



LAW UPDATE LABOR AND EMPLOYMENT

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WORKPLACE BULLYING: AB 2053 EDUCATIONAL/TRAINING REQUIREMENTS FOR SUPERVISORS

Encouraged by the national Healthy Workplace Campaign, and backed by studies which demonstrate the disruptive effect of bullying in the workplace, California has added “abusive conduct” education and training as a component of the required two-hour sexual harassment prevention training for supervisors, effective January 1, 2015. Proposed by Assembly Member Lorena Gonzales and signed by Governor Brown on September 9, 2014, AB 2053 amends Government Code §12950.1 to include “abusive conduct” education and training for managers.

WHAT IS “ABUSIVE CONDUCT?”

The new legislation defines “abusive conduct” as “conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. 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.”

WHAT IS REQUIRED OF EMPLOYERS?

AB 2053 does not make bullying, by itself, unlawful. It does require that management employees receive training on detection and prevention of workplace bullying along with required sexual harassment training. While CSBA Sample Policy 4119.21 requires all district employees to “maintain the highest ethical standards, [and] exhibit professional behavior,” districts should incorporate anti-bullying provisions in to current anti-harassment/anti-retaliation policies and complaint procedures which govern employee conduct, similar to bullying and intimidation prevention efforts applied to student conduct (see CSBA Sample Policy 5145.3) .

WHY AB 2053?

There is often times a gap between workplace misconduct which violates existing state and federal discrimination and harassment laws and that which is coarse, vulgar, uncivil or simply disrespectful. As noted by the court in *Lyle v. Warner Bros. Television Prod.* (2006) 38 Cal.4th 264, 295, like Title VII, the Fair Employment & Housing Act (FEHA) “is ‘not a civility code’ and is not designed to rid the workplace of vulgarity.” While the latter should be up to the employer to

appropriately restrict and manage, proponents of AB 2053 believe employers have not done enough in addressing abusive conduct in the workplace and thus this measured approach, education first, is the state's first attempt to deal with this growing problem.

AB 2053 is currently incorporated into sexual harassment trainings offered by Schools Legal Service. If you have any questions or comments, or would like to provide this training to district staff, please contact our office.

If you have any questions concerning this issue, please do not hesitate to contact our office.

– Kelly A. Lazerson

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