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## Regulations clarify sexual harassment training for employers

By DOUG SHERWIN

Nearly two years after it became law, employers finally will have a clear picture of their obligations under the sexual harassment prevention training bill.

Earlier this month, the California Fair Employment and Housing Commission adopted regulations interpreting the statute (AB 1825), and they are set to take effect Feb. 1.

"Employers have had very little guidance in terms of what sexual harassment prevention training actually needs to consist of," said Micah Parzen, a labor and employment lawyer in the San Diego office of Luce, Forward, Hamilton & Scripps LLP. "There have been questions as to how to properly implement the training. I think it's a really good thing to have some very clear guidelines."

One of the questions the regulations clarify is what qualification the trainers need to have. They need to be subject-matter experts who have a legal education coupled with practical experience or have substantial practical experience in sexual harassment discrimination and retaliation prevention training.

"That (requirement) combined with the content of the training suggests to me it's probably going to have to be lawyers doing this training," said San Diego's **Lois Kosch, an employment attorney with Wilson, Petty, Kosmo and Turner.** "The regulations specify what needs to be covered in terms of content, and a lot of it is very legally focused."

After the passage of AB 1825 -- which requires companies with 50 or more employees to train their supervisors in the prevention of sexual harassment once every two years -- many training programs began to sprout. Kosch said these new regulations will limit the number of people who will be able to offer the program.

"I think it raises the bar for the training, experience, background and depth of knowledge trainers have to have," she said. "The more knowledgeable the trainer, the better the training."

The regulations also clarify who needs to be trained. It stipulates that company officials outside the state who supervise California employees don't need to be trained.

"I'd probably train them anyway," said George Howard, a labor and employment attorney in the San Diego office of Pillsbury, Winthrop, Shaw & Pittman. "These regulations set a minimum."

The regulations stipulate that supervisors who have been trained by one company can still wait two years before receiving more training, even if they switch jobs.

Howard said he would advise his clients to retrain new hires because they would have to defend the quality of the training.

"If you want to be conservative, there's no penalty for training too often," he said. "I'd encourage

training in the first year, and then you don't have to train two years after that."

The regulations give the OK to training over the Internet but offer specific requirements.

The online training needs to be interactive. Participants must be able to ask a question and receive an answer within two business days. But while two hours of online training is necessary, it doesn't need to be all at once. Participants can pause the program and pick up where they left off.

"I don't think (these regulations will significantly impact anyone's bottom line)," Kosch or Wilson Petty said.

Luce Forward's Parzen cautioned that some of the regulations produce a difficult standard to meet.

"It's not impossible but it demands a lot of employers," he said. "There are a lot of nitpicky requirements in the regulations that to have compliant training is difficult to do."

Overall, Parzen is happy with the bill and the corresponding interpretation.

"I think this is a very clear message from the Legislature that it's time to take the issues regarding sexual harassment and discrimination seriously," Parzen said. "Up to now the requirement in the government code that employers take reasonable steps to prevent discrimination has not had much in the way of teeth. Now, with these regulations, there are teeth to the statute."