

# **CPEhr** **Webinar Series**

**presents**

## **Basics of Anti-Harassment Training: AB1825 and National Requirements**

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# Your Host



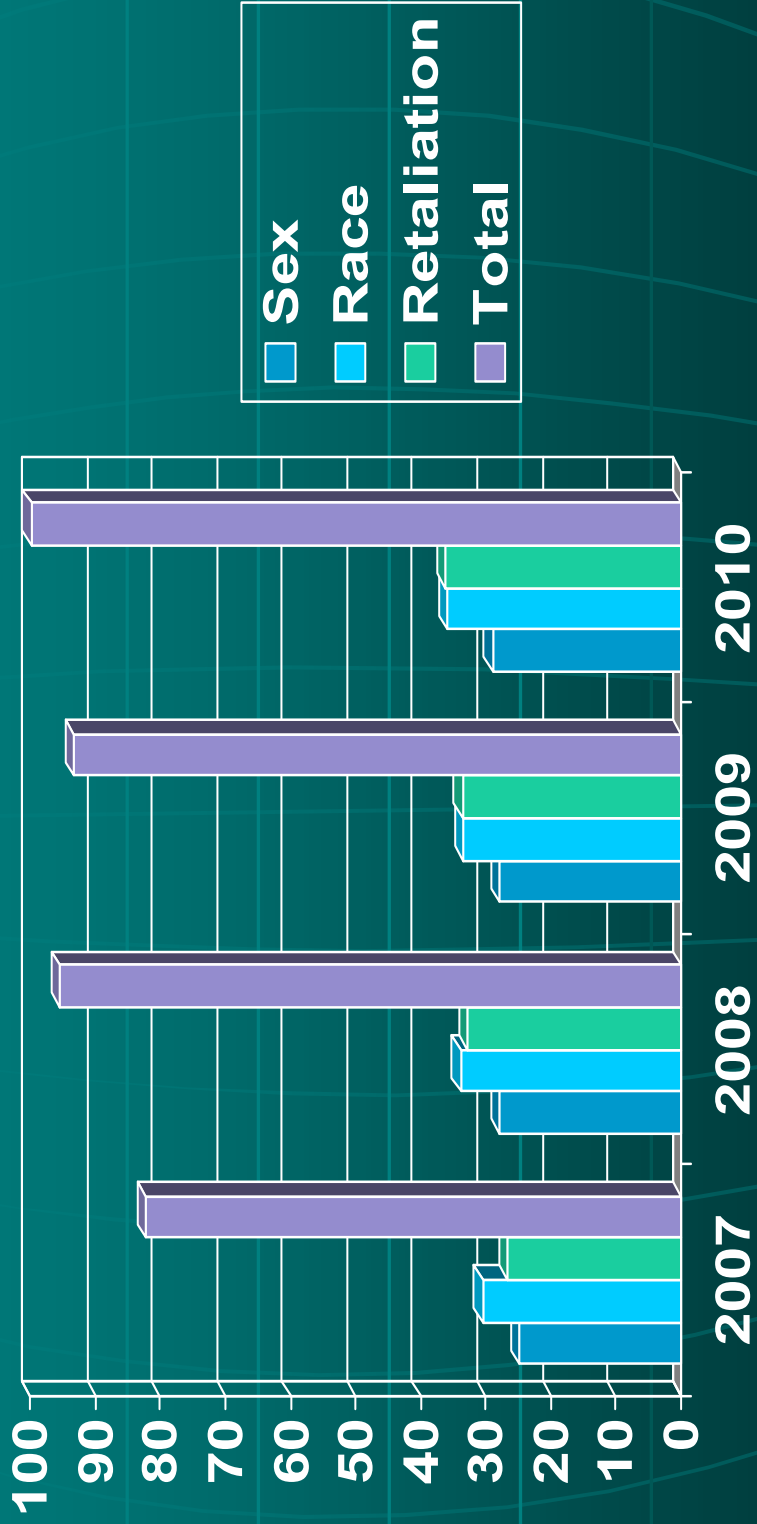
**Linda Robinson, PHR**

- **Training & Development Manager, CPEhr**
- **20+ years of HR and managerial experience in hospitality, food & beverage, gaming and manufacturing industries**

