

Best Practices Checklist: Implementing Your Internal Sexual Harassment Compliance Training Program

When implementing your own in-house training program or selecting a compliance training vendor, be advised that there are several steps that need to be completed to meet Federal and State compliance. Employers need to create the actual course content, provide training, and are responsible for providing handouts that meet your state or federal compliance requirements. Further requirements are to use a qualified in-person trainer, maintain all training records, monitor changes to laws and regulations associated with the training, and integrating changes into the training course.

In today's litigious business climate, it is not uncommon for attorneys to ask for the trainers' credentials, resume, and training materials to demonstrate their competence for facilitating the training.

Trainer Qualifications

Your trainer's qualifications may be called into question if your business is accused of harassment and litigation arises.

The following individuals are qualified to create harassment courses, provide in-person training, and answer questions pertaining to the subject matter.

Employment Law Attorney

- An attorney admitted to the bar of any state in the U.S. for more than two years and;
- Whose practice includes employment law on a consistent basis.

Human Resource Professional or Consultant

- A professional who has worked as an employee or independent contractor with a minimum of two years practical experience in one of the following areas:
 1. Designing and directing discrimination, retaliation, and sexual harassment prevention training;
 2. Responding to sexual harassment complaints or other discrimination complaints;
 3. Conducting investigations of sexual harassment complaints;

4. Advising employers on issues regarding discrimination, retaliation, and sexual harassment prevention.
5. Has been a member in a Human Resources related organization with a component of continuing education; local or national organization similar to Society for Human Resources Management (SHRM).

☐ **Subject Matter Professor or Instructor**

- A professor or instructor at a Law School, College, or University, with a Master's degree or teaching credential. In addition, they should have completed a minimum of 40 hours or more of live instruction or have two or more years of experience teaching about employment law.

Training Qualifications:

- A trainer must be qualified to train on the following:
 1. The definition of unlawful harassment, discrimination, and retaliation under both state and federal law;
 2. How to file a complaint about harassment;
 3. How an employer should respond to a harassment complaint
 4. What constitutes retaliation; how to prevent retaliation;
 5. The necessary components of an anti-harassment policy
 6. How to conduct an investigation when allegations of harassment occur
 7. The employer's obligation to conduct an investigation every time a harassment complaint occurs;
 8. The effect of harassment on employees, victims, co-workers, harassers, and employers

☐ **Non-qualified Trainer (Classroom & Webinar training):**

- Individuals who do not meet the qualifications outlined above (i.e. an attorney, human resource professional, harassment prevention consultant or professor/instructor) may "team-teach" with a qualified trainer in live classroom or web-based training sessions. This is only permitted if the qualified trainer supervises the non-qualified trainer and the qualified trainer is available throughout the entire training session to answer questions from attendees.

☐ **Visual Presentation Qualifications**

The course should be vetted by a qualified employment law attorney to ensure it is accurate, up-to-date, and meets compliance requirements for state and federal law in your jurisdiction(s). In some states, the training must have interactive components.

Training Content

This covers the various methods of training (live classroom, e-learning, webinar). Training content must contain the following:

☐ **Learning Objectives:**

- Assist employer in changing workplace behavior that potentially could constitute "sexual harassment," as defined under state and federal law

- Develop and encourage standards for supervisors who complete mandated training that will assist them in preventing and responding to allegations of sexual harassment, harassment and retaliation

❑ **Specific Content**

- The definition of sexual harassment under state and federal law
- The various forms of harassment (physical, verbal, visual)
- Relevant State (i.e. California Fair Employment and Housing Act, Maine Human Rights Act) and Federal (Title VII statutory provisions) laws concerning prohibition and prevention of sexual harassment, discrimination, and retaliation in the workplace
- Practical examples of what constitutes sexual harassment
- Strategies to prevent harassment
- The remedies available to harassed victims, such as filing a complaint
- The limited confidentiality of the complaint process
- Strategies to prevent sexual harassment in the workplace
- Resources for victims of unlawful sexual harassment
- The employer's obligation to conduct an effective workplace investigation on all harassment complaints
- What the supervisor should do if the supervisor is personally accused of harassment
- The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed

❑ **Interactive Elements**

- Practical examples of unwanted sexual harassment, such as scenarios drawn from existing case law, news, and media accounts or real investigations conducted by the trainer
- Hypothetical scenarios based on workplace situations which illustrate sexual harassment, discrimination, and retaliation using role playing and group discussion
- Quiz and test questions to assess the trainee's learning and keep supervisors engaged in the training
- Skill-building activities that assess the trainee's comprehension of reviewed content
- Anti-harassment Policy: Either the employer's existing policy or a sample policy must be provided to supervisors. Whether or not the employer policy is included in the training, the employer must give each supervisor a copy of its anti-harassment policy and require each supervisor to acknowledge receipt via signed acknowledgment.

