

How to Meet Your 2020 Anti-Harassment Training Requirements

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A person is holding a white sign with the text "#MeToo" written in black, handwritten-style font. The person is wearing a blue and white striped shirt. The background is a solid blue color.

#MeToo



Welcome to
the **WEBINAR**

- Please participate in our polls.
- You will be sent the recording and slides after the webinar.
- Use the question box in the sidebar to ask questions.

Poll Question

Do you currently administer anti-harassment training to your staff?

Poll Question

How confident are you that you're meeting all the compliance requirements for harassment prevention training?

Presenters



Jill Albrecht

Attorney & Compliance
Subject Matter Expert

- Employment attorney and compliance subject matter expert
- Former shareholder at Littler, world's largest labor and employment law firm
- Regularly conducts anti-harassment trainings for employers and designs training plans to combat workplace harassment



Today's Topics

- Current Training Mandates
- Pending Training Mandates
- Policy Mandates

New State Mandates

Training, Policy Requirements, Agreement
Restrictions, Posting Mandates

Current Training Mandates

Before and After #MeToo

Prior to 2018

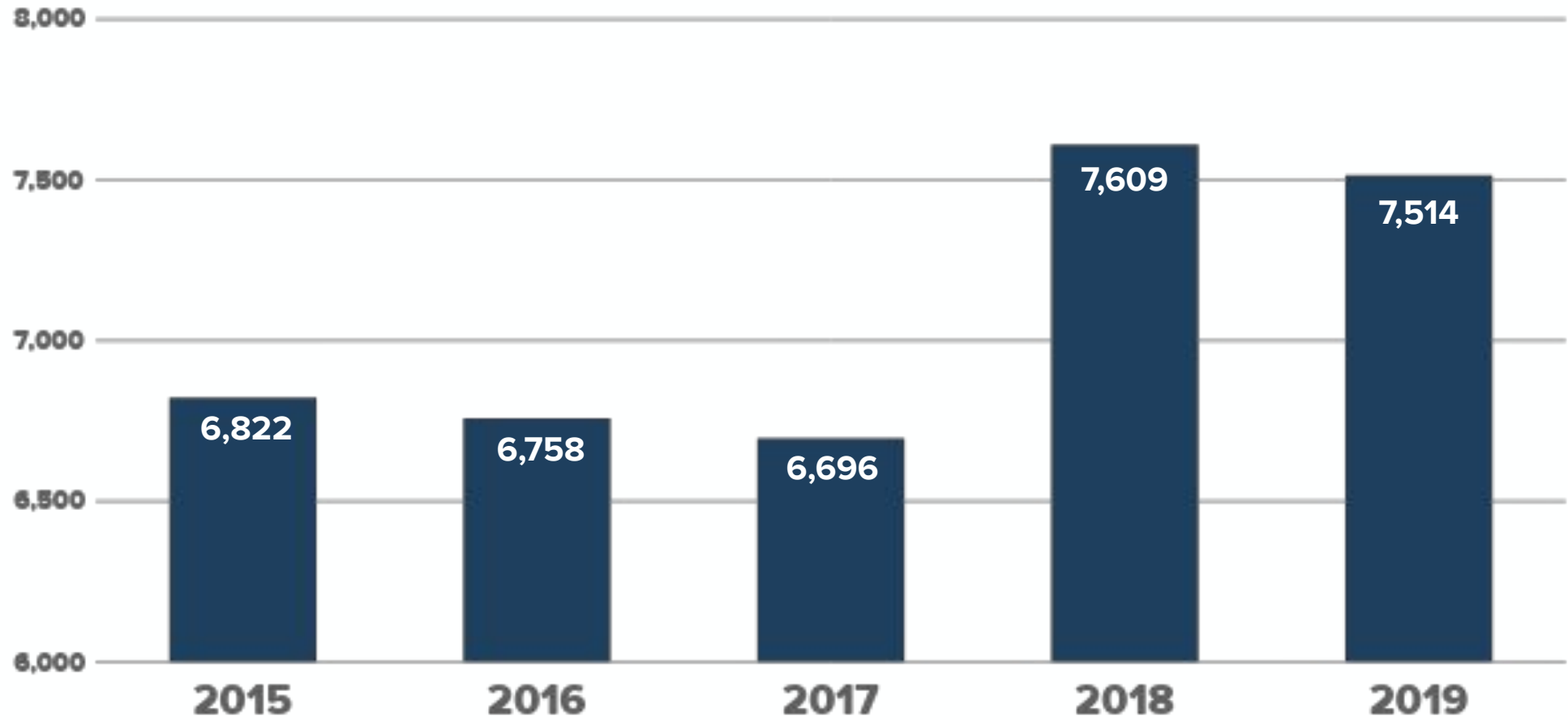
Only California, Maine, & Connecticut required sexual harassment prevention training by statute.



