

# California's AB 1825 Sexual Harassment Training Mandates

---



AB 1825 (California's sexual harassment training law) is the first law of its kind to actually detail the requirements for effective compliance training, setting the standard not only for California, but for the rest of the country as well.

ELT's interactive sexual harassment training course exceeds the stringent AB 1825 California sexual harassment training requirements, as well as those detailed under Federal Law and other states, such as Connecticut and Maine.

## Basic Provisions of California's AB 1825

### Two Hours of Training Every Two Years

The deadline for the first round of AB 1825 training was December 31, 2005. Thereafter, employers must provide two hours of sexual harassment training to each supervisory employee, every two years.

### 50 or More Employees

AB 1825 applies to organizations that regularly employ 50 or more employees or regularly "receive the services of" 50 or more persons. (Independent contractors and temps are included in the 50+ number.)

### New Hires and Promotions

New supervisory employees must be trained within six months of their assumption of a supervisory position, and thereafter, every two years.

### High Quality Training Required

The training mandated by California's AB 1825 must be of a high quality, conducted via "classroom or **other effective interactive training**" and must include the following topics:

- Information and practical guidance regarding federal and state statutory laws about sexual harassment.
- Information about the correction of sexual harassment and the remedies available to victims of sexual harassment.

- Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.

## Failure to Comply Opens the Door to Harassment Lawsuits

A claim that an employer failed to provide AB 1825-mandated sexual harassment training does not automatically result in the liability of an employer for harassment. Plaintiffs will argue, however, that the failure to meet the new training mandates is evidence of an employer's failure to take all reasonable steps to prevent sexual harassment.

### **Retaliation and First Amendment**

#### ***Coszalter v. City of Salem* (9th Cir. 2003) U.S. App. LEXIS 2907**

Plaintiffs, current and former city employees of the City of Salem, Oregon, sued under 42 U.S.C. Section 1983, alleging that defendant City and its supervisors had violated their First Amendment rights by retaliating against them for disclosing health and safety hazards. Plaintiffs had contacted the City's risk manager, news media, Oregon's Occupational Health and Safety Administration and the State Department of Environmental Quality concerning occupational and environmental risks posed by the City's discharge of sewage. Plaintiffs claimed that they were then reassigned, reprimanded, subjected to both civil and criminal investigations and made to perform hazardous work. One plaintiff alleged that he was terminated for a relatively minor offense and another, that he was compelled to resign.

The court found the above contacts by the employees to be protected speech, since they dealt with a matter of "public concern." By contrast, the court deemed the complaint by one of the employees that his truck had been vandalized unprotected. The court next examined whether the plaintiffs had suffered adverse action. Noting that retaliation "need not be severe and it need not be of a certain kind," the court held that if the actions taken by the defendants were "reasonably likely to deter [them] from engaging in protected activity...they will have established a valid claim under Section 1983." Lastly, the court decided that an elapsed time of eight months between protected speech and an adverse action can give rise to an inference of retaliation.

**Significance:** In this opinion the court reversed the trend to impose a standard that requires "objective adversity" of an action. Instead, the court adopted a more flexible, subjective/objective standard in the context of First Amendment retaliation claims, holding that if an action is "reasonably likely to deter" protected conduct in the future, it is sufficiently "adverse" to be actionable.

## **FIRST AMENDMENT**

### *Skaarup v. City of North Las Vegas (9th Cir. 2003) U.S. App. LEXIS 3667*

A former fire marshal sued the City, claiming that he had been subjected to retaliation as a result of protected speech. While serving as fire marshal, the plaintiff advised two female employees that the Fire Chief had told him that gender-based and anti-union bias had motivated the Deputy City Manager's decision to eliminate the positions of female employees. A new Fire Chief then suspended the plaintiff for eight days for making disrespectful statements that undermined City management and discredited the Fire Department. At his deposition, plaintiff claimed that he had contacted these women because of their connection with the women firefighter's group.

Applying a test that balanced the employee's right to speak against the City's interest in effective government, the court noted that plaintiff's speech consisted of comments he made to two female employees, and he neither addressed the allegations with his superiors nor made his views public. In addition, it noted that prior to his deposition, he had not contended that he had approached the women because of their connection with the women firefighter's group or equal opportunity issues. The court therefore concluded that the public interest in the "unsubstantiated rumors" disclosed by plaintiff was small, and was outweighed by the City's interest in not disrupting relations with the union, and in protecting the good name of its City Manager and its own reputation.

