



Board of Directors
Daniel C. Naumann, President
Michael W. Mobley, Vice President
Bruce E. Dandy, Secretary/Treasurer
Sheldon G. Berger
Robert Eranio
Lynn E. Maulhardt
Edwin T. McFadden III

General Manager
Mauricio E. Guardado, Jr.

Legal Counsel
David D. Boyer

MINUTES
SPECIAL BOARD MEETING
Thursday, July 11, 2019, 12:00 P.M.
Board Room, UWCD G.I. "Irv" Wilde Headquarters
106 North 8th Street, Santa Paula, California

DIRECTORS PRESENT

President Daniel C. Naumann
Vice President Michael W. Mobley
Secretary/Treasurer Bruce E. Dandy
Director Robert Eranio
Director Edwin T. McFadden, III

DIRECTORS ABSENT

Director Sheldon Berger
Director Lynn Maulhardt

STAFF PRESENT

David D. Boyer, Legal Counsel
Brian Collins, Operations and Maintenance Manager
Kris Sofley, Executive Assistant/Clerk of the Board

PUBLIC PRESENT

Dennis Timoney, ARM, SDRMA Chief Risk Officer

1. FIRST OPEN SESSION 12:00 P.M.

President Naumann called the meeting to order at 12p.m.

1.1 Public Comments

Information Item

President Naumann asked if any members of the public wished to address the Board on any matter on the agenda. No public comments were offered.

1.2 Sexual Harassment Prevention Training

Information Item

SDRMA's Dennis Timoney provided two hours of live instruction in compliance with AB 1825 (Government Code §12950.1), which requires that employers having 50 or more employees shall provide at least two hours of training regarding sexual harassment to all supervisory employees in California every two years. An employer shall also include prevention of abusive conduct as a component of the training.

1.3 Biennial AB 1234 Training

Information Item

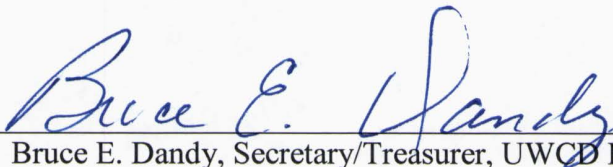
SDRMA's Dennis Timoney provided two hours of live instruction in compliance with AB 1234 (Government Code §53235 *et seq.*), which requires elected and appointed officials and designated employees to take at least two hours of training in general ethics principles and ethics laws relevant to public service at least every two years if they receive compensation for their service or are reimbursed for their expenses.

2. ADJOURNMENT 4:02p.m.

President Naumann adjourned the Special Board meeting at 4:02p.m. to the next **Regular Board Meeting scheduled for Wednesday, September 11, 2019** or call of the President.

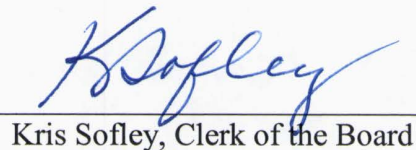
I certify that the above is a true and correct copy of the minutes of the United Water Conservation District's Special Board of Directors meeting of July 11, 2019.

ATTEST:




Bruce E. Dandy, Secretary/Treasurer, UWCD Board of Directors

ATTEST:



Kris Sofley, Clerk of the Board



AB 1234 ETHICS TRAINING

United Water Conservation District

July 11, 2019

Maximizing Protection. Minimizing Risk.

AB 1234 ETHICS TRAINING


Presented By

- *Dennis Timoney
SDRMA Chief Risk Officer

SDRMA is a not-for-profit Joint Powers Authority (JPA) formed in 1986 under California Government Code 6500 et. seq. to provide risk management services for public agencies. Currently SDRMA administers two programs:

- Property/Liability – 504 Members
- Workers’ Compensation - 433 Members

Dennis has 30 years of professional claims and risk management experience.



AB 1234 ETHICS TRAINING

Introduction

On October 7, 2005, the Governor signed Assembly Bill No. 1234. AB 1234 requires that if a local agency provides any type of compensation, salary, or stipend to, or reimburses the expenses of a member of its 'legislative body' (as that term is defined in California Government Code Section 54952), that local agency's officials must receive training in ethics.

This will be a two hour interactive presentation.



AB 1234 ETHICS TRAINING

Definitions

§ 82048 (a)

*"Public official" means every member, officer, employee or consultant of a state or local government agency.