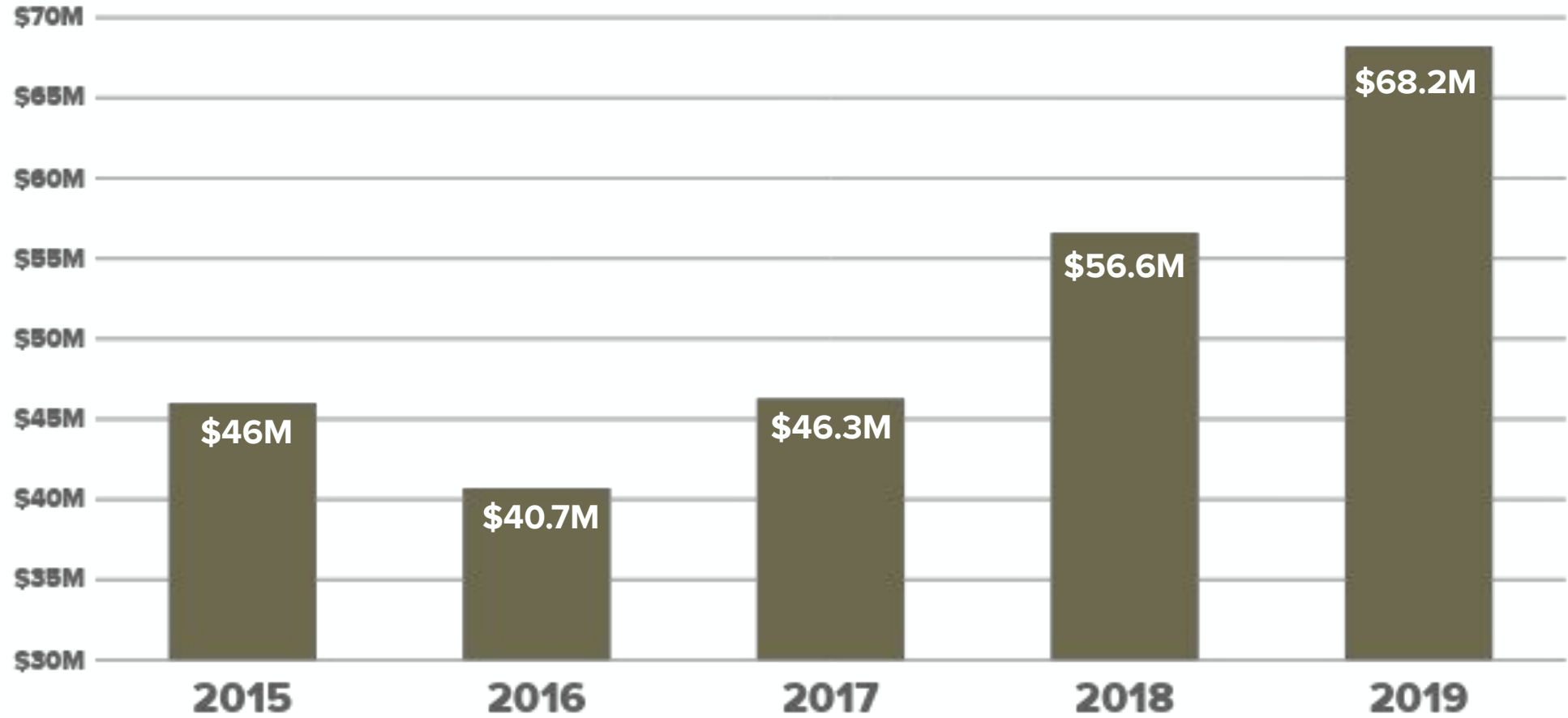
In 2018

California expanded its requirements & Delaware, the District of Columbia, New York State, and New York City passed laws requiring training.

