

## **4/1/16 NEW Sexual Harassment Requirements**

Department of Fair Employment and Housing (DFEH)

On April 1, 2016, California will **require** employers **of 5 or more employees** in California to have a **written** policy against unlawful harassment, discrimination and retaliation in the workplace.

While the regulations do not include any penalties for failure to maintain a compliant policy, if an employee brings a claim of harassment, discrimination or retaliation, an employer may be subject to additional damages for that failure.

In addition to having the policy, the regulation requires you tell employees about the policy, and maintain records that you did in fact give them a copy of your policy. Being in a handbook, sitting on a shelf collecting dust isn't going to cut it. Specifically the regulation requires:

- Employers must provide employees with a copy of the written policy.
  - It may be provided in a written document with an acknowledgement for the employee to sign and return, or via e-mail with an acknowledgement return form. Employers using internal electronic communications or intranets may post the policy electronically, provided that the employer utilizes a tracking system to ensure employees read and acknowledge it.
  - Alternatively, employers may discuss the policy upon hire and/or during a new hire orientation session. As a side note, even if you don't currently have a policy all employees at time of hire should be receiving the DFEH-185 pamphlet "[Sexual Harassment is Forbidden by Law](#)"

If your workforce at any location contains 10% or more persons who speak a language other than English, *the policy must be translated into every language that is spoken by at least 10% of the workforce.*

### **Your written policy must contain very specific information including:**

The policy must list all of the protected categories under the Fair Employment and Housing Act: 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, and military and/or veteran status.

The written policy must make clear that contractors, unpaid interns and volunteers are protected under the policy.

The policy must prohibit unlawful harassment, discrimination, and retaliation by supervisors, managers and co-workers, as well as by third-parties such as vendors or customers.

Employers are now required to establish a complaint process and include information about that process in the written policy. Employees must be informed that they can complain either to their manager or via an alternative method of reporting complaints, which can be to

Human Resources or a neutral manager or supervisor, to a complaint hotline, to a designated ombudsperson, or to agencies such as the Department of Fair Employment and Housing or the EEOC.

The written policy must include information regarding the complaint process that includes statements regarding the extent to which a complaint or investigation will be kept confidential, a timely response to complaints, a timely and impartial investigation by a qualified person, documentation and tracking for reasonable progress, appropriate due process, a reasonable conclusion based on the evidence collected, appropriate options for remedial actions and resolutions, and timely closure.

The policy must direct supervisors to report any complaints of violations of the policy to Human Resources or another person in the company so that a prompt internal investigation may occur.

The policy must specify that anyone who complains of violations of the policy will not suffer any retaliation for bringing a complaint or participating in an investigation.

The new amendments to the Department of Fair Employment and Housing (DFEH) regulations also cover additional topics such as the definition of a "covered employer" under DFEH, rules regarding mandatory supervisor harassment prevention training, and clarifications regarding pregnancy disability leave.