§ 82020. Elected Officer.

*"Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

§ 82023. Elective Office.

*"Elective office" means any state, regional, county, municipal, district or judicial office which is filled at an election. "Elective office" also includes membership on a county central committee of a qualified political party, and members elected to the Board of Administration of the Public Employees' Retirement System.



AB 1234 ETHICS TRAINING

Definitions

§ 82041. Local Government Agency.

*“Local government agency” means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.



AB 1234 ETHICS TRAINING

AB 1234

All Public officials receiving expense reimbursement and compensation for their service. As mandated by AB 1234, all elected and appointed officials are required to take two hours of ethics training every two years. Employees are covered by AB 1234 requirements only to the extent so designated by their governing bodies.

Ethics Issues:

- *Personal Financial Gain
- *Gift and Travel Restrictions
- *Financial Disclosure Requirements
- *Fair Contract and Due Process Requirements



AB 1234 ETHICS TRAINING

There are four significant core ethical principles all public officials must understand and implement.

1. Public offices cannot be used for personal financial gain.
2. Holding public office does not entitle anyone to personal advantages and perks.
3. The public's business must be conducted openly.
4. Fair processes and merit based decision making create an environment of good governance and service to the public.



AB 1234 ETHICS TRAINING

Personal Financial Gain

* § 1090. Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.



AB 1234 ETHICS TRAINING

* § 1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.



AB 1234 ETHICS TRAINING

Government Code section 8920, the Code of Ethics, applies to state elected and appointive officers. It does not apply to civil service employees. The Code of Ethics generally prohibits officers from participating in decisions that will have a direct monetary effect on them.

Specifically, the Code of Ethics prohibits officers from:

- * Having any direct or indirect financial interest, or
- * Engaging in any business transaction or professional activity, or incurring any financial obligation, or
- * If to do so would be in substantial conflict with the proper discharge of the official's duties.



AB 1234 ETHICS TRAINING

* § 1098. (a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.



AB 1234 ETHICS TRAINING

Recognizing the economic interests from which conflicts of interest may arise is the most important step in complying with the law. The Act's conflict-of-interest provisions apply only to conflicts that arise from the five types of economic interests listed below:

- * Business entities
- * Real property
- * Sources of income to the public official
- * Sources of gifts to the public official
- * The "personal financial effects" rule



AB 1234 ETHICS TRAINING

- * Local public officials must file statements of economic interests. (Form 700)
Other officials or employees of state and local government agencies also must file statements of economic interests if they are "designated" in a conflict of interest code adopted by the agency for which they work. Each agency must adopt a conflict of interest code which designates all its officials or employees who make or participate in governmental decisions which could cause conflicts of interest.
- * The Political Reform Act requires public officials at all levels of government to publicly disclose their private economic interests and to disqualify themselves from participating in decisions in which they have a financial interest.



AB 1234 ETHICS TRAINING

A public official or employee has a conflict of interest when all of the following occur:

1. The official makes, participates in, or uses his or her official position to influence a governmental decision;
2. It is foreseeable that the decision will affect the official's economic interest;
3. The effect of the decision on the official's economic interest will be material;
4. The effect of the decision on the official's economic interest will be distinguishable from its effect on the public generally.



AB 1234 ETHICS TRAINING

Conflict of Interest

§ 87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

§ 87460. (a) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.



AB 1234 ETHICS TRAINING

Disclosing Economic Interest

- * Business Investments of \$2,000 or more;
- * Business management positions in for profit entities;
- * Real property interests of \$2,000 or more;
- * Sources of income of \$500 or more;
- * Sources of gifts of \$470 or more;
- * Personal financial effects.



AB 1234 ETHICS TRAINING

Disclosing Economic Interest

- *A public official has an economic interest in sources of *income* to the official. A source of income to a public official is anyone, whether an individual, business entity or an organization, that provides or promises \$500 or more in income to the official within 12 months prior to the government decision-in-question.
- *Source of Income to the Official's Spouse In California, a public official has a community property interest in his or her *spouse's* income. Therefore, a person or entity that provides income to an official's spouse *may* be a source of income to the public official, as well.



AB 1234 ETHICS TRAINING

The Political Reform Act conflict-of-interest rules apply only to public officials as they are making, participating in making, or influencing a governmental decision. Following is a list of situations in which the Act's conflict-of-interest rules apply.

