Webcast: Hear from the Author of California's Harassment Training Law (AB 1825): The New 2006 Regulations
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Presented by ELT Inc.
Presenters: Sarah Reyes, Former California State Legislator, Author of AB 1825; Shanti Atkins, President & CEO of ELT Inc.

ASSOCIATION OF CORPORATE COUNSEL

Moderator: Shanti Atkins
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Operator: Please go ahead, Shanti.

Shanti Atkins: Good morning everyone, and good afternoon to those of you in the Easter Time Zone. I'd like to welcome everyone to our interactive webcast today, Mandatory Harassment Training in California and Beyond, the New AB 1825 Regulation.

I'd like to first off thank the Association of Corporate Counsel for partnering with us on this event. We're very excited to give you an informative presentation today that will give you the lay of the land as it relates to mandatory harassment training both in California and outside the state of California.

Before I get started and introduce my guest speaker today, I wanted to go through a few housekeeping items so that everyone is aware of how they can ask questions during the conference and get some additional information resources. First, if you look in the bottom lower left corner of your screen, you will see a chat box. If you have a question that you

would like to ask us, please enter your question into that box and click send. Bear in mind we have several people on the webcast today so we may not get to everybody's questions but we'll certainly make an effort to do so as we're going through the presentation.

Secondly, I want to draw your attention to the area just above the chat box where you can see the links feature. They're, in this links feature you can see, you can get access to further information from ELT. This includes white papers, frequently asked questions, access to interactive demonstrations, downloaded webcasts, as well as my bio and the bio of Sarah Reyes, who I'll be introducing in just a few minutes. The first link, and to access all of these, you just have to double click them, is the evaluation form and we very much encourage everyone to fill out the evaluation form after today's event. You just need to click on today's date in order to fill out that evaluation form.

Finally, a question that we get most often is how do I get a copy of the slides and the content in the slides? If you would like a copy of the slides from today's presentation, please just e-mail me directly at satkins@elt-inc.com. You'll see that I've just placed that e-mail address in the chat window and we will also put it up at the end of the presentation on a slide and leave it there for several seconds so that if you would like a copy of the presentation or you have additional questions that you'd like to ask me directly, I'm more than happy to field those.

All right. With all that in mind, let's get started and into the substance of the presentation. I first want to introduce our speakers, most importantly, starting with the Honorable Sarah Reyes. Sarah Reyes is the author of AB 1825, the Mandatory Harassment Training Law in California, so we're very privileged to have her here today and we really can't have a better

information than Sarah to tell us about some of the, some of the background of the law, as well as the very intensive regulatory process that has been going on in California for the last 18 months. Sarah served six years in the California State Legislature, representing the 31st Assembly District in the Central San Joaquin Valley. Now term-limited out of the legislator, she – legislature, she is consulting with expert trainers, both internally in organizations and externally with vendors to give counsel on the background and development of this new law. So welcome, Sarah, and thank you so much for being here today.

Sarah Reyes: Thank you, Shanti.

Shanti Atkins: Secondly, oh you're – thank you. Secondly, I just wanted to introduce myself briefly. My name is Shanti Atkins. I am the President and CEO of ELT. We are specialists in ethics and legal compliance training, providing training online. I work directly with the attorneys of Littler Mendelson to develop our e-learning solutions. As many of you probably know, Littler Mendelson is the largest labor and employment law firm in the country. I also advice clients across multiple industries regarding strategic and risk management compliance initiatives. At ELT, we now support over 600 corporate clients and at this point, more than a million and, almost a million and a half end users. The reason for giving you that information is to let you know we've been doing interactive online harassment training online since 1999 and from that, what I want to, what I want to weave into the presentation is some of our actual experience with clients and with other employers who are grappling with harassment prevention solutions and hopefully guide you to some best practices based on our experience in the industry.

So before we get started, and the format we want to use today is, I want to sort of give a brief overview but really almost interview Sarah and draw from her expertise so that you can, you can really get insights into 1825, but before we do that, I want to make sure that we have a brief recap of what this law's all about for those of you who may not be completely familiar with it. Eighteen twenty-five requires employers who do business in California and who have more than 50 employees to provide harassment training to all of their California based supervisors, and the first training deadline was at the end of last year, December 31st, 2005. There is a re-train requirement with AB 1825. It's not a one-time training requirement, which is similar to a law that passed in Connecticut in the early '90s. This is what makes this law quite groundbreaking. And additional to the initial training deadline from 2005, training must be repeated every two years, so that makes 2007 a retrain year for most organizations, 2009, 2011, et cetera. And there are also ongoing training obligations for newly hired or promoted supervisors. If you hire a supervisor or promote an employee into a supervisory position, you must train them within six months.

Does this have any impact outside of California? This is the question we hear often. Is this just a California specific issue? This definitely has impact outside of California for a number of reasons. California's really setting the standard for (espective) harassment prevention training programs for the rest of the country. And as you're going to see during this interactive webcast, there has been some very intense drafting on the regulatory side in terms of what compliance training is in this area and it is really setting the bar quite high for training in general when it comes to compliance and other states are paying attention to these standards and they certainly are common sense standards from an instructional design standpoint, as well as the legal content development standpoint, but they're important to know about because they are influencing training outside of California.

Secondly, federal guidelines have been around for quite some time, strongly promoting mandatory training for all employees and managers. We won't go into that in detail, but in 1998 and 1999 there were two very important Supreme Court decisions that strongly promote mandatory training in harassment and discrimination prevention. You can, you can establish affirmative defenses and defenses to punitive damages as a result of doing that training on a federal level. And also in 1999, the EEOC released guidelines strongly supporting mandatory training in this area. Also, a consistent national training policy is very effective and critical for the quality of the education, your prevention and risk mitigation and establishing the defenses that I just reviewed briefly.

