

CLIENT NEWS BRIEF

DFEH Releases Guidelines on Anti-Harassment Policies, Training and Notice Regulations

The Department of Fair Employment and Housing (DFEH) recently released a [Workplace Harassment Guide](#) that includes recommended practices to enable employers to comply with California Fair Employment and Housing Act (FEHA) regulations aimed at preventing, investigating and addressing workplace harassment. DFEH also issued [guidance](#) and a [poster](#) related to identifying and addressing sexual harassment in the workplace.

Effective April 1, 2016, California employers became subject to new regulations under FEHA which prohibit workplace discrimination and harassment. The new anti-harassment regulations require employers to adopt and distribute written policies on unlawful harassment, including how complaints of prohibited conduct should be filed. The new regulations also require employers to provide trainings on prohibited harassment, discrimination, and abusive conduct. (For more details regarding these FEHA regulations, [see 2016 Client News Brief No. 30.](#))

DFEH's Workplace Harassment Guide provides valuable guidance on what employers can do to ensure an effective anti-harassment program and provides recommended practices for conducting workplace investigations. The guide's recommendations include:

- If an employer receives a report of harassment, including an anonymous complaint, the employer should give the complaint "top priority" and determine if the complaint may be resolved informally or if a formal investigation is necessary.
- Investigations should be fair and should include:
 - A thorough interview with the complainant, preferably in person;
 - An opportunity for the accused to respond and tell his/her side of the story;
 - Interviews of relevant witnesses and a review of relevant documents; and
 - A conclusion based on the information collected, reviewed and analyzed.
- Employers can only promise *limited* confidentiality of the complaint, in part because the identity of the complainant can often be determined based on the allegations. Also, it is rarely appropriate for an employer to fail to investigate a complaint because an employee asks their employer to keep the complaint confidential.
- Whether employers may direct employees to not discuss a pending investigation is a complicated issue. Employers should consult with legal counsel prior to giving such a directive. (For the Public Employment Relations Board's determination on "no contact" admonitions, [see 2015 Client News Brief No. 3.](#))

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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- Investigations should be started and conducted promptly. Further, investigations should be fair, thorough, and conducted by a neutral investigator. Employers should also consider whether the investigator will be publicly perceived as unbiased.
- An investigator can reach a reasonable conclusion in a “he said/she said” situation based on an assessment of witness credibility.
- Investigators should document witness interviews, steps taken in the investigation and findings made.
- Investigators should make findings of fact (not legal conclusions) based on a “preponderance of the evidence” standard. “Preponderance of the evidence” means that it is more likely than not that the alleged conduct occurred.
- Misconduct should be addressed through remedial measures. Remedial measures recommended by DFEH include training, verbal counseling and discipline.
- Retaliation can occur at any time, and complainants and witnesses must be protected from retaliation.

In addition to DFEH’s guidance, school and community college districts should be mindful of their own policies and procedures for conducting investigations, which may include specific timelines and investigation procedures, as well as applicable collective bargaining agreements.

Lozano Smith has a team of attorneys experienced in conducting investigations of complaints, including employee and student complaints alleging discrimination and harassment. For more information, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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