- * The public official makes a governmental decision like voting or making an appointment.
- * The public official participates in making a governmental decision such as giving advice or making recommendations to the decision maker.
- * The public official influences a governmental decision by communicating with the decision maker.



AB 1234 ETHICS TRAINING

Gift Restrictions § 89503

- * A public official may not accept gifts from any single source totaling more than \$470 in a calendar year.
- * A 'gift' includes any payment or other benefits conferring a personal benefit for which the public official does not provide goods or services of equal or greater value.
- * A rebate or discount not regularly available to members of the public is also considered a gift.
- * A gift has been received or accepted when the official takes actual possession of the gift or exercises direction or control over the gift, including discarding the gift or turning it over to another person.



AB 1234 ETHICS TRAINING

Honoraria

- * § 89501. (a) For purposes of this chapter, "honorarium" means, except as provided in subdivision (b), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.
- * § 89502. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.



AB 1234 ETHICS TRAINING

Travel

Gifts of travel are particularly tricky. As a general rule, transportation, lodging and accommodations are covered by the gift limit. However, there are a number of exceptions.

When an official makes a speech, conducts a seminar or serves on a panel held within California, payments or reimbursements for certain items are not gifts. Following is a list of these exceptions.

- * Transportation to and from an event within California
- * Food and beverages at the event
- * “Necessary” lodging and accommodations in connection with the event



AB 1234 ETHICS TRAINING

Contracts

*An official participates in the making of a contract if the official is involved with its preparation at any stage in the process. The contract-making process begins at the time the idea for the contract is conceived and continues through the actual execution of the contract. That means that planning, determining the scope of the contract, drafting plans and specifications, setting contract terms, evaluating applicants, and negotiating are all included.

*Officials may avoid a violation of section 1090 by disqualifying themselves from participation in the making of the contract **whenever they have a financial interest in the contract.**



AB 1234 ETHICS TRAINING

Contracts

*Public Contract Code section 10410 imposes additional conflict-of-interest restrictions concerning state contracts and contractors. This section contains two separate prohibitions. First, there is a general ban on state officers and employees from having economic interests in state contracts. Second, there is a separate ban against state officers and employees acting as independent contractors with state agencies.

*Section 10410 specifically prohibits a state officer or employee from contracting on his or her own behalf with a state agency as an independent contractor to provide goods or services.



AB 1234 ETHICS TRAINING

*Government Code section 87406 places a one-year ban on former state government officials from contacting specified government agencies. Former officials may not accept compensation to act as the agent, attorney or representative of another person for purposes of influencing specified government agencies through oral or written communications.



AB 1234 ETHICS TRAINING

The Brown Act

The Brown Act (Ralph M. Brown Act) is found in California Government Code beginning at § 54950. The Act requires governmental agencies to conduct business at open and public meeting at which time the public may address their specific concerns.

§ 54950

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.



AB 1234 ETHICS TRAINING

WHO'S COVERED

***Local agencies**, including counties, cities, school and special districts.

(§ 54951)

***"Legislative bodies"** of each agency--the agency's governing body plus "covered boards," that is, any board, commission, committee, task force or other advisory body created by the agency, whether permanent or temporary.

(§ 54952(b))

*Any **standing committee** of a covered board, regardless of number of members. (§ 54952(b))



AB 1234 ETHICS TRAINING

WHO'S COVERED

* Newly-elected members of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office. Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.



AB 1234 ETHICS TRAINING

* All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

What is not a "Meeting":

The Brown Act creates six exceptions to the meeting definition:

- * *Individual Contacts*
- * *Conferences*
- * *Community Meetings*
- * *Other Legislative Bodies*
- * *Standing Committees*
- * *Social or Ceremonial Events*



AB 1234 ETHICS TRAINING

Brown Act gatherings include a legislative body's regular meetings, special meetings, emergency meetings and adjourned meetings.

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings.



AB 1234 ETHICS TRAINING

- * "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.
- * "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.



AB 1234 ETHICS TRAINING

- *Every regular meeting of a legislative body of a local agency—including advisory committees, commissions, or boards, as well as standing committees of legislative bodies—must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.
- *The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.” The courts have not definitively interpreted the “freely accessible” requirement.
- *The California Attorney General has interpreted this provision to require posting in locations accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.