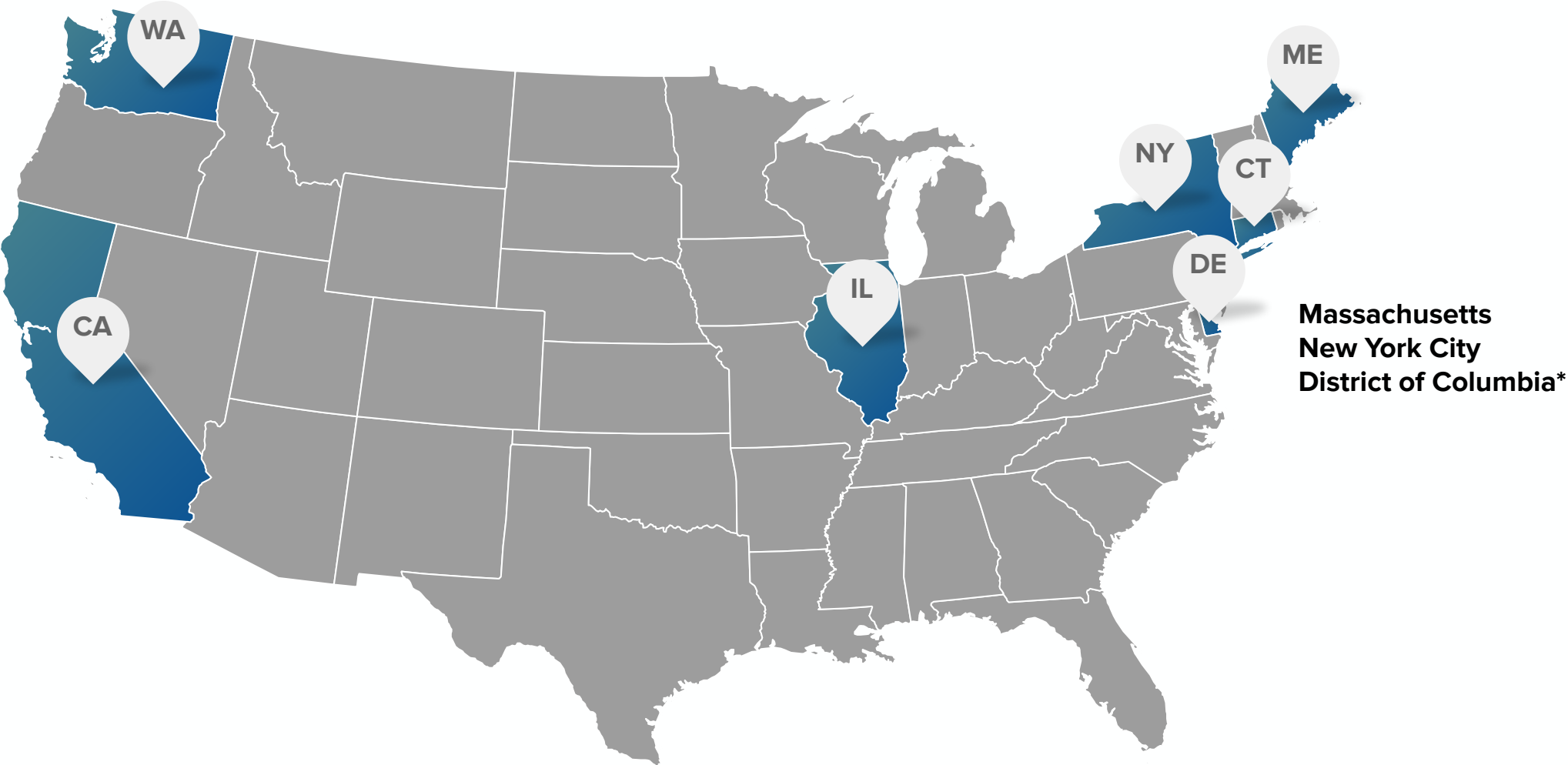
EEOC Sexual Harassment Charges (FY 2015-2019)



Monetary Relief (2015–2019)



Anti-Harassment Training Laws



California

Senate Bill No. 1343 signed into law September 30, 2018

- Employers with **5+ employees**
- All employees need to be trained, including **PT, unpaid interns, volunteers and contractors** (providing work for 20 consecutive weeks)
- **One-hour** mandate for employees, **two-hour** mandate for supervisors
- Seasonal and migrant workers included
- Specific **content required** (definition of harassment, FEHA provisions, examples of prohibited conduct, remedies and others)

California

Deadline for Compliance Extended to 2021

- Initial training requirement deadline moved to January 1, 2021
- 2018 trainees do not need to be retrained in 2019
- 2019 trainees do not need to be retrained until 2021
- Employees must be trained every two years
- As of 1/1/21, new hires and newly promoted employees must be trained within 6 months of hire
- Seasonal and temporary employees must be trained within 30 days or 100 hours worked, whichever comes first

New York State

Section 201-G(2) of the New York Labor Law, effective October 9, 2019.

