

CALIFORNIA'S
MANDATORY
TRAINING

Can It Be
More Than Just
“Check the Box”
Training?

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CALIFORNIA'S MANDATORY TRAINING:

Can It Be More Than Just “Check the Box” Training?

BY CONSTANCE A. WALTERS, ESQ., ELI®

Most employers have become familiar with the California mandate that requires two hours of sexual harassment training every two years for the supervisors of organizations with fifty or more employees. Unfortunately, those in the business world often refer to such mandatory training as “check the box” training, relegating it to that which must be done but which will probably be ineffective at preventing and correcting sexually harassing behavior. Employers who want the sexual harassment training to be effective must look beyond fulfilling a requirement – simply checking a box – and insist on training that makes a difference in their workplace culture.

While the requirements of the California statute are specifically detailed and must be met in order for the training to be legally compliant, the content of the training can be designed and delivered in such a way that the training is effective, meeting not only the letter of the law but also the spirit of the law. However, this involves not only selecting the right training program, but also committing to the training as part of a larger initiative to create a positive, productive, and professional work environment. If the training occurs in a vacuum, viewed only as “that sexual harassment class supervisors have to attend every other year,” then

it will fall far short of preventing and correcting sexually harassing behavior.

All supervisors know that the important messages are those continuously repeated and enforced by their organizations. Accordingly, if an organization does not reinforce the training messages in a supervisor’s day-to-day work life, the training will have little effect. Ultimately, training dollars will have been wasted. Let’s face it: training budgets are tight. Organizations should direct those scarce budgets to training initiatives that not only meet statutory requirements, but, more importantly, that make a difference.

What content must be covered?

The content of a proposed training program is the first consideration when developing or selecting a training program that not only meets California’s mandatory training requirements, but also creates real change in the workplace. The California statute is extremely specific, requiring the content of the training to include the following elements:

- A definition of sexual harassment under federal and California state law

- Federal and California state law provisions and case law principles concerning the prevention of unlawful sexual harassment, discrimination, and retaliation
- Types of conduct that constitute sexual harassment
- Remedies available to victims
- Strategies to prevent sexual harassment in the workplace
- Realistic examples of sexual harassment
- Limited confidentiality of the complaint process
- Resources available to victims of sexual harassment
- Employer's obligation to investigate
- Training on what to do if the supervisor is personally accused of harassment
- Essential elements of an anti-harassment policy and its utilization

Training courses that cover these topics in creative and interactive ways tend to yield the most effective results. Merely regurgitating the law to managers results in minimal, if any, true learning. However, managers who encounter the content through an experiential learning format internalize the values, making them their own. As we all have experienced at one time or another, we learn best by doing, not by being told. Accordingly, training that challenges managers to work through harassment and discrimination situations – and possibly make a mistake – leaves an indelible impression on the mind of the learner. Furthermore, customized training that addresses the organization's specific work environment typically yields greater impact than generic training.

While the California statute only requires covered employers to provide training on sexual harassment, discrimination, and retaliation, it does allow the coverage of other areas of harassment and discrimination as well. For organizations that are committed to creating and maintaining a positive, productive, and professional work environment, good business practices should also include training on other forms of harassment and discrimination (e.g., race, age, national origin, disability, etc.). The victim of race discrimination will certainly feel no relief just because he or she was not also a victim of sexual harassment. Instead, organizations should educate against and provide relief for victims of any type of harassment and discrimination.

How should the training be delivered?

After determining the content of the training program, the next consideration should be how to best deliver the training to an organization's supervisors.

Fortunately, the California law is fairly flexible as to how companies can deliver the mandatory training. As long as the training is effective and interactive, it may be deployed in any of the following ways:

- Instructor-led
- Online
- Webinar

Certain requirements apply to each delivery method. For example, a trainer must deliver instructor-led training. The statute specifically defines the term "trainer" and generally includes an attorney, human resources professional, harassment prevention consultant, or law professor with at least two years of

experience in the field of sexual harassment. Online training must provide a link so that supervisors can ask questions of a trainer, and the trainer must be available to answer questions within two business days after the question is asked. Additionally, the online training must require at least two hours for completion.

A webinar must also be taught by a trainer. The participating supervisors must be able to ask questions and have them answered, and the employer must prove that supervisors who were not present in the room with the trainer were able to actively participate in the session.

No matter what delivery method the training incorporates, the instruction must include questions that assess learning, skill-building activities that assess the supervisor's understanding of content learned, and hypothetical scenarios about harassment. Additionally, with respect to all three delivery methods, a qualified trainer must develop the content of the training.

The delivery format that is most effective for your managers depends on a variety of factors, including learning styles and location. Some managers learn best by engaging in discussion with one another. These managers will benefit most from an instructor-led or webinar forum. Other managers prefer to receive all communication online and require the option to stop and re-start the training. For those managers, an e-learning delivery format best fits their needs.

The location of your managers also factors into the appropriate delivery format. For managers that are centrally located, an instructor-led format may be the best option, while an organization whose managers

work remotely may find an online or webinar delivery format more suitable. In any event, organizations should ultimately base their choices of delivery formats on how managers will learn most effectively, rather than on cost alone.

What should be done following the training?

The California law is fairly specific in its designation of what documentation to keep following the mandatory training. First, organizations must give each manager a copy of the organization's anti-harassment policy, and the managers must read and acknowledge receipt of the policy. Next, for a period of two years, organizations must keep the following information: name of the supervisory employee trained, the date of training, the type of training, and the name of the training provider.

While the California statute requires additional training every two years, effective training initiatives do not allow the lapse of two years without further emphasis on the concepts learned. In order for training to produce results, supervisors must know that their organization is committed to the principles taught. Organizations demonstrate that commitment by continually reinforcing the message, making it an integral part of the supervisors' day-to-day work lives. Finally, organizations must hold supervisors accountable for living the message and sharing it with their co-workers. When supervisors are not held accountable, the training simply becomes "check the box" training.

About the Author

As General Counsel, Ms. Walters serves as the subject matter expert for ELI's employment law training materials and is responsible for all legal matters. Ms. Walters also facilitates ELI® training and provides support to ELI's Certified Instructor Community™.

Prior to joining ELI®, Ms. Walters litigated employment law cases for more than eight years. Her practice concentrated on the defense of claims under federal anti-discrimination statutes and related state laws.

Ms. Walters received her J.D. from the University of Michigan School of Law, and received her Bachelor of Arts degree from Michigan State University. She serves as Co-Chair of the American Bar Association's (ABA) Compliance Training and Communication Subcommittee and is a member of the Georgia bar.

About ELI®

ELI® is a training company that teaches professional workplace conduct, helping clients translate their values into behaviors, increase employee contribution, build respectful and inclusive cultures, and reduce legal and ethical risk. Since the company's inception, more than one million people around the globe have participated in ELI® training, building practical skills that help bring to life their organization's commitment to civility, fairness, and professionalism in the workplace.

With expertise in helping organizations change individual behavior and transform their overall workplace cultures, ELI® provides clients with a best practice approach that can be tailored to their unique environment, industry, business issues, or other factors. Whether delivered online or in the classroom, ELI's behavior-driven training solutions are based on a proven learning methodology that focuses on outcomes that impact bottom-line business results. Rather than teaching simply what the law says, ELI® programs give individuals the skills they need to make a sustained difference back in the workplace. As a result, over the past two decades ELI® courses have been used to satisfy court-imposed settlements and consent decrees and have won numerous awards, including "Top Ten Training" designations from Human Resource Executive Magazine.



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