AB 1234 ETHICS TRAINING

- *California Senate Bill 751, recently signed into law, will require all legislative bodies to publicly report any action taken in any meeting, and the vote or abstention on that action of each member present. The bill is effective January 1, 2014. In order to comply with these requirements, legislative bodies must verify the vote or abstention of each member, and publicly announce the action taken and the vote or abstention of each member in attendance. This information should also be noted in the minutes. As a practical matter, votes may need to be taken by roll call or in another manner that allows verification of the vote of each member in order to comply with the requirements of SB 751.



AB 1234 ETHICS TRAINING

- * There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.
- * Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.



AB 1234 ETHICS TRAINING

- * The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?
- * While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda.



AB 1234 ETHICS TRAINING

Closed Meetings

- Closed meetings are the exception and permitted only if they meet defined purposes and follow special requirements (§ § 54954, 54954.2, 54954.5, 54957.7).

Even at Closed Meetings...

- Special public notice and agenda requirements apply (§ § 54954, 54954.2, 54954.5, 54957.7).
- All actions taken and all votes in closed session must be publicly reported orally or in writing within 24 hours (§ 54957.1(b)), and copies of any contracts or settlements approved must be made available promptly (§ 54957.1(b),(c)).



AB 1234 ETHICS TRAINING

CLOSED MEETINGS MAY BE HELD FOR:

Personnel -- Only to discuss the appointment, employment, performance evaluation, discipline, complaints about or dismissal of a specific employee or potential employee (§ 54957).

- * The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception. That authority may be delegated to a subsidiary appointed body.
- * An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her.



AB 1234 ETHICS TRAINING

CLOSED MEETINGS MAY BE HELD FOR:

***Pending Litigation** -- Only if open discussion "would prejudice the position of the agency in the litigation." The litigation must be named on the posted agenda or announced in open session unless doing so would jeopardize the board's ability to service process on an unserved party or conclude existing settlement negotiations to its advantage. (§ 54956.9).

Existing litigation

Threatened litigation against the Public Entity

Initiation of litigation by the Public Entity

***Labor Negotiations**

***Property Negotiations**

***Others** -- License applications for people with criminal records (§ 54956.7); threats to public services or facilities; (§ 54957) insurance pooling (§ 54956.95)).



AB 1234 ETHICS TRAINING

Public Records Act

*The public may inspect or obtain a copy of identifiable public records. Writings held by state or local government are public records. A writing includes all forms of recorded information that currently exist or that may exist in the future.

*To the extent reasonable, agencies are generally required to assist members of the public in making focused and effective requests for identifiable records. One legislatively-approved method of providing assistance is to make available an index of the agency's records. A request for records may be made orally or in writing.

*When a person seeks a record in an electronic format, the agency shall, upon request, make the information available in any electronic format in which it holds the information. Computer software developed by the government is exempt from disclosure



AB 1234 ETHICS TRAINING

- *The CPRA entitles natural persons and business entities as members of the public to inspect public records in the possession of government agencies.
- *Records may be inspected at an agency during its regular office hours.
- *A person need not give notice in order to inspect public records at an agency's offices during normal working hours. However, if the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions.
- *When a copy of a record is requested, the agency shall determine within ten days whether to comply with the request, and shall promptly inform the requester of its decision and the reasons therefor.



AB 1234 ETHICS TRAINING

- *Under specified circumstances, the CPRA affords agencies a variety of discretionary exemptions which they may utilize as a basis for withholding records from disclosure. These exemptions generally include personnel records, investigative records, drafts, and material made confidential by other state or federal statutes. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure.
- *When an agency withholds a record because it is exempt from disclosure, the agency must notify the requester of the reasons for withholding the record. However, the agency is not required to provide a list identifying each record withheld and the specific justification for withholding the record.



