



Reminder: Legislation Requires Sexual Harassment Prevention Training for all Employers with 50 or More Workers

All California businesses employing fifty (50) or more persons must provide at least two (2) hours of classroom or other interactive sexual harassment prevention training and education to its supervisory employees once every two (2) years to comply with Government Code section 12950.1. It is important to remember that employees, independent contractors, and agents working full or part-time are counted when determining whether or not your business employs fifty (50) persons.

In addition, this statute requires that all *new* supervisory employees receive training within six (6) months of assuming their supervisory positions. According to Government Code section 12926(r), a supervisor is any person “having the authority, on behalf of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or to effectively recommend that action, if . . . the exercise of that authority . . . requires the use of independent judgment.”

The training must include:

- Information and practical guidance regarding federal and state statutory provisions concerning the prohibition against, and the prevention and correction of, sexual harassment;
- The remedies available to victims of sexual harassment in employment; and
- Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation.

Sexual harassment prevention training must be presented by trainers and educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. Vogt & Resnick can provide this service for your business. If you would like information about Vogt & Resnick’s sexual harassment prevention training for employees, please contact this office.

Are You Protecting Your Trade Secrets?

Many companies have valuable information that can be defined and protected as “trade secrets” under the *California Uniform Trade Secrets Act*. Trade secrets increase the value of a company’s goodwill and protect company information against competitors. While this is good news, many companies do not have adequate measures in place to protect their trade secrets.

It is important for a business to understand what information can be protected as a trade secret. The term “information” is broadly defined by case law and includes “devices, compilations, formulas, methods, processes, programs and techniques.” Many forms of information are suitable for trade secret protection as long as the trade secret owner takes “reasonable measures” under the circumstances to protect the information’s secrecy. Examples include customer lists and business processes.

Before embarking on a trade secret protection program, companies are advised to work with legal counsel and carefully define the information to be protected. The company, with assistance of legal counsel, should then examine appropriate legal measures to protect their information.

In summary, trade secret protection measures do not need to be overly burdensome. California law only requires reasonable efforts to keep your trade secret information secret. For more information about options available to you, please contact this office.

Property Tax Relief for Seniors

California’s Proposition 60 provides property tax relief for any person who is at least 55 years of age and selling their principal residence. In summary, the law allows a qualified person to transfer the property tax rate from the original property to a replacement property (existing or new construction) if the following conditions are met:

1. The claimant or claimant’s spouse must be at least 55 years of age.
2. The original property and the replacement property must be located in the same county, though many counties have reciprocity agreements with each other, which negates this requirement.
3. At the time of the sale or within two (2) years of the purchase or construction of the replacement property, the claimant must be the owner and a resident of the original property eligible for the homeowner’s exemption.

4. At the time of the claim, the claimant must be the owner and a resident of the replacement property eligible for the homeowner's exemption.
5. The base year value of the replacement property must be no more than 105% of the base year value of the original property, if the purchase of the replacement property occurs within one (1) year of the sale of the original property.
6. The base year value of the replacement property must be no more than 110% of the base year value of the original property, if the purchase of the replacement property occurs within two (2) years of the sale of the original property.

These conditions generally apply to single family residential homes. Special rules apply where the original or replacement property is a mobile home or interest in a condominium, a community apartment project, a cooperative housing corporation or planned unit development.

The claim process requires the claimant to file an application with the assessor's office where the replacement property is located. Any tax due on the replacement property must be paid, notwithstanding the claimant's eligibility under Prop. 60. If the claimant's application is approved then a refund is granted by the assessor's office. Please feel free to contact our office to discuss these special rules.

Employer-Employee Arbitration Agreements May Not Be Enforceable

Arbitration provisions in employee handbooks or written employment contracts may not be enforceable under California law, particularly if they apply to claims of discrimination. Arbitration of disputes pertaining to an employee's civil rights must comply with very specific criteria established by the California Supreme Court in the case of *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83. During the last seven years, these criteria have become known as the "*Armendariz Guidelines*."

Unless an employer's arbitration policy meets all of the *Armendariz Guidelines*, it is likely that it will not be enforced. The most common violation of the *Armendariz Guidelines* includes provisions which require the employee to contribute to the costs of arbitration. Under the *Armendariz Guidelines*, the employer must agree to pay all of the arbitrator's fee. Additionally, the employee's right to pre-arbitration discovery may not be reduced from that to which the employee would be entitled were the case litigated in court. Furthermore, the arbitration must be before a completely neutral arbitrator, a detailed written award of the arbitrator must be required, the employee must be entitled to all of the types of relief that otherwise would be

available in court litigation, including punitive damages and attorney's fees, and the arbitration process and damages available to both parties must be completely equal. Finally, the employee may have no shorter time to initiate arbitration than he or she would have to bring a court action. In summary, the employee must have no less rights than he or she would have had if the employee litigated the dispute in court, as opposed to submitting the dispute to an arbitrator.

Although there has been a public perception that arbitration is a far more favorable means of resolving a dispute than litigation in open court, this may or may not be the case. Depending on circumstances unique to each business, arbitration might have a negative impact for employers. Indeed, since the California Supreme Court set forth the *Armendariz Guidelines*, much of the efficiency and expediency believed to be implicit in arbitration has been lost. The guidance of qualified employment attorneys, such as those at Vogt & Resnick, LLP, is the most effective way to make the proper determination for your business. Nonetheless, if you already have an arbitration provision in your employee handbook, or if you have arbitration clauses in your written employee agreements, it is prudent to have these arbitration provisions reviewed by a qualified attorney. Unless they comply with the *Armendariz Guidelines*, they may be unenforceable.

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