



## **5 Reasons Why Employers Must Continue To Comply With AB 1825<sup>1</sup>**

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The following information should help clarify why California businesses need to continue to comply with AB 1825 by providing harassment prevention training to supervisory employees as required.

- 1) **Punitive Damages Available**: If a harassment suit is filed and proven in court and training in compliance with AB 1825 was not conducted it could effectively be argued that the plaintiff is entitled to *punitive or exemplary damages*—which is in addition to compensatory or actual damages and plaintiff's attorney's fees;
- 2) **Avoidable Consequences Defense Not Available**: If a harassment suit is filed and proven in court and training in compliance with AB 1825 was not conducted, it could preclude the employer from effectively arguing it had discharged its established legal duties to prevent, investigate and correct unlawful harassment in its workplace—and thus *lose the opportunity to reduce the amount of monetary damages recoverable by the plaintiff in the suit*;
- 3) **Insurance Coverage Lost**: If a harassment suit is filed and proven in court and training in compliance with AB 1825 was not conducted, Employment Practices Liability and other forms of insurance coverage, both for the employer and its directors/officers, could be lost because the failure to comply with the statute would likely be interpreted by carriers as an *intentional act* and, therefore, *outside the scope of the protection of their policies*;
- 4) **Personal Liability for Decision Maker(s)**: If a harassment suit is filed and proven in court and training in compliance with AB 1825 was not conducted, the decision maker(s) responsible for not approving the training could be held *personally liable for any damages* sustained by their employer for their intentional failure to comply with the well publicized training law as well as, in most cases, their employers own Non Discrimination/Harassment Policies; and,
- 5) **Benefits of Non-Discrimination/Harassment Policies Lost**: Having Non-Discrimination/Harassment Policies and not effectively communicating them to supervisors and employees is like having fire extinguishers in a workplace that no one in the building knows how to operate. The common purpose for having both the policies

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and the extinguishers is to *minimize the risk of damages* a business sustains from either discrimination/harassment claims or fires. Not to train employees on the use of these protections is to clearly *defeat their purpose* and would subject those who don't approve such training to justified criticism if those damages were to occur.

### **What California Statutory And Case Law Says About Employers Providing Training To Prevent Sexual Harassment**

- Section 12950.1 of the California Government Code requires:

By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, *and to all new supervisory employees within six months of their assumption of a supervisory position* (emphasis added).

- In State Dept. of Health Services v. Superior Court, 2003 (McGinnis) the California Supreme Court said:

... in a FEHA action against an employer for hostile environment sexual harassment by a supervisor, an employer may plead and prove a defense [to damages] based on the avoidable consequences doctrine. In this particular context, the defense has three elements: (1) the employer took reasonable steps to prevent and correct workplace sexual harassment [training]; (2) the employee unreasonably failed to use the preventive and corrective measures that the employer provided; and (3) reasonable use of the employer's procedures would have prevented at least some of the harm that the employee suffered.