AB 1234 ETHICS TRAINING

EXCEPTIONS

- * Personnel, medical or similar record generally refers to intimate or personal information which an individual is required to provide to a government agency frequently in connection with employment.
- * Disclosure Would Constitute An Unwarranted Invasion Of Privacy
- * Preliminary Notes, Drafts and Memoranda
- * Investigative records
- * Intelligence Information
- * Pending Claims and Litigation
- * Attorney-Client Privilege
- * Attorney Work Product
- * Official Information



AB 1234 ETHICS TRAINING


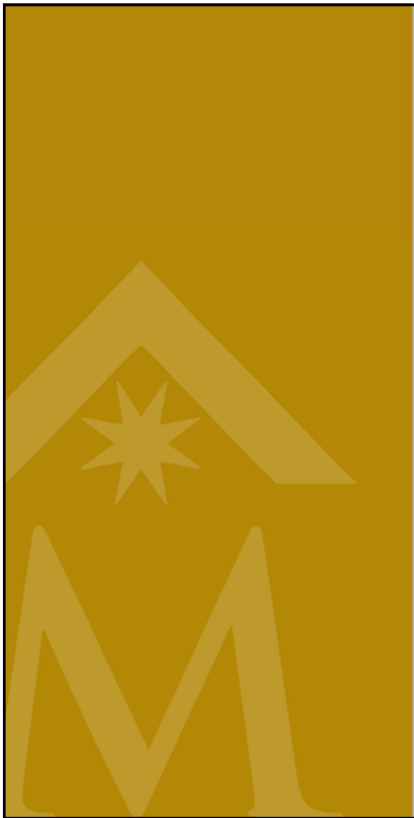
THANK YOU FOR YOUR PARTICIPATION TODAY

For further information please contact:

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A Proud California Special Districts
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Harassment Prevention Training
United Water Conservation District



AB 1825 HARASSMENT PREVENTION TRAINING

PRESENTED BY



Dennis Timoney, ARM
SDRMA Chief Risk Officer

Dennis supervises the SDRMA Property/Liability and Workers' Compensation claims operations. In addition, Dennis provides Safety and Risk Management training to Member agencies.

Currently there are 508 Member agencies in the Property/Liability Program and 442 Member agencies in the Workers' Compensation Program.



AB 1825 HARASSMENT PREVENTION TRAINING

This will be a two hour, interactive training session.

Questions are welcomed.



AB 1825 HARASSMENT PREVENTION TRAINING

WHAT EXACTLY IS THE LAW?

Existing law makes specific employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Existing law further requires every employer to act to ensure a workplace free of sexual harassment by implementing certain minimum requirements, including posting sexual harassment information posters at the workplace and obtaining and making available an information sheet on sexual harassment.



AB 1825 HARASSMENT PREVENTION TRAINING

WHAT'S NEW IN 2019

On September 30, 2018, Governor Jerry Brown approved [SB 1343](#), which amends Government Code § § 12950 and 12950.1, greatly expanding the requirements for providing anti-harassment training. Previously, only supervisors were required to be trained and only for companies with 50 or more employees. However, the new law requires that **both** supervisors and employees be trained every two years for any company with five or more employees. While there are many questions still outstanding as to the practical implementation of this new law, the Department of Fair Employment and Housing's (DFEH) currently published interpretation is that **ALL** employees must be trained in calendar year 2019, even if the company provided training in calendar year 2018.



AB 1825 HARASSMENT PREVENTION TRAINING

WHAT'S NEW IN 2019

Highlights of the new law include:

By January 1, 2020, California employers **with five or more employees** are required to provide: (1) at least **two hours** of classroom or other effective training and education regarding sexual harassment prevention to **supervisory employees**; and (2) **one hour** of sexual harassment prevention training and education to **nonsupervisory employees**. New employees must be trained within six months of hire.

On or after January 1, 2020, in addition to regular employees, employers will also be required to provide temporary or seasonal employees with sexual harassment prevention training **within 30 calendar days after the hire date or within 100 hours worked**, if the employee is expected to work for less than six months. If the temporary employee is provided by a temporary services employer, training must be provided by the temporary services employer, not the client.



AB 1825 HARASSMENT PREVENTION TRAINING

WHAT'S NEW IN 2019

The Fair Employment and Housing Act was amended to make it an **unlawful practice for an employer to require an employee to release a FEHA claim in exchange for a bonus, raise, or continued employment.** FEHA now also makes employers liable for any kind of unlawful harassment by non-employees (not just for sexual harassment as under existing law) where the employer knew or should have known of the harassment and failed to take appropriate remedial action.



AB 1825 HARASSMENT PREVENTION TRAINING

WHAT'S NEW IN 2019

Also, settlement agreements entered into after January 1, 2019 **cannot prevent disclosure of factual information about claims of sexual assault, sexual harassment, gender discrimination or related retaliation** that have been filed in court or before an administrative agency (but does not apply to settlements reached before any filing). The parties may limit disclosure of the amount of a settlement. And the claimant can request that the agreement protect his or her identity (and facts that would lead to the discovery of his or her identity).