- All employers, **regardless of size**
- All employees
- **Annual** training required
- Anti-harassment **policy required** with specific content
- **Poster requirement** with specific content
- Training content requirements, including information on employee's **rights and remedies** under the state and federal law
- New employees should be trained **ASAP**
- Training must be provided in the language **spoken at work**

New York City

Local Law 96 of 2018

- Employers with **15 or more employees**
- All employees must be trained **plus freelancers and independent contractors (80 hours/year and at least 90 days/year)**
- **Annual** training requirement
- Training content requirements, including internal and external complaint process
- New employees must be trained within **90 days** of commencement of employment
- **Bystander intervention** topic required to be covered in training.

Illinois

Workplace Transparency Act enacted on August 9, 2019

- **January 1, 2021 deadline, annual training**
- **All employers**, additional training requirements apply to restaurant and bar employers
- All employees, **independent contractors not required**, but “strongly advised”
- New hires must be trained “**as soon as possible**”
- **Recordkeeping** requirements: may be audited by IDHR
- Specific content requirements, including interactivity, responsibilities of the employers in the prevention, **investigation and corrective measures** of sexual harassment
- Training must be provided in an **accessible way** (language, ADA)

Delaware

Effective January 1, 2019

- **Deadline to Train: January 1, 2020**
- Employers with **50 or more** employees **within the state**
- All employees must be trained
- Applicants, independent contractors or employees employed less than six months continuously, ***do not need to be trained***
- **Every two years** must be re-trained
- New employees must be trained within **1 year** of commencement of employment or assumption of supervisory position
- **Additional training for supervisors** is required
- Specific content requirements (legal remedies and complaint process available to employee)

Maine

Originally Effective October 1991; Updated April 2018

- Employers with **15 or more** employees
- **All employees** must be trained
- Supervisors must receive **additional training**
- **Only required to train one time**
- Must train within one year of commencement of employment or promotion to supervisory responsibilities
- Must include specific content, including information about the complaint process
- Must keep record of compliance for 3 years, including roster of employees who have received the training

Connecticut

Time's Up Act enacted on June 18, 2019

- Less than 3 employees-- **managers only**
- Employers with **3+ employees** must provide training to all employees
- Two hour length requirement for training
- **October 1, 2020 deadline for current employees**
- **New employees must be trained within 6 months**
- All employees must receive periodic supplemental training not less than every **10 years**.
- CHRO recommends employers with 50+ EEs to re-train every 3 years
- Notice, Posting and Interactivity requirements

Washington State

Senate Bill 5258 enacted in May 2019

- Applies to employers of more than one employee in retail, hotel, motel, security, and property services industries
- Annual training required for all employees
- List of resources for employees to utilize for reporting
- Recordkeeping and reporting requirements
- **January 1, 2020 deadline for hotels and motels with 60+ rooms**
- **January 1, 2021 deadline for all others**

Washington D.C.

Tipped Wage Worker Fairness Amendment Act of 2018

- Tipped Wage Worker Fairness Amendment Act of 2018
- Employers with tipped employees must provide training
- All tipped employees, plus managers, operators and owners must be trained
- Must be trained within 90 days after hire
- Training must include information on how to respond to, intervene in and prevent sexual harassment by co-workers, management and patrons
- Training must be completed every two years
- Employer must submit a certification of completed training for all
- **Deadline TBD, pending budget funding**

Oregon

Workplace Fairness Act

- Deadline: October 1, 2020 to implement and disseminate compliant policy
- Employers affected: All employers
- Who must receive the policy: All employees
- Content requirements: Policies must include specific, state-mandated content

What to Watch

New Jersey

PROPOSED LEGISLATION by Gov. Phil Murphy

- Strengthens New Jersey harassment law
- Result of two-year study by NJ Department on Civil Rights
- All Employers will be required to provide anti-harassment and anti-discrimination training to all employees
- Policy and Reporting Requirements also proposed

Public Agency Requirement

- Illinois
- Virginia
- Utah
- Pennsylvania
- Kansas
- Kentucky
- Mississippi
- Nevada
- North Carolina
- Texas
- Louisiana
- Washington
- New Jersey
- Tennessee

Federal “Be Heard” Act

- United States S 1082
- Requires adoption of nondiscrimination policy
- Requires employee climate surveys
- Requires training and other mandates for employers

Compliance & Culture

Why Now?

