

AB 1825 Sexual Harassment Training Mandates

AB 1825 (California's sexual harassment training law) is the first law of its kind to actually detail the requirements for effective sexual harassment training, setting the standard not only for California, but for the rest of the country as well.

NAVEX Global's interactive sexual harassment training course exceeds the stringent California AB 1825 training requirements, as well as those detailed under Federal Law and other states, such as Connecticut and Maine.

Basic Provisions of California's AB 1825

Two Hours of Sexual Harassment Training Every Two Years

The deadline for the first round of AB 1825 training was December 31, 2005. Thereafter, employers must provide two hours of training to each supervisory employee, every two years.

50 or More Employees

AB 1825's sexual harassment training requirements apply to organizations that regularly employ 50 or more employees, or regularly "receive the services of" 50 or more persons. (Independent contractors and temps are included in the 50+ number.)

New Hires and Promotions

New supervisory employees must receive sexual harassment training within six months of their assumption of a supervisory position, and thereafter, every two years.

High Quality Sexual Harassment Training Required

The training mandated by California's AB 1825 must be of a high quality, conducted via "classroom or other effective interactive training" and must include the following topics:

- » Information and practical guidance regarding federal and state statutory laws about sexual harassment.
- » Information about the correction of sexual harassment and the remedies available to victims of sexual harassment.
- » Practical examples aimed at instructing supervisors in the prevention of sexual harassment, discrimination, and retaliation.

Failure to Comply Opens the Door to Sexual Harassment Lawsuits

A claim that an employer failed to provide AB 1825-mandated sexual harassment training does not automatically result in the liability of an employer for harassment. Plaintiffs will argue, however, that the failure to meet the new AB 1825 training mandates is evidence of an employer's failure to take all reasonable steps to prevent sexual harassment.

NAVEX Global's involvement in the Blue Ribbon Advisory Committee for AB 1825 Sexual Harassment Training Regulations

Because of our recognized expertise in the areas of sexual harassment training and discrimination prevention, the State of California appointed two NAVEX Global team members to the Blue Ribbon Advisory Committee tasked with drafting AB 1825.

AB 1825 Requirements and NAVEX Global's Sexual Harassment Training Solutions:

- » Legal Expertise Required for Sexual Harassment Training Course Designers
- » Interactivity Requirements for Sexual Harassment Training
- » Required "Help" Link in Sexual Harassment Training Courses
- » Required Policy Incorporation in Sexual Harassment Training Courses
- » Two-Year Sexual Harassment Training Requirements & Training Records
- » Two-Hour Sexual Harassment Training Requirements
- » Sexual Harassment Training Can and Should Address Other Types of Discrimination
- » The Draft Regulations Do Not Require a "California-Only" Sexual Harassment Training Program

Legal Expertise Required for Sexual Harassment Training Course Designers

The Regulations require that individuals who develop training materials ("trainers") meet certain qualifications. Trainers can be:

- » Attorneys admitted for two or more years to the bar of any state in the United States and whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964, or
- » Human resource professionals with two or more years practical experience in one or more of the following: a) designing or conducting discrimination, retaliation and sexual harassment prevention training; b) responding to sexual harassment complaints or other discrimination complaints; c) conducting investigations of sexual harassment complaints; or d) advising employers or employees regarding discrimination, retaliation and sexual harassment prevention, or
- » Professors and instructors in law schools, colleges or universities who have a post-graduate degree or California teaching credential and either 20 instruction hours or two or more years of experience in a law school, college or university teaching about employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.

Employers who develop their own sexual harassment training programs, or procure them from outside vendors, must be able to clearly demonstrate the active, hands-on participation of a true sexual harassment-prevention expert. This relates not only to a program's development, but also its ongoing maintenance.

NAVEX Global's Sexual Harassment Training

Long Term, Exclusive Relationship with the Nation's Preeminent Employment Law Firm

NAVEX Global has an exclusive relationship with California-based Littler Mendelson, the world's largest employment law firm. The firm remains our exclusive content partner for employment-related training.

NAVEX Global's relationship with Littler gives us access to a "brain trust" of more than 600 employment law specialists and the flexibility to include their attorneys in every step of course development, testing and updating.

Because of the Littler relationship, we are also able to use course scenarios drawn from real case law, anticipate cutting edge legal issues, and always meet or exceed every regulatory and statutory mandate - including those imposed by AB1825 and its final regulations.

As a result, our sexual harassment training solution can withstand intense legal review. In the event of litigation or a formal administrative proceeding, our NAVEX Global and Littler content developers are available for cross examination regarding their legal credentials, their practical experience in sexual harassment training and their hands-on involvement in developing NAVEX Global sexual harassment training courses.

Interactivity Requirements

The Regulations impose heightened interactivity requirements for all courseware, including:

- » “Questions that assess learning”
- » “Skill-building activities that assess the supervisor’s application and understanding of content learning”
- » “Numerous hypothetical scenarios about harassment, each with one or more discussion questions so that supervisors remain measurably engaged in the training.”

