

Sample Antiharassment/Antidiscrimination Training Regulations

Required Antiharassment and Antidiscrimination Training for Apprentices, Instructors, and Employees of an Apprenticeship Program.

New: 8 CCR 214.4. Required Training and Education Regarding Harassment Based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) “Program is an apprenticeship program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(2) “Effective interactive training” includes any of the following:

(A) “Classroom” training is in-person, trainer-instruction, whose content is created by a trainer and provided to an employee by a trainer, in a setting removed from the employee’s daily duties.

(B) “E-learning” training is individualized, interactive, computer-based training created by a trainer and an instructional designer. An e-learning training shall provide a link or directions on how to contact a trainer who shall be available to answer questions and to provide guidance and assistance about the training within a reasonable period of time after the employee asks the question, but no more than two business days after the question is asked.

(C) “Webinar” training is an internet-based seminar whose content is created and taught by a trainer and transmitted over the internet or intranet in real time. A Program utilizing a webinar for its employee’s and apprentices must document and demonstrate that each participant who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training’s interactive content, discussion questions, hypothetical scenarios, polls, quizzes or tests, and activities. The webinar must provide the participants an opportunity to ask questions, to have them answered and otherwise to seek guidance and assistance.

(D) For any of the above training methods, the instruction shall include questions that assess learning, skill-building activities that assess the participant’s application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that employees remain engaged in the training. Examples include pre- or post-training quizzes or tests, small group discussion questions, discussion questions that accompany hypothetical fact scenarios, use of brief scenarios discussed in small groups or by the entire group, or any other learning activity geared towards ensuring interactive participation as well as the ability to apply what is learned to the participant’s work environment.

(3) "Employee" includes full time, part time, and temporary workers of the Program.

(4) "Harassment" under this section refers to harassment on the bases of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation.

(5) "Discrimination" means the treatment one person or group differently from others who are not in the same group, but are similarly situated, based on many different factors, including race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation.

(6) "Trainers" or "Trainers or educators" qualified to provide training under this section are individuals who, through a combination of training, experience, knowledge, and expertise, have the ability to provide training about the following: 1) the definitions of abusive conduct, sexual harassment as specified in Government Code section 12940(j), gender identity, gender expression, sexual orientation, age, and the definitions of the other bases enumerated in the FEHA as specified in Government Code section 12940(a); 2) how to identify behavior that may constitute unlawful harassment, discrimination, and/or retaliation under both California and federal law; 3) what steps to take when harassing behavior occurs in the workplace; 4) how to report harassment complaints; 5) supervisors' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware; 6) how to respond to a harassment complaint; 7) the employer's obligation to conduct a workplace investigation of a harassment complaint; 8) what constitutes retaliation and how to prevent it; 9) essential components of an anti-harassment policy; 10) the effect of harassment on harassed employees, co-workers, harassers and employers; and 11) practical examples in the prevention of harassment, discrimination, and retaliation based on sex, gender identity, gender expression, sexual orientation, and the prevention of abusive conduct. Nothing in this section shall preclude an employer from utilizing multiple trainers who, in combination, meet all of the qualifications required by this subsection.

(7) "Training," as used in this section, is effective interactive training as defined at section 214.4(a)(2).

(8) "Two hours" of training is two hours of classroom training or two hours of webinar training or, in the case of an e-learning training, a program that takes the Program Staff no less than two hours to complete.

(9) "One hour" of training is one hour of classroom training or one hour of webinar training or, in the case of an e-learning training, a program that takes the apprentice no less than one hour to complete.

(b) Training.

(1) Frequency of Training. An program shall provide one hour of training to apprentices and two hours of training to program staff, in the content specified in section 214.4(c), once every two years.

(2) Documentation of Training. To track compliance, an program shall keep documentation of the training it has provided its employees under this section for a minimum of five years, including but not limited to the names of the employees and apprentices trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider.

(3) Training at a New Businesses Program. ~~Businesses-Programs~~ created after January 1, 2021, must provide training to employees within ~~six months~~ two weeks of their establishment and thereafter biennially.

(4) Training for New Employees. New employees shall be trained within ~~six months~~ two weeks of their hire date and thereafter shall be trained once every two years, measured either from the individual or training year tracking method.

(5) Training for New Supervisors. New supervisors shall be trained within ~~six months~~ two weeks of assuming their supervisory position (either as a new hire or as a promoted employee) and thereafter shall be trained once every two years, measured either from the individual or training year tracking method.

(c) Content of training.

(i) That discriminatory or harassing conduct will not be tolerated.

(ii) The definition of discrimination and harassment and the types of conduct that constitute unlawful discrimination and harassment.

(iii) The complaint procedures established by the apprenticeship program pursuant to Section 212(a)(14) of Title 8 of the California Code of Regulations.

(iv) The procedure for filing a complaint with the Administrator of Apprenticeship pursuant to Section 201.1 of Title 8 of the California Code of Regulations.

~~(A) The types of conduct that constitute harassment.~~

~~(B) Remedies available for harassment victims in civil actions; potential employer/individual exposure/liability.~~

~~(C) Strategies to prevent harassment in the workplace.~~

~~(D) Supervisors' obligation to report harassment, discrimination, and retaliation of which they become aware.~~

~~(E) Practical examples, such as factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources, which illustrate harassment, discrimination and retaliation using training modalities such as role plays, case studies and group discussions.~~

~~(F) The limited confidentiality of the complaint process.~~

~~(G) Resources for victims of unlawful harassment, such as to whom they should report any alleged harassment.~~

~~(H) In addition to discussing strategies to prevent harassment, the training should also cover the steps necessary to take appropriate remedial measures to correct harassing behavior, which includes an employer's obligation to conduct an effective workplace investigation of a harassment complaint.~~

~~(I) Training on what to do if a supervisor is personally accused of harassment.~~

~~(J) The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed. Either the employer's policy or a sample policy shall be provided to the employees. Regardless of whether the employer's policy is used as part of the training, the employer shall give each employee a copy of its anti-harassment policy and require each employee to read and to acknowledge receipt of that policy.~~

~~(K) A review of the definition of "abusive conduct" as used in this context (and as defined by Government Code section 12950.1(i)(2)). The training should explain the negative effects that abusive conduct has on the victim of the conduct as well as others in the workplace. The discussion should also include information about the detrimental consequences of this conduct on employers—including a reduction in productivity and morale. The training should specifically discuss the elements of "abusive conduct," including conduct undertaken with malice that a reasonable person would find hostile or offensive and that is not related to an employer's legitimate business interests (including performance standards). Examples of abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. Finally, the training should emphasize that a single act shall not constitute abusive conduct, unless the act is especially severe or egregious. While there is not a specific amount of time or ratio of the training that needs to be dedicated to the prevention of abusive conduct, it should be covered in a meaningful manner.~~

(e) Compliance with section 214.4 prior to effective date of these regulations. A Program who has made a substantial, good faith effort to comply with section 214.4 by completing training of its staff and apprentices prior to the effective date of these regulations shall be deemed to be in compliance with section 214.4 regarding training as though it had been done under these regulations.