

DEPARTMENT OF INDUSTRIAL RELATIONS

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Julie A. Su, California Labor Commissioner
Division of Labor Standards Enforcement

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Dear Farm Labor Contractor:

I want to inform you of a new law that went into effect on January 1, 2018 that affects every farm labor contractor (FLC) operating in California. The Governor signed Senate Bill 295 (SB 295), which includes additional responsibilities for FLCs in educating your employees about and preventing sexual harassment.

SB 295 enables the Labor Commissioner's Office to issue citations and assess civil penalties for violations of sexual harassment prevention training as outlined in SB 1087 (2015) and SB 295. Given the importance of this issue, I hope this letter assists you in complying with the new requirements in this law.

1. Sexual harassment prevention training must be administered in the language the employee understands (Labor Code section 1684(a)(8)(B)). You may comply with the language requirement by:

- Providing the training in the language employee understands; or
- Having the training interpreted for the employee in the language that he or she understands.

2. FLC License Renewal applicants shall provide the Labor Commissioner with a complete list of all materials or resources utilized in providing sexual harassment prevention training to employees (Labor Code section 1684(a)(8)(D)(ii)). When you are renewing your FLC license, you must provide a complete list of all materials or resources utilized in providing sexual harassment prevention training to your agricultural employees in the calendar year prior to the month the renewal application is submitted. Training shall include, at a minimum, components of the following (Labor Code sections 1684(a)(8)(C)(i) through (D)(i)):

- (i) The illegality of sexual harassment;
 - (ii) The definition of sexual harassment under applicable state and federal law;
 - (iii) A description of sexual harassment, utilizing examples;
 - (iv) The internal complaint process of the employer available to the employee;
 - (v) The legal remedies and complaint process available through the Department of Fair Employment and Housing;
 - (vi) Directions for how to contact the Department of Fair Employment and Housing and;
 - (vii) Protections against retaliation under current law;
- (D)(i) The trainer may use the text of the Department of Fair Employment and Housing's pamphlet DFEH-185, "Sexual Harassment" as a guide to training, or may use other written material or other training resources covering the information required in subparagraph (C).

3. FLC License Renewal applicants shall provide the Labor Commissioner the total number of agricultural employees trained in sexual harassment prevention (Labor Code section 1684(a)(8)(G)(i)). With your license renewal, you must provide the total number of agricultural employees trained in sexual harassment prevention in the calendar year prior to the month the renewal application is submitted.

- The Labor Commissioner provides a “Farm Labor Contractor Employee Record of Training in Sexual Harassment Identification and Prevention” form in English and Spanish on our website for employees to complete and sign once they receive training.
- FLCs shall keep a record with the names of all employees receiving sexual harassment training for a period of three years (Labor Code section 1684(a)(8)(F)).

4. The Labor Commissioner shall annually aggregate the data provided by the FLCs and publish the total number on our website. The total number of agricultural employees trained in sexual harassment prevention in the previous calendar year, provided by the FLCs, will be published on our website (Labor Code section 1684(a)(8)(G)(ii)).

5. A citation and civil penalty may be assessed for noncompliance. The Labor Commissioner may issue a citation and assess a civil penalty in the amount of one hundred dollars (\$100) for each violation, taking into consideration whether the violation was inadvertent (Labor Code Section 1697.5(a)(1) through (6)). Potential violations are summarized below:

- (1) Fail to train an agricultural employee at the time of hire;
- (2) Fail to provide training in a language understood by the agricultural employee;
- (3) Fail to provide an agricultural employee with at least the minimum training;
- (4) Fail to provide an agricultural employee either (a) with a record of his or her training, or (b) a copy of the specified Department of Fair Employment and Housing sexual harassment pamphlet;
- (5) Provide an agricultural employee with a false record of completion of his or her training, when he or she has, in fact, received no training or;
- (6) Fail to keep a record of training for each agricultural employee who has received training.

6. Reminder: Sexual harassment prevention training requirements differ for supervisory and nonsupervisory (including agricultural) employees. Supervisory employees, including any supervisor, crew leader, mayordomo, foreperson, or other employee whose duties include the supervision, direction, or control of agricultural employees, still need to be trained for at least two hours each calendar year in the prevention of sexual harassment in the workplace. This requirement, which was in effect prior to January, remains in effect. In addition, all new nonsupervisory employees, including agricultural employees, must be trained at the time of hire and then at least once every two years in identifying, preventing, and reporting sexual harassment in the workplace (Labor Code Section 1684(a)(8)(A)).

Also, included is a list of sexual harassment prevention resources. Please also note that I have updated the required continuing education requirements under 1684(c). While the topic headings remain the same, some specificity has been added to reflect these new requirements. There remains one set of requirements for newer FLCs and another for those more experienced. They are included here with this letter and can be found on our website at http://www.dir.ca.gov/DLSE/Rules_and_Regulations_for_FLCs.htm.

