

Avoiding Top Ten Legal Traps into which I See Churches Fall

**2021 Winterfest Workshop
Presbytery of San Gabriel
By Kay Virginia Gustafson, Esq.**

Trap #1 – Session Mis(or Non)management

The buck stops at the top: the Session is ultimately responsible for everything within that Session's church (in addition to the responsibilities to the higher councils of the Presbyterian Church (U.S.A.)).

“The session shall have responsibility for governing the congregation and guiding its witness to the sovereign of God in the world, so that the congregation is and becomes a community of faith, hope, love and witness.” (G-3.0201)

Trap #1 (cont.) – No delegation to Committees without Adequate Controls

- **Ultimate responsibility for all committee actions (and everything else) rests with Session**
- There must be clarity as to responsibilities delegated to each committee with reporting and accountability to Session.
- Active Ruling Elder as Chair of each committee
- Identification of clear reporting relationships for staff - who supervises which personnel
- Pastor as Head of Staff (but not usually the person to whom other staff members report)

Trap #1 (cont.) – “Separate Boards” each must be controlled by and accountable to the Session

- Board of Trustees is subordinate to Session (see, e.g., G-4.0101).
- Board of Deacons is under the supervision and authority of the Session (see, e.g., G-2.0202).
- Session determines “the distribution of the church’s benevolences” (G-3.0205), which includes investments (endowment committees are subordinate to the Session) and any special funds (particularly as to authorizing any targeted fundraising opportunities for the congregation, which may pull funds away from the general giving).
- And let’s not forget the church owned preschool and the preschool “board” – which get a PowerPoint page all their own.

Trap #1 (cont.) - the Church's Preschool

If the Church has a preschool, make sure the Session is in charge (because the church will be responsible for mistakes made within the Preschool):

- The Preschool Board must report to Session, best with an Active Ruling Elder chairing the Preschool Board (treat the Preschool Board like any other committee of Session – in fact, **call it the Preschool Committee**).
- The Session's Personnel Committee must oversee preschool personnel decisions. The Preschool's employees may be covered by different personnel policies and benefits than the other church employees – but there must be clarity over those details and what applies to whom.
- The Preschool's financials roll into the church financials.
- Complaint procedure for Preschool employees needs to go up to Session.
- Religious discrimination is not advised for preschool employees (or, for that matter, for non-ministerial church employees).

Trap #2 – Inadequate Financial Controls

- Internal Controls (counting offerings, dual signature, other checks and balances, etc.).
- Check writing/signing authorizations.
- Authorizing expense reimbursements and other payments inside and outside of budget.
- Full financial review every year – G-3.0113.
- Investment/Endowment Policies (ultimately under Session control).
- Understanding Unrelated Business Income Tax.
- Including all church organizations in financial reports.
- Building and grounds safety and security policy (insurance company can often help with this).
- Record retention policy (Presbyterian Historical Society)

Trap #2 – Inadequate Financial Controls (cont.)

– Property Questions

Financial controls include control over real property.

- Who is using property: all occupants must be qualified non-profits.
- Adequate proof of tenant insurance is a must. (Handling AA-type groups – make it a part of church’s express mission.)
- Know the church’s proper property tax exemption category – and remain in compliance with the county’s requirements:
 - “Church” exemption: only churches (can include leased property) annual filing
 - “Religious” exemption: must be owned and operated for church purposes
 - “Welfare” exemption: owner and all occupants must be qualified non-profits. This requires annual filing. County audits do occur!

Trap #3 – Weak Internal Conflict Resolution Skills

All human relationships – including church congregations – have conflicts within those relationships. Examples of specific issues that can disrupt functional congregational life when not resolved well:

- Rigid, split congregation views on issues from big (traditional v. contemporary worship) to small (coffee hour with disposable paper cups or washable coffee cups) issues – a particularly high risk of congregational disruption if influential congregants are on both sides of the troubling issue.
- Disproportionate portions of congregational giving devoted to direct appeal special offerings, functionally beyond Session control (often music programs, including, for example, multi-tiers of bell choirs).

Trap #3 (cont.) – Internal Conflict Resolution Skills

Three clues as to dysfunctional congregational conflict resolution skills:

- Unhealthy triangulation – putting a third person in the middle, rather than two individuals communicating directly.
- With too much pass-through communication (like the kids game of “telephone”), information can become badly distorted.
- Anonymous feedback and complaints must not be listened to or retained (or rewarded) – the feedback/complaints can wound the target without any viable means of resolution.

