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### **California Extends Compliance Deadline for New Harassment Training Requirements from January 1, 2020 to January 1, 2021**

California Governor Gavin Newsom has signed SB 778, which took effect immediately, and both clarifies certain aspects of and extends the initial compliance deadline for California's new harassment training requirements enacted in 2018. Specifically, this new law extends from January 1, 2020 to January 1, 2021 the deadline for most employers to train supervisors who were not already subject to so-called AB 1825 harassment training, and for most employers to provide harassment training to non-supervisory employees.

This extension also means supervisors trained in 2018 will not need to be retrained in 2019, as they arguably would have been under the initial January 1, 2020 deadline. Further, it clarifies that moving forwards, the prior two-year training timeframe will apply for both supervisory and non-supervisory employees, meaning any employees trained in 2019 notwithstanding this one year extension will also not need to be retrained until 2021, and then will only be need to be trained every two years thereafter.

### **Background Regarding New Harassment Training Requirements and the Need for Clarifications**

In 2004, California enacted AB 1825 requiring that larger employers (i.e., 50 or more employees) provide two hours of sexual harassment training to supervisors every two years. However, the ongoing sexual harassment culminating in 2018's #MeToo movement suggested this so-called AB 1825 training was too limited in several respects: (1) by limiting it to only larger employers, most employers were not required to provide any harassment training; and (2) by limiting it only to supervisors, it arguably was not training more vulnerable employees.

Accordingly, in 2018, California unanimously enacted SB 1343 –which took effect January 1, 2019 -- to address these concerns by expanding the scope of harassment training. First, it required that by January 1, 2020, employers with five or more employees must provide at least two hours of harassment training to supervisory employees. Second, it required that by January 1, 2020, employers with five or more employees must provide at least one hour of harassment training to non-supervisory employees. As discussed below, it also contained special training rules regarding seasonal, temporary or other employees hired to work for less than six months, requiring that “beginning January 1, 2020,” these employees needed to be trained within the earlier of 30 calendar days of hire or within 100 hours worked.

To help employers satisfy these new training obligations, SB 1343 directed the Department of Fair Employment and Housing (DFEH) to develop online training courses which employers could use for both this supervisor and non-supervisor training, or employers could develop and use their own training modules.

However, as employers began preparing for these new training deadlines, several ambiguities emerged. First, it was not clear from the statutory language requiring essentially all employers provide training “by January 1, 2020” whether supervisors trained in 2018 would need to be re-trained in 2019. On the one hand, such a requirement seemed at odds with the prior two-year training regimen utilized under AB 1825, but the new statute’s language requiring training “by January 1, 2020” seemed to compel such a result. The DFEH’s “Frequently Asked Questions” issued in late 2018 created additional concern by suggesting that employers would need to train all employees in 2019 – even supervisors trained in 2018 – to satisfy the statutory language requiring all employees be trained “by January 1, 2020.”

Second, while it was clear supervisory employees needed to be trained within six months of hire or assumption of the supervisory position, SB 1343 had not specified when non-supervisory employees must be trained.

Lastly, additional practical compliance challenges emerged when the DFEH announced that its promised training videos would not be available until late 2019, leaving many employers who had anticipated using them little time to either develop their own training modules or complete training “by January 1, 2020” once the videos were published.

Accordingly, after consultation with employee and employer groups and human resource professionals, the California Senate Committee on Labor, Public Employment and Retirement introduced SB 778 as a “committee bill” to clean up and clarify these open issues. The California Legislature subsequently unanimously passed and Governor Newsom has signed SB 778 which, due to an urgency clause, is immediately effective.

### **SB 778’s Clarifications of the New Harassment Training Requirements**

SB 778 makes three helpful clarifications to California’s new harassment training requirements contained in Government Code section 12950.1. First, it extends the deadline for most employers to comply with the new harassment training requirements from January 1, 2020 to January 1, 2021. This extension will provide additional time for those larger employers who previously trained their supervisors to train their non-supervisory employees, and for smaller employers to train both their supervisory and non-supervisory employees. As a practical matter, it will also provide additional time after the DFEH training materials are published in late 2019 for employers to determine whether to use them or to develop their own training modules.

Second, the new January 1, 2021 deadline removes the prior concern that supervisors trained in 2018 would need to be retrained in 2019 to meet the 2020 deadline. It also specifically provides that employers who provide legally-sufficient training in 2019 – whether to comply with the previously announced January 1, 2020 deadline or because they simply still wish to do so earlier – will not be required to provide further refresher training and education again until two years thereafter. Further, it specifies that moving forward, employers must provide this sexual harassment training and education to each California employee once every two years.

Third, it specifies that non-supervisory employees must be trained within six months of hire.

Please note, while SB 778 extended the initial training compliance deadline in Government Code section 12950.1(a) applicable to most employers, it did not affect the training requirements contained in

subsection (h) applicable to seasonal, temporary or other employees hired to work for less than six months, or to migrant and seasonal agricultural workers. Thus, while the employees covered by subsection (a) (which is most employees) must now be trained “by January 1, 2021” those employers subject to these more industry specific subsections must comply with their particular training requirements beginning “January 1, 2020.” As a practical matter, while almost all employees in California will need to be trained in 2020 (unless trained in 2019) to meet the new January 1, 2021 deadline, employers subject to these more specific industry-specific requirements may need to provide their training earlier in 2020 to meet the specific time frames applicable to them (e.g., within the first 30 days after hire or within 100 hours worked for seasonal, temporary or other employees hired to work for less than six months).

### **What This Means for Employers and Human Resources Professionals**

Overall, SB 778 provides several helpful clarifications and changes, as follows:

Extra Time to Train, if Needed. SB 778 delays for one year and from January 1, 2020 until January 1, 2021 the initial deadline for employers to comply with the new harassment training required under SB 1343. However, it does not preclude employers from providing this harassment training in 2019 (as originally contemplated) in which case the employer need not provide refresher training until 2021.

No Duty to Train in Both 2018 and 2019. SB 778 clarifies that supervisors previously trained in 2018 will not need to be retrained in 2019, and also specifies that employees trained in 2019 will not need to be retrained in 2020. Instead, SB 778 specifies that the every-two-year training protocol previously used under AB 1825 training for supervisors will apply for SB 1343 training for supervisors and non-supervisors moving forward.

Deadline to Train Non-Supervisors. SB 778 further clarifies that harassment training for non-supervisory employees must be provided within six months of hire, which somewhat mirrors the requirement that supervisory employees be trained within six months of becoming a supervisor, whether through new hire or promotion.