# Overview

- **History**
  - **Federal**
  - **Individual States**
- **What should be covered**
- **Who should be trained**
- **Who should be the trainer**
- **Why training is smart**

# EEOC Charges Continue To Rise



# US Supreme Court

## Meritor Savings Bank v. Vinson-1986

- Supreme Court first recognizes sexual harassment as a violation of federal law

# US Supreme Court

**Faragher v. City of Boca Raton-  
1998**

**Ellerth v. Burlington Northern  
Industries-1998**

- **For a company to reduce liability for harassment claims it must:**
  - **train employees and supervisors**
  - **Require employees to report incidents**
  - **Thoroughly investigate all reports**
  - **Take corrective action when necessary**

# US Supreme Court

## Kolstad v. American Dental Assoc- 1999

- **Company must show good faith to train ALL managers**
  - **Basic anti-discrimination Title VII**
- **Policies are not sufficient**
- **Punitive damage defense**

# The Policy

**It is not enough for a company to have a policy.**

**The policy must be understood and supported by all staff and enforced by management and supervision**

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# EEOC & Training

**“the employer should provide training to all employees to ensure that they understand their rights and responsibilities....” (EEOC Guidelines)**

- **If a claim is filed with the EEOC, evidence of harassment training will be expected**

# EEOC

- With respect to sexual harassment **“prevention is the best tool** to eliminate sexual harassment in the workplace from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing **sexual harassment training** to their employees and by establishing an **effective complaint or grievance process** and taking **immediate and appropriate action** when an employee complains.”

# Private Sector

- **Maine:**
  - 15 or more employees
  - Must provide sexual harassment training for ALL new employees within 1 year of start of employment
- **Connecticut:**
  - 50 or more employees
  - 2-hours of sexual harassment training to all supervisory employees within 6 months of assumption of supervisory position

# Other States

- **Massachusetts, Rhode Island, New Jersey:**
  - **Sexual harassment training is STRONGLY ENCOURAGED**
  - **The courts determination of punitive damages is heavily influenced by the presence of training provided by the employer**

# State of California

- **AB1825- January 1, 2005**
- **50 or more employees (no matter where the employees are located)**
- **Employees include full time, part time, temporary, contractors, agents, seasonal workers (CA Gov Code sec. 12940(j)(5) who work under contract for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year**
- **Monitored by the DFEH**

# DFEH (FEHA)

Department of Fair Employment and Housing

- **Law against harassment applies to all employers, regardless of size**
- **All employers with 5 or more employees MUST comply with gender discrimination laws including sexual harassment, gender harassment, and harassment based on pregnancy, childbirth or related medical conditions**

# DFEH and Training

**Employers in California are expected to take ALL reasonable steps including:**

- **Posting all required notices**
- **Distributing all policies**
- **Training all employees (annual)**

# Who Must Attend

- A “supervisor” is anyone who, exercising independent judgment, directs other employees, or has the authority (or recommends when) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, adjust grievances, or discipline other employees
- Attending an AB1825 training does NOT create an inference that an employee is a supervisor or that a contractor is an employee or supervisor

# New Hires

- **6 months for newly hired managers/promotions (who then must receive training at next 2 year cycle for company)**
- **Training from past employer**
  - **Present (Hiring) employer is responsible for validity of prior employer's training**

# Duration of Training

- ***Minimum* of 2 hours of highly interactive harassment training**
- **Training should go beyond sexual harassment and include harassment and discrimination involving other protected categories**
- **Inclusion of additional material can be within the 2 hour threshold**

# Frequency of Training/Tracking

- **Every 2 years for managers, supervisors and lead people**
- **Can track individually**
  - **If trained on January 26, 2005**
  - **Must be retrained no later than January 26, 2007**
- **Can track by training year**
  - **Company can designate “training years”  
ex: 2005, 2007, 2009**
  - **If trained on January 26, 2005**
  - **Must be retrained by Dec 31, 2007**

# What Should Be Covered

- Purpose of the law
  - Assist California employers in changing or modifying workplace behaviors that contribute to harassment
  - To develop, foster and encourage a set of values in supervisory employees that will assist in preventing and effectively responding to incidents of harassment