If conflicts are not resolved in a constructive fashion, congregants may leave and/or pastors and other critical employees may leave (from Session or congregational pressure or from job dissatisfaction by or mental/emotional damage to the pastor or other critical employees).

Trap #3 (cont.) – Internal Conflict Resolution Skills

The danger is not in the fact of conflicts, but in whether the congregation and its leadership have the skills (or the commitment to develop the skills) to resolve those conflicts in a constructive, non-hurtful fashion.

- Sessions should work to regularly, actively build conflict resolution skills, e.g. as part of annual new officer training events.
- Do not expect a few minutes in a talk like mine to solve these challenges – it takes far more than I possibly can cover here.
- We have tremendous resources within the Southern California PC(U.S.A.) community – best to ask for help early before issues become more serious.

Trap #4 – Entrenched Lay Leadership

- Potential conflicts of interest (e.g. married couples where one is on Session and the other is an employee).
- Excessively consolidated power (e.g. multiple extended family members simultaneously on Session).
- “Volunteers” who insist upon doing it “my way” or “I will quit” – and Session members bowing to that blackmail.
- Boards of Trustees, Endowment Committees or Investment Committees resistant to Session leadership.
- One person in an important role for decades – becoming irreplaceable. (What if he or she becomes unavailable? What if he or she is or becomes untrustworthy?)

Trap #5 – Deficient Sexual Misconduct Policy

Sexual misconduct policies for ordained persons, staff and others in church leadership:

- Required by PC(U.S.A.) Book of Order
- Applies based on status of alleged accused
- An accusation against any Teaching Elder is referred to Presbytery under terms of Presbytery policy (and Book of Order).
- Presbytery policy DOES NOT cover Ruling Elders and others
- **Church needs its own policy and response process for Ruling Elders, etc., although may ask Presbytery's help.**
- Clarity as to with whom a concern should be reported is vital.
- Must be compliant with PC(U.S.A.) Book of Order Rules of Discipline.

Trap #6 – Incomplete Child, Youth and Elder Abuse Prevention and Reporting Policy

Child and Youth Abuse Prevention and Reporting:

- Required by PC(U.S.A.) Book of Order
- Applies based on the status of the alleged victim – minors/child and youth (and dependent adults and elderly).
- NOT one size fits all but must fit your church's programming & be continuously implemented.
- Personnel and volunteer screening and appropriate and regular training must be included, in a form with which church will comply.
- Reasonable operational controls, including two adult teams (particularly with teens); if church is too small for two adults in each Sunday school class, consider a “roving” supervisor.
- Mandated reporters must understand civil law obligations and process and must comply promptly.

Trap #7 – Inapt or Missing Employment P&P

- **Up-to-date current policies are essential: WRITTEN POLICIES MUST MATCH ACTUAL PRACTICES**
- Document policies carefully and consistently – do not just use “standard” P&P.
- Must clearly provide which benefits apply to whom, particularly if church runs preschool.
- Maintain job descriptions for each staff member (how they are determined is part of P&P– but don’t put the job descriptions themselves not in P&P, but as part of an appendix).
- Maintain a personnel file for each staff member (contents/location).
- Keep accurate time records/vacation, sick, personal time accruals.
- Remember annual update of required postings on wall chart.

Trap #7 – Inapt or Missing Employment P&P (cont.)

- COVID Safety Rules

2020 brought many new laws in response to the novel coronavirus (which are not covered in full or detail here):

Employee notice of potential COVID-19 exposure,

Expanded workers compensation benefits if exposed during work,

Reporting to county health authorities as to any coronavirus outbreak, and

Critical importance of compliance with state and county rules governing live worship and facility cleanliness and ventilation.

Trap #7 – Inapt or Missing Employment P&P (cont.)

- Keep Accurate Time Records

There is high financial liability exposure for failure to keep accurate time records for any non-exempt employee (including anyone who SHOULD be a non-exempt employee but is treated as exempt – more on that below).

Supervisors are responsible for approving time cards.

Time cards are required to be accurate and must reflect 10 minute breaks and lunch.

It is very important to require that all overtime be approved in advance in writing by the employee's supervisor.

