

New California Harassment, Discrimination and Retaliation Prevention Policy Requirements

Under new California regulations, effective April 1, 2016, employers are required to develop and disseminate a written anti-harassment, discrimination, and retaliation policy to their employees as part of their affirmative duty to take reasonable steps to prevent harassment and discrimination in the workplace. The written anti-harassment, discrimination and retaliation prevention policy:

- Must list all the current protected categories under the California Fair Employment and Housing Act (“FEHA”);
- Must state that the law prohibits co-workers and third parties, as well as supervisors and managers, from engaging in conduct prohibited by FEHA;
- Must provide a complaint procedure that does not require an employee to complain directly to his or her supervisor; the regulations provide several examples of alternative complaint mechanisms, including directing employees to report complaints to a designated company representative, providing a complaint hotline, providing access to an ombudsman, and/or identifying the Department of Fair Employment and Housing (“DFEH”) and Equal Employment Opportunity Commission (“EEOC”) as additional avenues for complaints;
- Must include a complaint procedure that ensures that complaints receive: (1) a designation of confidentiality, to the extent possible; (2) a timely response; (3) an impartial and timely investigation by qualified personnel; (4) documentation and tracking for reasonable progress; (5) appropriate options for remedial actions and resolutions; and (6) timely closures;
- Must instruct supervisors to report any complaints they receive to a designated company representative;
- Must state that when the employer receives a complaint, it will conduct a fair, timely and thorough investigation that provides all parties with appropriate due process and will reach reasonable conclusions based on evidence collected;
- Must state that the employer will maintain confidentiality to the extent possible, but does not indicate that the investigation will be completely confidential;
- Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures will be taken; and
- Makes clear that employees will not be subject to retaliation as a result of making a complaint or participating in a workplace investigation.

Employers must distribute the written policy to their employees, such as by printing and providing the policy to employees with an acknowledgment form for the employee to sign and return, by sending the policy via e-mail with an acknowledgment return form, by posting current versions of the policy on a company intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policy, by discussing the policy upon hire and/or during a new hire orientation session, and/or by any other way that ensures employees receive and understand the policy. In addition, employers are required to translate the harassment, discrimination and retaliation prevention policy into every language spoken by at least 10% of their workforce.

This Alert is intended to provide you with general information about the amendments to the FEHA regulations, not legal advice. The full text of the regulations are available at <http://www.dfeh.ca.gov/res/docs/FEHC/FinalText.pdf>.

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