



602 - New & Improved Approaches to Training Your Clients

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Faculty Biographies

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Mr. Gilmartin has been general counsel, vice president and secretary for Richardson Electronics, Ltd. in Lafox, Illinois. Prior to that, Mr. Gilmartin had been assistant general counsel, vice president and assistant secretary.

Prior to joining Richardson Electronics, Mr. Gilmartin served as vice president of Legal for SBI Group Inc. and deputy general counsel to Lante Corporation until it was acquired by SBI. Prior to that, Mr. Gilmartin served as corporate counsel to Alliant Foodservice, Inc. and as director and senior counsel to CNA. Prior to that, Mr. Gilmartin served in private law firm practice as an associate with Gardner, Carton & Douglas LLP and Lord, Bissell & Brook, LLP.

Mr. Gilmartin has played an active role with Chicago Volunteer Legal Services Foundation, serving as a volunteer providing pro bono legal services in the Chicago area, serving as an officer on the board and as president of the board.

Mr. Gilmartin is a graduate of the University of Notre Dame Law School and received a B.S. from the University of Illinois.

Keith Omsberg

Keith Omsberg is the vice president & associate general counsel of Tier Technologies, Inc., a provider of financial transaction processing, payment solutions, and software systems based in Reston, Virginia. His responsibilities include providing legal counsel and advice to the company in the areas of general corporate law, governance, compliance, technology licensing, intellectual property, litigation, and employment law.

Prior to joining Tier, Mr. Omsberg served as senior counsel at Peoplesoft, Inc., in Pleasanton, California, where he provided legal counsel in the areas of corporate law, commercial transactions, intellectual property, and technology licensing.

Mr. Omsberg currently serves as co-chair of the ACC's Washington DC Chapter's intellectual property/information technology committee.

Mr. Omsberg received his B.A. from University of Southern California, and is a graduate of Golden Gate University School of Law.

Meredith Stone

Meredith B. Stone, vice president, general counsel Americas for NACCO Materials Handling Group, Inc. in Greenville, North Carolina, is responsible for the legal compliance of NMHG's Americas Division activities in North, South, and Central America, including providing advice on and representing the company on corporate transactions, litigation,

import/export and government sales compliance, negotiating, drafting and approving contractual commitments, advising and counseling the corporation on employment law issues, and providing preventative legal training to employees.

Prior to joining NACCO Materials Handling Group, Inc., Ms. Stone was the vice president, general counsel and secretary of Konica Business Technologies, Inc., a general attorney for the Long Island Railroad Company in Jamaica, New York; an associate attorney with Levine & Robinson, P.C. in Mitchel Field, New York; and an assistant corporation counsel for the law department of the City of New York.

Ms. Stone previously served as ACC's Connecticut chapter chairperson of the small law department committee. Ms. Stone is a member of the ABA (business law, employment law, international law and antitrust sections), the New York State Bar Association, and the North Carolina Bar Association, where she is a council member of the corporate counsel section and chairperson of its membership committee.

She earned her B.A. from the University of Vermont and J.D., cum laude, from St. John's University School of Law in Jamaica, New York.



The Importance of Training

- Part of overall communications effort
- Enhance legal department value
- Encourage colleagues to come to you early
- Strengthen legal-business relationships
- Instill confidence and trust

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The Importance of Training (cont'd)

- Provide tools for efficiency
- Promote inter-department cross training
- Provide efficient knowledge transfer
- Avoid personal and corporate exposure through preventative law
- Meet mandatory legal compliance guidelines

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What Should I Do First?

- Determine why you want to provide training
- Develop topic list
- Develop business reason and intended result
- Get management endorsement
- Work with HR on audience

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Plan Your Training Program

- Determine your goals for the program
- Determine your method of training
- Tailor your presentation to the audience
- Remember you will never be able to present everything
- Enhance your credibility
- Draft and then shorten - you will run out of time!

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How to Present:

- Know your audience
- Use different methods
- Pre and Post tests
- War stories
- Examples of the good, the bad and the really ugly!
- Present as “Business” not as “Legal”

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Get Their Attention:

- Provide copies of approved agreements or checklists
- Explain how they work
- Explain how they will make the attendee's life easier (yours will be too!)
- Explain any personal liability, if this is a possibility
- Make it practical

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What Not to Do:

- Don't bore your audience with "Legalese"
- Try not to lecture
- Make the training practical
- Have a focus
- Provide guidelines or checklists
- Be available for questions

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Benefits of Legal Training:

- Spot issues
- Determine relevance
- Sort and analyze facts
- Better communication, both written and oral

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Training Programs – Types/Tools Overview

- Live classes (in person / teleconf / webcast)
 - Partnering with outside counsel
- Web-based training programs
- Memos / articles
- Intranet – archive / library / self-help
- Value of “Informal” training

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Review of Considerations

- Customize tools (like methods) to fit audience, company culture, and objectives
- Create reusable tools (i.e., save by user, downloadable, resend periodically)
- Create audience interaction
- Address current issues (in company or news)

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Common Tools

- Audience interaction tools
- Lessons learned
- Key standard forms
- Tips and guidelines
- Newsletters/bulletins
- Utilizing third-party providers
- FAQ's
- Visual aids generally

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Also,

- Cross training and dept. specific training
- Develop any of the above into other formats
- Obtain feedback (informal or formal)

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Audience Interaction Tools

- Role playing (e.g., proper interview Q's)
- Quizzes / tests
 - From fact patterns
 - Pre and post tests on key training
- Brown bag lunch session: Q&A
- Monthly "Ask the Lawyer" teleconf
- Utilize key business players in training

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Lessons Learned

- Internal company issues
- Hot topics in the news

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Key Standard Forms

- Use explanatory comments
- Send periodic reminders
- Not just a passive tool (spring board to training)

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Tips and Guidelines – “Cheat Sheets”

- Short communication on single topic
 - Negotiating NDA's (see sample)
 - IP basics (see sample)
 - Recruiting AGMT guidelines (see sample)
 - Responding to RFP's
 - Corporate fact sheet

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- Creating attorney-client privilege
- Contract basics (no legalese) e.g.:
 - Can you create a contract via e-mail?
 - Whose TS & CS of sale/purchase govern?
 - How PO terms create contractual obligations
- Negotiating key contract provisions

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Newsletters/Bulletins – “Legal Briefs”

- Relevant topics on interesting news items
- Via e-mail blast, archive to intranet, FAQ’s
- For example,
 - Who’s who in the legal department
 - Dangers of e-mail
 - Contract review process
 - What to do if complaint received

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Cross-Training / Dept. Specific Training

For example,

- Discrimination / interview skills
- All employees and expand for HR
- Revenue recognition
 - Accounting and sales

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- Protecting inside information/insider trading
- All employees, management, board
- Record retention (legal implications)
 - All employees and expand for IT
- Distinguish EE level vs supervisor level

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Utilizing Third Party Providers

- ACC materials
- Outside counsel memos
- Outside counsel (live sessions/telecons)
- Website resources (e.g., copyrightclearancecenter.com)
- Web-based “Compliance” training
 - Established programs
 - Can be customized to company

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Compliance Training

- Best Practices vs. Mandatory Compliance
- Management and the board
- Corporate and personal liability

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Compliance Training (cont'd)

- No “Window Dressing” - program must be sincere & effective
- Compliance incentives and accountability
 - Signatures
 - Audits
 - Reviews

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Federal Sentencing Guidelines

- DOJ/USSC- Sentencing credit for effective compliance programs
- Training & communication are essential elements



Federal Sentencing Guidelines (cont'd)

- What is “Effective” compliance training?
 - Promotion of organizational culture that encourages ethical conduct
 - Tailor to specific circumstances
 - Cover ethics not just legal topics
 - Accountability



Harassment/Discrimination

Supreme Court Cases

- Training Guidelines
 - Faragher v. City of Boca Raton (1998)
 - Burlington Industries v. Ellerth (1998)
- Punitive Damages/Affirmative Defense
 - Kolstad v. American Dental Association (1999)

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Harassment/Discrimination (cont'd)

- EEOC Mandatory Training Guidelines

- Impact of Federal Guidelines

- State Laws and Training

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Sarbanes-Oxley

- Code of Conduct
- Whistleblower Liability
- Training and Procedures Implicit
 - Section 802 - Criminal Obstruction of Justice
 - Section 301- Reporting Channels/Complaints

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Other Resources Provided

- *"Making Compliance Training Effective"*
GC New York – July 25, 2005
- *"50 State Protected Category & Harassment Training Survey"*
http://www.elt-inc.com/ept_chart.html - *ELT Technologies*
- *"Legal Drivers for Mandatory Harassment, Discrimination and Ethics Training"*
http://www.elt-inc.com/ept_chart.html - *ELT Technologies*
- *"Conducting Contract Training for Non-Lawyers"*
NCBA Business Lawyer – June 2005
- *Recruiter Agreement Checklist*
- *Non-Disclosure Agreement Tips*

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- Questions?
- Comments?
- Other Ideas?
- Thank You!

