



# SEXUAL HARASSMENT PREVENTION TRAINING

## FAQ

**SB 1343** requires that all employers of 5 or more employees provide 1 hour of sexual harassment and abusive conduct prevention training to non-managerial employees and 2 hours of sexual harassment and abusive conduct prevention training to managerial employees once every two years. Existing law requires the training to include harassment based on gender identity, gender expression, and sexual orientation and to include practical examples of such harassment and to be provided by trainers or educators with knowledge and expertise in those areas. The bill also requires the Department to produce and post both training courses to its website, which employers may utilize instead of hiring a trainer.

An employer is required to train its California-based employees so long as it employs 5 or more employees anywhere, even if they do not work at the same location and even if not all of them work or reside in California.

Under the DFEH's regulations, the definition of "employee" for training purposes includes full-time, part-time, and temporary employees, unpaid interns, unpaid volunteers, and persons providing services pursuant to a contract (independent contractors).

**Click the below toolkit for additional tools, including a sample sexual harassment and abusive conduct prevention training:**

### SEXUAL HARASSMENT AND ABUSIVE CONDUCT PREVENTION TOOLKIT

■ **NEW UPDATE: By what date must employees be trained?**

All employees must now receive training by January 1, 2021<sup>1</sup>. Employers of 50 or more employees have an existing and ongoing obligation to train new supervisory employees within six months of assuming their supervisory position. Beginning January 1, 2021, new supervisory employees in workplaces of 5 or more employees must be trained within six months of assuming their supervisory position, and new non-supervisory employees must be trained within six months of hire. Employees must be retrained once every two years.

■ **NEW UPDATE: What if the employees are seasonal, temporary or otherwise work for less than six months?** Employers are required to provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first, beginning January 1, 2021<sup>2</sup>. Employers are not required to train employees who are employed for fewer than 30 calendar days and work for fewer than 100 hours.

- In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

■ **NEW UPDATE: When will the Department of Fair Employment and Housing's online training courses be available?** SB 1343 requires that DFEH make online training courses available on the prevention of sexual harassment and abusive conduct in the workplace. DFEH expects to have all trainings available by July 30, 2020. In the interim period, DFEH is offering a **SEXUAL HARASSMENT AND ABUSIVE CONDUCT PREVENTION TOOLKIT**, including a sample sexual harassment and abusive conduct prevention training. Employers may use the training in conjunction with an eligible trainer to provide sexual harassment and abusive conduct prevention training.

<sup>1</sup>SB 778 signed by Governor Newsom on 8/30/19 amended existing law to change deadline of harassment training until 1/1/2021.

<sup>2</sup>SB 530 signed by Governor Newsom on 10/10/19 amended existing law to change deadline to 1/1/2021 for seasonal and temporary worker harassment training compliance.

■ **Do employers need to train independent contractors, volunteers, and unpaid interns?**

No, it is not required that employers train independent contractors, volunteers, and unpaid interns. However, in determining whether an employer meets the threshold of having 5 employees and being subject to the harassment prevention training requirement, independent contractors, volunteers, and unpaid interns must be counted. For example, if an employer has 2 full time employees and 6 unpaid interns, the employer would meet the training threshold requirement and would need to ensure the two full time employees receive training only.

■ **What if a supervisor or non-supervisory employee has received the training in compliance with 12950.1 within the prior two years either from a current, a prior or alternate, or a joint employer? Do they have to retake the training again?**

No. Supervisors do not need to retake the training. But their new, alternate, or joint employer must give them the employer's antiharassment policy, require them to read it, and require them to acknowledge receipt of it. This must happen within six months of the supervisor assuming their new supervisory position (or within six months of the creation of a new business or the expansion of a business that was previously not required to provide training). However, the current employer is responsible for ensuring that all supervisors have fulfilled the training requirement contained in [12950.1](#), which may require verifying compliance from the prior, alternate, or joint employer.

