

New California DFEH Regulations, effective April 1, 2016

New regulations apply to employers subject to the FEHA (Fair Employment and Housing Act). They do not alter existing law. They were created to clarify already existing obligations of employers to take reasonable steps to prevent and promptly correct discrimination or harassment in the workplace.

Existing requirements

- Prevent discrimination based on protected characteristics
- Prohibit retaliation against participating in legally protected activities
- Interactively determine reasonable accommodations for disabilities (and to accommodate)
- Distribute the DFEH-185 brochure (or equivalent)
- Include instruction on the prevention of abusive conduct in AB 1825 supervisor training.

New requirements for organizational policies

While company policies have long been recommended and are widely already in use, the new regulations now require a written policy against discrimination, harassment and retaliation:

- Policies must be distributed so that all employees have access to them. This can be done by hard copy or by email, or posted on an intranet, with an acknowledgement form for employees to sign or other tracking system to make sure all employees have read and acknowledged them. Or they may be discussed with new hires or during new-hire orientation sessions.
- Policies must be distributed in English and other languages spoken by at least 10% of the workforce (for non-native speakers).
- They must include a list of all current protected categories, including religion or religious creed, race, color, ethnic group identification, age (40 or over), national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, military and veteran status, and sex, gender, gender identity, gender expression, or sexual orientation.
- They must state that supervisors, managers, coworkers and third parties are all covered by these prohibitions against discrimination, harassment and retaliatory conduct.
- They must provide details about investigations that will be triggered by complaints (see the following).

New requirements for investigations

While these requirements have been considered “best practices” for quite some time, these regulations now formally require:

- The organization’s complaint and investigation process must be outlined in the organization’s written policy and distributed to employees.

- A complaint mechanism that provides additional avenues for complaint in addition to an employee's immediate supervisor, such as another manager, ombudsperson or neutral investigator, or complaint hotline.
- A process for responding to complaints that is confidential, timely, and impartial.
- Confirmation that the employer will conduct a fair, timely and thorough investigation that provides everyone concerned with due process and reaches a reasonable conclusion based on the evidence.
- An investigation by qualified personnel, documented and tracked for reasonable progress; appropriate remedial actions and resolutions; and timely closure.
- Instruction to supervisors to report complaints to a designated company representative (such as an HR director or manager) to attempt internal resolution. (This instruction must also be included in mandated supervisor training.)
- A statement that confidentiality will be maintained as much as possible in response to all complaints, issues will be resolved, and appropriate remedial measures will be taken if misconduct has occurred.
- Confirmation that employees who complain or participate in an investigation will not be retaliated against.

The two-hour interactive Kantola eLearning programs for California Managers meet the requirements for AB 1825, AB 2053 and SB 292 training. The video versions of Kantola training can be used as part of a two-hour training led by a qualified trainer to meet these requirements.

This overview is for educational purposes only and not intended to provide legal advice.

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