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THE CHAIR'S COMMENTS

OUR CORPORATE COUNSEL SECTION Annual Meeting at MidPines Inn & Golf Club on May 5 and 6 was a great success. Many thanks to all those who helped organize, speak at and sponsor our events. From our opening reception at Cosgrove's through our Thursday evening Banquet and Friday CLE and golf, approximately 40 section members enjoyed the opportunities to relax, network and learn.



MATTHEW R. JOYNER

At our annual meeting, Calley Gerber, Nancy Mason, Eric Montgomery, Tamika Shafeek-Horton and Andrew Spainhour were elected to three-year terms on the section council. Rob Griffin and Tamara Stringer were elected to two-year terms.

Guy Brooks and Amy Reynolds were elected to one-year terms. In the coming 2005-06 year the section officers will be as follows: Teresa Murphy Brenner, chair; Andy Finkle, vice chair; Joe Ritter, secretary and Peggy Watts, treasurer. We are fortunate to have so many capable leaders devoting their energies to our section.

As my days as section chair draw to a close, I would especially like to thank my fellow council members for their involvement, support and encouragement in the past year. It was an honor and a pleasure to lead you this year, and I appreciated your individual contributions to our section activities. The Corporate Counsel Section exists to promote the professional development of the state's in-house counsel and to represent the corporate bar to the public, the state government and to the rest of the state bar. This year we fulfilled our multiple purposes admirably. We succeeded particularly in rep-

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Conducting Contract Law Training for Non-Lawyers

BY MEREDITH B. STONE

Editor's Note: The following article is based on a program presented at the Corporate Counsel Section Meeting of the North Carolina Bar Association.

Why Should You Conduct Contract Law Training?

There are many benefits to conducting contract law training for your business associates. Conducting a realistic, beneficial, practical program may encourage colleagues to come to you earlier in their negotiation process; it assists in establishing the business relationship and business purpose for the contracts your company is entering into; it helps your business unit forecast outcomes and develop contingencies; it may help you establish yourself as a trusted business partner; and it may result in a more efficient workflow for your legal department.

There are a few questions you should ask yourself before you start. How are contracts perceived in your company? Is it "something for the lawyers?" Are good contracting practices, including timely and relevant review, a priority for your senior management? If the latter, you will be off to a good start. If the former, you may have some re-educating to do.

Developing your training program. When conducting training, you want to teach your fellow employees to spot issues, to determine their relevance to the company's operations, and to sort and analyze the applicable facts.

When you plan your training program, think about your company and its business needs and practices. Determine your goals and your method of training. Tailor your presentation to the audience, and remember you will never be able to present everything, so after

you develop your outline, make it shorter. However, always make sure the participants know you are available after the training to answer questions and provide assistance.

Your goal in establishing a contract training program should include establishing the business necessity for good contracting practices. Demonstrate how good contracting practices add value to the business by enhancing decisions and avoiding problems. The aim of your program could be to establish that contracts are a business tool for better-informed decisions. By presenting the parallels between making good business decisions and drafting good contracts, your program will be practical and appreciated by your audience, with the added side benefit of enhancing your credibility as a business partner.

Types of training and content of training. There are many types of training programs. What will work best depends on your organization. You may want to consider variations of the following program types: one-on-one sessions; Web-based training pro-

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grams; CD-ROM training; small-group sessions with participants with similar responsibilities to your company; annual employee meetings; and/or articles on your company Intranet or in your newsletters. All of these are potential training opportunities and methods.

In presenting your training, make sure you understand your audience and tailor your presentation accordingly. Your goal is not to turn the attendees into "mini-lawyers" but to establish the business relationship of a contract, explain and demonstrate that a contract is similar to a "business pre-nupt" detailing what the parties will do, what happens if their goals change, what happens if one side does not perform and what are the consequences. Consider using pre- and post-tests to determine how effective your program is; present war stories (changing the names to protect the innocent), use examples and provide template agreements and other tools. The goal of your training is to establish the contracting process as a necessary step in the business process, not simply something that "legal requires."

What to include. No matter the nature of your company's business, there are certain basics you will want to address in your training program. These include educating your employees on what is a contract and what are your company's policies on contract review and approval. Do agreements need to be in writing? What is the effect of oral agreements? What needs legal review and approval? What is the process for legal review of contracts? You should address how the contracting process affects your customers as well as your company, why a well-written agreement is beneficial to both. Make sure the participants know who can sign what type of agreements for your company and the scope of their authority, what are the rules and requirements? How does your company manage electronic agreements?

As practical training is most effective, you should review your company's standard contracts that apply to your audience. Explain why different clauses are included, what they mean, what are the risks involved, what are acceptable alternatives and what the contract means to them in performing their job responsibilities.

You want to get their attention and participation. You can do this by providing copies of approved agreements that your company regularly uses, explain how these

work, how they will make the attendee's life easier (yours may be, too!) and explain any personal liability they may incur if that is applicable.

In presenting your training, try not to lecture the participants. Perhaps you may want to conduct a mock contract negotiation with a customer or a mock deposition in a breach-of-contract lawsuit. Consider providing guidelines or checklists the attendees can use when meeting with your customers or negotiating an agreement on behalf of your company.

"The goal of providing contract training for your business people is to assist them in being aware of your organization's risk tolerance, what is the blueprint or game plan they should follow and how it can be modified and by whom."

Just as in selecting the contract clauses you will review with the participants you have selected clauses relevant to your company's core business operations, you should also discuss and explain any statutes that may be relevant to your company's business activities. Privacy and disclosure issues should also be addressed, suited to your business needs.

If your company uses template or form contracts that have been blessed by your legal department, make sure you address these in the training. Demonstrate what exists, explain how they are used, explain the modification and approval process and review the business goals of your form agreements. Similarly, educate your attendees about "other people's contracts," what they should do when they are handed a form contract from a customer, vendor or other business partner. How should these be addressed? What clauses are "deal breakers" for your company; where is there business flexibility?

One tool that may be helpful is develop-

ment of a matrix of terms and conditions that you see over and over again in contracts; explain what the term means, what is the range of acceptable language or risk, what should the business person do to get approval for an exception, who should they speak to? What should be considered in evaluating this business risk?

Training Goals. The goal of providing contract training for your business people is to assist them in being aware of your organization's risk tolerance, what is the blueprint or game plan they should follow and how it can be modified and by whom.

By presenting practical, focused training, your co-workers should better appreciate your function and involvement in the contracting process, better understand their role in the process and hopefully, involve you, when appropriate, sooner rather than later in the transaction. By teaching them to see the contract as a business tool, preventative drafting and early involvement may lead to less disputes and smoother business relationships. ■

STONE IS THE VICE PRESIDENT GENERAL COUNSEL OF AMERICAS FOR NACCO MATERIALS HANDLING GROUP, INC.



BY JAMES M. BRENNAN AND JEFFREY M. KAPLAN

AS LONG AS there have been compliance and ethics programs there has been a concern not altogether unfounded, "window dressing"—that some companies will act less than sincerely and will attempt to get credit for a program without achieving, even intending, anything substantive. The United States Sentencing Commission (USSC), when it implemented the Organizational Sentencing Guidelines (OSG) in 1991, addressed this fear. The guidelines informed federal judges that they could give a convicted company credit for a compliance program—not for a finding that the company had a program, but only upon a finding that the program was "effective."

The determination of "effective," in turn, revolved around seven stated components. These seven components a company must show as revised by the USSC in 2004, include: 1) standards including Code of Conduct; 2) an active role played by a company's board, senior management and ethics officer; 3) due diligence in hiring and promoting law-abiding personnel; 4) training and other forms of communication; and 5) evaluation of the program and a Helpline; 6) discipline for violations; 7) remedial actions upon discovery of a violation.