❑ **Record Keeping Considerations: *Note-*** *Employer must retain evidence of the training such as a certificate of completion and/or sign in sheet. The burden is on the current employer to demonstrate the training requirement was fulfilled.*

- To avoid any mistakes or problems employers must retain the records for a minimum of two years after the employee leaves his or her employment at the organization. It's recommended that employers maintain all personnel training records for the complete duration the employee is employed. In some states employers may be required to keep a record of questions and answers relevant to the individuals training. Therefore, if the employer uses classroom or live webinar training, the employer needs to be sure it can locate the trainer and a copy of the training course if litigation arises. For eLearning training, employers must ensure they maintain a backup or archive of the training course.

New to California Employers: As of April 1, 2016, CA employers now have new amendments to the Fair Employment and Housing Act (FEHA) with additional regulations, expanding their compliance requirements for complying with California's sexual harassment training procedures under AB1825.

- The new amendments require the “qualified trainer” to teach on identifying behaviors that may fall under the harassment, discrimination, and retaliation for both federal and CA laws. They must also be trained on how to report all these types of behaviors and that they are obligated under the laws to do so once they are made aware of the behaviors occurring.
- Further requirements that are more strict, require the employer to track the compliance in all forms of training, eLearning, in-person training and live webinars including the trainers name, document all questions and answers, keep all sign-in sheets of attendees, keep all written tests, questions and handouts to the attendees and all discussion points, scenarios, and examples used during all formats of training. This record keeping further documents the interactive format of the training for the supervisors. These new requirements of documentation must be kept for 2 years from the date of the training.

Handouts

Employers are required to post information in common areas of the business as well as hand out information on the topic of sexual harassment prevention and how to report a complaint, concern or any information of relevance. HR departments should keep handouts readily available in the office area for employees to take upon request or for informational purposes.

- Employers must post the Department of Fair Employment and Housing (DFEH) employment **poster** (DFEH-162)
- Employers must distribute pamphlets or information sheets containing information on sexual harassment prevention to all employees. There are government-approved pamphlets available for purchase or you may develop your own version, as long as it contains the same information that meets the requirements of Government Code §12950(b). Employers may choose how they distribute the information to employees, as long the information reaches each employee. For example, the notice may be included with an employee's paystub.

Policy

Employers must provide all employees with a copy of the company's sexual harassment and discrimination prevention policy.

- Employers should ensure that each employee reads the policy and then signs an acknowledgment of the policy. This acknowledgment should be kept in the employee's personnel file.
- It is recommended that the employer should hold a meeting by shift and or department to verbally review the policy, engage in role playing or Q & A to cover the policy in depth

Conclusion

An employer who makes a good faith effort to adhere to state and federal laws and provides effective training to its employees and supervisors is in a better position than an employer who ignores the law. Employers who fail to train are not automatically liable in any action alleging sexual harassment or discrimination. The real penalty for employers who fail to provide adequate training is increased legal fees to defend the employer and litigate the claim, in addition to monetary damages awarded to the victim, should a harassment claim occur.

About Compliance Training Group

Compliance Training Group creates a safer workplace through education on such topics as sexual harassment prevention, substance abuse awareness, diversity & inclusion, conflict resolution, HIPPA, OSHA Safety, Violence in the Workplace Prevention, and many other Human Resources related topics. Our courses are available in Spanish and we also provide training materials for the hearing and vision impaired.

The degree to which misconduct remains unidentified is determined by how well employees are screened, trained, and supervised. Recognition, corrective action, and training are necessary steps to cultivating and preserving a healthy and productive workplace. Call us to receive a complimentary consultation and proposal for your training needs. Learn more about ways we can help your organization reduce liability, improve morale and increase profitability. We have no minimums, no contracts and a simple pay-as-you-go service.

Compliance Training Group is a division of Employers Choice Online, Inc., a provider of employment background screening and drug testing services, specializing in serving mid-market corporate and government clients.

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