- As a result of #metoo, the workforce is more receptive to preventing harassment and discrimination.
- An increased remote workforce increases risk of sexual harassment, something we're seeing now.
- Training is a constructive way to engage employees to identify and prevent sexual harassment, especially during COVID-19.

A Note about Culture

- **There are a lot of elements:**
 - Tone from the top
 - Tone in the middle (managers as role models)
 - Everyday practices
 - Accountability
 - Training
 - Ethics/Operations/Brand tie-in
- **Patience.**
 - No one gets there overnight, but it's really important to begin building your foundation today for continued sustainability.

What to Do?

- Communication and ongoing training. It's not just annual training.
- Reporting. An employer can't be everywhere, the need employees to tell them.
- Policies. No longer a silent partner.

Policy Mandates

Anti-Harassment Policy Mandates

Policy Required

- California
- Connecticut
- District of Columbia
- Illinois*
- Maine
- Massachusetts (6+ employees)
- New York State
- Oregon*
- Rhode Island (50+ employees)
- Vermont
- Washington

Policy Recommended

- Iowa
- New Jersey
- Oregon*
- South Dakota
- Tennessee
- Texas
- Wisconsin

Policy Specific Content Requirements

States with Policy Content Requirements

- California
- Maine
- Massachusetts
- New York State
- Rhode Island
- Oregon
- Vermont
- Washington

Frequently Asked Questions

Question #1

If our company only has one employee in California, does the California mandate apply to that one employee?

Question #2

What happens if some employees fail to take the training despite an employer's best efforts to make it available, and to require everyone to take it?

Question #3

Does the employer have to provide paid time for this training?

