

New FEHA Regulation

Are you prepared for new FEHA regulations taking effect April 1?

New California regulations that took effect on April 1, 2016, require employers with 5 or more employees to develop written anti-discrimination and harassment policies that meet several requirements. These regulations require employers to develop and distribute anti-discrimination and harassment policies to employees.

Requirements Under the New Regulations

In addition to the requirement that employers distribute the Department of Fair Employment and Housing (DFEH)-185 brochure on sexual harassment, employers must now also have anti-discrimination and harassment policies that:

1. Is in writing;
2. Lists all current protected categories covered under the Act;
3. Indicates that the law prohibits coworkers and third parties, as well as supervisors and managers, with whom the employee comes into contact from engaging in conduct prohibited by the Act;
4. Creates a complaint process to ensure that complaints receive:
 - An employer's designation of confidentiality, to the extent possible;
 - A timely response;
 - Impartial and timely investigations by qualified personnel;
 - Documentation and tracking for reasonable progress;
 - Appropriate options for remedial actions and resolutions; and
 - Timely closures.
5. Provides a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor, including, but not limited to, the following:
 - Direct communication, either orally or in writing, with a designated company representative, such as a human resources manager, EEO officer, or other supervisor; and/or
 - A complaint hotline; and/or
 - Access to an ombudsperson; and/or
 - Identification of the Department and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints.
6. Instructs supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment prevention training, pursuant to section 11024 of these regulations.

7. Indicates that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
8. States that confidentiality will be kept by the employer to the extent possible, but not indicate that the investigation will be completely confidential.
9. Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures shall be taken.
10. Makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation.

In addition to the above, the regulations require employers to disseminate the anti-discrimination and harassment policies. To this end, employers can do one of the following:

- 1) Printing and providing a copy to all employees with an acknowledgment form for the employee to sign and return;
- 2) Sending the policy via e-mail with an acknowledgment return form;
- 3) Posting current versions of the policies on a company intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies;
- 4) Discussing policies upon hire and/or during a new hire orientation session; and/or
- 5) Any other way that ensures employees receive and understand the policies.

Finally, the regulations require employers whose workforce includes 10% or more non-native English-speaking employees to issue the anti-discrimination and harassment policies in each such language.

What Should Employers do to Ensure Compliance?

California employers must ensure they have written policies that comply with these new regulations. In particular, employers should:

- 1) Review and update their anti-discrimination and harassment policies prior to April 1, 2016.
- 2) Distribute their anti-discrimination and harassment policies via one or more of the approved methods (in addition to Form DFEH-185).
- 3) Ensure proper complaint and investigation procedures are in place.
- 4) Train human resources personnel on how to address all inquiries and potential complaints related to implementation of these new policies and procedures.

Out of State Employers

An out-of-state employer with at least one California employee will now have to adhere to FEHA with respect to that one employee if the total number of its employees is at least five. Even though out-of-state employees are counted for the purpose of determining whether an employer is covered under FEHA with respect to its California employees, the out-of-state employees are not themselves protected by the statute.

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