# What Should Be Covered

- Definition of sexual harassment and discrimination (state and federal)
- Definition of other forms of harassment and discrimination
  - FEHA and Title VII
- Types of conduct that constitute sexual harassment
- Remedies available for sexual harassment
- Strategies to prevent sexual harassment

# What Should Be Covered

- **Practical examples of sexual harassment**
  - **Including same sex harassment**
- **Limited confidentiality of the complaint process**
- **Resources for victims including who they should report to**
- **Employer's obligation to conduct an effective investigation**
- **What constitutes an effective investigation**

# What Should be Covered

- What to do if a supervisor is personally accused of harassment
- Essential elements of an anti-harassment policy
  - In every training, anti-harassment policies must be included, given to each supervisor, and each supervisor must read and acknowledge receipt of the policy

# Interactive Elements

- **Practical examples from case law, current news, etc.**
- **Hypothetical situations**
- **Quizzes, questions**
- **Skill-building activities**
- **Anti-Harassment policy**

# Qualified Trainers

- **Attorneys- admitted to the bar, with 2 or more years of employment law practice**
- **Professors and Instructors- post-graduate degree or CA 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**

# Qualified Trainers

- **HR Professionals- 2 or more years of practical experience in one or more of the following:**
  - **Designing training**
  - **Responding to harassment complaints**
  - **Conducting investigations**
  - **Advising employers about harassment prevention**

# Training Qualifications

- **What are unlawful harassment, discrimination and retaliation under both California and federal law**
- **How to report harassment complaints**
- **How to respond to harassment complaints**
- **What constitutes retaliation and how to prevent it**

# Training Qualifications

- **Essential components of an anti-harassment policy**
- **What steps to take to stop harassing behavior at work**
- **Employer's obligation to conduct an investigation**
- **Effect of harassment on others**
- **How to prevent harassment at work**

# Team Training

- **Individuals who do not meet the expertise criteria may team teach with a trainer in classroom or webinar trainings, provided that the trainer supervises these individuals and the trainer is available throughout the training to answer questions from training attendees”**

# Delivery Options

- **Live**
  - **Qualified trainer and multiple training tools**
    - **Powerpoint, video, handouts, booklets**
- **Elearning**
  - **Know your vendor**
    - **Instructional Designer must meet specific qualifications**
- **Webinars**
  - **Must prove participation**

# In All Cases

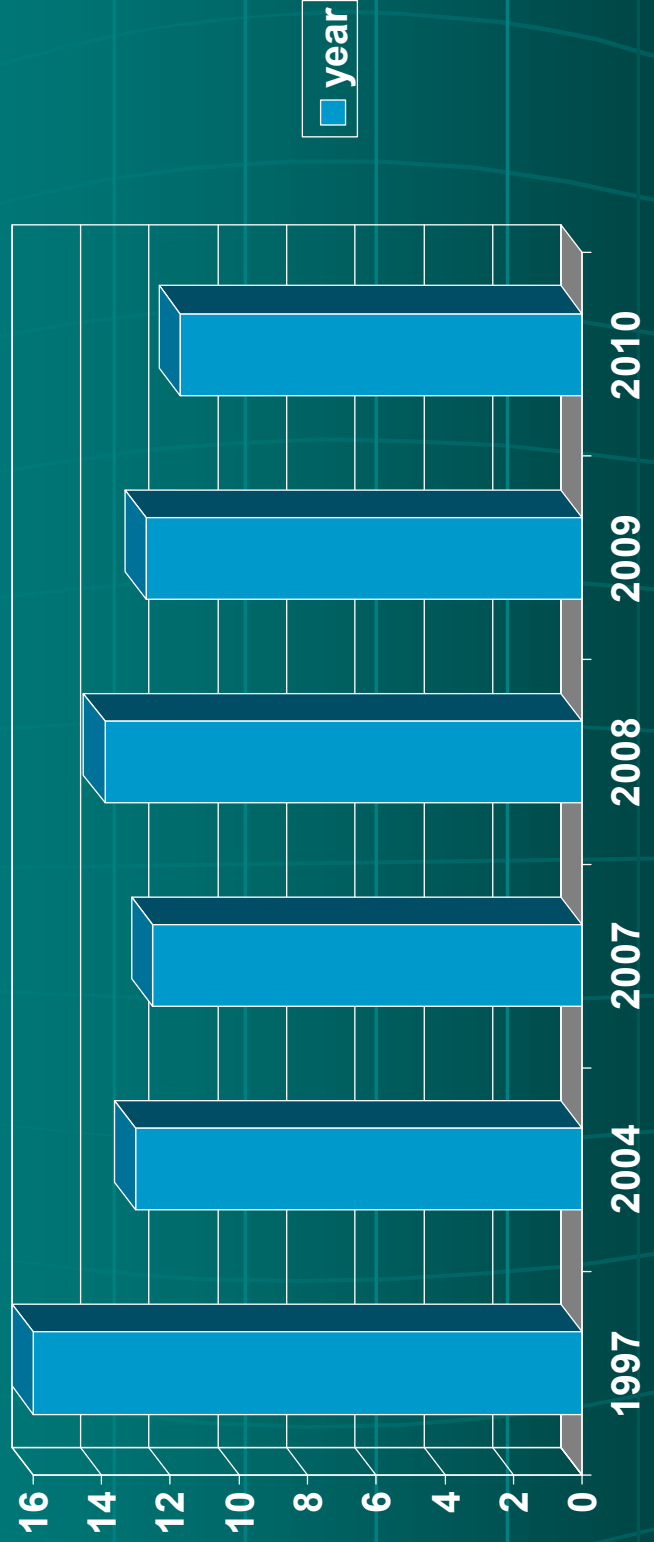
- Participants must be able to ask questions
- Must receive an answer within a “reasonable period of time”; “no more than two business days” after the question is asked
- Person who answers questions must be a qualified trainer

