

AMENDED IN SENATE APRIL 1, 2019

SENATE BILL

No. 778

Introduced by Committee on Labor, Public Employment and Retirement (Senators Hill (Chair), Jackson, Mitchell, Morrell, and Pan)

February 26, 2019

An act to amend Section 12950.1 of the Government Code, relating to ~~employment~~, *employment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Committee on Labor, Public Employment and Retirement. Employers: sexual harassment training: requirements.

The California Fair Employment and Housing Act makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Under existing law, the Department of Fair Employment and Housing administers these provisions. Existing law, by January 1, 2020, requires an employer with 5 or more employees to provide at least 2 hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least 1 hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California within 6 months of their assumption of a position. Existing law also specifies that an employer who has provided this training to an employee after January 1, 2019, is not required to provide sexual harassment training and education by the January 1, 2020, deadline.

This bill would instead specify that an employer who has provided this training and education to an employee after January 1, 2018, is not required to do so again until after December 31, 2020. *require an employer with 5 or more employees to provide the above-described training and education by January 1, 2021, and thereafter once every 2 years. The bill would require new nonsupervisory employees to be provided the training within 6 months of hire and new supervisory employees to be provided the training within 6 months of the assumption of a supervisory position. The bill would also specify that an employer who has provided this training and education in 2019 is not required to provide it again until 2 years thereafter.* The bill would make other related changes to those provisions requiring sexual harassment training.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12950.1 of the Government Code is
2 amended to read:
3 12950.1. (a) By January 1, ~~2020~~, 2021, an employer having
4 five or more employees shall provide at least two hours of
5 classroom or other effective interactive training and education
6 regarding sexual harassment to all supervisory employees and at
7 least one hour of classroom or other effective interactive training
8 and education regarding sexual harassment to all nonsupervisory
9 employees in ~~California within six months of their assumption of~~
10 ~~a position, and thereafter refresher training to each employee once~~
11 ~~every two years.~~ *California. Thereafter, each employer covered*
12 *by this section shall provide sexual harassment training and*
13 *education to each employee in California once every two years.*
14 *New nonsupervisory employees shall be provided training with*
15 *six months of hire. New supervisory employees shall be provided*
16 *training within six months of the assumption of a supervisory*
17 *position. An employer may provide this training in conjunction*
18 *with other training provided to the employees. The training may*
19 *be completed by employees individually or as part of a group*
20 *presentation, and may be completed in shorter segments, as long*
21 *as the applicable hourly total requirement is met. An employer*

1 who has provided this training and education to an employee ~~after~~
2 ~~January 1, 2018, in 2019~~ is not required to provide refresher
3 training and education ~~until after December 31, 2020.~~ *again until*
4 *two years thereafter.* The training and education required by this
5 section shall include information and practical guidance regarding
6 the federal and state statutory provisions concerning the prohibition
7 against and the prevention and correction of sexual harassment
8 and the remedies available to victims of sexual harassment in
9 employment. The training and education shall also include practical
10 examples aimed at instructing supervisors in the prevention of
11 harassment, discrimination, and retaliation, and shall be presented
12 by trainers or educators with knowledge and expertise in the
13 prevention of harassment, discrimination, and retaliation. The
14 department shall provide a method for employees who have
15 completed the training to save electronically and print a certificate
16 of completion.

17 (b) An employer shall also include prevention of abusive
18 conduct as a component of the training and education specified in
19 subdivision (a).

20 (c) An employer shall also provide training inclusive of
21 harassment based on gender identity, gender expression, and sexual
22 orientation as a component of the training and education specified
23 in subdivision (a). The training and education shall include practical
24 examples inclusive of harassment based on gender identity, gender
25 expression, and sexual orientation, and shall be presented by
26 trainers or educators with knowledge and expertise in those areas.

27 (d) The state shall incorporate the training required by
28 subdivisions (a) to (c), inclusive, into the 80 hours of training
29 provided to all new employees pursuant to subdivision (b) of
30 Section 19995.4, using existing resources.

