

Blog Post

Sexual Harassment Prevention Training Never Goes Out of Style

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Even in a shifting legal landscape, some things stay constant – such as an employer’s obligation to provide sexual harassment prevention training to its employees. While federal law does not explicitly require all employers to provide sexual harassment training to their employees, many state and local laws either require or strongly recommend that such trainings be given. Moreover, under federal law, an employer’s administration of a harassment training program is the first line of defense in establishing that an employer took reasonable steps to prevent harassment in its workplace. So, while employers may be feeling seismic shifts in other areas, there is no time like the present to review harassment training requirements in select key jurisdictions to stay compliant and harassment-free.

Which Employers Are Required to Provide Sexual Harassment Training?

Employers may need to look at either a state or local law to determine what (if anything) is required in terms of sexual harassment trainings. Many jurisdictions require sexual harassment training; others recommend it. The following is a non-exhaustive list of key places in which sexual harassment trainings are required:

California: Employers with 5+ employees (including temporary or seasonal employees)

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Connecticut: Employers with 3+ employees at any location (including outside Connecticut); employers with less than 3 employees must provide training to supervisors only

Delaware: Employers with 50+ employees

Illinois: Employers with 1+ employee(s) in Illinois during 20+ calendar weeks within a calendar year

Chicago: Employers with employees working in Chicago

Maine: Employers with 15+ employees

New York: Employers with employees who work any portion of their time in New York

NYC: Employers with 15+ employees or independent contractors in the previous calendar year

In addition, sexual harassment trainings are recommended or encouraged, but not required, in: **Colorado, Massachusetts, Oregon, Rhode Island** (for 50+ employees), and **Vermont**, among other places.

What Are the Frequency/Timing Requirements for the Trainings?

In California, employees must be trained within six months of hire or starting in a supervisory position (with nuances for seasonal and temporary employees, and new businesses), and every two years thereafter. In Connecticut, supplemental training is required every 10 years. Delaware requires training within one year of beginning new or supervisory employment, and every two years thereafter. Illinois requires annual training, including supplemental trainings for restaurants and bars. In Maine, all new employees must be trained within one year of beginning new or supervisor/managerial employment. In Massachusetts, training is encouraged within one

year of an employee or supervisor/manager beginning employment. In New York, employees must be trained annually (based on the calendar year, the employee's start date, or any other date of the employer's choosing). Chicago and New York City employees must also receive annual harassment training.

Employers in Rhode Island and Vermont who choose to conduct a harassment training must provide the training within one year of new or supervisory/managerial employment. In Vermont, training should be done annually.

What Is the Required Format for the Training?

Regardless of the geographic location, the jurisdictions that require or encourage trainings generally require that the training include an explanation of sexual harassment, examples of conduct that constitutes sexual harassment, the relevant state and federal laws concerning sexual harassment, and internal and/or external complaint processes available to the worker. Most trainings also require an explanation of the supervisor's role in preventing and addressing sexual harassment, and some also include required bystander intervention training. Employers should consult their jurisdiction's laws for more details as to the specific training requirements.

California, Connecticut, Delaware, New York, Chicago, and New York City include additional formatting nuances. California requires training to be interactive and two hours long for supervisors, one hour for nonsupervisory employees. Connecticut requires a two-hour long interactive training, and Delaware, New York, and New York City require interactive trainings. Chicago employees must receive one hour of sexual harassment prevention training, and one hour of bystander training, whereas Chicago supervisors and managers must receive two hours of sexual

harassment prevention training and one hour of bystander training.

Some jurisdictions, including California, Connecticut, Illinois, Chicago, New York, and New York City, also have pre-made and compliant model trainings available online through their state/city human rights agencies.

What Is Required of Trainers?

Most state and local laws on sexual harassment trainings do not include specific requirements with respect to the people conducting the trainings. Of the places discussed above, California requires a classroom setting with an in-person trainer or other interactive training. New York state and New York City do not require, but recommend, the use of a live trainer.

General Best Practices

Even if your company is not subject to the laws of one of the jurisdictions where training is required, harassment training is always a good idea. Training employees to understand and recognize unlawful conduct not only helps them feel supported and equipped to address any wrongdoing, but it may also bolster the employer's defense in an employment discrimination or harassment lawsuit. Being able to show that a company is committed to complying with the law and providing a harassment-free workplace is a valuable tool that employers can leverage if litigation ensues.

Similarly, no matter what your jurisdiction's law says about recordkeeping, it is a great idea to maintain records of attendance at employee and supervisor/manager harassment trainings. Some places actually impose civil penalties against an employer who fails to conduct such trainings (examples include Connecticut, Illinois, and Maine). Regardless, it is crucial for an employer to be able to show proof that such trainings were given, in

defense of a sexual harassment claim, which makes keeping these records all the more important.

The attorneys in Akerman LLP's national Labor and Employment Group are available to assist with harassment trainings, compliance with applicable state and local employment laws, and litigation.

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