We Deliver Engaging, High Quality, Real-World Scenarios

With respect to e-learning, we at NAVEX Global believe this section of AB 1825 means that it is critical to avoid developing or purchasing sexual harassment training programs that involve a one-way “information dump” or excessive amounts of passive reading. Every component of the sexual harassment training program should be highly interactive and require the learner to constantly apply knowledge.

Every course we design engages learners by using a story-based program with a believable plotline and characters. The evolving story presents learners with real-world scenarios that deliver your message and make sense in today’s business environment.

Interactive Exercises Reinforce Lessons

Our Workplace Harassment sexual harassment training course also reinforces key lessons with interactive questions that must be resolved before learners proceed. In the standard supervisor sexual harassment training course, supervisors complete more than 40 interactive questions and activities, ensuring they stay engaged throughout the learning experience.

Supervisors Resolve Real Life Situations

In the supervisor version of NAVEX Global’s sexual harassment training course, learners actually become part of the story through special simulations that present realistic workplace scenarios and then ask the supervisors to resolve them.

Required “Help” Link in Sexual Harassment Training Course

The Regulations require that every online program must “provide a link to or directions on how to contact a trainer” for “questions and guidance.”

NAVEX Global’s “Ask A Question” Link

An “Ask a Question” link is available throughout the Workplace Harassment training course. Learners have immediate and consistent answers to their questions, with a link that includes a fully indexed and searchable database of hundreds of frequently asked questions.

It can also be a link directed to a specific email address, policies and procedure guidelines, your hotline/helpline, or contact information for appropriate organization leaders. The information in the link also appears automatically at the end of the sexual harassment training, and must be acknowledged by learners before they complete the sexual harassment training course.

Required Policy Incorporation in Sexual Harassment Training Courses

The Regulations require training to cover the elements of employer anti-harassment policy and address how to handle complaints. The regulations further provide that “regardless of whether the employer’s policy is used as part of the training the employer shall give each supervisor a copy of its anti-harassment policy and require each supervisor to read and to acknowledge receipt of that policy.”

NAVEX Global’s “Policies” Icon

Employer’s policies are available throughout the Workplace Harassment course under the “Policies” icon and appear automatically before learners complete the course. NAVEX Global’s electronic certification screen also asks learners to confirm that they have received and read your policies – this receipt is tracked in our LMS. All policies are printable.

Supervisors Are Encouraged to Report Potential Problems

The importance of reporting concerns or questions and understanding the specifics of the employer’s complaint procedure is reinforced in NAVEX Global’s Workplace Harassment course.

Completion Tracking & Training Records

The Regulations provide that employers must track sexual harassment training for each supervisor using the Individual Tracking Method, the Training Year Method, or a combination of both.

- » Individual Tracking Method – Under this method, an employer can track training for each supervisor measured two years from the date of the completion of the last training for that individual. E.g. Doug receives training on January 15, 2017. Doug must be retrained no later than January 15, 2019.
- » Training Year Tracking Method – Under this method, an employer can designate a “training year” to train some or all of its supervisors, and thereafter, must again retrain these supervisors by the end of the next “training year,” two years later, even those newly hired or promoted supervisors who received training the prior year.

Employers are also required to keep records of the sexual harassment training provided to supervisors for at least 2 years. The retained record must include:

- » The supervisory employee’s name
- » The training date
- » The type of training
- » The name of the trainer or provider

Thorough Tracking and Reporting

Our Learning Management System (LMS) allows clients to easily track and report on individual learner sexual harassment training records and to schedule appropriate re-training.

The LMS can be quickly populated with an employer’s user information for its initial training populations and includes several customizable fields that permit employers to run reports that make sense in their environments.

Clients also have access to an invaluable resource - NAVEX Global’s Implementation Managers. Clients are assigned an Implementation Manager to help them implement the sexual harassment training course and support them throughout their agreement.

Two Year Training Requirements

Two hours of training is “two hours of classroom training, or two hours of Webinar training, or in the case of an e-learning program, a program that takes the supervisor no less than two hours to complete.”

The Regulations expressly provide, however, that “the training need not be completed in two consecutive hours; e-learning courses may include bookmarking features.”

NAVEX Global Course Delivery & Frequency

Timing Options Tailored to Your Workplace. NAVEX Global’s Workplace Harassment solution easily meets AB 1825’s 2-hour mandate.

- » Pre-Timed Audio Version. One sexual harassment training course option is an enhanced version configured to run in no less than 2 hours.
- » Timer Feature. Another option is a timer feature that tracks how long learners have been in the course. Learners who “complete” the sexual harassment training course in less than 2 hours are guided to go back through the course for additional study until the 2-hour requirement is satisfied.

Bookmarking

Workplace Harassment also includes a bookmarking feature that allows your supervisors to log out of the sexual harassment training program, and then return to where they left off.