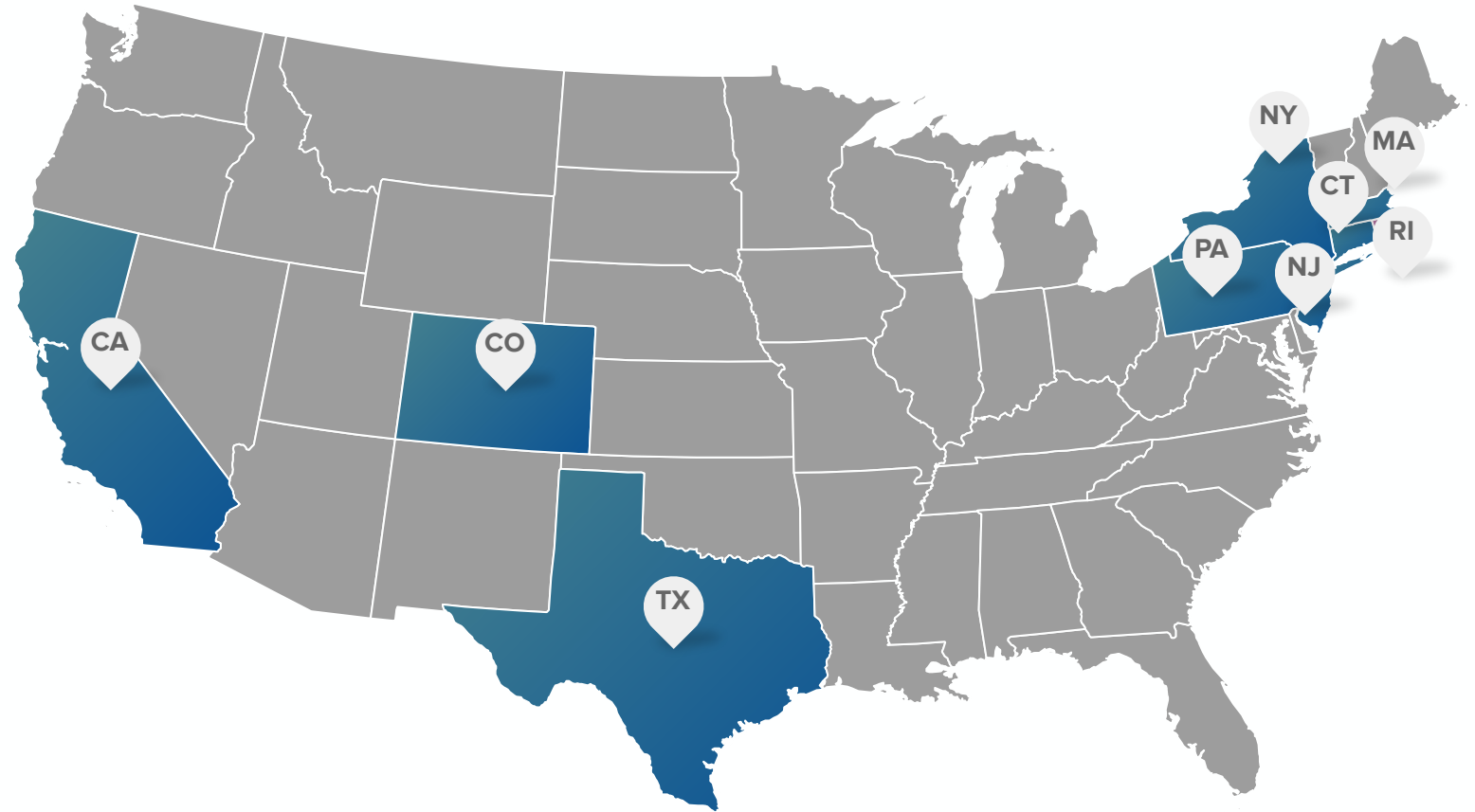
Question #4

Is “annually” calendar year or employee anniversary?

Pending Training Mandates

Pending Legislation

- California
- Colorado
- Connecticut
- Massachusetts
- New Jersey
- New York
- Pennsylvania
- Rhode Island
- Texas



5 Yard Line

Colorado

- Anonymous reporting process
- Policy requirement
- Multiple bills in motion

California

- Anti-Arbitration Agreement provision
- “Job Killer” list - deterrent to CA employers

Rhode Island HB 5343 and SB3300

- 5343: Training requirement for employees and supervisors of 50+ employees
- 330: Requires policy adoption and specific training content

Connecticut – Not Done Yet!

HB 5271

Increases penalties for non-compliance with training mandates

HB 5271

Clarifies provisions regarding training, defenses to harassment complaints, and calculation of damages in harassment complaint proceedings

SB 3

Requires employers to provide new employees with anti-harassment policy and amends certain training requirements

Massachusetts Pipeline

HB 1345

- Introduced: 1/22/19
- Status: Introduced; In Committee
- Action: Expands current sexual harassment training requirements

HB 1694

- Introduced: 1/22/19
- Status: Introduced; In Committee
- Action: Requires employers to provide discrimination and harassment training every two years

SB 1057

- Introduced: 1/22/19
- Status: Introduced; In Committee
- Action: Requires employers to provide at least two hours of training on employment non-discrimination law and preventing sexual harassment in the workplace

New York Pipeline

SB 3941

- Introduced: 2/21/19
- Status: Introduced; In Committee
- Action: Prohibits sexual harassment and discrimination in the workplace and requires employers to notify employees on these laws

SB 4716

- Introduced: 3/21/19
- Status: Introduced; In Committee
- Action: Requires sexual harassment prevention training include bystander intervention training

SB 4845

- Introduced: 3/27/19
- Status: Introduced; In Committee
- Action: Requires employers submit an affirmative acknowledgement of implementing a sexual harassment prevention policy

SB 5977

- Introduced: 5/16/19
- Status: Introduced; In Committee
- Action: Provides that using the model sexual harassment training program will satisfy the state training requirements

Other State Activity

ARIZONA HB 2156

- Introduced: 4/29/19
- Status: Failed
- Action: Requires employers to provide workplace counseling, sexual harassment training, information on employment organizations, and any required skills training

PENNSYLVANIA HB 1040

- Multiple bills under consideration for statewide mandates
- All employers encouraged to train

PUBLIC AGENCY REQUIREMENT

- IL, KS, KY, LA, MS, NV
- NJ, NC, PA, TN
- TX, UT, VA, WA

TEXAS HB 1575

- Introduced: 2/11/19
- Status: Introduced; In Committee
- Action: Requires certain employers to adopt a sexual harassment policy and provide training regarding sexual assault and discrimination prevention