**Significance:** Although the First Amendment may protect speech on matters of public concern uttered in a private conversation between employees, the court found that plaintiff's speech to two employees in this instance involved only a "small" public interest.

# Hostile Work Environment

— deskinlawfirm

Workplace Harassment is a Form of Discrimination

Unlawful harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964 and other federal authority.

Unwelcome verbal or physical conduct based on race, color, religion, sex (whether or not of a sexual nature and including same-gender harassment and gender identity harassment), national origin, age (40 and over), disability (mental or physical), sexual orientation, or retaliation (sometimes collectively referred to as "legally protected characteristics") constitutes harassment when:

- The conduct is sufficiently severe or pervasive to create a hostile work environment; or
- A supervisor's harassing conduct results in a tangible change in an employee's employment status or benefits (for example, demotion, termination, failure to promote, etc.).

Hostile work environment harassment occurs when unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment. Anyone in the workplace might commit this type of harassment; a management official, co-worker, or non-employee, such as a contractor, vendor or guest. The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.

Examples of actions that may create sexual hostile environment harassment include:

- Leering, i.e., staring in a sexually suggestive manner
- Making offensive remarks about looks, clothing, body parts
- Touching in a way that may make an employee feel uncomfortable, such as patting, pinching or intentional brushing against another's body
- Telling sexual or lewd jokes, hanging sexual posters, making sexual gestures, etc.
- Sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images

Other actions which may result in hostile environment harassment, but are non-sexual in nature, include:

- Use of racially derogatory words, phrases, epithets
- Demonstrations of a racial or ethnic nature such as a use of gestures, pictures or drawings which would offend a particular racial or ethnic group
- Comments about an individual's skin color or other racial/ethnic characteristics
- Making disparaging remarks about an individual's gender that are not sexual in nature
- Negative comments about an employee's religious beliefs (or lack of religious beliefs)
- Expressing negative stereotypes regarding an employee's birthplace or ancestry
- Negative comments regarding an employee's age when referring to employees 40 and over
- Derogatory or intimidating references to an employee's mental or physical impairment

Harassment that results in a tangible employment action occurs when a management official's harassing conduct results in some significant change in an employee's employment status (e.g., hiring, firing, promotion, failure to promote, demotion, formal discipline, such as suspension, undesirable reassignment, or a significant change in benefits, a compensation decision, or a work assignment). Only individuals with supervisory or managerial responsibility can commit this type of harassment.

**A claim of harassment generally requires ALL the following elements:**

1. The complaining party must be a member of a statutorily protected class;
2. S/he was subjected to unwelcome verbal or physical conduct related to his or her membership in that protected;
3. The unwelcome conduct complained of was based on his or her membership in that protected class;
4. The unwelcome conduct affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with his or her work performance and/or creating an intimidating, hostile or offensive work environment.

**What is Not Harassment?**

The anti-discrimination statutes are not a general civility code. Thus, federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Rather, the conduct must be so objectively offensive as to alter the conditions of the individual's employment. The conditions of employment are altered only if the harassment culminates in a tangible employment action or is sufficiently severe or pervasive to create a hostile work environment.

**The California Whistleblower Protection Act** authorizes the California State Auditor to receive complaints from state employees and members of the public who wish to report an improper governmental activity. An "improper governmental activity" is defined as any action that violates the law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. The complaints received by the State Auditor shall remain confidential, and the identity of the complainant may not be revealed without the permission of the complainant, except to an appropriate law enforcement agency conducting a criminal investigation.

Upon receiving a complaint, the State Auditor may conduct an investigation into the facts alleged in the complaint to determine whether an improper governmental activity has occurred. Before launching an investigation, the State Auditor's staff will conduct a careful evaluation of the complaint to determine whether it has enough potential merit to warrant the expenditure of state resources to conduct an investigation. We therefore ask that you keep the following points in mind when filing a complaint:

We need a clear and concise statement of what you are alleging is an improper act, why you believe it is improper, and what evidence there is to confirm that what you are saying is true.

If you do not provide a name or other information that clearly identifies the person you are alleging has acted improperly, and the department where that person works, we may not know whom to investigate.

If you do not identify witnesses or documents that will support what you are saying, we may not be able to verify that what you are saying is true.

While you may submit a complaint anonymously, we may not be able to determine whether your complaint has merit if we are not able to interview you.