Trap #7 – Inapt or Missing Employment P&P (cont.) - New Requirements (beyond COVID)

Employers with five or more employees must offer up to 12 weeks of unpaid job-protected leave for family and medical needs.

“Thanks” to the pandemic, not nearly as many new employment-related laws as usual

See Appendix B for the latest detailed information on the Dynamex Decision, AB5 and Proposition 22. No, nothing here makes it easier for a church to have independent contractors!

Trap #7 – Inapt or Missing Employment P&P (cont.) - Vacation Policy Issues

Vacation policies that include “Use It or Lose It” provisions are unlawful in California. (It is OK to have a maximum amount of accrued but unused vacation of at least 1-1/2 times – or better yet, two times – annual accrual amounts.)

Failure to keep accurate written records for accrual and use of vacation time leaves the church very vulnerable to extensive claims for paying a departing employee for accrued but unused vacation time.

Trap #7 – Inapt or Missing Employment P&P (cont.) - Additional Resources

Appendix A covers some additional guidelines for personnel practices and appropriate policies and procedures.

Appendix C covers detailed information on antidiscrimination/antiharassment requirements.

Trap #8 – Not Understanding Exempt v. Non-Exempt

Employee or Not?

- Treating as independent contractors (tax reporting with 1099) people who are properly employees (W-2) can be a very costly mistake.
- Each church needs familiarity with the federal and state standards of who can be an independent contractor. See details of recent California secular law history in Appendix B.
- All full-time and most part-time workers must be treated as employees (other than the special status of pastors).

Trap #8 – Not Understanding Exempt v. Non-Exempt (cont.)

I cannot overstate the significant potential financial exposure to a church for treating employees as exempt if not so qualified.

- California has stringent requirements as to definitions of who qualifies as exempt.
- An exempt worker (even if a part-time worker) must be paid at least twice the minimum wage for full time work – as of January 1, 2021, \$54,080/year (for 25 employees or less, if minimum wage is \$13/hour) or higher if larger employer or in city or county with higher minimum wage.

Trap #8 – Not Understanding Exempt v. Non-Exempt (cont.) - **Minimum Wage**

As of 1/1/2021, minimum wage increased to \$13/hour with 25 or fewer employees and \$14/hour with 26 or more employees; it continues to increase each year through 2023.

Some municipalities in Southern California have higher minimums: Los Angeles City, unincorporated Los Angeles County areas, Malibu and Santa Monica: \$14.25 (with 25 or fewer employees), going to \$15 as on 7/1, and \$15.00 (with 26 or more employees); Pasadena: \$15.

Trap #8 – Not Understanding **Exempt v. Non-Exempt** - Interplay between the ministerial exception and exempt v. non-exempt:

One of the grayest areas in this analysis has been for the choir director and the organist/accompanist: not whether they are properly employees (which they almost certainly are), but whether they can be treated as exempt rather than non-exempt employees. Given California's rigid standard that exempt employees must be paid at least two times minimum wage for a full-time employee, very, very few are paid that much, but, on the other hand, it is entirely unrealistic to pay the choir director and the organist/accompanist on an hourly basis. (How can they each be paid so many fewer hours during the lean summer months, while waiting for the windfall of being paid so much more during the Advent/Christmas and Easter Week seasons?) **Last summer's new 2020 SCOTUS decisions on the ministerial exemption makes it clear that most (but perhaps not all) choir directors and organist/accompanists fall within the ministerial exception.**

Trap #9 – Forgotten Policies and Procedures

When is adopting a written policy worse than nothing?

- If it is a standard form that is not customized for the church and does not match the church's practices.
- If it is adopted but not implemented.
- Last but certainly not least, if it is initially implemented and then forgotten.

Trap #9 Forgotten Policies and Procedures (cont.):

- Session needs to implement practices that:

(1) assure there are written P&P to cover all aspects of church administration,

(2) pull those comprehensive P&P into a Manual of Administrative Operations,

(3) regularly reviews all to assure consistent with the church's on-going practices, and

(4) assure that knowledge of and access to that comprehensive Manual of Administrative Operations is passed on to each generation of new lay leadership.

Trap #9 Forgotten Policies and Procedures (cont.) – What happens to comprehensive Policies and Procedures after creation/compilation?

Keep a centralized physical copy of each set of Policies and Procedures in the church's full Manual of Administrative Operations (along with electronic copies).

