

## Required Harassment Prevention Training FAQs

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**A**s you all remember, beginning January 1, 2019, California made substantial changes to its sexual harassment prevention training requirements. Under the 2019 changes, all employers with five or more employees must provide sexual harassment prevention training to all employees — supervisors must receive two hours of training and nonsupervisory employees (including seasonal and temporary employees hired to work for less than six months) must receive one hour. Training must take place within six months of hire or promotion and every two years thereafter.

Now that this law — and emergency clean-up legislation that better clarified training deadlines — have been in effect for a few years, these deadlines by which employees must take refresher training are pretty clear.

Many other questions about the state's harassment prevention training requirements remain, so read on for answers to the ones asked most frequently.

**Mandatory harassment prevention training must take place within six months of hire or promotion and every two years thereafter.**

### If we trained employees in 2020 or 2021, do we need to train them again in 2023?

If employees trained in 2020 completed refresher training in 2022, then they're all set and don't need to complete training in 2023. If, however, these employees did not complete refresher training last year, they're already past due and must complete harassment prevention training ASAP! Employees trained in 2021 are now due for refresher training, but aren't past due — they're right on track.

Here's a quick breakdown for employers who've trained employees in recent years:

Year you last trained	Next required training year	Explanation
2022	2024	These employees are all set; no need to worry about training this year. It will, however, be on the docket for 2024.
2021	2023	Employees who trained in 2021 are officially due for their refresher training in order to comply with California law.
2020	2022	Because employers are required to provide refresher training two years after the time the employee was first trained, these employees are past due and must complete training immediately.

## Who is considered a “qualified trainer”? Can HR perform the required training?

California regulations identify three types of qualified trainers:

1. **Attorneys** who have been members of the bar of any state for at least two years and whose practice includes employment law under California's Fair Employment and Housing Act (FEHA) or Title VII of the federal Civil Rights Act of 1964.
2. **Human resource professionals, harassment prevention consultants or peer-to-peer trainers** with at least two years of practical experience in:
  - Designing or conducting training on discrimination, retaliation and harassment prevention training;
  - Responding to harassment complaints or other discrimination complaints;
  - Investigating harassment complaints; or
  - Advising employers or employees about discrimination, retaliation and harassment prevention.

## Employers must pay their employees for the time spent training.

3. **Law school, college or university instructors** with a post-graduate degree or California teaching credential and either 20 hours of instruction about employment law under the FEHA or Title VII.

Additionally, qualified trainers must — through a combination of training, experience, knowledge and expertise — have the ability to provide specific training on the following topics:

- The definitions of abusive conduct, sexual harassment as specified in Government Code section 12940(j), gender identity, gender expression, sexual orientation, and the definitions of the other bases enumerated in the FEHA as specified in Government Code section 12940(a);
- How to identify behavior that may constitute unlawful harassment, discrimination and/or retaliation under both California and federal law;
- What steps to take when harassing behavior occurs in the workplace;
- How to report harassment complaints;
- Supervisors' obligation to report harassing, discriminatory or retaliatory behavior of which they become aware;
- How to respond to a harassment complaint;
- The employer's obligation to conduct a workplace investigation of a harassment complaint;
- What constitutes retaliation and how to prevent it;
- Essential components of an anti-harassment policy;
- The effect of harassment on harassed employees, coworkers, harassers and employers; and
- Practical examples in the prevention of harassment, discrimination and retaliation based on sex, gender identity, gender expression, sexual orientation and the prevention of abusive conduct.

## Do I need to pay my employees for the time spent training?

Yes, employers must pay their employees for the time spent training. The cost of the training itself also falls on employers, not the employees.

## What if a current employee already received training from a prior employer?

An employee who's received compliant training within the prior two years either from a current, previous, or alternate or joint employer must only be given — and be required to read and acknowledge receipt of — the employer's anti-harassment policy within six months of assuming the supervisory position or within six months of the employer's eligibility, according to regulations from prior law.

The employee should then be put on a two-year tracking schedule based on the employee's last training.

Keep in mind that the burden of establishing that prior training was legally compliant remains with you as the current employer. And if there's any doubt as to whether training from a previous employer meets requirements, a best practice is to provide training to that employee yourself so you're sure that requirements are met.

**When counting your number of employees to determine whether you're subject to the training requirements, temporary employees are counted.**

## Do I have to train employees who work remotely in other states?

When you count your number of employees to determine whether the training requirements apply to you, employees located anywhere, as well as independent contractors, must be included. However, employers are not required to train employees located outside of California. For remote supervisors located out of state who do supervise any of your California employees (or remote employees interacting with California employees), it's highly recommended that those supervisors/employees take a compliant harassment prevention training course. Of course, it's always a best practice to train all of your employees everywhere, regardless of whether they fall under California's specific mandate.