AB 1825 HARASSMENT PREVENTION TRAINING

DEFINE EMPLOYER

"Employer" means any of the following:

(A) any person engaged in any business or enterprise in California, who employs 50 or more employees to perform services for a wage or salary or contractors or any person acting as an agent of an employer, directly or indirectly.

(B) the state of California, counties, and any other political or civil subdivision of the state and cities, **regardless of the number of employees.** For the purposes of this section, governmental and quasi-governmental entities such as boards, commissions, local agencies and special districts are considered "political subdivisions of the state."



AB 1825 HARASSMENT PREVENTION TRAINING

EMPLOYER LIABILITY

Employers are strictly liable for harassment by their supervisors or agents. The harasser can be held personally liable for damages. Additionally, Government Code section 12940, subdivision (k), requires an entity to take "all reasonable steps to prevent harassment from occurring."

If an employer has failed to take such preventative measures, that employer can be held liable for the harassment. A victim may be entitled to monetary damages even though no employment opportunity has been denied and there is no actual loss of pay or benefits.



AB 1825 HARASSMENT PREVENTION TRAINING

FORMS OF SEXUAL HARASSMENT

Quid Pro Quo

Quid pro quo harassment occurs when employment decisions or expectations (hiring, promotions, salary increases, shift or work assignments, performance standards, access to recommendations) are based on an employee submission to or rejection of sexual advances, requests for sexual favors, or other behavior of a sexual nature. These cases involve tangible actions that adversely affect the conditions of work.

Supervisor/Manager – **Strict Liability**

A supervisor/manager is anyone who, exercising independent judgment, directs other employees, or has the authority (or recommends when) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, adjust grievances, or discipline other employees.



AB 1825 HARASSMENT PREVENTION TRAINING

EXAMPLES OF UNLAWFUL SEXUAL HARASSING BEHAVIOR

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct: leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters
- Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations, emails, Facebook, Snapchat, Instagram, etc.
- Physical conduct: touching, assault, impeding or blocking movements



AB 1825 HARASSMENT PREVENTION TRAINING

WORK ENVIRONMENT/HARASSMENT

Occurs when unwelcome comments or conduct based on sex or other protected class unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

Hostile environment / sexual harassment is "unwelcome conduct that is sufficiently severe or pervasive to alter the conditions of the employee's employment and to create an intimidating, oppressive, hostile, abusive or offensive work environment, or otherwise interfere with the victim's emotional well-being or ability to perform his/her work."



AB 1825 HARASSMENT PREVENTION TRAINING

WHO IS CONSIDERED A SUPERVISOR?

The California Fair Employment and Housing Act's (FEHA's) definition of "supervisor" is broad and up to interpretation; it covers many employees who don't necessarily have "manager" in their title. FEHA's definition states a supervisor is any individual whom possesses the authority "to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them...if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment". This definition depends solely on how an employee carries out their job responsibilities, not on an individual's exempt or non-exempt status.



AB 1825 HARASSMENT PREVENTION TRAINING

LEGAL ELEMENTS OF HARASSMENT/HOSTILE WORK ENVIRONMENT

The victim himself/herself must perceive the work environment as hostile or abusive. A reasonable person would find the environment to be hostile or abusive. Consider age, gender, work experience, education, and life experiences.

This law specifically provides protection from harassment or discrimination in employment because of:

Age (40 and over)

Ancestry

Color

Religious Creed (including religious dress and grooming practices)

Denial of Family and Medical Care Leave

Disability (mental and physical) including HIV and AIDS

Marital Status



AB 1825 HARASSMENT PREVENTION TRAINING

LEGAL ELEMENTS OF HARASSMENT/HOSTILE WORK ENVIRONMENT

This law specifically provides protection from harassment or discrimination in employment because of:

Medical Condition (cancer and genetic characteristics)

Genetic Information

Military and Veteran Status

National Origin (including language use restrictions)

Race

Sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding)

Gender, Gender Identity, and Gender Expression

Sexual Orientation



AB 1825 HARASSMENT PREVENTION TRAINING

FORMS OF HARASSMENT/HOSTILE WORK ENVIRONMENT

“Abusive Conduct” means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and **unrelated to an employer’s legitimate business interests**.

Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.



AB 1825 HARASSMENT PREVENTION TRAINING

ABUSIVE CONDUCT

Currently, there is no law in California that makes workplace bullying or “abusive conduct” as defined in AB 2053 illegal. The policy reason behind not making such conduct illegal is that it would be difficult to determine what conduct is simply discipline, counseling, and day-to-day management actions versus actions taken with “malice” by a manager.

Making such conduct actionable under the law would, in effect, make the court system the final decision maker in resolving normal day-to-day workplace disputes, which could stress the already overwhelmed court system.



AB 1825 HARASSMENT PREVENTION TRAINING

EMPLOYER REQUIREMENTS

While employers have had a duty to take “reasonable steps” to prevent and correct discriminatory and harassing conduct, the adequacy of those reasonable steps will now be evaluated based on factors such as an employer’s workforce size, budget, the nature of its business, and the facts of a particular case.



AB 1825 HARASSMENT PREVENTION TRAINING

NEW AND UPDATED DEFINITIONS

Although the new regulations concerning written employer policies are the most significant, the regulations also provide new and updated definitions of certain protected categories. Specifically:

“Sex” has been redefined to be consistent with the definition in FEHA, that is, to include (but not be limited to): pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breast feeding; gender identity; and gender expression.

“Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression.



AB 1825 HARASSMENT PREVENTION TRAINING

NEW AND UPDATED DEFINITIONS

“Gender expression” means a person’s gender-related appearance or behavior, whether or not stereotypically associated with the person’s sex at birth.

“Gender identity” means a person’s identification as male, female, a gender different from the person’s sex at birth, or transgender.

“Transgender” refers to a person whose gender identity differs from the person’s sex at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”



AB 1825 HARASSMENT PREVENTION TRAINING

EMPLOYER REQUIREMENTS

As of April 1, 2016 every California employer must have a harassment, discrimination, and retaliation prevention policy that:

- (a) is in writing,
- (b) lists all current protected categories under the Fair Employment & Housing Act,
- (c) specifies that employees are protected from illegal conduct from any workplace source, including third parties who are in the workplace,
- (d) creates a confidential complaint process that ensures a timely response, impartial investigation by qualified personnel, documentation and tracking, appropriate remedial actions and resolutions, and timely closure,



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EMPLOYER REQUIREMENTS

- (e) informs employees about several avenues of complaint other than to a direct supervisor,
- (f) requires supervisors to report any complaints of misconduct to a designated company representative, and
- (g) makes clear that employees will not be exposed to retaliation as a result of making a complaint or participating in any workplace investigation.



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EMPLOYER REQUIREMENTS

To ensure that employees know about the policy and mandated procedures, employers may publicize the policy through various means, including providing a copy of the policy upon hire, posting it in the workplace, and obtaining a written acknowledgment from each employee who receives the policy. Further, if the workforce contains persons whose spoken language is a language other than English, then the employer must translate the policy into every language that is spoken by at least 10 percent of the workforce.



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EMPLOYER DUTIES

Create a complaint process to ensure that 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;

Provides a complaint mechanism that permits employees to complain to someone other than his or her immediate supervisor, such as a designated company representative (including a human resources manager, EEO officer, or other supervisor), a complaint hotline, an ombudsperson, or identification of the California Department of Fair Employment and Housing (“DFEH”) and the U.S. Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints;



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EMPLOYER DUTIES

- Assures employees that if the employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation in a manner that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected;
- States that confidentiality will be kept by the employer to the extent possible, but not that an investigation will be completely confidential;
- Instructs supervisors to report complaints of misconduct to a designated company representative, such as a human resources manager;
- Indicates that if misconduct is found after investigation, appropriate remedial measures shall be taken; and
- Confirms that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation.



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EMPLOYER DUTIES

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

(1) providing a printed copy to all employees with an acknowledgement form for the employee to sign and return; (2) sending the policy via email to all employees with an acknowledgement return form; (3) posting the current versions of the policies on a company intranet with a tracking system to ensure that all employees have read and acknowledged receipt of the policies; (4) discussing the policy upon hire and/or during a new hire orientation session; and/or (5) any other way that ensures employees receive and understand the policy. Employers must translate the written policy into every language that is used as the “spoken language” by at least 10 percent of the workforce at any facility or establishment.



