



NEW DEVELOPMENTS AT THE DFEH

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The California Department of Fair Employment and Housing is the state agency charged with enforcing California's civil rights laws. The mission of DFEH is to protect the people of California from unlawful discrimination in employment, housing and public accommodations and from hate violence and human trafficking.

LATEST NEWS

- Changes in DFEH workforce and staffing
- Training Unit
- Specialization
- CCRS: new online case filing and management system
- Strategic plan: www.dfeh.ca.gov/strategic-plan/

2 CCR § 11017.1 -- effective July 1, 2017

CRIMINAL HISTORY INFORMATION

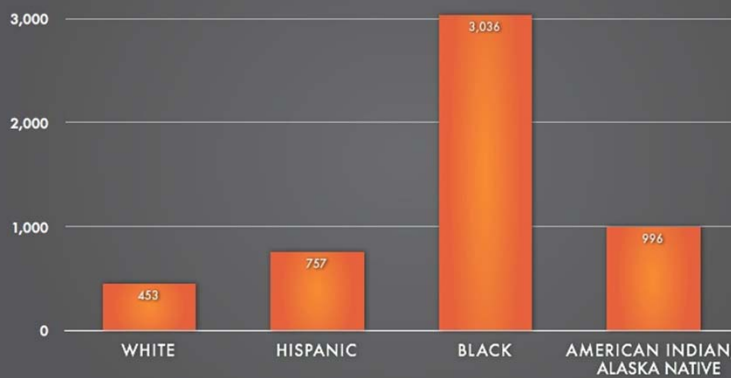
CRIMINAL HISTORY INFORMATION

- Almost One in Three California Adults (7 Million) Has an Arrest or Conviction Record
- Nearly 90% of large employers conduct criminal background checks for employment. (Source: Society for Human Resources Management, 2012)

CRIMINAL HISTORY INFORMATION

CALIFORNIA INCARCERATION RATES BY RACE/ETHNICITY, 2010

(Number of people incarcerated per 100,000 people in that group)



PRISON
POLICY INITIATIVE

Source: Calculated by the Prison Policy Initiative from U.S. Census 2010 Summary File 1. Incarcerated populations are all types of correctional facilities in a state, including federal and state prisons, local jails, halfway houses, etc. Statistics for Whites are for Non-Hispanic Whites.

CRIMINAL HISTORY INFORMATION

- Regulations gather current laws in one place
- And explain “adverse impact” theory of discrimination
- If there is adverse impact, burden is on employer to show the policy is job-related and consistent with business necessity.

CRIMINAL HISTORY INFORMATION

- Factors:
 - The nature and gravity of the offense or conduct
 - The time that has passed since the offense or conduct and/or completion of the sentence
 - The nature of the job held or sought.

2 CCR § 11030 -11034

**LATEST ON
TRANSGENDER PROTECTIONS**

Government Code § 12950.1

**NEW REQUIREMENTS FOR AB 1825
SEXUAL HARASSMENT TRAINING**

AB 1825

The required training went into effect back in 2005 and generally requires two hours of supervisor harassment training every two years (commonly referred to as “AB 1825 supervisor harassment training”).

AB 1825

Clarify what is meant by “new”

Improved Communication between the DFEH and all parties of interest!

Human Resource professionals:

- FEHA
- FEHA Regulations

- CASE LAW?

Many of the updates bring the regulations into conformity with recent changes to the law and court decisions interpreting the Fair Employment and Housing Act (“FEHA”).

AB 1825

The regulations now provide further details regarding the proper training methods and recordkeeping of required supervisor sexual harassment trainings.

AB 1825

Goal! - It's not just training, but engagement!

Designed to create a more respectful and successful workplace culture for your organization

4-1-16 FAIR EMPLOYMENT & HOUSING ACT REGULATIONS

**“ANTI-DISCRIMINATION, HARASSMENT
& RETALIATION POLICIES”**

Employer’s potential liability of
alleged harassers

- 11031 f C 1- 3 An employer or other covered entity may be liable for sexual harassment committed by a supervisor, coworker, or third party.
- 1. An employer or other covered entity is strictly liable for the harassing conduct of its agents or supervisors, regardless of whether the employer or other covered entity knew or should have known of the harassment.
- 2. An employer or other covered entity is liable for harassment of an employee, applicant, or independent contractor, perpetrated by an employee other than an agent or supervisor, if the entity or its agents or supervisors knows or should have known of the harassment and fails to take immediate and appropriate corrective action.
- 3. An employer or other covered entity is liable for the sexually harassing conduct of nonemployees towards its own employees where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

Employee's Potential Personal Liability

- 11031 f C 4. An employee who harasses a co-employee is personally liable for the harassment, regardless of whether the employer knew or should have known of the conduct and/or failed to take appropriate corrective action.