Provide a copy of relevant Policies and Procedures to each employee and obtain an acknowledgement of receipt.

Provide easy access to all Policies and Procedures for all Session members and to relevant Policies and Procedures for all Committee members.

Include an educational component about all Policies and Procedures in the annual lay leadership training event.

At least annually schedule a re-review of all Policies and Procedures (including looking for changes of the applicable law – both secular and ecclesiastical).

Trap #9 (cont.): If the church does not have up-to-date Policies and Procedures covering all relevant topics, don't be overwhelmed; take it a step at a time.

Where to go for help:

- * Knowledgeable volunteers within the church, the Presbytery, and other presbytery websites**
- * Other churches**
- * Insurance company (Be cautious that suggested policies also fit our polity.)**
- * If all else fails, engage legal counsel to consult.**

Trap #9 (cont.): MATTERS OF FORM ACTUALLY MATTER (INCONSISTENCIES AND/OR CONFUSION CAN LEAD TO MISUNDERSTOOD OR MISAPPLIED POLICIES AND PROCEDURES)

- Do not use a defined term (capitalized) unless it is defined – and then use it consistently.
- Include an alphabetized list of defined terms with definitions at the beginning of the each set of Policies and Procedures.
- Do not consecutively number pages of different policies and procedures and their appendices. (It makes it too difficult to make section changes.) Each should be separately numbered.
- Identify section, subsections, etc., sequentially, e.g. 1, 1.1, 1.1.1. (making it easier to find provisions, particularly where there are lengthy subsections).
- Keep PC(U.S.A.) Book of Order references up to date.

Trap #9 (cont.): Minimum to Include in Manual of Administrative Operations

- Child Abuse Prevention and Reporting Policy
- The Presbytery's sexual misconduct policy for Teaching Elders and the Church's separate sexual misconduct policy for ordained persons, staff and other leadership
- Session policies, such as committee descriptions, and policies for subordinate groups (Deacons, Trustees, etc.)
- Personnel Policies and Procedures and its related appendices (such as job descriptions, application, review and other forms, employee benefit plans)
- Personnel Files

Trap #9 (cont.): Minimum to Include in Manual of Administrative Operations (cont.)

- Pastor(s) terms of call
- Reimbursable expense policy
- Clergy medical expense reimbursement policy
- Corporate documents (articles, bylaws, etc.)
- Building and grounds safety and security policy
- Disaster response plan
- Financial practices policies including investment policy and endowment policy
- Record retention policy

Trap #9 (cont.): Minimum to Include in Manual of Administrative Operations (cont.)

- Real estate documents (title policy and deed copies), recorded restrictions (CCRs, easements, etc.), mortgage documents, cell tower lease, etc.
- Property tax exemption records and copy of state tax clearance certificate
- Property management documents – facilities usage policy, rules and regulations, tenant leases and certificates of insurance
- Insurance policies and certificates of insurance, claims records and workers compensation records
- Policies relating to church-owned preschool
- Anything other policies of significance for that Church

Trap #10 – The Oddest New Claim I Saw During 2020 – Copyright Infringement

- How many of churches publish regular newsletter online through the church website?
- How many of those newsletters occasionally use clipart from the internet?
- If so, **WATCH OUT!** There is at least one law firm (using a fancy internet search program) trolling for use by businesses and others (including churches) of clip art without payment of the applicable royalties. And when found, the law firm moves in to shake the church down for a settlement.
- Volunteers and staff who write content for a newsletter and/or run the church's website must be trained in the basics of copyright law, the necessity of respecting copyright interests and the payment of royalties.

**If there are additional questions,
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APPENDICES

Appendix A

Additional Guidelines for Personnel Practices

Appendix B

Detailed Information on Dynamex Decision, AB5 and Proposition 22

Appendix C

Detailed Information on Antidiscrimination/Antiharassment

Appendix A

Additional Guidelines for Personnel Practices

Additional Guidelines for Personnel Practices

Forms and processes for annual reviews (put in appendix)

Other personnel management forms (put in appendix)

Workers compensation process – claims and records

Clear understanding of supervisory relationships

Which committee(s) is/are responsible for which employee(s)

While pastor may be “head of staff,” but responsibility for overall employee management rests with Session.

Additional Guidelines for Personnel Practices (cont.)

