

DEPARTMENT OF INDUSTRIAL RELATIONS
Headquarters Office

1515 Clay Street, Room 401
Oakland, CA 94612
Tel.: (510) 285-2118 Fax: (510) 285-1365

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603



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Patricia Huber, Assistant Chief
Division of Labor Standards Enforcement

Dear Farm Labor Contractor:

Workplace sexual harassment in agriculture is a profound issue that impacts many lives. California legislators continue to pass and amend existing laws aimed at educating employers, supervisors, and nonsupervisory employees on how to prevent sexual harassment and to identify resources for victims of sexual harassment.

In 2014 and 2017, Senate Bills 1087 (SB 1087) and 295 (SB 295) were enacted. These bills directly impact farm labor contractors (FLCs) and implement sexual harassment prevention training requirements. In 2018, Senate Bill 1343 (SB 1343) was enacted. SB 1343 amended the sexual harassment prevention training requirements under the California Fair Employment and Housing Act (FEHA), Government Code §§12950 and 12950.1, which apply to all employers who employ five or more employees (previously these training requirements applied to employers with 50 or more employees), including temporary and seasonal employees. SB 1343 went into effect on January 1, 2019, requiring employers to comply with the new sexual harassment prevention training requirements by January 1, 2020.

The Labor Commissioner has received many inquiries from the FLC community regarding SB 1343. Many of you expressed confusion over the sexual harassment prevention training requirements in SB 1343 and those in Labor Code Section 1684. Please note that SB 1343 does not override or supersede Labor Code Section 1684. As such, where the requirements differ, FLCs must comply with the stricter requirement.

This letter provides answers to the questions we received for those comparing the bills and the training requirements. The information is intended to assist FLCs remain in compliance with the law.

Senate Bill 1087 – Effective January 01, 2015

SB 1087 established additional FLC licensing requirements under Labor Code Section 1684 with an emphasis on educating supervisory and nonsupervisory employees on sexual harassment prevention.

The Labor Commissioner issued two letters to FLCs ([December 2014](#)¹ and [May 2015](#)²) to explain the new law and prepare FLCs for the changes to the FLC licensing program. For complete bill information, please click [here](#)³ to view.

¹ December 2014 - https://www.dir.ca.gov/DLSE/Letter_to_FLC.pdf

² May 2015 - https://www.dir.ca.gov/dlse/Letter_SB_1087.pdf

³ SB 1087 bill information - https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1087

Senate Bill 295 – Effective January 01, 2018

SB 295 included additional responsibilities for FLCs in educating employees about and preventing sexual harassment. SB 295 enables the Labor Commissioner’s Office to issue citations and assess civil penalties for violations of the sexual harassment prevention training requirements outlined in SB 1087 and SB 295.

The Labor Commissioner issued a letter to FLCs ([March 2018](#)⁴) to assist them in remaining in compliance with the law. For complete bill information, please click [here](#)⁵ to view.

Senate Bill 1343 – Effective January 01, 2019

SB 1343 expanded the all-industry sexual harassment training requirements under FEHA. Employees must receive this training by January 1, 2020. For complete bill information, please click [here](#)⁶ to view.

Frequently Asked Questions (FAQs) for FLCs

Question:

As an FLC, do I provide sexual harassment prevention training only if I employ five or more employees (SB 1343 – Government Code Section 12950.1(a)), or do I provide sexual harassment prevention training per Labor Code Section 1684(a)(8)(A), regardless of the number of employees?

Answer:

You must provide sexual harassment prevention training regardless of the number of employees to remain in compliance with Labor Code Section 1684. By doing so, you will also be in compliance with Government Code Section 12950.1’s requirement that an employer with five or more employees provide sexual harassment prevention training.

- Government Code §12950.1(g):
 - The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.
- Labor Code §1684(a)(8)(A):
 - The Labor Commissioner shall not issue to any person a license to act as an FLC, nor shall the Labor Commissioner renew that license, unless the FLC provides a written statement to the Labor Commissioner attesting that the FLC’s supervisory employees and nonsupervisory employees have been trained as required.