James M. Brennan is the chief ethics officer and legal counsel at Media provided in Princeton, NJ. He works from the company's Princeton, NJ office. **Jeffrey M. Kaplan**, a partner in the New York City office of Stinson & Associates Law and Business, is the advisor.

Besides the Sentencing Commission, the Department of Justice, too, has stressed the importance of effectiveness in compliance programs. In its 1999 Guidelines, Federal Prosecutors in Corporate Crime DOJ stated: Prosecutors should therefore attempt to determine whether a corporation's compliance program is merely a "paper program" or whether it was designed and

implemented in an effective manner... In addition, prosecutors should determine whether the corporation's employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it. This will enable the prosecutor to make an informed decision as to whether the corporation has adopted and implemented a truly effective compliance program.

Making Compliance Training Effective
Methods that keep employees engaged and interested help them learn.

Implemented in an effective manner... In addition, prosecutors should determine whether the corporation's employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it. This will enable the prosecutor to make an informed decision as to whether the corporation has adopted and implemented a truly effective compliance program.

Since training an essential element of a compliance program, when government entities emphasize program effectiveness, they are among other things, indirectly making it the necessity of effective training, at least to the Sentencing Commission, however an indirect approach is not enough. To leave no doubt, in the 2004 OSG revision, the commission specifically stated that training, in its own right, must be "effective."

USSC, §8B2.1(b)(4)(A).

Even prior to the revisions to the USSC, effectiveness of training in expected court decisions in the area of harassment litigation, where case law shows that simply offering training is not enough; the quality of the training can mean the difference between allowance or disallowance of punitive damages.

An example is *Cadena v. Passerella Corp.*, 224 F.3d 1203 (10th Cir. 2000). There, the lower court granted to the sex harassment plaintiff a punitive damages award of \$250,000. On appeal, the defendant company argued that punitive damages were in proper since the record showed that the company had offered periodic sex harassment training.

The court was not persuaded, since even if the training had occurred it suffered from a fundamental deficiency: the training manager herself believed that grabbing breasts is not ex harassment if a policy allows. The inadequacies of the training manager's understanding of the law—and thus, evidently, the quality of the training—knocked out the defendant's claim that punitive damages should be precluded. Id. at 1210.

The government's interest in effectiveness is mirrored in the private sector as corporations more and more insist on the importance of ethics training in their compliance programs. This is not to say that private sector attention to the topic stems solely from government guidance, but it is perhaps an even bigger factor in the business

imperative that money be well spent. After all, training programs represent a significant investment of money, resources and employee time. There is a growing recognition that if the training is not effective, the investments are compromised or even wasted.

So What Is Effectiveness?

Unfortunately, while the "your training must be effective" message has been coming through loud and clear, less clear is the explanation of what, exactly, "effective" means. Nevertheless, through experience, best practices, principles of adult learning, and aspects of the revised OSG, a multifaceted picture of what is effective is emerging.

Training should be tailored to the individual circumstances of the particular company. There is no universal formula that applies to all companies. Various factors must be taken into account in determining what makes sense, including the company's size, industry, market, employee distribution and history. A very small company, for example, may find that its best course is to gather all employees into one room for a session or series of sessions. For larger companies, particularly those with employees who are largely dispersed, such an approach may be impractical. The logistical ease, cost savings and consistency of message provided by online training may prove compelling. In any event, regardless of circumstances, all companies should analyze their situation and their needs before kicking off a program. An adequate needs analysis goes a long way toward ensuring that a subsequent training initiative hits the mark.

Don't treat compliance training like a second-class citizen. Vital business activities such as R & D, production and sales generally receive what they need to succeed, in terms of money, senior management attention, and resources. If a company is to succeed in its training initiative, it must show comparable commitment and try to achieve "results" in compliance and ethics with the same spirit that it does with other, more traditional business functions.

Training should not cover merely legal topics but should also address ethics. The USSC recognized that the breakdowns at Enron, WorldCom and other companies were a result of a lack of awareness about the law but from problems of corporate culture as well. For that reason, the revised guidelines stress that companies must not content themselves with programs addressing only the law but need to also strive toward

an ethical culture. See USSG, §8B2.1(b) (compliance and ethics program must include "the promotion of an organizational culture that encourages ethical conduct...").

Goal of Training

It may be common sense but it is forgotten too often that the goal of a training program is not to offer training to the goal that employees learn, remember and be motivated to follow company compliance and ethical standards in attending to logistical details of the company or forget to ensure that the course is geared to achieve the primary goal. It is beyond the scope of this



article is engaged in an analysis of learning theory, but a few key points are basic.

First, the training should be relevant to employees' jobs. Employees must be able to relate to the lessons and circumstances presented in compliance and ethics training. If they do not feel it can be applied to their own work situation, they will gain little benefit from it. Worse, experience shows that irrelevant training can cause employees to become disaffected, not only with the training program but also with the company's entire compliance and ethics initiative.

Second, the training should be engaging. It should be interesting. We have, thank heavens, come a long way from the days when a company sent out a PowerPoint presentation and called it training. But still, far too many training modules hold about as much appeal as reading the Internal Revenue Code. If participants do not pay attention, they will not learn, much less

remember, the information presented.

One way to elicit attention is to make training interactive. Active learning is always better than passive learning. Whether the training is in a classroom or on a computer, student participation is vital. In a classroom, a dialogue is better than a lecture. In an online course, participants should be asked questions and given options. A rather proven method for getting and keeping attention is to include a course's lessons within a narrative, rather than simply regurgitating abstract information. As the great communicators of history know, storytelling can be an unparalleled method of teaching. This is particularly the case where the teaching seeks to alter behavior, as is the case with compliance and ethics training.

Furthermore, as anyone who has read a book and seen a movie knows, the more sense that are involved when a story is told, the more gripping it is. Pictures are more interesting and create more interest, attention and empathy than pictures. Empathy, in turn, engenders further interest. And an added benefit of empathy is that the more that participants are able to place themselves in the shoes of a character in the module, the more likely they will be to apply the lessons learned and act accordingly in the workplace. Thus, a narrative approach is not only helpful for creating interest but for creating motivation as well.

Even the best-laid plans of management and counsel do not guarantee that the training will be effective. Employees ultimately take it upon themselves to learn, remember and apply the lessons presented. Nevertheless, by using training that is based on sound principles of adult learning, a company can assure itself of doing all within its power to assure effectiveness.

1. Throughout the 2004 paper was some question to whether the Organizational Sentencing Guidelines would survive the U.S. Supreme Court's decision in *Peugh v. United States*, 545 U.S. 160 (2005). In responding to the claim that the Sentencing Guidelines in *Peugh* place judges' constitutional responsibility on the shoulders of the courts, the advisory committee considered the guidelines must not be required to follow the upshot of the Supreme Court's decision in *Peugh*. The guidelines sentencing business convicted crimes.

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50 State Protected Category & Harassment Training Survey

- Training requirements are not specifically mentioned
- Training required

Jurisdiction	Categories Protected by State FEP Statutes	Training & Education Requirement
	<i>The following is not a comprehensive list of every category protected by every state law, rather, it is a list of those categories protected by each state's primary FEP statutes. For example, many states have separate statutes that protect employees who use tobacco, who have an arrest record, or who engage in political activity. Those types of separate statutes are not discussed below. In addition, some cities may also have ordinances or laws that prohibit discrimination. These laws may be broader than state statutes and are not reflected below.</i>	<i>Listed below are detailed training requirements by state. Many of these requirements are specific to government employees.</i>
Alabama	Age (40+): Ala. Code § 25-1-20, <i>et seq.</i> Handicap (blind, visually handicapped, or otherwise physically disabled) for state employers and employment supported in whole or part by public funds. Ala. Code § 21-7-8. Alabama does not recognize an independent cause of action for sexual harassment. Instead, claims of sexual harassment are maintained under common-law tort theories such as assault and battery, invasion of privacy, negligent training and supervision, and outrage. <i>Machen v. Childersburg Bancorporation, Inc.</i> , 761 So. 2d 981, 983 (Ala. 1999).	None
Alaska	Race, religion, color, national origin, ancestry, age, physical or mental disability, sex, marital status, pregnancy, and parenthood Alaska Stat. § 18.80.220; § 18.80.300(10), § 47.30.865.	None