AB 1825 HARASSMENT PREVENTION TRAINING

LEGAL DEFINITIONS

The amended regulations define several terms regarding gender discrimination, such as **gender expression** (a person’s gender-related appearance or behavior, whether or not stereotypically associated with the person’s sex at birth), **gender identity** (a person's identification as male, female, a gender different from the person’s sex at birth, or transgender), and **transgender** (a general term for a person whose gender identity differs from the person’s sex at birth). The regulations also remind us that gender discrimination includes **sex stereotyping** (relying on assumptions about a person’s appearance or behavior, or making assumptions about an individual’s ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual’s gender).



AB 1825 HARASSMENT PREVENTION TRAINING

PROTECTIONS FOR UNPAID INTERNS AND VOLUNTEERS

The amendments include protections against discrimination and harassment for unpaid interns and volunteers as follows:

Define unpaid interns and volunteers as “any individual (often a student or trainee) who works without pay for an employer or other covered entity, in any unpaid internship or another limited duration program to provide unpaid work experience, or as a volunteer. Unpaid interns and volunteers may or may not be employees.”

Make it unlawful for an employer to discriminate against unpaid interns in the selection, termination, training, or other terms or treatment of those individuals on any basis protected by the FEHA. Make it unlawful for unpaid interns, volunteers, and persons providing services pursuant to a contract to be subjected to unlawful harassment in the workplace on any basis protected by the FEHA.



AB 1825 HARASSMENT PREVENTION TRAINING

EMPLOYER DUTIES

AB 1661, Local government: sexual harassment prevention training and education.

Existing law requires all local agency officials to receive training in ethics, at specified intervals, if the local agency provides any type of compensation, salary, or stipend to those officials. Existing law also requires any civil or political subdivision of the state and all cities to provide at least 2 hours of training and education regarding sexual harassment to all supervisory employees, as specified.

This bill additionally requires local agency officials, as defined, to receive sexual harassment prevention training and education if the local agency provides any type of compensation, salary, or stipend to those officials, and would allow a local agency to require employees to receive sexual harassment prevention training or information.



AB 1825 HARASSMENT PREVENTION TRAINING

NEW LAWS FOR 2019

[Senate Bill 820](#) prohibits confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct – unless the party alleging the harm desires confidentiality language to protect his or her identity. The bill, which adds Section 1001 to the California Code of Civil Procedure, renders void as against public policy any provision in a settlement agreement that prevents the disclosure of factual information regarding sexual assault, sexual harassment (as defined in Section 51.9 of the Civil Code), workplace harassment or discrimination based on sex (as described in Section 12940 of the Government Code), along with failure to prevent, or retaliation for reporting, harassment or discrimination based on sex.



AB 1825 HARASSMENT PREVENTION TRAINING

NEW LAWS FOR 2019

SB 1300

The California Fair Employment and Housing Act (FEHA) prohibits various actions as unlawful employment practices unless the employer acts based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California. In this regard, FEHA makes it an unlawful employment practice for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to engage in harassment of an employee or other specified person. FEHA also makes harassment of those persons by an employee, other than an agent or supervisor, unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.



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NEW LAWS FOR 2019

SB 1300

Under FEHA, an employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees and other specified persons, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

This bill would specify that an employer may be responsible for the acts of nonemployees with respect to other harassment activity.



AB 1825 HARASSMENT PREVENTION TRAINING

NEW LAWS FOR 2019

[Senate Bill 1300](#) decrees that a single incident of harassing conduct is sufficient to create a triable issue of hostile work environment if the conduct interfered with a plaintiff's work performance or otherwise created an intimidating, hostile, or offensive work environment.

(a) The purpose of these laws is to provide all Californians with an equal opportunity to succeed in the workplace and should be applied accordingly by the courts. The Legislature hereby declares that harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being.



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NEW LAWS FOR 2019

(d) The legal standard for sexual harassment should not vary by type of workplace. It is irrelevant that a particular occupation may have been characterized by a greater frequency of sexually related commentary or conduct in the past. In determining whether or not a hostile environment existed, courts should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties. The Legislature hereby declares its disapproval of any language, reasoning, or holding to the contrary in the decision *Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191.

(e) Harassment cases are rarely appropriate for disposition on summary judgment. In that regard, the Legislature affirms the decision in *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243 and its observation that hostile working environment cases involve issues “not determinable on paper.”



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