



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

April 14, 2016

**To:** Superintendents, Member School Districts (K-12)

**From:** Monica D. Batanero *MDB*  
Associate General Counsel

**Subject:** **New Anti-Discrimination and Anti-Harassment Regulations  
Impose Additional Requirements for California Employers  
Memo No. 12-2016**

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Effective April 1, 2016, California employers, including school districts, county offices of education and community college districts, are required to implement new anti-discrimination and anti-harassment regulations. The new California Fair Employment and Housing Act (FEHA) regulations are available on the Department of Fair Employment and Housing website.<sup>1</sup> The California FEHA requires employers to take all reasonable steps to prevent discrimination and harassment from occurring at a workplace.<sup>2</sup>

One of the key new revisions is the requirement that employers provide employees with anti-harassment and anti-discrimination policies that outline a formalized complaint process to address any employee concerns regarding discrimination or harassment.

### New Written Policy Requirements

- **Protected Categories**—A list of all current protected categories under FEHA: race, religion, color, national origin, ancestry, physical and/or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and/or veteran status (Government Code §§ 12940, 12945, and 12945.2).

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<sup>1</sup> <http://www.dfeh.ca.gov/res/docs/FEHC/FinalText.pdf>.

<sup>2</sup> Cal. Govt. Code § 12940(j)(1).



- **Protected Statement**—A statement protecting employees from unlawful acts/conduct under FEHA of coworkers, managers, supervisors, and third parties. The written policy must also make clear that contractors, unpaid interns and volunteers are protected under the policy.
- **Complaint Mechanism**—Complaints receive: (a) a designation of confidentiality, to the extent possible; (b) timely responses; (c) impartial and timely investigations by qualified personnel; (d) documentation and tracking for reasonable progress; (e) appropriate options for remedial actions and resolutions; and (f) timely closure.

Additionally, the policy must ensure that employees are given the option to complain to someone other than his or her immediate supervisor, such as a designated company representative, a hotline, an ombudsperson, or to direct employees to the California Department of Fair Employment and Housing (DFEH) and the U.S. Equal Employment Opportunity Commission.

- **Non-retaliation**—Employees will not be subject to retaliation as a result of submitting a complaint or participating in any workplace investigation.

### New Training Requirements

The new regulations also add the following to existing supervisor harassment training<sup>3</sup> requirements for employers with 50 or more employees:

- Instructing supervisors on their obligation to report sexual harassment, discrimination, and retaliation of which they become aware (Title 2, California Code of Regulations Section (CCR) 11024(c)(2)(F)).
- Covering appropriate remedial measures to correct harassing behavior (Title 2 CCR 11024(c)(2)(J)).
- Reviewing the definition of “abusive conduct,” explaining the negative impact of abusive conduct, specifically discussing the elements of abusive conduct, providing examples of abusive conduct, and emphasizing that, unless the act is especially severe or egregious, a single act shall not constitute abusive conduct. Although the new regulations still do not identify the amount of time that must be dedicated specifically to the subject of “abusive conduct,” they make clear that the subject should be covered “in a meaningful manner.” (Title 2 CCR 11024(c)(2)(M)).
- Maintaining, for two years, all written or recorded materials that comprise the training, including copies of all webinars, all written questions and responses from webinars and e-learning, all sign-in sheets, and all certificates of attendance or completion issued, in addition to the already-required names of supervisory employees trained, the date of the training, the type of training and the name of the training provider. (Title 2 CCR 11024(a)(2)(C); (b)(2)).

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<sup>3</sup> (Govt. Code § 12950.1(a))



## **New Dissemination Requirements**

Employers must disseminate the new written policy to employees by using **one or more** of the following methods:

- (1) Printed copy with an acknowledgement form for the employee to sign and return;
- (2) Via email with an acknowledgement return form;
- (3) Posted on company intranet with a tracking system to ensure that employees have read and acknowledge receipt of the policy;
- (4) Discuss the policy upon hire and/or during a new orientation session (Title 2 CCR 11023(c)); and/or
- (5) Employers must translate the written policy into every language that is used as the “spoken” language by at least 10% of the workforce. (Title 2 CCR 11023(d)).

Also, in accordance with Education Code § 231.5, a copy of the district’s policy on sexual harassment must be provided to every employee each school year – such as by one of the methods described above.

## **Update Your Policy**

Employers should promptly review their employee handbooks, anti-harassment policies, and anti-harassment training to ensure compliance with the amended regulations.

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

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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