Jurisdiction	Categories Protected by State FEP Statutes	Training & Education Requirement
Arizona	Race, color, religion, sex, age (40+), disability, national origin, and genetic test results Ariz. Rev. Stat. Ann. §§ 23-341; 41-1463; 41-1464, 41-1465	None
Arkansas	Race, religion, national origin, ancestry, gender, or the presence of any sensory and mental or physical disability Ark. Code Ann. § 11-4-601; § 16-123-102(6); § 16-123-107.	None
California	Age (40+), ancestry, color, religious creed, disability (mental and physical), marital status, medical condition (cancer and genetic characteristics), national origin, race, religion, sex (including pregnancy, childbirth or related medical conditions), sexual orientation, and gender identity Cal. Gov't Code § 12940(a), (j); Cal. Labor Code §§ 1025; 1101, <i>et seq.</i>	California law mandates that employers with at least 50 employees provide all supervisory employees a minimum of two hours of sexual harassment training every two years. New supervisors must be trained within six months of assuming their supervisory position and once every two years thereafter. For the purpose of determining coverage, "employees" includes full-time, part-time, and temporary employees as well as contractors (those providing work under a contract for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year). There is no requirement that the 50 employees or contractors work at the same location or all reside in California. The regulations for the California law establish extensive requirements for the content of the training, the qualifications of the trainer, the level of interactivity and the manner in which length of training is measured. Employers are required to track

California		compliance by keeping records of any harassment training. Records must include at least the supervisor's name, the training date, the type of training, and the name of the trainer, educator, or instructional designer. In addition, FEHA requires all employers to take "reasonable steps to prevent discrimination and harassment from occurring." Cal. Gov. Code § 12940(k). The DFEH's (Department charged with enforcing the statute) position is that reasonable steps include providing sexual harassment training to <i>all employees</i> . In California, employers are strictly liable for harassment at the hands of their supervisors and managers. The <i>Faragher/Elterth</i> defense is not available to employers under FEHA. Rather, training provides employers with an opportunity to mitigate and reduce the level of damages that they ultimately pay.
Colorado	Disability, race, creed, color, sex (including pregnancy), age (40+), national origin, ancestry, religion, and marriage to a coworker Colo. Rev. Stat. Ann. §§ 24-34-301, 24-34-402.	The Colorado Sex Discrimination Rules, as adopted by the Colorado Civil Rights Commission, "encourage" employers to take all necessary steps to prevent sexual harassment from occurring; this includes informing employees of their rights, affirmatively raising the subject with employees, and sensitizing employees regarding issues relating to sexual harassment. See 3 Colo. Code Regs. § 708-1, Rule 80.11(C).
Connecticut	Race, color, religious creed, age, marital status, national origin, sex, sexual orientation, ancestry, present or past history of mental disability, mental retardation, pregnancy, genetic information, learning or physical disabilities, and breast feeding Conn. Gen. Stat. Ann. §§ 31-40s; 31-40w; 31-57e; 46a-51; 46a-60;	The Connecticut Fair Employment Practices Act (CFEPA) requires that all employers with 50 or more employees provide sexual harassment training to supervisors. This training must be provided within six months of assuming the position. Conn. Gen. Stat. Ann. § 46a-54(15)(B). Regulations provide greater insight into the training requirements. See Conn. Agency Regs. 46a-54-204. In general the training

Connecticut	46a-81c.	<p>must cover the laws, the definitions, remedies, and provide information about examples and strategies for avoiding harassment.</p> <p>Connecticut has expressly recognized that online training can satisfy the training requirement so long as learners are given an opportunity "to ask questions and obtain answers in a reasonably prompt manner." Letter Opinion dated May 19, 2003.</p>
Delaware	<p>Race, color, religion, sex, national origin, genetic information, age (40), disability and handicap, and marital status</p> <p>Del. Code, Ann. tit. 19 § 711-724.</p>	None
District of Columbia	<p>Race, color, religion, sex (including pregnancy, childbirth and related medical conditions), national origin, age, disability and handicap, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities (actual or perceived), matriculation, political affiliation, and genetic information</p> <p>D.C. Code Ann. §§ 2.1401.01; 2-1401.05; 2-1402.11; 7-1703.03.</p>	None
Florida	<p>Race, color, religion, sex, national origin, age, handicap, marital status, HIV/AIDS, sickle-cell trait, pregnancy, and political affiliation (public employees only)</p> <p>Fla. Stat. §§ 110.105(2), 112.042, 112.043, 448.075, 760.10, 760.50(2); <i>O'Loughlin v. Pinchback</i>, 579 So. 2d 788 (Fla. Dist. Ct. App. 1991).</p>	<p>Executive branch agencies, as part of the process of developing and maintaining an affirmative action plan, are required to provide employees with training on affirmative action and equal opportunity. This training should include training on sexual harassment.</p> <p>Fla. Adm. Code, Tit. 60L §21.004</p>
Georgia	<p>Sex with respect to wages. Ga. Code §34-5-3.</p> <p>Age (40-70). Ga. Code Ann. §§ 34-1-2.</p>	None

	Race, color, religion, national origin, sex disability, and age (40-70) for public employers. Ga. Code Ann. §§ 45-19-20 <i>et seq.</i>	
Hawaii	<p>Race, color, religion, sex or pregnancy, ancestry, age, disability, sexual orientation, marital status, arrest and court record</p> <p>Haw. Rev. Stat. Ann. § 378-2.</p>	<p>The Hawaii Administrative Rules provide that "prevention is the best tool for the elimination of sexual harassment. Employers should affirmatively raise the subject, express strong disapproval, develop appropriate sanctions, inform employees of their right to raise and how to raise the issue of sexual harassment, and take any other steps necessary to prevent sexual harassment from occurring." See Haw. Admin. Rules § 12-46-109(g).</p>
Idaho	<p>Race, color, religion, creed, sex (includes pregnancy, childbirth or related medical condition), national origin, ancestry, age (40+), and disability</p> <p>Idaho Code § 67-5909, § 67-5911; Idaho Admin. Code § 45.01.010-18.</p>	None
Illinois	<p>Race, color, religion, creed, sex (including pregnancy), national origin, ancestry, age, marital status, physical or mental handicap, military status (including active duty and veteran status), unfavorable discharge from military service, genetic information, citizenship status, and sexual orientation (actual or perceived hetero-, homo- or bisexuality and gender-related identity)</p> <p>775 Ill. Comp. Stat. Ann. 5/1-101 <i>et seq.</i> § 5/2-102; § 55/5;56 Ill Adm. Code § 5210.110.</p>	<p>The Illinois Human Rights Act provides that every state executive department, state agency, board, commission, and instrumentality must maintain and carry out a sexual harassment program that includes:</p> <ul style="list-style-type: none"> Developing a written sexual harassment policy that includes at a minimum the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the agency's internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Illinois Department of Human Rights and the Illinois Human

Illinois		<p>Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. The policy must be reviewed annually.</p> <ul style="list-style-type: none"> • Posting in a prominent and accessible location and distribution in a manner to assure notice to all agency employees without exception the agency's sexual harassment policy. Such documents may meet, but must not exceed, the 6th grade literacy level. Distribution must occur annually thereafter. • Providing training on sexual harassment prevention and the agency's sexual harassment policy as a component of all ongoing or new employee training programs. See 775 Ill. Comp. Stat. § 5/2-105(B)(5). <p>Every public contractor and every eligible bidder must have written sexual harassment policies that include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Illinois Human Rights Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. A copy of the policies must be provided to the Department upon request.</p>
Indiana	Race, religion, color, sex, disability, national origin, ancestry,	None

	and age (40-70) Ind. Code Ann. §§ 22-9-1-1 <i>et seq.</i> , and 22-9-2-1, <i>et seq.</i>	
Iowa	Age (18+ or otherwise deemed an adult), race, color, creed, national origin, religion, sex, pregnancy, childbirth and related medical conditions, HIV status, physical or mental disability, and genetic testing Iowa Code §§ 216.6; 729.4, 729.6	By Executive Order, all management and supervisory employees of, and all employees working in a human resources management capacity for the Executive branch are required to attend affirmative action, cultural diversity, and discriminatory harassment prevention training as a condition of employment. Executive Order No. 44 (1982)
Kansas	Race, religion, color, sex, disability, national origin or ancestry, and age (18+). Kan. Stat. Ann. §§ 44.1001; Kan. Stat. Ann. § 44-1009; 44-1111 <i>et seq.</i> In addition, the law also prohibits discrimination based on an employee's, or prospective employee's, genetic screening or testing information.	None
Kentucky	Age (40+), race, color, national origin, religion, sex (including pregnancy, childbirth, or related medical conditions), disability, and smoker/nonsmoker status (as long as the person complies with any workplace policy concerning smoking) Ky. Rev. Stat. § 207.130, 207.135, 344.010, 344.040; 436.165.	None
Louisiana	Race, color, religion, sex, disability, age, sickle-cell trait, pregnancy, national origin, genetic information, childbirth and related medical conditions, smoking, and military status. La. Rev. Stat. Title 23:301 <i>et seq.</i> , 23:302 <i>et seq.</i> , 23:311; 23:341; 23:351 <i>et seq.</i> ; 23:368; 51:2231 <i>et seq.</i> ; 29:401 <i>et seq.</i>	None

