

Practice Update

California's New Workplace and Violence Prevention Law's Impact on Higher Education

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By [LaKeisha C. Marsh](#), [Montoya M. Ho-Sang](#), [Jamel A.R. Greer](#), and [Sommer Sharpe](#)

Introduction

This summer, California employers (including higher education institutions) will be required to implement a comprehensive workplace violence prevention plan. The new law, Senate Bill No. 553 (SB 553), goes into effect on July 1, 2024, and imposes several conditions, which will require employers in California to:

1. Establish, implement, and maintain an efficient injury prevention program.
2. Establish channels for reporting violent incidents and threats.
3. Provide annual training on the violence prevention plan to all employees.
4. Maintain ongoing recordkeeping related to the above activities.

SB 553 urges higher education institutions in California to proactively address workplace violence, establish a safer work environment for employees, and review current policies to ensure compliance with the new legislation. Notably, higher education institutions in California must be mindful of how SB 553 intersects with existing federal law, including

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Title IX and the Clery Act, each of which govern institutional responses to sexual violence.

SB 553's Intersection with the Clery Act and Title IX

The Clery Act provides the protocols for schools to address and document on-campus crime. The Act mandates institutions to gather data, maintain a crime log, and annually publish a Security Report to its employees and students every October 1. The Security Report must include statistics of campus crime for the preceding three calendar years, details about strategies implemented to improve campus safety, policy statements regarding crime reporting, campus facility security and access, law enforcement authority, incidence of alcohol and drug use, and the prevention of and response to sexual assault, domestic or dating violence, and stalking. However, SB 553 imposes additional requirements on schools in California regarding mandatory reporting of violent workplace incidents. In contrast with the Clery Act, SB 553:

1. Applies to more expansive conduct, including threats or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury, and incidents involving a threat or use of a firearm or other dangerous weapon.
2. Applies to “places of employment,” meaning each faculty, department, or operation of the establishment, including surrounding areas like employee parking areas and employer-provided housing. In contrast, the Clery Act explicitly applies to places on campus, public property within or immediately adjacent to campus, and off-campus buildings or property the institution owns or controls.
3. Requires employers to maintain a violence incident log, which is a record of every workplace

violence incident. The log must include the date, time, and location of the incident, a detailed description of the incident, a classification of the parties involved, a categorization of the type of conduct involved in the incident, and post-incident measures taken. On the other hand, the Annual Security Report mandated by the Clery Act includes statistics of campus crime, a summary of efforts taken to improve campus safety, and policy statements regarding crime reporting, campus facility security, and access.

Institutions should also identify the intersecting implications of SB 553 and Title IX:

1. As discussed above, SB 553 applies to a narrower range of conduct compared to Title IX, which applies to all forms of sexual harassment in every aspect of education.
2. SB 553 broadly applies to places of employment, while Title IX applies to educational programs or activities operated by recipients of federal funding.
3. SB 553 does not discuss supportive measures or prescribe procedures an employer must follow before imposing punishment, while Title IX specifies the supportive measures an institution must offer a complainant and respondent and outlines the protocols a school must follow when determining an appropriate punishment.

How California Higher Education Institutions Can Prepare for Compliance with SB 553

As an initial step, institutions should review all existing policies to identify and evaluate potential instances of noncompliance with SB 553.

Additionally, engage institutional leadership in furtherance of developing a workplace protection plan in accordance with SB 553. Further, consider implementing mandatory training for staff to promote campus-wide understanding of the protocols required under SB 553. Lastly, we

recommend institutions establish and implement a formal policy detailing the mandatory data recording and disclosure processes under SB 553.

As always, Akerman Higher Education attorneys stand ready to provide counsel and assist institutions in furtherance of complying with SB 533.

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