# Benefits of Training

**There is a direct relation  
between training and  
harassment complaints:  
the greater the trainings, the  
fewer the incidents of  
harassment and  
inappropriate behavior**

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# Sexual Harassment Cases:



# EEOC: April-July 2010

<u>Claim</u>	<u>EE Wins</u>	<u>Median\$</u>
All cases	70%	\$100K
Age	81%	\$67K
Race	64%	\$190K
Religion	80%	\$62K
Sex Discrim	86%	\$87K
Sexual Harassment	75%	\$101K

# Beware of ...

- **Passive aggressive behavior**
- **Don't support the resistance of management, even at the meetings**
- **Don't let jokes of "how to harass" go unacknowledged**
- **Always be a professional role model and encourage acceptance of any laws that create a healthy, professional and responsible work environment**

# What If I Don't Train?

- **AB 1825 has no penalties, but violation of FEHA does as well as the liability of the employer for all acts of sexual harassment by its supervision**
- **DFEH: Requires documentation of all training**
- **EEOC: Training can reduce punitive damages and is quite often a standard part of settlements**

# Consequences

- **Federal Cap for non-economic (punitive) damages**
  - **15-100 employees = \$50,000**
  - **101-200 employees = \$100,000**
  - **201-500 employees = \$200,000**
  - **501 or more = \$300,000**

**California has no cap!**

# Case Study

## Hettick v. Federal Express

Santa Clara, CA 2004

**FedEx ordered to pay \$2.3 million dollars in punitive damages for sexual harassment of two female employees by a male employee:**

....\$298,000 (harassment, failure to correct it and constructive discharge)

....\$30,000 (harassment, failure to correct it)

....\$1,000,000 EACH punitive damages

....\$4,461,636 total

# Benefits of Training

- **Cost of training greatly outweighs the cost of a lawsuit**
- **Greater awareness and SUPPORT by the management team creates an environment:**
  - **Improved morale**
  - **Better employee engagement**
  - **Increased productivity**

# Conclusion

- **Make sure you are compliant with the state law—it's never too late to initiate a training program**
- **Hold documentation of trainings for at least 2 years**
- **Refresh annually: retraining every two years is a minimum threshold**
- **Routinely review training material**
- **Always check with HR or legal counsel**

**Presented by:**

**Linda Robinson, PHR  
Training & Development Manager**

**[lrobinson@cpehr.com](mailto:lrobinson@cpehr.com)**

**310-270-9806**