Maine	Race, color, religion, national origin, ancestry, physical or mental disability, age (no minimum); sex (including pregnancy and related medical conditions), sexual orientation, reporting a violation of law, filing a claim for workers' compensation, smoking, genetic information and testing	The Maine statute mandating training applies to all employers with 15 or more employees. The training must be conducted within one year of the commencement of employment and must cover topics such as the definition of sexual harassment, use of examples to illustrate forms of sexual harassment, information about the complaint process, legal recourse and how to file a complaint, and the protection against retaliation.
Maine	Me. Rev. Stat. Ann. Tit. 5 §§ 4551 <i>et seq.</i> , 4572; tit. 26 § 597; Me. Rev. Stat. Ann. Tit. 5 § 19302 (genetic information).	Employers must also conduct specialized training for supervisors and managers that addressed their specific roles and responsibilities. This training must be delivered within one year of the commencement of employment.
		See ME Rev. Stat. Ann. Tit. 26 § 807(3).
Maryland	Race, color, religion, creed, sex (including pregnancy, childbirth and related medical conditions), age, national origin, marital status, sexual orientation, genetic information, disability, and because of the individual's refusal to submit to a genetic test or make available the results of a genetic test	The Maryland Commission on Human Relations encourages employers to take steps to prevent sexual harassment. On its Web site, the agency states that "in deciding the outcome of a sexual harassment case, the Maryland Commission on Human Relations will favorably consider the preventative steps the employer has taken. To reduce exposure to charges of sexual harassment, all employers should make staff aware of personnel policies and train staff to recognize and avoid sexual harassment."
	Md. Code Ann., art. 49B, § 14-18; Labor and Employ § 3-704.	
Massachusetts	Age (40+), race, color, religious creed, national origin, ancestry, sex (including pregnancy and maternity leave), sexual orientation, genetic information, AIDS, and handicap	Massachusetts' Fair Employment Practices Act "encourages" employers to conduct an education and training program on harassment and discrimination to all new employees and new supervisors and other managers within one year of hiring or promotion. See M.G.L. c. 151B § 3A(e).
	M.G.L., c. 93 § 102, <i>et seq.</i> ; c. 149 § 24, § 105A; M.G.L.c. 149, § 105D; M.G.L. c. 151B, § 1(18); M.G.L. c. 151B, §4; M.G.L. c. 214. § 1C.	Employers are required to prepare and provide all employees with an individual, written copy of the

		employer's policy against sexual harassment on an annual basis, with new employees being provided copies of the policy when they start
Massachusetts		employment. M.G.L. c. 151B, § 3A.
Michigan	Religion, race, color, national origin, sex, disability, chronological age (not just 40+), marital status, pregnancy, childbirth and related conditions except non-therapeutic abortions, height, and weight	Michigan's Disability Bias Law requires the department of civil rights to offer training programs to employers, labor organizations, and employment agencies to assist in understanding the requirements of the Act. See Mich. Comp. Las. Ann., § 37.1212.
	Mich. Comp. Laws § 37.1102 <i>et seq.</i>	
Minnesota	Race, color, creed, religion, national origin, sex (including pregnancy, childbirth, and related conditions), marital status (including identity of spouse), status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, and age (over age of majority)	None
	Minn. Stat. Ann. § 363.03.	
	A separate dismissal for age statute provides protection against age discrimination relating to adverse action toward individuals on the grounds that the individual has reached an age of less than 70.	
	Minn. Stat. § 181.81.	
Mississippi	Race, color, religion, sex, national origin, age, or handicap	None
	Miss. Code Ann. § 25-9-149.	
Missouri	Race, color, religion, national origin, sex, ancestry, age (40-70), and disability	None
	V.A.M.S. § 213.055.1(1)(a).	

Montana	Race, creed, religion, color, sex, physical or mental disability, age, national origin, marital status, and pregnancy	None
Montana	Montana Human Rights Act § 49-2-303(1)(a).	
Nebraska	Race, color, national origin, religion, sex (including pregnancy, childbirth, and related medical conditions), disability, marital status, age (40-70), and HIV/AIDS	None
	Neb. Rev. Stat. §§ 20-168(1), 48-1104, <i>et seq.</i>	
Nevada	Race, color, religion, sex, sexual orientation, pregnancy, age, disability, and national origin	The agency Web site advises employers that "prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated."
	Nev. Rev. Stat. §§ 613.310 <i>et seq.</i>	
New Hampshire	Age, sex (including pregnancy and pregnancy-related medical conditions), race, religion, creed, color, marital status, physical or mental disability, national origin, and sexual orientation	None
	N.H. Rev. Stat. § 354:A-7.	
New Jersey	Race, creed, color, national origin, nationality, ancestry, age (18-70), sex (including pregnancy and sexual harassment), marital status, affectional or sexual orientation, atypical hereditary, cellular or blood trait, genetic information or the refusal to submit to a genetic test or make available the genetic test of an employer, liability for service in the Armed Forces of the United States, mental and physical disability or handicap (including AIDS and HIV-related illnesses)	The New Jersey Supreme Court held in 2002 that absent managerial and supervisory training on harassment, there were questions of fact as to whether the policy was effective and whether the policy could shield the organization from vicarious liability for supervisor misconduct. See <i>Gaines v. Bellino</i> , 801 A.2d 322 (N.J. 2002). In its decision the court also noted the importance of making such training available to <i>all</i> employees.
	N.J. Stat. §§ 10:5-1 <i>et seq.</i> , 34:6B-	This ruling in essence made supervisory and managerial training mandatory for employers covered by the New Jersey

	1, <i>et seq.</i>	Law Against Discrimination. It also made all-employee training essential.
New Mexico	Race, color, national origin, ancestry, religion, sex (including pregnancy, childbirth, or related medical condition), age, physical or mental handicap, serious medical condition, genetic information, HIV testing and nursing mothers. If the employer has 50 or more employees, spousal affiliation is protected. If the employer has 15 or more employees, sexual orientation or gender identity is protected.	None
	N.M. Stat. §§ 24-21-1 <i>et seq.</i> , 28-1-7, 28-10A-1, 28-20-1, 50-11-3; N. M. Admin Code 9.1.1.7(HH).	
North Carolina	Age, sex, race, color, national origin, religion, disability/handicap, sickle-cell or hemoglobin C trait, genetic testing/genetic information and AIDS virus/HIV infection or results of AIDS test	The North Carolina Administrative Code requires all state agencies to develop a "plan on unlawful workplace harassment." This plan should include "utilization of training and other methods" to educate state employees. All state employees are required to participate in "Unlawful Workplace Harassment" training programs.
	N.C. Gen. Stat. §§ 95-28.1, 95-28.1A, 95-241, <i>et seq.</i> , 130A-148, 143-422.2, 168A-1 <i>et seq.</i>	25 N.C.A.C. 1J.1101.
North Dakota	Race, color, religion, sex, pregnancy, childbirth, pregnancy related disabilities, national origin, age (40+), mental or physical disability, status with regard to marriage or public assistance, and participation in lawful activities during nonwork hours off the employer's premises, which is not in direct conflict with the essential business-related interests of the employer	None
	N.D. Cent. Code § 14-02.4 <i>et seq.</i>	
Ohio	Race, color, religion, sex (including pregnancy and related conditions), national origin,	The Ohio Administrative Code and the regulations of the Civil Rights Commission provide that "prevention is the best tool for the elimination of

