

AB 2053: NEW LAW REQUIRES SUPERVISOR TRAINING REGARDING ABUSIVE CONDUCT

On September 9, 2014, Governor Jerry Brown signed into law AB 2053 (Chapter 306, Statutes of 2014), requiring California employers to provide employee training on the prevention of abusive conduct at work. This requirement will become effective on January 1, 2015.

BACKGROUND

Since 2005, California has required private employers with 50 or more employees and all California governmental employers to provide at least two hours of effective interactive training and education regarding sexual harassment to all supervisory employees within six months of their assumption of a supervisory position and once every two years thereafter. While the requirement is contained in Government Code Section 12950.1 and its accompanying regulations, it is still commonly referred to by the bill number that created the requirement — AB 1825. AB 2053 amends the AB 1825 requirements to add training on the prevention of abusive conduct as a component of the two hour sexual harassment training.

DEFINITION OF “ABUSIVE CONDUCT”

AB 2053 defines “abusive conduct” as “conduct of an employer or an employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests.” The statute continues to provide that, “abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.”

NEW TRAINING REQUIREMENT

The abusive conduct prevention training requirement only applies to employers and employees to which AB 1825 already applies. Private employers with 50 or more employees and all California governmental employers will be required to provide this training to their supervisory employees.

Beyond the definition of abusive conduct, there is no more guidance in the statute on how AB 1825 training should incorporate this information. Much of the current regulatory guidance on AB 1825 training focuses on training supervisors on the laws that make sexual harassment unlawful. But abusive conduct, absent unlawful discrimination, harassment or retaliation, is generally not actionable under California or federal law. The Fair Employment and Housing Council is expected to issue regulations on the abusive conduct training required under AB 2053 early next year. We have been advised that there will be no requirement on how many minutes must be devoted to abusive conduct training as a part of sexual harassment training. Until regulatory guidance is available, training should cover the AB 2053 definition of abusive conduct set forth above. It would also be reasonable to state that although abusive conduct on its own is not necessarily actionable under California anti-discrimination statutes, its prevention is nonetheless included in the training as a good business practice.

We will issue a follow-up *Briefing* when regulatory guidance becomes available.

For questions regarding this *Briefing*, please contact your Keenan HealthCare Account Manager.

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