31 (e) Notwithstanding subdivisions (j) and (k) of Section 12940,
32 a claim that the training and education required by this section did
33 not reach a particular individual or individuals shall not in and of
34 itself result in the liability of any employer to any present or former
35 employee or applicant in any action alleging sexual harassment.
36 Conversely, an employer's compliance with this section does not
37 insulate the employer from liability for sexual harassment of any
38 current or former employee or applicant.

39 (f) If an employer violates this section, the department may seek
40 an order requiring the employer to comply with these requirements.

1 (g) The training and education required by this section is
2 intended to establish a minimum threshold and should not
3 discourage or relieve any employer from providing for longer,
4 more frequent, or more elaborate training and education regarding
5 workplace harassment or other forms of unlawful discrimination
6 in order to meet its obligations to take all reasonable steps
7 necessary to prevent and correct harassment and discrimination.
8 This section shall not be construed to override or supersede statutes,
9 including, but not limited to, Section 1684 of the Labor Code, that
10 meet or exceed the training for nonsupervisory employees required
11 under this section.

12 (h) (1) Beginning January 1, 2020, for seasonal, temporary, or
13 other employees that are hired to work for less than six months,
14 an employer shall provide training within 30 calendar days after
15 the hire date or within 100 hours worked, whichever occurs first.
16 In the case of a temporary employee employed by a temporary
17 services employer, as defined in Section 201.3 of the Labor Code,
18 to perform services for clients, the training shall be provided by
19 the temporary services employer, not the client.

20 (2) Beginning January 1, 2020, sexual harassment prevention
21 training for migrant and seasonal agricultural workers, as defined
22 in the federal Migrant and Seasonal Agricultural Worker Protection
23 Act (29 U.S.C. 1801, et seq.), shall be consistent with training for
24 nonsupervisory employees pursuant to paragraph (8) of subdivision
25 (a) of Section 1684 of the Labor Code.

26 (i) (1) For purposes of this section only, “employer” means any
27 person regularly employing five or more persons or regularly
28 receiving the services of five or more persons providing services
29 pursuant to a contract, or any person acting as an agent of an
30 employer, directly or indirectly, the state, or any political or civil
31 subdivision of the state, and cities.

32 (2) For purposes of this section, “abusive conduct” means
33 conduct of an employer or employee in the workplace, with malice,
34 that a reasonable person would find hostile, offensive, and
35 unrelated to an employer’s legitimate business interests. Abusive
36 conduct may include repeated infliction of verbal abuse, such as
37 the use of derogatory remarks, insults, and epithets, verbal or
38 physical conduct that a reasonable person would find threatening,
39 intimidating, or humiliating, or the gratuitous sabotage or
40 undermining of a person’s work performance. A single act shall

1 not constitute abusive conduct, unless especially severe and
2 egregious.

3 (j) For purposes of providing training to employees as required
4 by this section, an employer may develop their own training
5 module or may direct employees to view the online training course
6 referenced in subdivision (k) and this shall be deemed to have
7 complied with and satisfied the employers' obligations as set forth
8 in this section and Section 12950.

9 (k) The Department of Fair Employment and Housing shall
10 develop or obtain two online training courses on the prevention
11 of sexual harassment in the workplace in accordance with the
12 provisions of this section. The course for nonsupervisory
13 employees shall be one hour in length and the course for
14 supervisory employees shall be two hours in length.

15 (l) The department shall make the online training courses
16 available on its internet website. The online training courses shall
17 contain an interactive feature that requires the viewer to respond
18 to a question periodically in order for the online training courses
19 to continue to play. Any questions resulting from the online training
20 course described in this subdivision shall be directed to the trainee's
21 employer's Human Resources Department or equally qualified
22 professional rather than the department.

23 *SEC. 2. This act is an urgency statute necessary for the*
24 *immediate preservation of the public peace, health, or safety within*
25 *the meaning of Article IV of the California Constitution and shall*
26 *go into immediate effect. The facts constituting the necessity are:*

27 *In order to encourage maximum employer compliance by*
28 *ensuring general awareness of the new requirements governing*
29 *sexual harassment training, it is necessary for this act to take effect*
30 *immediately.*