⁴ March 2018 - https://www.dir.ca.gov/DLSE/SB-295_Letter_to_FLC_Resources.pdf

⁵ SB 295 bill information - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB295

⁶ SB 1343 bill information - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1343

Question:

As an FLC, do I provide sexual harassment prevention training for nonsupervisory employees at the time of hire per Labor Code Section 1684(a)(8)(A), or within six months of the employee assuming the position as required under Government Code Section 12950.1(a)? And when do I provide training for supervisory employees?

Answer:

An FLC's nonsupervisory employees must be trained at the time of hire, as required by Labor Code Section 1684(a)(8)(A). Labor Code Section 1684(a)(8)(A) does not provide a specific time for training supervisory employees, as long as they are trained at least once each calendar year. However, FLCs who have five or more employees and are covered under Government Code Section 12950.1(a) must train their supervisory employees within six months of their assumption of the position. ***Please note the Question and Answer below regarding timing requirements for seasonal and temporary employees.***

Question:

How often and for how long do I train supervisory and nonsupervisory employees to remain in compliance with the law?

Answer:

Supervisory employees must receive at least two hours of training each calendar year. Nonsupervisory employees must receive at least one hour of training every two years.

Labor Code Section 1684(a)(8)(A) requires FLCs provide sexual harassment prevention training to nonsupervisory employees at the time of hire and then at least once every two years, but is silent on the length of the training. The law requires supervisory employees receive at least two hours of training each calendar year.

Government Code Section 12950.1(a) specifically requires nonsupervisory employees receive at least one hour of classroom or other effective interactive training and education regarding sexual harassment within six months of hire. Supervisory employees must receive at least two hours of training under Government Code Section 12950.1(a). An employer may provide this training in conjunction with other training provided to employees. Employees may complete the training individually or as part of a group presentation. The training may be completed in shorter segments (no less than 30 minutes), as long as the aggregate time equals one hour for nonsupervisory employees and two hours for supervisory employees.

For example, FLCs can comply with both statutes by conducting the training required for nonsupervisory employees under Labor Code Section 1684(a)(8)(A) at the time of hire. If the training is less than one hour, the FLC may complete the remainder of the one-hour requirement within six months (segments of no less than 30 minutes each). ***Please note the Question and Answer below regarding timing requirements for seasonal and temporary employees.***

As a reminder, FLCs must follow the stricter standard to ensure compliance with the law.

Question:

How do I meet the minimum training components to comply with both Government Code Sections 12950, 12950.1, and Labor Code Sections 1684(a)(8)(C)(i) – (D)(i)?

Answer:

In addition to the requirements specified in Labor Code Sections 1684(a)(8)(C)(i) – (D)(i), FLCs with five or more employees must also incorporate the training topics in Government Code Sections 12950 and 12950.1.

Government Code Section 12950(b) directs employers to distribute an information sheet on sexual harassment that is available through the Department of Fair Employment and Housing (DFEH), or to provide equivalent information to its employees that contains, at a minimum, the following components:

- The illegality of sexual harassment;
- The definition of sexual harassment under applicable state and federal law;
- A description of sexual harassment, utilizing examples;
- The internal complaint process of the employer available to the employee;
- The legal remedies and complaint process available through DFEH;
- Directions for how to contact DFEH; and
- Protections against retaliation under FEHA.

Under Labor Code Section 1684(a)(8)(C), the required training components are essentially the same as those described above. An FLC’s trainer may use the text of the DFEH pamphlet DFEH-185, “Sexual Harassment” as a guide to training, or may use other written material or other training resources covering the information listed above.

Government Code Section 12950.1 also requires the following training topics:

- Prevention of abusive conduct.
- Harassment based on gender identity, gender expression, and sexual orientation.
- Practical examples aimed at instructing employees in the prevention of harassment, discrimination, and retaliation.

