

## Sexual Harassment Prevention

# Don't Forget Remote Workers in Training, Rules

**I**F YOU have staff working from home as a result of changes wrought by the COVID-19 pandemic, you still need to stay on top of your obligations to protect all of your workers from sexual harassment.

Not being physically in the office doesn't seem to have had an effect on employee sexual harassment as employers paid out more than \$65 million in sexual harassment settlements and court awards in 2020, according to the Equal Employment Opportunity Commission.

While most workplace sexual harassment has historically taken place in person at the workplace, a good portion has migrated online in the form of harassment by workplace collaboration apps, e-mail, chat and texting. Just because you can't see the harassment, doesn't mean it's not happening.

Most companies, while they likely have policies prohibiting sexual harassment in the workplace, have not updated their policies to include online harassment. And that can leave them exposed to lawsuits by staff who feel they've been harassed by a manager, supervisor, co-worker – or even a customer.

If you have employees, you need to make sure that you have strong policies in place that reach beyond the physical worksite.

### What you can, and should, do

Review your sexual harassment prevention policies and training and update them to include employees working remotely. Make sure you have buy-in from management and supervisors for your prevention policies and training to be truly effective.

Remember too that all California employers with five or more workers must conduct two hours of sexual harassment prevention training to all supervisors and one hour of training to all non-supervisor staff six months after being hired, and every two years after that.

The state requires that the training include the following:

- Information and practical guidance regarding federal and state law concerning the prohibition against, and the prevention and correction of, sexual harassment and the remedies available to victims of such harassment.
- Examples of harassment, discrimination and retaliation.
- Information about preventing \ harassment based on sexual orientation, gender identity and gender expression.
- Procedures for employees to file a complaint of sexual

harassment, as well as the company's steps for dealing with complaints.

- Appropriate remedial steps to correct harassing behavior, including the employer's obligation to effectively investigate harassment.

The law also requires employers to have in place a written sexual harassment prevention policy that must also be distributed to your staff. You are also required to post sexual harassment prevention posters in the workplace.

You should approach workplace harassment prevention with extreme care to reduce the risk of lawsuits, agency charges and penalties, and other fallout. Not only is training employees on sexual harassment in the workplace required by California employment law, but it is also arguably the first and foremost best practice in preventing legal risks associated with sexual harassment.

Take reasonable steps, such as policy assimilation and training, to prevent discrimination and harassment from occurring. You should prohibit not only sexual harassment but also gender harassment and harassment based on pregnancy, childbirth, breast-feeding and related medical conditions.

If harassment does occur, you must take effective action to stop any repetition and to correct any effects of the harassment. ❖



*Continued from page 1*

## EPLI Policies Typically Exclude PAGA Claims

One potential bright spot: In December 2021, the U.S. Supreme Court agreed to consider whether California employers may enter voluntary agreements with employees in which the employee agrees to pursue only their individual claim and not bring a PAGA claim. A decision is expected this summer.

### Insurance implications

One issue for employers is that employment practices liability insurance typically won't cover wage and hour disputes or significantly

submit the amount of coverage available for defense costs only.

Also, EPLI policies usually carve out coverage for wage and hour claims under PAGA representative actions.

Directors and officers liability policies exclude wage and hour claims.

One option is wage and hour insurance, which most likely would provide defense and indemnity coverage for PAGA claims that allege violations of wage and hour laws and regulations.

However, these policies are expensive and usually have quite high retentions, which could price out most smaller employers. ❖