Responsibility for Hiring and Firing

- Clear designation of who hires and fires (ultimate responsibility with the Session except as to ministers)
- Always provide clarity that employment is “at will” (except as to ministers)
- If church includes processes for layered discipline or “cause” for termination, P&P must make clear that it is discretionary and not required. For example, include: “Nothing in this Employee Handbook changes the ‘at will’ nature of your employment at *** Church. There should be no expectation that discipline is progressive in nature.”

Additional Guidelines for Personnel Practices (cont.) **Written Employment contracts?**

- Not necessary so long as terms of employment are clear (e.g. engagement letter and job description is sufficient, so long as Personnel P&P are clear as to what benefits apply to which employees).
- Make sure not inconsistent with Personnel P&P.
- Employment expressly “at will.”
- Any employment contract must expressly state that the employment contract can only be modified in writing, approved by the Session, signed by Clerk of Session.
- Pastoral terms under Book of Order and Presbytery process.

Additional Guidelines for Personnel Practices (cont.)

Performance Reviews

- Performance reviews are not required.
- If a process is described for performance reviews, make sure reviews are conducted in the manner described. If there are concerns about performance, make sure those concerns are reflected in reviews and/or other written documentation in personnel file.

Background Checks

- Not legally required (other than for preschool).
- If required by church, implement consistently.
- Use a responsible contractor to perform.
- If the church is going to do background checks, best to limit to post-offer situations.
- Fairly new law - credit reports requested only for certain positions (managerial positions, check signatory, handle large sums).

Additional Guidelines for Personnel Practices (cont.)

Other On-Going Benefit Issues

Churches are normally exempt from State Disability Insurance and Unemployment Insurance, unless the church has opted in.

This includes being exempt from the California Paid Family Leave (paid under the SDI system).

Be careful not to promise such benefits unless the church has intentionally opted into the system.

(WARNING: SDI and UI may be included in “form” personnel policies.)

Additional Guidelines for Personnel Practices (cont.) – Keep up with law changes

Remove references in applications and in interview questions as to salary history (cannot ask) and criminal records (only after employment offer – if 5 or more employees). [new from 2019]

Legal limits to requesting credit reports – only permitted for managerial positions, bank account signatories, regular access to sensitive personal information. [new from 2019]

Lactation accommodations expanded to require employers to make reasonable efforts to provide an employee with use of a room or location (other than a bathroom), in close proximity to the employee's work area, for the employee to express milk in private. [new from 2019]

Three days minimum sick leave per year – paychecks must show sick leave accrued and used – not clear how this fits with PTO.

Appendix B

Detailed Information on Dynamex Decision,
AB5, and Proposition 22

Recent California law refinements – Dynamex CA Supreme Court decision, AB5 and Proposition 22

In May, 2018, the California Supreme Court issued a decision in the Dynamex case tightening who must be treated as employees (not independent contractors). Prior to Dynamex, the California standard (much like the federal IRS standard) was a multi-faceted evaluation balancing many different factors as to the extent to which the "employer" controls the hours, nature, performance, etc., of the work against the extent to which the "employee" (or independent contractor) meets indicia of running a separate, independent business.

Dynamex Decision, AB5, and Proposition 22 (cont.)

The Dynamex case elevated what the court called the ABC test above this multi-faceted balancing test. Under the ABC test, the "employer" must be able to establish all three of the following factors in order to treat the worker as an independent contractor:

(A) The worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for performance of the work and in fact;

(B) The worker performs work that is outside the course of the hiring entity's business; and

(C) The worker is customarily engaged in an independently established trade, occupation, or business.

Dynamex Decision, AB5 and Proposition 22 (cont.)

(A) and (C) were central to the prior multi-faceted balancing test. (B) is the big change under Dynamex: even if the employer can prove (A) and (C), an independent contractor cannot perform the employer's central business functions.

Simple examples (within a church context) compare/contrast the church secretary and the church janitor. Under the Dynamex test, it is virtually impossible to show that the church secretary is an independent contractor, because the types of functions performed (preparing bulletins and other church publications, interfacing with congregants, etc.) are central to the church's business. The functions performed by a janitor are not. (That does NOT mean that the janitor can always be an independent contractor, because (A) and (C) must also be satisfied. A janitorial service – that provides its own supplies, hires its own employees, satisfies the assigned tasks in more or less hours as needed - often is legitimately an independent contractor.) Even before Dynamex, very few church secretaries could ever have met the multi-faceted California test as independent contractors (set hours, specific standards of performance, not running independent secretarial businesses, etc.).

