

THE REA LETTER

Monthly Human Resources and Labor Relations Digest

Thanksgiving Holiday

Our office will be closed Thursday and Friday, November 22 and 23, 2018. We wish you a safe and happy holiday.

Harassment and EEOC Statistics

Overall, the EEOC's data shows a significant increase in sexual harassment claims as well as pro-employee rulings.

As one might imagine, the me-too movement has increased the level of individual confidence in the filing of claims of alleged inappropriate behavior.

In the past year:

- Sexual harassment claims filed with the EEOC have increased by 12%.
- Lawsuits filed by the EEOC have increased by 50%.
- Successful EEOC-run mediations have increased by 43%.
- The EEOC recovered approximately \$70 million for harassment victims in the last year, an amount that increased by 22%.

The issue of harassment and associated liabilities will not go away soon.

We strongly recommend that all Clients and Friends:

- Review and update their harassment policies and make certain that zero tolerance for harassment and retaliation is clearly communicated.
- Distribute the policies and remind personnel in regularly conducted meetings of the position of the Company concerning harassment and retaliation.
- Clearly communicate the reporting and investigation procedure.
- Train your managers, not just regarding what is harassment, but how to handle an allegation. The most common mistake made by managers is communicating by their words or actions that a harassment allegation is without merit or frivolous. Managers and supervisors need to understand that at

times allegations are not expressed as "complaints" but rather as a feeling of discomfort or a request for reassignment.

- All allegations, or expressions that could mean the person feels that they have been the subject of harassment must be immediately and thoroughly investigated.

When appropriate the employer must:

- Implement appropriate disciplinary action up to, and including termination
- Ensure no retaliation
- Restore anything lost by the person harassed or who experienced retaliation

Harassment must have resources (time and effort) devoted to the subject that the significance of the liability warrants. Harassment under no circumstances should be considered something that can't occur at your place of business.

SB 1343: Expansion of California Sexual Harassment Prevention Training

Recently passed and signed California Senate Bill 1343 will soon require employers with five or more employees to provide sexual harassment prevention training to both supervisory *and* non-supervisory employees by 2020.

Smaller Employers Are Also Now Covered

The existing law generally requires employers with 50 or more employees to provide sexual harassment (and similar conduct) prevention training to supervisors once every two years (AB 1825). With passage of SB 1343, employers with five or more employees will also be required to provide the mandated training by January 1, 2020.

Training Required for both Supervisors and Non-Supervisors

SB 1343 greatly expands the scope of employees to whom sexual harassment prevention training must be provided. Existing law requires two hours of training per supervisory employee only; SB 1343 now extends

new training obligations to all other non-supervisory employees as well.

- By January 1, 2020, an employer with five or more employees must provide at least **two hours** of training to all **supervisory** employees in California within six months of assuming their supervisory position.
- By January 1, 2020, employers with five or more employees must provide at least **one hour** of training to all **non-supervisory** employees in California within six months of assumption of position.
- After January 1, 2020, covered employers must provide required training to each employee in California once every two years.

The new law specifies that an employer who has provided the training after January 1, 2019 is not required to provide training again by the January 1, 2020 deadline. Additionally, SB 1343 states that training may be completed by employees individually or as part of a group presentation and broken down into shorter segments as long as the total hourly requirement is met.

Finally, SB 1343 requires the Department of Fair Employment and Housing (DFEH) to provide a method for employees who have completed the training to electronically save and print a certificate of completion. Additionally, the DFEH will also be required to develop both supervisory (two hour) and non-supervisory (one hour) online training courses, to be made available via the DFEH website.

The Rea Company provides both supervisory and non-supervisory compliant harassment prevention training. Please contact us should you have further questions or want to schedule any trainings through our company.

New Rules Regarding English Only Policies

As the workforce continues to become more diverse, some employers have considered adopting policies that require employees to speak only English while at work. This is because some employers feel that adopting a policy requiring employees to speak only English helps to enhance communication among employees, and prohibits any behavior that is viewed as rude or inconsiderate by those that do not speak any language other than English.