Thank you for your ongoing commitment to compliance and for educating yourself and your employees in sexual harassment prevention in this important and valued industry in California.

Sincerely,

Julie A. Su
Labor Commissioner

Resources for Sexual Harassment Training
Labor Commissioner Julie A. Su
Labor Code section §1684(a)(8)(A) through §1684 (d)(4) and §1697.5

SB 295 includes a new requirement for sexual harassment identification and prevention training to be in the language understood by employee receiving training. An FLC may comply with this requirement in two ways, either by providing the training in that language or by having the training interpreted into the language understood by the employee. SB 295 also requires an FLC to provide the Labor Commissioner a complete list of all materials or resources used to provide sexual harassment prevention training to their employees as part of their application for license renewal. To assist FLCs in this task, the Labor Commissioner has compiled a small sample of websites that contain training materials and information about sexual harassment identification and prevention in the workplace.

- Department of Fair Employment and Housing Poster and Brochures:
<https://www.dfeh.ca.gov/resources/posters-and-brochures-and-fact-sheets/poster-and-brochure-tab-list/>
- Department of Fair Employment and Housing Sexual Harassment FAQs:
<https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/sexual-harassment-faqs/>
- [Department of Fair Employment and Housing Video – Workplace Sexual Harassment - Spanish](#)
- [Department of Fair Employment and Housing Video – Sexual Harassment – English with Russian Subtitles](#)
- [Department of Fair Employment and Housing Video – Sexual Harassment – English with Hmong Subtitles](#)
- Employee Record of Training Form - English
[Farm Labor Contractor Employee Record of Training in Sexual Harassment Identification and Prevention form DLSE-404 \(English\)](#)
- Employee Record of Training Form - Spanish
[Farm Labor Contractor Employee Record of Training in Sexual Harassment Identification and Prevention form DLSE-404 \(Spanish\)](#)

In addition to the DFEH links provided above, CalChamber also offers complete two-hour sexual harassment training programs for both [supervisors](#) and [employees](#). (Click on “supervisors” and “employees” to open respective links).

As part of the mandated training, employers are required to provide the Department of Fair Employment and Housing pamphlet “Sexual Harassment: The Facts about Sexual Harassment” DFEH-185. Below are the pamphlets in the following languages: English, Spanish, Chinese, Korean, Tagalog, and Vietnamese.

- [DFEH-185-ENG - English](#)
- [DFEH-185-SP - Spanish](#)
- [DFEH-185-CH - Chinese](#)
- [DFEH-185-K - Korean](#)

- [DFEH-185-TG - Tagalog](#)
- [DFEH-185-VT - Vietnamese](#)

(Clicking links above will open a new browser window)

For assistance on locating interpreters, FLCs can contact their local community based organization.

FLCs are still required to keep a record of the training provided to employees and supervisors. At a minimum, the training record should include:

- (i) Name, address, and telephone number of the individual(s) who performed the training
- (ii) The date(s) on which the training and information were provided;
- (iii) Names of all employees to whom the training and information were provided (the FLC shall provide the total number of employees trained in sexual harassment prevention in the calendar year prior to the month the renewal application is submitted as part of his or her renewal application);
- (iv) A description of the training and information provided and, if written materials were provided (other than the DFEH-185, which is required to be provided), include a copy of such materials; and
- (v) A certification by the licensee or designated person of the licensee that the record is true and complete

FLC Continuing Education Requirements

Labor Commissioner Julie A. Su

Labor Code section 1684(c)

Core Topics for New FLC or FLC with less than 5 years in the business or those with 2 or more citations within the last 2 years

I. Farm Labor Contractor Requirements (**2 hours**)

- A. Wage and Hour (minimum wage, overtime, piece rate, meal/rest breaks, paid sick leave)
- B. Workers' Comp Insurance requirement
- C. AB 1897 and definition of client employer; obligations of client employers
- D. Labor Code 2810 Labor Costing
- E. Proper information to employees (226 itemized wage statements, LC 2810.5 notice)
- F. Transportation and Housing
- G. Child labor
- H. Duties of licensee (Labor Code 1695)
- I. Other requirements as dictated by legislative action

II. Health & Safety (**2 hours**)

- A. Injury and Illness Prevention Program
- B. Heat Illness (including First Aid)
- C. Pesticides
- D. Field Sanitation
- E. Electrical hazards
- F. Agriculture equipment and operation
 - Hand held and working tools
 - Ladders (fixed and portable metal ladders)
 - Machine Guarding
 - Helmets, earplugs, gloves, headgear, and other personal protective gear
 - Lock Out/Tag Out/Block Out--Hazardous Energy Stabilization
- G. Other requirements as directed by legislative action

III. Management and Supervision Education for FLC and Supervisors (**1 hour**)

- A. How to be a good manager, create a positive work environment, and proper role of supervisor
- B. Communication skills
- C. How to do an adequate investigation into labor law violations reported to you at your workplace
- D. Hiring, discipline and termination issues