Sexual Harassment Prevention & Correction

- 11023 b
- In addition to distributing the Department's DFEH-185 brochure on sexual harassment, or an alternative writing that complies with Government Code section 12950, an employer shall develop a harassment, discrimination, and retaliation prevention policy that
- Includes, but is no limited to:
- Is in writing
- Identify ways to report other than to supervisor e.g. Identification of the Department and the U.S. Equal Employment Opportunity Commission (EEOC) as additional avenues for employees to lodge complaints.

Sexual Harassment Prevention & Correction

- Lists all current protected categories covered under the Act;
- Indicates that the law prohibits coworkers and third parties, as well as supervisors and managers, with whom the employee comes into contact from engaging in conduct prohibited by the Act;

Sexual Harassment Prevention & Correction

- Creates a complaint process to ensure that complaints receive:
 - (A) An employer's designation of confidentiality, to the extent possible;
 - (B) A timely response;
 - (C) Impartial and timely investigations by qualified personnel;
 - (D) Documentation and tracking for reasonable progress;
 - (E) Appropriate options for remedial actions and resolutions; and
 - (F) Timely closures

**Anti-Discrimination,
Harassment, & Retaliation
Policy**

In addition, employers are also obligated to show that they have properly provided such policies to employees and confirm receipt of the policy. (2 C.C.R. 11023(b)).

**Anti-Discrimination,
Harassment, & Retaliation
Policy**

The regulations now provide the following:

- Employers must maintain the following information related to the supervisor harassment trainings for a minimum of two years:
 - Names of the supervisory employees trained,
 - Date of training,
 - Sign in sheet,
 - Copy of all certificates of attendance or completion issued,
 - Type of training,
 - Copy of all written or recorded materials that comprise the training, and
 - Name of the training provider. (2 C.C.R. 11024(b)(2)).

Anti-Discrimination,
Harassment, & Retaliation
Policy

- For any interactive electronic trainings (*g.*, e-learning or webinar training), the trainer must also maintain copies of all materials, employee questions, and written responses to employee questions for two years after the training. (2 C.C.R. sec. 11024(a)(2)).

Anti-Discrimination,
Harassment, & Retaliation
Policy

- Clarifies that while the use of audio, video, or computer technology can be used in conjunction with classroom, webinar, or e-learning training, the use of such supplemental tools by themselves cannot fulfill the supervisor training requirements. (2 C.C.R. 11024(a)(2)).

**Anti-Discrimination,
Harassment, & Retaliation
Policy**

- Outlines examples of interactive measures that can be used in the training to satisfy the requirements to assess a supervisor's understanding of content and to ensure that the supervisor remains engaged in the training. (2 C.C.R. 11024(a)(2)).

**Anti-Discrimination,
Harassment, & Retaliation
Policy**

The employee told me that they did not want me to take any action; they just wanted to let me know.

- Supervisors' obligation to report sexual harassment, discrimination, and retaliation when they become aware,
- Steps necessary to take appropriate remedial measures to correct harassing behavior; and
- Review "abusive conduct" (in compliance with AB 2053 requirements that went into effect on January 1, 2015). (2 C.C.R. 11024(c)).

Civil Code § 52.5

CALIFORNIA TRAFFICKING VICTIMS PROTECTION ACT

California Trafficking Victims Protection Act



California Trafficking Victims Protection Act



California Trafficking Victims Protection Act



California Trafficking Victims Protection Act.

- Human trafficking is a form of “unfree labor.”
- This means that workers, no matter how they come to the workplace, are not free to quit due to force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury
- Note: no requirement of transportation or movement

Government Code section 11135

- Provides protection from discrimination in any program or activity that is conducted, funded directly by, or receives any financial assistance from the State.

Learn More About DFEH

- Visit our website at www.dfeh.ca.gov
- Contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY)
- If you wish to file a complaint, please visit our website or contact the Communication Center at the numbers above.