Ohio	disability, age (40+), and ancestry Ohio Rev. Code §§ 4112.02.; 4112.14. See also Ohio Adm. Code 4112-5-05(G), (J).	sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Chapter 4112 of the Revised Code, and developing methods to sensitize all concerned." Ohio Adm. Code 4112-5-05(J)(7).
Oklahoma	Race, color, religion, sex, pregnancy, national origin, age (40+), handicap 25 Okla. Stat. §1302.	Oklahoma's Fair Employment Practices Act, through its Rules of Personnel Management and Administration, requires that all state personnel who investigate complains of discrimination be trained in the areas of equal employment opportunity, discrimination, and the burdens of proof. See Okla. Stat. Tit. 74, § 840.21(F.1); tit. 530, § 10-3-20.
Oregon	Race, color, national origin, ancestry, sex, pregnancy, childbirth, pregnancy related conditions, religion, age (18+), physical or mental disability (employers with 6 or more employees), genetic screening, juvenile records, personal associations, and marital status Or. Rev. Stat. §§ 659A.006, 659A.030. Based on the December 9, 1998, Oregon Court of Appeals decision in <i>Tanner vs. Oregon Health Sciences University, et al.</i> , BOLI's Civil Rights Division now accepts complaints of sexual orientation discrimination from employees throughout Oregon.	None
Pennsylvania	Race, color, religious creed, ancestry, age, sex, pregnancy, national origin, nonjob related handicap or disability, use of a guide or support animal,	Pennsylvania's Human Relations Act requires that all "Commonwealth employees will be educated in sexual harassment." Training and education on this topic can include written materials,

Pennsylvania	willingness or refusal to perform or participate in abortion, and persons who hold general education development certificates rather than high school diplomas 43 Pa. Stat. § 951 <i>et seq.</i>	formal training, videos, orientations sessions, discussion, and individual counseling. 4 Pa. Code § 7.595. In addition, the Agency Guidelines on Sexual Harassment provide that "prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII and the Pennsylvania Human Relations Act, and developing methods to sensitize all concerned." See Pa. B. Dec. No. 81-201.
Rhode Island	Race, color, sex, pregnancy, ancestral origin, disability, age (40+), sexual orientation, gender identity or expression, religion, AIDS testing, and genetic information R.I. Gen. Laws, §§ 23-6-22; 23-20.10-14(a); 28-5-5, 28-6.7-0. The public employment and government contractor law prohibits discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age or handicap by government contractors. R.I. Gen. Laws § 28-5.1-10.	Agency officers of the executive branch are required to attend sexual harassment prevention and EEO training annually. Exec. Order No. 05-01. Rhode Island's Sexual Harassment, Education, and Training Law "encourages" employers to conduct an education and training program for all employees. The act encourages that such training be provided for new employees within one year of commencement of employment, and that employers provide additional training for supervisors. See R.I. Gen. Laws ch. §§ 28-51-2(c), 28-51-3. Supervisory training should at a minimum address the following topics: i. A statement that sexual harassment in the workplace is unlawful; ii. A statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment; iii. A description and examples of sexual harassment;

Rhode Island		<p>iv. A statement of the range of consequences for employees who are found to have committed sexual harassment;</p> <p>v. A description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and</p> <p>vi. The identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact these agencies.</p> <p>The training should also address the specific responsibilities of supervisory and managerial employees and the methods that these employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.</p> <p>See R.I. Gen. Laws ch. §§ 28-51-2(b); 28-51-2(c).</p>
South Carolina	<p>Race, religion, color, sex (including pregnancy, child birth and pregnancy related medical conditions), age (40+), and national origin</p> <p>S.C. Code, §§ 1-13-10 <i>et seq.</i></p>	None
South Dakota	<p>Race, color, creed, religion, sex, ancestry, disability, and national origin</p> <p>S.D. Cod. Laws, §§ 20-13-10.</p>	None
Tennessee	<p>Race, creed, color, religion, sex, age, pregnancy, and national origin are prohibited discriminatory classifications for all employers under the Human Rights Act. All employers, excluding joint labor-management training committees, are prohibited from discriminating</p>	<p>By statute, the Department of Personnel is required to assist each department and entity of the state government with planning and conducting sexual harassment prevention training workshops for all public employees. See. Tenn. Code § 4-3-1703(4).</p>

Tennessee	<p>based on age.</p> <p>Tenn. Code, §§ 4-21-301(1); 4-21-401; 4-21-404.</p> <p>Discrimination by all employers against people who use tobacco is prohibited.</p> <p>Tenn. Code § 50-1-304.</p> <p>Discrimination against the handicapped is prohibited by public and private employers.</p> <p>Tenn. Code § 8-50-103.</p>	
Texas	<p>Race, color, disability, religion, sex (including pregnancy, childbirth or related medical conditions), national origin, age (40+), and HIV/AIDS and other communicable diseases (unless the HIV/AIDS or other communicable disease poses a direct threat to the health and safety of others or impairs the individual's ability to perform the job)</p> <p>Tex. Labor Code, ch. 21.</p>	<p>Texas' Employment Discrimination Law mandates that training relating to employment discrimination and sexual harassment is required for all state agency employees. Refresher training is required every two years and new employees must be trained within 30 days of starting employment with the agency. See Tex. Lab. Code. § 21.010.</p> <p>On its Web site, and in its business guidance for employers in the state, the agency encourages all employers to take the steps necessary to prevent sexual harassment from occurring. This includes clearly communicating to employees that sexual harassment will not be tolerated. Training is specifically identified as an important step for minimizing liability.</p>
Utah	<p>Race, color, sex, pregnancy (including childbirth and pregnancy-related conditions), age (40+), religion, national origin, and disability</p> <p>Utah Code, tit. 34A, ch. 5.</p>	<p>The Utah Department of Human Resource Management Rules obligate all public employers to conduct unlawful harassment prevention training consistent with standards established by the Department. See Utah Admin. Code § 477-15-7.</p> <p>The Unlawful Harassment Prevention Training Standards established by the DHRM require training within 90 days of hire (both employee and supervisor) and refresher training at least every</p>

Utah		<p>three years. Temporary employees and volunteers must also be provided with information. The training must cover all forms of protected class harassment, address retaliation, cover how to report, provide information about supervisory responsibilities, and identify the state complaint procedure. Special more in-depth training for supervisors is also required.</p> <p>Training programs must be approved by the Department of Human Resource Management and Risk Management.</p>
Vermont	<p>Race, color, religion, sex, sexual orientation, national origin, ancestry or place of birth, mental or physical disability, age (18+), and marital status</p> <p>21 Vt. St. Ann. §495.</p>	<p>The Vermont Fair Employment Practices Act "encourages" employers to conduct an education and training program for new employees on sexual harassment within one year of commencement of employment and to provide additional training for supervisors. See 21 Vt. Stat. Ann. §495h(f).</p>
Virginia	<p>Race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions (including lactation), age, marital status, and disability (mental or physical impairments)</p> <p>Va. Code, §§ 2.2-3900; 2.2-3901; 44-93 <i>et seq.</i>; 24.2-118.1.</p> <p>Genetic characteristics or test results Va. Code § 40.1-28.7:1.</p>	None
Washington	<p>Age (40+), sex (including pregnancy), marital status, race, creed, color, national origin, ancestry, the presence of any sensory, mental or physical disability, use of a trained guide dog or service animal by a disabled person, the results of a HIV or hepatitis C test, and using paid time off to care for a child or family member</p> <p>R.C.W. 49.12.175, 49.12.265,</p>	<p>By Executive Order, state agencies are required to provide all employees with training designed to prevent sexual harassment.</p> <p>Executive Order EO 89-1.</p>

