

## Harassment

# California Passes Mandatory Harassment Training Law

California leads the nation again in passing an innovative employment law. The State's newest twist is a law requiring employers with 50 or more employees to provide sexual harassment training to all supervisory employees. Effective January 1, 2006, employers *must* provide at least two hours of classroom or other effective training to all supervisors who are employed as of July 1, 2005, and to every new supervisor within six months of his or her date of hire. The training must be repeated to all supervisors every two years.

The California law specifies the information that must be conveyed in the mandatory training. The training must provide information and practical guidance regarding federal and state law pertaining to harassment, must explain the remedies available to victims of harassment, and must include practical examples. The training must be given by individuals with expertise in the preven-

tion of discrimination, harassment, and retaliation. Presumably, regulations will be in effect by mid-2005 so that employers will know who qualifies to perform the training. However, the mere fact that an employer conducts the mandatory training in accordance with the law

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does not automatically insulate the employer from liability for harassment.

Although the California law is significant in that it contains specific mandatory training requirements, it has long been important for all employers throughout the country to provide harassment training—particularly since the Supreme Court's 1998 *Ellerth* and

*Faragher* decisions. In *Ellerth* and *Faragher*, the Supreme Court created an affirmative defense to harassment liability for employers who take steps to prevent and correct workplace harassment, and numerous courts have found that employee training is essential to establishing such an affirmative defense. By conducting and documenting training of employees in accordance with the California statute, an employer will not only be in compliance with this new state law, the employer should also be well on the road to establishing an affirmative defense under *Ellerth* and *Faragher*—which, as shown in the *McPherson* case discussed above, can be extremely important to an employer defending against a harassment claim.

Kevin D. Kelly | 312.443.0217 | [kkelly@lordbissell.com](mailto:kkelly@lordbissell.com)

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## OFCCP

# OFCCP Gets Bank To Pay \$5.5 Million For Pay Discrimination

As we have noted in previous articles regarding the Office of Federal Contract Compliance Programs ("OFCCP") (the agency that enforces the federal government's affirmative action requirements for government contractors), the OFCCP is now focused on class action-type relief. A good example of their current orientation is a settlement that the agency recently negotiated with Wachovia Corp.

Based on a review of First Union National Bank's corporate headquarters in 2001, the OFCCP determined that First Union had discriminated against female employees with respect to compensation. Approximately one month after a complaint was issued against First Union, the bank merged with Wachovia. In September 2004, the DOL announced that Wachovia has agreed to pay 2,021 current and former female employees a total of \$5.5 million in backpay and interest, as well as agreeing to undertake "extensive self-monitoring meas-

ures" over the next three years and to correct any statistically significant disparities in the compensation of its female employees. In announcing the settlement, Labor Secretary Elaine Chao said the \$5.5 million settlement "should put all federal contractors on notice that the Labor Department is serious about eliminating systemic discrimination against women."

It is not only government contractors who are well-advised to do an analysis of their employees' compensation to ensure that there is no statistical disparities between employees of different races or genders. In order to minimize any vulnerability to litigation for discrimination it is a good practice for all employers subject to federal and/or state anti-discrimination laws to periodically do a confidential wage review.

Steven H. Adelman | 312.443.0405 | [sadelman@lordbissell.com](mailto:sadelman@lordbissell.com)