Training Can and Should Address Other Types of Discrimination

The Regulations specify that the sexual harassment training must extend beyond sexual harassment to other forms of prohibited harassment and require that training provide “practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.”

Sexual harassment training can discuss “how harassment of an employee can cover more than one basis.” These basis categories include:

- » Race
- » National origin
- » Mental disability
- » Sex
- » Religious creed
- » Ancestry
- » Medical condition
- » Age
- » Color
- » Physical disability
- » Marital status
- » Sexual orientation

NAVEX Global Addresses Many Other Forms of Discrimination and Retaliation Behaviors

Workplace Harassment focuses on sexual harassment issues but also introduces learners to other forms of discriminatory conduct that often form the basis of claims, and also covers the retaliation prohibition.

Workplace Harassment specially emphasizes “intersectional discrimination,” how sexual harassment claims often intersect with claims relating to race, religion, disability, and age. Intersectional discrimination has been highlighted by the EEOC in its 2006 Compliance Manual.

Providing supervisors and employees with the broadest possible sexual harassment training, is an efficient use of resources, provides the strongest legal protections, and makes plain, common sense:

- » California harassment prevention law is not limited to sexual harassment, and requires employers to take “all reasonable steps necessary to prevent discrimination and harassment from occurring.” Govt. Code §12940(k).
- » Federal law strongly encourages mandatory harassment and discrimination training under all of the “protected categories.”
- » Broad-based harassment and discrimination training makes it easier for employers to meet evolving state and federal requirements.

The Regulations Do Not Require a “California-only” Sexual Harassment Training Program

The Regulations provide specific guidance on the type of training that must be provided. They do not, however, require employers to create a “California-only” training program or bar employers from including California supervisors in a national program that meets AB 1825 standards for rigorous, comprehensive sexual harassment training.

NAVEX Global Delivers a Consistent, National Sexual Harassment Training Program

Treating AB 1825’s sexual harassment training guidelines as a “California-only” phenomenon may be tempting. However, employers should treat AB 1825 as a catalyst for the comprehensive training that is required across your organization.

- » Such sexual harassment training is required to meet the federal standards, discussed above.
- » Employers may be criticized in court for limiting comprehensive sexual harassment training to California-based supervisors. Imagine savvy plaintiffs’ lawyers: ‘Why didn’t you give the supervisor in this case the same, comprehensive sexual harassment training that you give your California-based supervisors?’
- » Employers should, wherever possible, speak with a single voice regarding their harassment policies and programming.

Only Providing Managers with Sexual Harassment Training

Federal case law suggests that both managers and employees must be trained to successfully establish an affirmative defense to harassment claims brought in federal court.

- » California Government Code §12940(k) requires employers to take “all reasonable steps necessary to prevent discrimination and harassment from occurring.”
- » In *State Dep’t of Health Servs. v. Superior Court*, the California Supreme Court held that the Fair Employment and Housing Act (FEHA) does not allow the federal Faragher/Ellerth defense in harassment claims. Instead, California employers may assert a different defense under the FEHA – the doctrine of avoidable consequences. This defense allows an employer to limit damages by proving that it took appropriate steps to prevent and address harassment.

According to State Dep’t of Health Services, to establish the avoidable consequences defense, a California employer must:

- » Show that it adopted appropriate anti-harassment policies and communicated essential information to employees.
- » Ensure a strict prohibition against retaliation for reporting alleged policy violations.
- » Ensure that reporting procedures protect employee confidentiality as much as is practical.
- » “Consistently and firmly” enforce anti-harassment policies.

The Court further stated that in establishing the avoidable consequences defense, potentially relevant evidence includes “anything tending to show that the employer took effective steps” to encourage individuals to report harassment and for the employer to respond effectively.

None of these factors are limited to supervisors. This broader directive strongly supports sexual harassment training for both employees and managers.

Delaying Implementation of a Sexual Harassment Training Solution that Meets the Regulatory Requirements

Even if a sexual harassment training deadline has just ended, the next cycle of required training will be at hand for most organizations. Employers must evaluate their training needs and existing programs now so that:

- » The sexual harassment training provided to supervisors in the next training cycle fully complies with AB 1825 and its regulations.
- » Newly hired and newly promoted supervisors receive compliant AB 1825 training.
- » Employers needing additional compliance solutions will have sufficient time to evaluate, procure, and roll out a program. The procurement process often requires buy-in from multiple constituencies and typically takes from 2-6 months. Also, once a sexual harassment training program is developed or purchased, time is also required to actually roll out and complete the training.

For more information about detailed training requirements for AB 1825/AB 2053 see: [AB 2053: Navigating California's Abusive Conduct Training Regulation](#) and [California Fair Employment Housing Act](#), effective April 1ST, 2016.

ABOUT NAVEX GLOBAL

NAVEX Global's comprehensive suite of ethics and compliance software, content and services helps organizations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, our solutions are informed by the largest ethics and compliance community in the world.