For non-supervisory employees who received harassment prevention training in compliance with 12950.1 from another employer within the prior two years, they must be required to read and to acknowledge receipt of the current employer's antiharassment policy. Again, the current employer will be responsible for ensuring that all non-supervisory staff have fulfilled the training requirement contained in 12950.1, which may require verifying compliance from the prior, alternate, or joint employer.

■ **Does DFEH have a list of approved outside training providers, or can DFEH recommend or approve an outside training provider for my company to use?**

DFEH does not approve training providers. DFEH cannot offer recommendations or approvals for other training providers.

■ **I believe I may be eligible to become a trainer; how can I verify this?**

There is currently no certification requirement for qualified trainers, and DFEH is unable to provide guidance as to whether one meets the qualifications of a trainer. If you believe you meet the requirements found in [2 CCR 11024](#), you may choose to offer your services as a trainer.

■ **Does a trainer who is also an employee need to receive sexual harassment prevention training in order for their employer to be compliant?**

No. An individual who is a qualified training provider according to the regulations (and who does provide the training) does not need to participate in a separate sexual harassment prevention training for their employer to be in compliance with the training requirements.

■ **What documentation is required for those who have completed the training?**

The law requires employers to keep documentation of the training it has provided its employees for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider. Examples of tracking individual compliance include a certificate and/or a sign-in sheet that includes a verification that trainees completed the training. Documentation of the training should not be sent to DFEH but should be kept on the employer's premises.

■ **If I have employees located outside of California, are they required to be trained?**

No. While employees located inside and outside of California are counted in determining whether employers are covered under the Act, employees located outside of California are not themselves required to be trained.

■ **What is meant by “effective interactive training”?**

Effective interactive training can include any of the following:

- Classroom training that is in-person, trainer-instruction, whose content is created by a trainer and provided to a supervisor by a trainer, in a setting removed from the supervisor’s daily duties.
- E-learning that is individualized, interactive, computer-based training created by a trainer and an instructional designer that includes a link or directions on how to contact a trainer who shall be available to answer questions and to provide guidance within two business days after the question is asked.
  - The trainer shall maintain all written questions received, and all written responses or guidance provided, for a period of two years after the date of the response.
- Webinar training that’s an internet-based seminar whose content is created and taught by a trainer and transmitted over the internet or intranet in real time.
- Other “effective interactive training” and education includes the use of audio, video or computer technology in conjunction with classroom, webinar and/or e-learning training.

■ **If an employer utilizes a webinar as their effective interactive training, can the training be watched in a large group at the same time?**

Yes, but it is up to the employer to comply with the documentation procedures, including the following:

- An employer utilizing a webinar for its supervisors or non-supervisory employees must document and demonstrate that each supervisor and non-supervisory employee who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training’s interactive content, discussion questions, hypothetical scenarios, polls, quizzes or tests, and activities.
- The webinar must provide an opportunity for all employees to ask questions, to have them answered and otherwise to seek guidance and assistance.
- For a period of two years after the date of the webinar, the employer shall maintain a copy of the webinar, all written materials used by the trainer and all written questions submitted during the webinar, and document all written responses or guidance the trainer provided during the webinar.

■ **In addition to the training (and corresponding process and procedures), is there anything else required?**

Yes, every employer must post a poster developed by the Department regarding **TRANSGENDER RIGHTS** and **SEXUAL HARASSMENT** in a prominent and accessible location in the workplace.

■ **Does the employer have to pay for sexual harassment and abusive conduct prevention training? Does the employer have to provide paid time for such training?**

California law specifies that, “An employer.... shall provide” sexual harassment and abusive conduct prevention training. Gov. Code 12950.1(a)-(b). The Department is authorized to seek a court order that “the employer” has not complied with this requirement. Gov. Code 12950.1(f). This language makes clear that it is the employer’s – not the employee’s – responsibility to provide the required training, including any costs that may be incurred. This language also makes clear that employees may not be required to take such training during their personal time; the training must be “provided” by the employer as part of an individual’s employment.