The Fair Employment and Housing Council adopted new rules which took effect on July 1st, 2018. In comparison to the previous rules, the new rules include more restrictions on when English-only policies are allowed. Specifically,

the rules prohibit English only workplace policies unless the following limited conditions are met:

- It is justified by business necessity
- It is narrowly tailored
- The employer has informed workers about the specific details of its policy.

Furthermore, the new rules also provide for the following employee protections:

- Prohibits discrimination based on a person's accent, unless the employer can show that the accent materially interferes with the person's ability to do the job.
- Bans discrimination based on English proficiency, unless an employer can show that there's a business necessity for an English proficiency requirement.
- Prohibits employers from basing hiring decisions on national origin or assigning people to positions or facilities based on national origin, unless they can justify the decision with a valid defense.
- Offers protections for undocumented workers by stating that employers that threaten to contact immigration authorities may be engaging in harassment or retaliation.
- Broadens the definition of national origin.

Certainly, these stricter guidelines make it much more difficult to prove that an English-only employer policy is justified by business necessity. Specifically, it cannot be justified simply because English speakers want to understand all the conversations that occur in the workplace, or even because a company's customers may prefer for communication to be only in English. So essentially, a general desire to facilitate effective communication does not justify an English-only policy nor should employers apply English-only policies to employees whose jobs do not logically require that they speak English.

It is important to keep in mind that employers who adopt English-only policies expose themselves to a risk of claims for discrimination. Since the circumstances in which an English-only policy might be justified are very limited, employers should carefully consider the requirements before adopting such a policy, and any such policies should be carefully drafted and narrowly tailored.

If you have questions regarding English-only rules and/or policies, please contact our office.

CONSUMER PRICE INDEX

Consumer Price Index for All Urban Consumers, CPI-U.

The Los Angeles-Long Beach-Anaheim Consumer Price Index (not seasonally adjusted) for September 2018 was 268.032, a 0.5% increase from August 2018, and a 3.9% increase over the last 12 months.

The United States City Average, Consumer Price Index (not seasonally adjusted) for September 2018 was 252.439, a 0.1% increase from August 2018 and a 2.3% increase over the last 12 months.

Los Angeles-Long Beach-Anaheim

September	2018	268.032
August	2018	266.665
September	2017	257.890

United States City Average

September	2018	252.439
August	2018	252.146
September	2017	246.819

Consumer Price Index for Urban Wage Earners & Clerical Workers, CPI-W.

The Los Angeles-Long Beach-Anaheim Consumer Price Index (not seasonally adjusted) for September 2018 was 258.246, a 0.4% increase from August 2018 and a 3.9% increase in the last 12 months.

The United States City Average Consumer Price Index (not seasonally adjusted) for September 2018 was 246.565, a 0.1% increase from August 2018 and a 2.3% increase in the last 12 months.

Los Angeles-Long Beach-Anaheim

September	2018	258.246
August	2018	257.318
September	2017	248.550

United States City Average

September	2018	246.565
August	2018	246.336
September	2017	240.939

All Consumer Price Indexes are based on 1982-1984.

HUMAN RESOURCES PICTURE

California Employment

The California seasonally adjusted unemployment rate for September 2018 was 4.1% for the month.

Los Angeles Employment

The Los Angeles seasonally adjusted unemployment rate increased over the month to 4.6% in September 2018 from a revised 4.5% in August 2018 and was above the rate of 4.5% one year ago.

National Employment

The national unemployment rate for September 2018 declined to 3.7%. Job growth increased in professional and business services, in health care and in transportation and warehousing.

National Wage and Hours

Real average hourly earnings for all employees increased 0.3% from August to September, seasonally adjusted. This stems from a 0.3% increase in average hourly earnings combined with a 0.1% increase in the CPI-U.

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The Rea Company HR/Labor Relations Service:

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