Question:

I employ migrant and seasonal agricultural workers as defined in the federal [Migrant and Seasonal Agricultural Worker Protection Act \(MSPA\)](#).⁷ Are the training requirements different?

Answer:

No. FLCs must provide migrant and seasonal workers with the same training that is required to be provided to nonsupervisory employees under both laws. Migrant and seasonal workers similarly need to be trained at the time of hire.

⁷ 29 U.S.C. Section 1802(8) defines the term “migrant agricultural worker” as an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence (does not include any immediate family member of an agricultural employer or an FLC, or workers authorized through the H-2A program). Additional information on MSPA - <https://www.dol.gov/whd/mspa/>

Sexual Harassment Prevention Training Requirements for FLCs

Government Code Section 12950.1(h)(2) provides that sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal MSPA, shall be consistent with training for nonsupervisory employees pursuant to Labor Code Section 1684(a)(8).

Question:

If I hire other seasonal and/or temporary employees, how soon after the date of hire must the training be provided?

Answer:

Labor Code Section 1684(a)(8)(A) requires all new nonsupervisory employees, including agricultural employees, be trained at the time of hire. While Government Code Section 12950.1(h)(1) provides that seasonal or temporary employees, or any employee that is hired to work for less than six months, must be trained within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. FLCs must meet the requirements for nonsupervisory employees set forth in Labor Code Section 1684. For supervisory temporary or seasonal employees, FLCs with five or more employees must comply with the time requirements (30 days or 100 hours) set forth in Government Code Section 12950.1(h)(1).

Question:

Who is qualified to provide the training?

Answer:

FLCs with five or more employees must use a qualified trainer as established by regulations implementing the FEHA training requirements. Currently, pursuant to California Code of Regulations Section 11024(a)(9)(A), a trainer shall be one or more of the following:

- **Attorneys** with two or more years of specified experience; or
- **Human resource professionals** or **harassment prevention consultants** with a minimum of two or more years of practical experience in on or more of the following: designing or conducting discrimination, retaliation and sexual harassment prevention training, responding to sexual harassment complaints or other discrimination complaints, conducting investigations of sexual harassment complaints, or advising employers or employees regarding discrimination, retaliation and sexual harassment prevention; or
- **Professors** or **instructors** in law schools, colleges or universities with two or more years of specified experience.

Individuals who do not meet the qualifications above because they lack the requisite years of experience may team-teach with a trainer who does meet the above requirements.

FLCs with less than five employees may provide the training or use an appropriate designee, per Labor Code Section 1684(a)(8)(A).

The DFEH will make available two online training courses in multiple languages, in accordance with Government Code Sections 12950 and 12590.1. The course for nonsupervisory employees will be one hour in length and the supervisory course will be two hours in length. The courses made available by DFEH in the future will meet the Labor Code Section 1684(a)(8)(D)(i) requirement for FLCs as other training resources

Sexual Harassment Prevention Training Requirements for FLCs

covering the minimum components required for sexual harassment prevention training. However, FLCs may only use these online training courses to meet the training requirement if the courses are in a language that is understood by the employee, in compliance with Labor Code Section 1684(a)(8)(B).

Government Code Section 12950.1 unequivocally states that the statute does not override or supersede statutes like Labor Code §1684 which “meet or exceed” the training for nonsupervisory employees. As such, FLCs must follow the stricter standard to ensure compliance with the law.

We understand there will be additional questions and we will continue to [post information on FLC requirements online](#).⁸ Thank you for your questions and commitment to complying with the law and educating yourself and your employees in sexual harassment prevention in this important and valued industry in California.

Sincerely,



Patricia Huber
Assistant Chief

⁸ Rules and Regulations for FLCs Website - https://www.dir.ca.gov/DLSE/Rules_and_Regulations_for_FLCs.htm