years.

This bill would additionally require that the above-described training and education include, as a component of the training and education, prevention of abusive conduct, as defined.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) An employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California within six months of their assumption of a supervisory position. An employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) An employer shall also include prevention of abusive conduct as a component of the training and education specified in subdivision (a).

(c) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

(g) (1) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.