Dynamex Decision, AB5 and Proposition 22 (cont.) and the Ministerial Exception

AB5 "codified" the Dynamex test - but also imbedded in California law dozens of exceptions (mostly, industries with the lobbying clout to make sure their people were outside the ABC test, including most licensed professionals). **There is little in AB5 relevant to churches and determining who is an independent contractor.**

There is nothing in Proposition 22 relevant to churches and determining who is an independent contractor.

What is most relevant to churches is the overlay provided by the First Amendment and the ministerial exception. Very few state labor laws are applicable to employment of "ministers." "Ministers" are different from our Teaching Elders. (A Teaching Elder in a non-ministerial position is not under the ministerial exception.) The ministerial exception is the creation of Federal constitutional law by Federal court and United States Supreme Court cases. (Recent SCOTUS cases further refined the "ministerial exception" in the context of teachers for religious organization schools.) An honorarium to a one-time pulpit supply is not an "employee" payment. Paid singers in a church choir are not independent contractors (and this is NOT new law); there are rarely any religious standards (many are Jewish or unchurched); they have specific hour and performance standards and services provided are central to the church's functioning. Similarly, the choir director and the organist/accompanist are (in my experience) always properly treated as employees.

Appendix C

Detailed Information on Antidiscrimination/Antiharassment

Anti-discrimination/anti-harassment

California prohibits employment discrimination/harassment based on race, color, ancestry, national origin, religion (except for ministerial positions), sex (including pregnancy, childbirth, and related medical conditions), disability (physical or mental), age (40 and older), genetic information, marital status, sexual orientation, gender identity, gender expression, transgender, AIDS/HIV, medical condition, political activities or affiliations, military or veteran status, status as a victim of domestic violence, assault, or stalking, and arrest not followed by conviction, referral or participation in a pretrial or post-trial diversion program, and convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.

Anti-discrimination/anti-harassment (cont.)

1. Federal law has narrower list of protected classes and applies to larger employers (mostly 15+, including part-timers); California law applies to smaller employers (mostly 5+) but not to discrimination by religious employers; California law does apply anti-harassment rules to all employers (including religious).
2. Adopt a comprehensive and robust anti-discrimination and anti-harassment policy – in particular, renew, refresh and refocus on anti-sexual harassment training and policies: Name at least two people to receive complaints; Applies based upon status of the alleged victim – an employee
2. Train all personnel (including volunteers)
3. Listen carefully, investigate thoroughly, act promptly
4. Prevent any type of retaliation for making a complaint
5. When in doubt, consult legal counsel

Anti-discrimination/anti-harassment (cont.)

- By January 1, 2021 [extended deadline], employers with 5 or more employees must provide sexual harassment training of at least two hours to supervisory employees and of at least one hour to all non-supervisory employees. Employees must be trained within six months of the assumption of their positions and temporary employees must be trained within 30 days after hire or within 100 hours worked, whichever occurs first.
- First training required during 2020 [extended deadline]. Sexual harassment training must be repeated once every two years.

Anti-sexual harassment training (continued)

What training do employers have to provide? Employers must provide sexual harassment prevention training in a classroom setting, through interactive E-learning, or through a live webinar. E-learning training must provide instructions on how to contact a trainer who can answer questions within two business days.

Any training must explain:

- The definition of sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964;
- The statutes and case-law prohibiting and preventing sexual harassment;
- The types of conduct that can be sexual harassment;
- The remedies available for victims of sexual harassment;
- Strategies to prevent sexual harassment;
- Supervisors' obligation to report harassment;
- Practical examples of harassment;

Anti-sexual harassment training (continued)

What training do employers have to provide? (continued)

- The limited confidentiality of the complaint process;
- Resources for victims of sexual harassment, including to whom they should report it;
- How employers must correct harassing behavior;
- What to do if a supervisor is personally accused of harassment;
- The elements of an effective anti-harassment policy and how to use it;
- “Abusive conduct” under Government Code section 12950.1, subdivision (g)(2).
- Discuss harassment based on gender identity, gender expression, and sexual orientation, which shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation.

Finally, any training must include questions that assess learning, skill-building activities to assess understanding and application of content, and hypothetical scenarios about harassment with discussion questions.