IV. Sexual Harassment Prevention and Identification in the Workplace (**1 hour**)

- A. The definition of sexual harassment under applicable state and federal law.
- B. Why sexual harassment is illegal and legislative intent behind this training requirement

- C. A description of sexual harassment, utilizing examples, particularly those commonly occurring in the agricultural industry
- D. The internal complaint process of the employer available to the employee.
- E. The legal remedies and complaint process available through the Department of Fair Employment and Housing.
- F. Directions for how to contact the Department of Fair Employment and Housing.
- G. The protection against retaliation provided under current law.
- H. Employee sexual harassment prevention training records retention
- I. Timeframe for training new hires, supervisors, and non-supervisory employees

V. Retaliation Laws and Prohibitions on Retaliation (1 hour**)**

- A. Labor Code 98.6 and Discrimination in the workplace in general
- B. Stability in labor relations, collective bargaining and concerted activity
- C. California Equal Pay Act (Labor Code 1197.5 (SB 358 and AB 46 amendment))
- D. Protection against unfair immigration-related practices (Labor Code 1019 and 1019.1)

VI. Knowing the Costs of Your Business and Good Grower Relations (2 hours**)**

- A. Written contract or agreement between FLC and grower per Labor Code 2810
- B. How to calculate the costs of doing business to meet your needs (Labor Code 2810)
- C. Payroll list of employees at growers request (Labor Code 1695.5 and 1695.55)
- D. Joint employment and liability (Labor Code 2810.3)
- E. Effective communication to enhance FLC and grower relationship

FLC Continuing Education Requirements
Labor Commissioner Julie A. Su
Labor Code section 1684(c)

Core Topics for Experienced FLC with at least 5 years or more in the business without violation

I. Overview of Changes in Farm Labor Contractor Requirements (**1.5 hours**)

- A. Wage and Hour (minimum wage, overtime, piece rate, meal/rest breaks, paid sick leave)
- B. Workers' Comp Insurance requirement
- C. AB 1897 and definition of client employer; obligations of client employers
- D. Labor Code 2810 Labor Costing
- E. Proper information to employees (226 itemized wage statements, LC 2810.5 notice)
- F. Transportation and Housing
- G. Child labor
- H. Duties of licensee (Labor Code 1695)
- I. Other requirements as directed by legislative action

II. Overview of Changes in Health & Safety (**1.5 hours**)

- A. Injury and Illness Prevention Program
- B. Heat Illness (including First Aid)
- C. Pesticides
- D. Field Sanitation
- E. Electrical hazards
- F. Advanced Safety & Health
 - Personal Fall Protection Systems
 - Excavation Fall Protection
- G. Agriculture Equipment and Operation
 - Hand held and working tools
 - Ladders (fixed and portable metal ladders)
 - Machine guarding
 - Helmets, earplugs, gloves, headgear, and other personal protective gear
- H. Other requirements as directed by legislative action

III. Advanced Effective Management and Supervision (**1.5 hours**)

- A. How to be a good manager, create a positive work environment, and proper role of supervisor
- B. Communication skills
- C. How to do an adequate investigation into labor law violations reported to you in your workplace

IV. Sexual Harassment Prevention and Identification in the Workplace (1 hour**)**

- A. The definition of sexual harassment under applicable state and federal law.
- B. Why sexual harassment is illegal & legislative intent behind this training requirement
- C. A description of sexual harassment, utilizing examples, particularly those commonly occurring in the agricultural industry
- D. The internal complaint process of the employer available to the employee.
- E. The legal remedies and complaint process available through the Department of Fair Employment and Housing.
- F. Directions for how to contact the Department of Fair Employment and Housing.
- G. The protection against retaliation provided under current law.
- H. Employee sexual harassment prevention training records retention
- I. Timeframe for training new hires, supervisors, and non-supervisory employees

V. Knowing the Costs of Your Business and Good Grower Relations (2.5 hours**)**

(include information on AB 1897 and client employer obligations)

- A. Written contract or agreement between FLC and grower per Labor Code 2810
- B. How to calculate the costs of doing business to meet your needs (Labor Code 2810)
- C. Payroll list of employees at growers request (Labor Code 1695.5 and 1695.55)
- D. Joint employment and liability (Labor Code 2810.3)
- E. Effective communication to enhance FLC and grower relationship

Alternate Topics (must have 1 hour)

I. Immigration issues in the agriculture industry (including H-2A responsibilities)

II. Criminal provisions of the Labor Code

III. Health care reform: what does it mean for you?

IV. Landlord and Tenant Rights

V. Americans with Disabilities Act

VI. Discrimination in the Workplace and Hostile Work Environment

VII. Overview of changes in Retaliation Laws and Prohibitions on Retaliation

- A. Labor Code 98.6 and discrimination in the workplace in general
- B. Stability in labor relations, collective bargaining and concerted activity