

THE LAW OFFICES OF ALEX W. CRAIGIE

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Consider Updating Sexual Harassment Policies Ahead of Proposed Amendments to the Fair Employment and Housing Act (FEHA)

The law is changing, why not beat the rush?

In 2013, the California Legislature created the Fair Employment and Housing Council to amend and augment the California Fair Employment and Housing Act (FEHA). The Council is considering a proposed new section of FEHA, Section 11023 entitled "Harassment and Discrimination Prevention and Correction," which would dictate that employers who fall under FEHA (5 + employees) must develop *written* sexual harassment and discrimination policies that contain certain key ingredients.

While the new section is just a proposal, it provides a good outline of best practices for California employers and a glimpse into the Council's expected focus in its rulemaking. Here are the highlights of what must be included in an employer's written harassment and discrimination policy if the new regulation is enacted. The policy must:

- Clarify that the law prohibits harassment and discrimination, not only by supervisors and managers, but also coworkers and third parties with whom an employee comes into contact.
- Create a confidential complaint process to ensure that complaints receive a timely response, impartial investigation by qualified personnel, documentation and tracking for reasonable progress, and appropriate options for remedial actions and resolutions.
- Provide a complaint mechanism that does not require an employee to complain about harassment or discrimination directly to his or her supervisor.
- Instruct supervisors to report any complaints of misconduct to a designated company representative. Employers with 50 or more employees must include this as a topic in mandated sexual harassment prevention training.

- Promise that a valid complaint will trigger a fair, timely, and thorough investigation.
- Suggest that confidentiality will be kept to the extent possible, but not promise that the investigation will be completely confidential.
- Promise that, if misconduct is found, remedial measures shall be taken.
- Make clear that employees shall not be exposed to retaliation as a result of complaining or participating in a workplace investigation.

Additionally, the proposed regulation would require a mechanism to ensure the policy is provided to all employees and translated into any language that is spoken by 10% of the workforce.

Anyone interested in learning more about the new Fair Employment and Housing Council or the proposed amendments should visit this Department of Fair Employment and Housing webpage: <http://www.dfeh.ca.gov/FEHCouncil.htm>.

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