Submitting copies of any documents that will support your complaint is extremely helpful to our evaluation process. However, please submit copies of the documents, rather than the original documents, as they cannot be returned. If we need the original documents, we will ask you for them later.

After the State Auditor receives a complaint, any investigation resulting from the complaint is confidential, so the State Auditor's staff cannot provide any updates about what is being done to investigate the complaint or what information has been uncovered. Information about the investigation will not be released until a report is issued by the State Auditor.

State employees who file a complaint are [entitled to protection against retaliation](#) by their employers for filing the complaint.

January 6, 2010

My complaint of verbal harassment, hostile work environment and retaliation is based on my rights as a City of Encinitas employee.

The City has a “zero tolerance” policy against harassment (P024).

California law AB1825 prohibits verbal harassment (is the city and SDWD in compliance with training requirements?)

California Fair Employment and Housing Law prohibits harassment and retaliation

The 1<sup>st</sup> Amendment of the US Constitution protects my right to free speech.

Councilman Stocks stated that he was angry and his actions were intended to send me a message about my actions concerning my closed session boycott, open government stands, Orpheus Park tree removal. All of my positions and statements are protected speech, since they deal with matters of “public concern.”

Councilman Stocks comments as reported in the Dec. 11, 2009 Union-Tribune and Dec. 18, 2009 Coast News clearly shows that his actions at the December 8, 2009 council meeting were in retaliation for my previous actions. His public comments crossed the line from political disagreement to verbal harassment with the intention to intimidate and discourage me from future efforts to protest inappropriate, illegal or wasteful city government actions.

His statement in the Coast News about my decision to recuse myself is false and was intended to deem me and question my integrity.

His comments about me never apologizing for my actions concerning closed session notification are unwarranted. The City has changed procedures because they were not correct. The issue of legitimacy of the 24 hour notice has also been contested by other public-interest attorneys.

These actions follow a long history of repetitive threatening and intimidating comments by both Councilmen Stocks and Dalager to me and about me to the media and individual citizens. There is also a long history of inappropriate behavior towards female employees and members of the public.

I first observed the sexist attitude of Councilman Dalager at the April 24, 2007 Budget Workshop meeting when Councilman Dalager made a comment about the attractive appearance of a public speaker, Cami Mattson, CEO of the San Diego North Convention & Visitors Bureau. I expressed my concern to Phil Cotton, City Manager about Councilman Dalager’s inappropriate comment. I do not know if any actions were taken. I again observed and complained to the City Manager about Councilman Dalager’s unwanted hugging of female employees at the June 20, 2008 employee picnic. I believe my comments resulted in a required Harassment Training on August 21, 2008.

In the email exchange concerning the Orpheus Park tree removal I stated that I found councilman Dalager's comments about me (which he copied to the media) as rude, intimidating and threatening. Councilman Stocks dismissed my comments.

A number of citizens also commented on the offensive language and tone of the emails.

I expressed my concern to the City Manager about Councilman Dalager's threatening comments shortly after the incident. I do not know if any actions were taken.

Again on December 16, 2009 Councilman Dalager hugged a female employee, Darlene Hill at the council meeting recognizing her retirement. He commented that he could hug her since he had known her longer than her husband had. His joking remark clearly shows he is aware of his inappropriate behavior .

Councilman Stocks also makes belittling and dismissive comments to members of the public in emails, which he copies to all councilmembers, and at public meetings.

There is a culture at city hall that allows this behavior to continue in spite of the city's own stated "zero tolerance policy".

Most evident of that attitude is the fact that the City Manager and City Attorney did not adhere to the city's harassment policy when they failed to follow written procedures. Even though they stated to me verbally that they took my complaint seriously.

The most egregious violation concerns the confidentiality of the investigation. The distribution of the letter from Liebert Cassidy Whitmore concerning my complaint to all council members via the council secretary was a breach of my right to a confidential investigation. Leaving the document on each members chair made it easily accessible to any person entering the councilmember's office. I was out of town at the time which meant that my copy was placed on my chair for over a week.

There is a "good old boy" culture at city hall that has allowed this bullying to continue and escalate. Councilman Stock's comment that he was angry makes me fearful of a future violent response. I would feel unsafe if I was alone in his presence. Without legal protection I fear for my personal safety.

Teresa Barth

Hostile work environment harassment occurs when unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment. Anyone in the workplace might commit this type of harassment; a management official, co-worker, or non-employee, such as a contractor, vendor or guest. The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.