Washington	<p>49.44.090, 49.60.010, 49.60.030, 49.60.172, 49.60.180.</p> <p>As of June 7, 2006, Washington also prohibits discrimination on the basis of sexual orientation. The term includes hetero-, homo-, or bisexuality, and gender expression or identity.</p> <p>RCW 49.60.040(15).</p>	
West Virginia	<p>Race, religion, color, national origin, ancestry, sex, age (40+), blindness, disability, and pregnancy (applies to public and private employers)</p> <p>W.V. Code §§ 5-11-1 <i>et seq.</i>, 21-3-19, 21-5B-3.</p>	None
Wisconsin	<p>Age (40+), race, creed, color, disability, marital status, sex (including pregnancy, childbirth, maternity leave or related medical condition), genetic testing, national origin, ancestry, sexual orientation, arrest or conviction record, membership in the national guard or military service, use/nonuse of lawful products off the employers premises during nonworking hours, and honesty testing</p> <p>Wis. Stat. §§ 103.15, 111.31-111.395.</p>	<p>On its Web site, the agency advises employers to take action to respond to concerns about workplace harassment. One of the ways to do this is to "provide training to sensitize employees on the issue of harassment and periodically remind them of your strong desire to maintain a harassment free workplace."</p>
Wyoming	<p>Age (40+), sex, race, creed, color, national origin, ancestry, and disability</p> <p>Wyo. Stat. §§ 27-4-302, 27-9-105.</p>	None

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Legal Department Memorandum
Privileged and Confidential

Date:
 To: [Managers]
 From:
 Re: Non-Disclosure Agreements

As you know Non-Disclosure Agreements (NDAs) are an important part of our business. The Legal Department receives numerous requests in a day or week to review NDAs with limited turnaround time. There are several considerations that you may want to pass on to your teams that would improve the process flow on the NDAs.

1. **Standard Company Form.** The single greatest opportunity to reduce contract review by Legal will be to use our standard Mutual NDA. It appears that some personnel are not aware that we have a standard form or assume we cannot use our form. This form is available from any of us in Legal and is available on the Legal Intranet page. We should push use of our form whenever we have the bargaining power. In many cases, a customer will require their own form; however, in those instances that the customer accepts ours, we save resources on our end. When we are the "customer" we should use our leverage to require our form.

2. **Mutual NDAs.** The vast majority of NDAs Legal receives for review are unilateral, protecting only the other party's information. Rarely, is there a situation where we will not have to also disclose some confidential or proprietary information of our own or of our supplier to a customer (or vice versa) during the relationship. It is tempting for our personnel on the front line to conclude at the moment no confidential or proprietary information need be disclosed; however, for relationships that continue beyond the first meeting, such a conclusion is unlikely to remain valid. Moreover, some time later, the parties may remember that an NDA was signed; however, it is more likely that the parties will assume that it was mutual without confirming. When being asked to sign another party's NDA (if our form will not be accepted), it will save time to request that the NDA be mutual in advance. This will save numerous e-mails from Legal to our business team restating the information above, their e-mail to the other party and potentially days of delay in between.

3. **Review, Understand and Manage.** Often it appears that the submitting personnel have not reviewed the NDA themselves. In addition, too often there is an impression that the NDA is simply a legal requirement that gets put in a file after execution. As you know, the NDA is a critical component to the relationship upon which the parties rely when exchanging information. There are terms that may vary in NDAs that will expand or restrict what the business team can do with information. While the NDA no doubt contains legalese, the business team should review the short document and should be able to easily glean the restrictions with which he/she must comply in handling applicable information. It is also important to understand that the repercussions of breaching an NDA are significant. Generally, releasing confidential or proprietary information results in damage to another's business—which can mean claims of lost profits and consequential damages. It is important for the business team to recognize that they will have to manage/control the information received (e.g., stamping confidential, keeping in locked file cabinets, limiting disclosure to select person, making

sure third parties to whom the information is disclosed have an NDA with REL (verbal assurance is insufficient). Be on the look out for NDAs that have more detailed terms about how information must be handled and be ready to follow.

4. **Key Terms.** Below are some of the key issues to consider in an NDA.

a. *Documents Marked Confidential or Proprietary (verbal communications confirmed in writing).* Company practice is to require information be *marked* confidential. We do this to avoid inadvertent disclosure at a later time or by individuals not informed about the nature of the information. If the other party will not agree (mostly because there is some administrative burden and a party does not want to lose confidentiality by forgetting to mark it), Legal's response to the business team will be whether it can limit the "control group" internally and adequately manage the process.

b. *Disclosure to Third Parties.* NDAs will either limit disclosure to employees (who have a need to know) or permit disclosure to employees and agents/subcontractors (that have a need to know). Often, we have to interact with "agents" (e.g., suppliers or OEMs re customer specs). If the NDA does not expressly permit such disclosure, we would have to have written consent from the disclosing party for each such disclosure. By addressing this need up front, we can work more freely thereafter. The business team can confirm this need with the other party at the outset and/or confirm with Legal that they may have or are very unlikely to have such a need.

c. *What information is confidential? What is the Purpose?* Some NDAs contain blanks where either party may describe what confidential information they expect to exchange. It will limit the number of back and forth e-mails if the business team communicates in advance what information they expect to exchange. For a limited purpose NDA, the description may be narrow. For an NDA that will last through a longer term relationship, the description should be broader. The broader the description from either party, the harder it will be to monitor and control. Similarly, some NDAs state the "purpose" for the NDA which may be broad (e.g., "evaluate transaction between the parties") or narrow (e.g., "develop and evaluate specifications for project X"). It will move the process along if the business team communicates what the purpose should be where there is a blank to fill and to confirm that a pre-stated purpose is appropriate.

There are several other pure legal considerations that Legal will look for, but having the business team aware of the above, should help this process flow.

Your comments on Legal support are always welcome and encouraged.

*FOR [Company] INTERNAL USE ONLY***Company Procedures for Entering into Recruiting Agreements**

Issued 2007

To avoid proliferation of agreements with recruiting agencies which may result in overlapping uses or even conflicting terms, the Company has established the below process for such relationships.

1. Consult the Director of Recruiting (or in their absence, the Senior VP of HR) before committing to any agency relationships. If there are no agencies with whom the Company has an existing relationship that are likely to meet the requested needs, then approval will be provided to investigate a new agency relationship.
2. A checklist of terms that HR and Legal will evaluate is provided below. This checklist will provide guidance for any advance discussions with the proposed agency.
3. Submit proposed contracts to the Director of Recruiting and Legal for review and approval. Authorized signatories include: Director of Recruiting, Senior VP of HR, VP Legal, Business Unit General Manager, or higher level.

Recruiter's Agreement Checklist

When reviewing third party recruiter's agreements please ensure that the following points are satisfactorily covered.

1. **Unconditional Guarantee:** Recruiter must provide unconditional guarantee for new hire, regardless of how employment ends (e.g., terminates or resigns), except for RIFs.
 - a. Try for a 1 year period from date of hire and try to get at least 6 months (recruiter's will try for 30-90 days)
 - b. The remedy should be a replacement for NO charge whatsoever or a refund at our option (if they cannot find a replacement within a specified period such as 30 days)
2. **Non-solicitation:** Recruiter may not recruit out of the Company's business during the term of the agreement and for a period of 6 months thereafter.
3. **Active Period:** Limit the Company's obligation not to hire their referrals to no more than 6 months after résumé submitted (sometimes referred to as the "active" period). And, clarify that we may hire a person if their resume is separately received from another recruiter or in response to a general solicitation. We may have to concede that we will compensate the recruiter that can demonstrate that they first sent the resume--but in NO event will we compensate more than one recruiter. Further, avoid obligation to compensate recruiter if candidate provides services in any capacity other than an employee (e.g., subcontractor, agent). If, for example, a candidate is hired by a company that provides services we are seeking and we decide to outsource; and that candidate is chosen to provide services (with or without knowledge they were a candidate for hire directly), we would avoid any financial obligation to the recruiter.
4. **Non-exclusive:** Make sure the agreement is non-exclusive (i.e., we can hire independently or through another recruiter). Where some exclusivity is approved limit the exclusivity as much as possible, such as with respect to geography (City, State, Region), specific business unit and preferably specific positions requested. It is important to avoid an unintended broad exclusive agreement.
5. **Market Rate:** Limit fee to the then current market rate—probably 15-20%--of first year *base* salary (not including commissions, signing bonuses, other bonuses, non-cash employee benefits). Review appropriate benchmark with HR prior to confirming rate.

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6. **Term and Termination:** Establish a term to the agreement (e.g., agreement in force for 1 year unless renewed) and a right to terminate without cause upon 30 days notice. In addition, consider how long you want the recruiter trying to fill a position (e.g., after 3 months, you may want to find another recruiter, and rather than continuing to receive resumes from the initial recruiter, you may just want their service to end).
7. **Confidentiality:** Avoid any confidentiality agreement. In particular, avoid obligation not to disclose existence of agreement to other companies.

