

NOVEMBER 3, 2017 | STATE &amp; LOCAL TRENDS

# California Governor Signs SB 396 Requiring Training on Gender Identity Harassment

✘ Only a few months after the California Department of Fair Employment and Housing [amendments](#) to the FEHA regulations went into effect on July 1, 2017, which centralize, clarify, and expand protections for transgender individuals against discrimination, California Governor Jerry Brown signed [Senate Bill 396](#) into law on October 15, 2017. Senate Bill 396 goes even further in facilitating a discrimination-free workplace by requiring employers to provide gender identity and sexual orientation training to supervisory employees.

The FEHA prohibits harassment and discrimination based on protected classes, which includes people who identify as transgender, providing protections on the basis of both gender identity and gender expression. California law also specifically protects an employee's right to appear or dress consistently with his/her gender identity or gender expression, unless the employer can establish a business necessity defense. As explained in a [previous post](#), however, the new regulations significantly increase protections for transgender employees by specifying rules concerning access to bathroom facilities, grooming and dress standards, and recording the gender and name of employees. Additionally, the new regulations include an amendment that prohibits employers from seeking gender- or sex-related information from applicants and employees, such as proof of an individual's sex, gender, gender identity, or expression.

In an effort to help prepare employers for these new requirements and the protections extended to transgender employees, the California Legislature drafted Senate Bill 396 to require employers to provide training to supervisors based on gender identity, gender expression, and sexual orientation. FEHA already requires employers with 50 or more employees to provide supervisors sexual harassment training within 6 months of becoming a supervisor, and at least once every two years. Therefore, employers can incorporate the specific requirements of Senate Bill 396 – gender identity, gender expression, and sexual orientation – into that training. Under Senate Bill 396, employers must ensure that that training is performed by an individual with knowledge and expertise in these topics, and must include practical examples.

As of January 1, 2018, employers are also required to post a poster developed by the Department of Fair Employment and Housing regarding transgender rights in a prominent and accessible location in the workplace. In addition to this posting, employers must distribute an information sheet that will be created by the Department of Fair Employment and Housing to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, information on the following:

1. The illegality of sexual harassment;
2. The definition of sexual harassment under applicable state and federal law;
3. A description of sexual harassment, utilizing examples;
4. The internal complaint process of the employer available to the employee;
5. The legal remedies and complaint process available through the department;
6. Directions on how to contact the Department of Fair Employment and Housing; and
7. Protections from retaliation.

Employers can satisfy this requirement by updating their anti-discrimination/anti-harassment policies in their employee handbooks.

In light of the recent amendments to the FEHA regulations and Senate Bill 396's new supervisor training requirement, California employers should take time to review their employment applications and employment policies to ensure that their policies reflect the FEHA's prohibition against transition discrimination and gender identity and expression discrimination. Additionally, employers should update their training materials and programs for supervisors to ensure that they are properly trained on this subject. In the interim, employers should instruct supervisors to refer any questions or concerns related to gender identity, gender expression, or sexual orientation promptly to human resources. Swiftly implementing these policy changes and conducting new training for supervisors will help ensure compliance with the new regulations and limit the potential for workplace issues and FEHA violations.