



Changes Proposed to New California Harassment Training Regulations

March 1, 2007

By Joanne Deschenaux

Final regulations to implement California's AB 1825, which requires harassment prevention training, remain a work in progress, as the California Fair Employment and Housing Commission issued revisions to draft "final" AB 1825 regulations on Feb. 27.

The [revisions](#) addressed questions raised by the Office of Administrative Law (OAL), which on Feb. 6 rejected the November 2006 regulations, according to Shanti Atkins, president and chief executive officer of ELT Inc., a provider of online training with content from Littler Mendelson. The OAL was primarily concerned about two issues, Atkins told *HR News* in a March 1 interview:

- Who could qualify as either a "trainer or educator" or as a "subject matter expert" was not clear.
- It was not clear how someone could be a "qualified trainer" without also being a "subject matter expert."

Three Types of Experts

The regulations address the required qualifications for three kinds of experts: instructional designers, subject matter experts and trainers. An instructional designer is someone who designs a training program. That definition has not changed, Atkins noted.

In developing a training program, whether it provides instruction through e-learning, a classroom setting or a webinar, the instructional designer typically works with a subject matter expert to develop the basic training materials.

The subject matter expert provides content to the instructional designer. Atkins said a subject matter expert is "someone who knows the subject matter cold. They know all the laws. They could write a treatise."

Finally, in classroom training or webinars, a trainer presents the material and answers questions. Trainers are most important in the classroom setting. And although they are often subject matter experts, the regulations do not require them to be.

New Definitions

The new regulations clarify the criteria for being a subject matter expert and a trainer or educator.

The definition of subject matter expert is far more narrow and specific than the previous definition. The following may qualify as subject matter experts:

- Attorneys, admitted for three or more years to the bar of any state in the United States, whose practice includes employment law.
- Certified human resource professionals (by SHRM or via a higher certification) with three years' practical experience involving discrimination, retaliation and sexual harassment (e.g., providing training, conducting investigations, responding to complaints or advising employers).
- Professors and instructors in law schools, colleges or universities with three or more years' teaching experience about employment discrimination laws (or 25 instruction hours).
- Individual consultants with three or more years of experience providing professional advice about discrimination, retaliation and sexual harassment.

A trainer or educator must have three years of experience designing and conducting discrimination, retaliation and sexual harassment training programs.

Who Answers Questions?

Under the regulations, it is possible to be a trainer or educator without being a subject matter expert. This raises the critical issue of who is going to answer questions from trainees?

The answer, according to Atkins, is that trainers who are not subject matter experts cannot answer these questions. They must be answered by a subject matter expert.

The revised regulations allow for questions asked in a classroom or webinar training session to be answered after the session by a subject matter expert within two business days.

However, Atkins noted, it is more efficient if the person delivering the training is also a subject matter expert. And, in Atkins' opinion, it makes more sense if the subject matter expert is the same person that the organization uses to handle actual harassment complaints. "A lot of the questions that arise during training relate to an organization's policies or to specific factual situations. They often are indicators of a complaint," Atkins said.

Outsourcing your harassment training questions to a vendor is "a high-risk proposition," Atkins remarked. "A training vendor has lots of clients, fielding questions from lots of trainees. The vendor may not know all of your organization's policies. One organization can be subtly different than another."

Questions that arise during e-learning also must be answered by a subject matter expert within two business days. This is a change from the previous version of the regulations, which specified that questions needed to be routed to a trainer or educator. Atkins recommends that an e-learning program contain a list of frequently asked questions to prevent the subject matter expert from having to answer simple questions over and over.

A public comment period on the proposed regulatory changes will end on March 14.

Although the requested changes delay the effective date of the regulations to April or May of this year, the requirement to provide two hours of effective training remains-AB 1825 itself is still in effect. Most employers must meet a Dec. 31, 2007, training deadline.

Joanne Deschenaux, J.D., is senior legal editor for HR News.

A copy of this article is available online at

http://www.shrm.org/hrnews_published/archives/CMS_020671.asp