Checklist for Standard Terms for Recruiting Agreement

- ✓ Non-Exclusive
- ✓ Retention limited to stated position(s) and not an open ended retention for any or all positions (retention may also be limited to division and or region, where appropriate)
- ✓ Recruiter must agree not to solicit from Company for term of agreement, plus 6 months
- ✓ Unconditional Guarantee for 1 year regardless of termination with or without cause (except RIF)
- ✓ Remedy under Guarantee must be prompt replacement or, at Company's option, refund
- ✓ Active Period (period in which recruiter due compensation if candidate is hired) of no more than 6 months after submission of résumé
- ✓ Company shall not be obligated to compensate recruiter if hiring the result of receipt of candidate's resume from public solicitation or other recruiter (Company will use reasonable efforts to pay recruiter that demonstrates first submission, but in no event will Company pay more than one recruiter for the same candidate)
- ✓ Rate/Fee of no more than 15%
- ✓ Compensation limited to hiring as employee only (i.e., not as consultant, for which other terms would be appropriate)
- ✓ Term of 6 months to a year, with a mutual right to terminate upon 30 days written notice
- ✓ Submissions received by Company will not be considered confidential
- ✓ Agreement shall be governed by Illinois law with consent to jurisdiction and venue on the state and federal courts of Illinois

The Legal Drivers for Mandatory Harassment, Discrimination and Ethics Training

Over the past decade, several key legal developments have compelled employers to embrace mandatory harassment, discrimination and ethics training for the entire workforce. This chart details each of the requirements and their significance in the current legal landscape.

Supreme Court Decisions

- 1998 – Faragher and Ellerth
 - The U.S. Supreme Court establishes its first "mandatory training guideline"
 - **All employers** should train on workplace harassment (not just sexual harassment.)
 - Training should cover other protected categories such as race, disability, age and national origin.
 - **Train everyone** (employees and managers)
 - **Train "periodically,"** not just once
 - Employers can have an "**affirmative defense**" to either absolve liability, or to reduce damages, especially punitive damages. To obtain the defense, employers must be able to show that they have:
 - A good harassment policy
 - Education about the policy, provided to everyone periodically
- 1999 – Kolstad
 - The second U.S. Supreme Court "mandatory training guideline"
 - Supervisors should get **additional workplace discrimination training** (not just sexual harassment training)
 - Harassment is only one form of discrimination. Supervisors, who are in a position of power, can engage in discrimination throughout the employment lifecycle – hiring, performance management and terminations.
 - Policies are not enough
 - Employers can have a **punitive damage defense** (a "Kolstad Defense") if they can show:
 - Good faith efforts to educate all managers about basic anti-discrimination principles (Title VII)

EEOC Guidelines

- 1999 – EEOC Guidelines
 - The third federal "mandatory guideline" for discrimination and harassment training
 - Promote harassment **training for ALL employees:**
 - "[T]he employer should provide training to all employees to ensure they understand their rights and responsibilities [concerning workplace harassment]...

EEOC Guidelines Continued

- Reinforce a "**periodic**" **training requirement:**
 - "An employer should ensure that its supervisors and managers understand their responsibilities under the organization's anti-harassment policy and complaint procedures. Periodic training of those individuals can help achieve that result."
- The Impact of the Federal "Mandatory Guidelines"
 - Failure to train exposes the organization to increased liability and damages.
 - Since 1998, the Federal Circuit Courts have taken the US Supreme Court and EEOC training guidelines very seriously:
 - [L]eaving managers with hiring authority in ignorance of the basic features of discrimination laws is an extraordinary mistake for a company to make, and a jury can find that such an extraordinary mistake amounts to **reckless indifference.**" [insert case cite]

SOX

- 2002 – Sarbanes-Oxley
 - **Publicly traded** companies must disclose if they have a Code of Conduct for senior leader, or explain why not.
 - SOX creates a **cause of action for whistleblowers** who suffer discrimination because they complained of ethical violations. SOX discrimination claims now trump "classic" discrimination claims:
 - **\$270,000** – Average Recovery in SOX Whistleblower Discrimination Lawsuit
 - **\$187,583** – Average Recovery in Title VII Discrimination lawsuit [insert cite re: jury verdict stats]
 - Training is not expressly required under SOX, but:
 - Section 301 of SOX requires **clear communication of reporting channels and protocols.**
 - Audit Committees **must establish a procedure for the confidential, anonymous reporting of complaints.** (Section 301(4)).
 - Such "procedures" naturally involve **training.**

Federal Sentencing Guidelines

- 2004 – Federal Sentencing Guidelines
 - What are the FSGs?:
 - Rules that set out a uniform sentencing policy for defendants – including employers.
 - Mandate effective and "periodic" ethics and legal compliance training
 - **For all organizations,** whether privately held, publicly held, government, non profit etc.
 - **To all employees.** Employers must train "members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents."
 - **Training must be formal and "effective"** - quality matters. Distributing a Code is not enough.

Federal Sentencing Guidelines Continued

- **Training must be ongoing – "periodic."**
- Reduces potential fines up to 95%
- **"The potential fine range ... can be significantly reduced – in some cases up to 95% – if an organization can demonstrate that it had put in place an effective compliance and ethics program."**

ELT Ethics Survey Statistics

- 70.3% of respondents were unaware that ethics and compliance training is mandated for all employers under the Federal Sentencing Guidelines.
- Almost 60% of employers were not offering such training to their employees.
- Of the employers that are conducting ethics and compliance training, 26% are holding informal training sessions, such as briefly discussing and distributing a Code of Conduct during a staff meeting.
- One third (30.4%) of respondents surveyed have not published a Code of Conduct or Code of Ethics.

State Laws and AB 1825

- 1991 – Maine
 - Employers with 15 or more employees must conduct sexual harassment training for all new employees within 1 year of commencement of employment.
- 1993 – Connecticut
 - Employers with 50 or more employees must provide 2 hours of sexual harassment training to all supervisory employees within 6 months of the assumption of a supervisory position.
 - Encourages (not requires) re-training every 3 years. [citation]
- 2004 – California's AB 1825
 - Employers with 50 or more employees must provide 2 hours of sexual harassment training to all California-based supervisors, every 2 years.
 - New hires / promotions to be trained within 6 months of assuming a supervisory position.
 - **The first sexual harassment training law to define "periodic."** (Federal harassment and ethics training laws all use the term "periodic.")
 - **The first sexual harassment training law to specifically define what constitutes "effective" training.**
 - Programs must be highly **"interactive"** with mandatory exercises, Q&A and hypotheticals.
 - **Expertise Threshold** – Trainers must be:
 - Employment attorneys admitted to the bar for two or more years
 - HR professionals with two or more years of practical experience in workplace harassment advising, training, complaint handling and/or investigations.
 - Law school or university professor with a post-graduate degree and either two years or 20 instruction hours teaching about employment law.
 - Training content should **not be limited to sexual harassment**

State Laws and AB 1825 Continued

- For e-learning, **"two hours"** is a program that takes "no less than two hours to complete."
 - E-learning programs need paced timers, or mandatory audio files of no less than 2 hours.
- Online, live, and webinar solutions approved. Must have:
 - Ability to ask questions
 - Harassment Policy distribution
 - Track and archive (for two years) individual training records
- There will be a lobby inside California to extend the sexual harassment training mandate to employees (not just supervisors)
- Several other states are considering similar laws

There are many additional state training laws that either encourage training, or directly impact the public sector: [Review ELT's comprehensive 50-state harassment and discrimination training survey](#)

Harassment Training Survey Results

- Almost 60% of respondents are providing harassment training for the entire organization – not just the California workforce.
- Half, 50%, of organizations are training all supervisors and employees, not just supervisors.
- 65% of respondents said some element of quality training – the provider's legal expertise, quality and "look and feel" of the program, or required interactivity – were the most important aspect of training.
- 86% of respondents' harassment training goes beyond sexual harassment, to cover other protected categories such as race, religion, age and disability.
- Almost half (42%) of respondents are not keeping detailed training records.
- Only 10% of respondents would rely on an outside vendor to answer questions submitted by employees during an online training program.

http://www.elt-inc.com/ept_chart.html

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