## Do temporary or seasonal employees have to be trained?

Seasonal and temporary employees, or any employee hired to work for less than six months, must be trained within 30 calendar days after their hire date or within 100 hours worked, whichever occurs first.

## If I hire a temporary employee from a staffing agency, do I need to provide the training to that individual or is it the staffing agency's responsibility?

If you utilize temporary or seasonal employees from a staffing agency, it is the staffing agency's responsibility — not yours as the client — to provide the harassment prevention training.

Keep in mind, however, that with joint-employer liability issues potentially at play, it's always a best practice to make sure the staffing agency you choose to work with is aware of the new training requirements and has explicitly agreed to provide such training to any employees provided to you for employment. For example, a client could require the staffing agency to certify that they train all of their employees before the temporary assignment begins.

Also keep in mind that when counting your number of employees to determine whether you're subject to the training requirements, temporary employees are counted, even if provided by a staffing agency.

**Total length of training is two hours for supervisory employees and one hour for nonsupervisory employees.**

## Do I need to provide training to independent contractors?

Even though independent contractors are counted toward the number of employees that would subject an employer to the new training requirements, you aren't required to provide harassment prevention training to them, as the language of the statute specifically refers to "supervisory employees" and "nonsupervisory employees" (Gov. Code sec. 12950.1(a)). This, however, assumes that your independent contractors are properly classified.

## What are the various types of training that comply with the requirements?

Harassment prevention training falls into three categories: in-person, e-learning and webinars.

- **In-Person Training** is a more traditional, classroom-like training featuring content created by a trainer. Existing regulations specifically define the credentials that a qualified trainer must possess.
- **E-Learning** involves online training that features individualized, interactive and computer-based training created by a trainer and an instructional designer. Trainees must have the opportunity to ask a trainer questions and receive a response within two business days after asking the questions.
- **Webinars** are Internet-based seminars featuring content created and taught by a trainer, and transmitted over the Internet or an intranet in real time. Employers must document that each trainee who is not physically present in the same room as the trainer actually attended the training. They also must document that the trainee actively participated in the interactive content, discussion questions, hypothetical scenarios, quizzes or tests, and activities. Lastly, webinars must provide trainees with the opportunity to ask questions and receive answers to those questions or otherwise seek guidance and assistance.

## How long must the training be, and does it need to be taken all at once?

The total length of training is two hours for supervisory employees and one hour for nonsupervisory employees. The training can be broken up into shorter segments, so long as each supervisor/employee completes the minimum training requirements over the course of their training year.

**CalChamber's online Harassment Prevention Training courses meet the mandatory training requirements and help simplify training for employers.**

## What kind of training-related documentation do we need to keep?

Existing regulations state what training documentation must be retained, some of which varies depending on the type of training that you choose to use. At a minimum, all types of training must include the following training documentation to be compliant:

- The name of the person trained;
- The date of the training;
- The type of training (live/classroom, e-learning, webinar or other interactive training);
- The name of the training provider;
- The sign-in sheet;
- A copy of all certificates of attendance or completion issued; and
- A copy of all written or recorded materials that comprise the training.

Employers must keep a copy of all the above information for a minimum of two years.

Additional information must be retained for the following training methods:

- **E-Learning:** A trainer must maintain all written questions received and all written responses or guidance provided for two years after the date of the responses. Employers are advised to confirm with their training provider that this information is being properly maintained.
- **Webinar:** For two years after the date of the webinar, the employer must maintain:
  - » A copy of the webinar;
  - » A copy of all written materials used by the trainer; and
  - » All written questions submitted during the webinar and all responses or guidance the trainer provided during the webinar.

## What about CalChamber's Harassment Prevention Training?

We have also received a lot of questions about CalChamber's Harassment Prevention Training and whether it complies with the law. The short answer is YES!

Here are some additional details about what CalChamber's Harassment Prevention Training has to offer:

- CalChamber's online California Harassment Prevention Training courses for both supervisors and employees meet the mandatory training requirements and help simplify training for employers.
- CalChamber's convenient self-paced courses let trainees start and stop anytime so they can train when it best fits their schedules.
- CalChamber's online training courses provide an interactive learning experience through use of scenarios, quizzes and more.
- CalChamber's training lets trainees take the courses in English and Spanish.
- CalChamber's "Ask the Expert" feature allows trainees to email questions directly to CalChamber's training experts.
- CalChamber's training complies with recordkeeping requirements to maintain training documentation.
- CalChamber's training includes a wide range of administrative functions and features that make it easy to track each trainee's progress and completion.
- CalChamber's training includes a harassment, discrimination and retaliation prevention policy that employers are required to distribute to employees.

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### CalChamber Can Help ...

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Mandatory Harassment  
Prevention Training



*Checklist for Developing a  
Harassment Prevention Policy*

To learn more about CalChamber resources, please call our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. PT, and Friday from 8 a.m. to 4 p.m. PT.

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