I want to start out with a little bit of a question for attendees to think about. Normally when we do these webcasts, we actually send these questions out as polls. We're unfortunately unable to do that with this current interface, but I wanted to put the question on the screen so that people are thinking about it and what I want to do is give you some of the feedback we've gotten previously to these questions. We've polled over 1,000 legal and HR professionals on these questions and I think you'll find the answers to them, the sort of trends, extremely helpful. The question is, my organization considers the most important aspect of training to be the provider's legal expertise, the quality and look and feel of the program, the interactivity required by the program, cost or speed and ease of implementation. Of all the poll questions that we have posed to our community of HR and legal professionals, this is the one where we get the biggest array of answers and it's fairly, we get a, we get a large number of people answering to each of these as the most important, but where we see the strongest proponents of concern is with the provider's legal expertise and interactivity. So among your peers, answers A and C are really considered the most

important aspects. As we get into the substance of the presentation, you'll see why that's the case.

So let's move to our agenda and dive into AB 1825 and its associated regulations. We're going to give you a little bit of an overview of where we've been in the regulatory process. We're going to go through some critical components of the regulations and then give you some best practices on what to do now.

To clarify something that I know that we often hear confusion about, AB 1825 is in effect. That law went into effect over a year ago. You absolutely have a live requirement to do this training. The regulatory process, which is taking place via the Fair Employment Housing Commission is not yet finalized, but because the regulatory process isn't finalized does not negate the need to comply with the basic text of the law. So when you hear Sarah and I talk today about portions of the regulations that are in draft form are not yet finalized, that doesn't mean that you don't need to do the training, it just means that some of the specific compliance standards are not yet in affect. Just wanted to clarify that briefly.

So let's talk about the regulatory process. In July 2005, the Fair Employment Housing Commission appointed a blue ribbon advisory committee to help create real regulations for 1825. The purpose of those regulations being to provide further detail on what is compliant harassment training? What are the specific requirements that employers need to follow in providing this training? We and Littler were very fortunate to be appointed to this advisory committee to help draft the regulations so we've been right on the inside track as these regulations have been developed and so, obviously, along with Sarah on the line today, we can really give you the most accurate, up to date information about the regulations.

You can see that this has been a lengthy process in terms of these regulations being revised and refined. The first draft was released at the end of last year and we've gone through four iterations. The last iteration being released at the beginning of October with a comment period ending on October 20th, just a few weeks ago. So Sarah, you know, I'm sure a lot of people hearing this are thinking, gosh that's been going for a long time. I'm trying to re-plan my training for the 2000 year. What do these final drafts mean to me? Do you want to speak a little bit to that?

Sarah Reyes: Right. Thank you, Shanti and I want to say that government does move slow and 1825 regulations are obviously an example of that. Really, the initial regulations, drafter regulations were released in December '05. They've been highly that Shanti has mentioned, not only through the blue ribbon committee, but the Department of Fair Employment Housing Commission has also done several public hearings for public comment as well. The review took place and new drafts were released in '06, in October of '06. The final draft that is out right now has really been fine-tuned and I believe these are going to be the final guidance or the final draft that will be adopted by the commission as we move forward. And speaking with the commission and speaking with those that are involved with this process, we anticipate that these regulations will be drafted in, this month, actually, before the end of the year, before the deadline that the commission faces. For employers, what this means right now for employers is that you should use these regulations that are out, these drafts as really the final type of regulations that you will be seeing so as you're dealing with your 2007 retraining year, you should use these guidelines, these regulations as guidelines for your training. And that's very important, and I think later we'll be talking to you about if anybody's counted the days to the end of the year and when the retraining year is coming,

it's not too far in the offing. And so if we go to the next slide, what you'll find is that, he anticipates that the regulations will be adopted at the November 14th meeting of the commission and the commission was to complete its work by December 16th, '06 and anticipate that that will happen since they're slated to do those in a couple weeks now. If they did not make that happen by November 14th, they obviously could schedule another emergency meeting or if they pass the deadline of December 16th, they would have to start the process all over again. But truly, Shanti, I would say that the commission is well on its way to adopting these final regulations and what we saw in the last draft were fine-tuning of those regulations.

Shanti Atkins: That's right. That the scope of changes between the, between the August and October draft were very, very, very small. We can highlight a couple of those as we dive into the substance of the regulations just so that people know what some of the last contentious issues are, but everything I'm seeing and hearing is that there's a lot of confidence on these regulations being adopted November 14th.

Sarah Reyes: Yes.

Shanti Atkins: All right, so let's get into the critical components of AB 1825 and its associated regulations and again I want to pose some of these questions to the audience for people to think about and give you some of our poll results to help you understand what your peers are doing, both in HR and legal and give you some guidance on best practices. Another question, what is your organization's primary method of delivering training? Is it classroom based, meaning live training? Is it self paced e-learning? Is it a webinar, which is live online training, that's what we're doing right now, or through informal meeting?

To let you know what the big trend here is, we see about an even split between live training and e-learning, and that split is typically along the lines of the size of the employer. An employer that has a lot of people to train, it's often not practical to get thousands of people trained in a classroom, so those employers tend to use e-learning and some of the smaller employers are using the live training.

Let's talk a little bit about the requirements for e-learning. I think this is really critical. It was really the most contentious part of the regulatory process in terms of interactivity for an online experience and I'll talk a little bit about the basics and then, Sarah, I'd like you to give everyone a sense of the background of why this was so important. With self-paced e-learning, there are two things to keep in mind. The first is that learners must have the opportunity to ask questions during the training. What does that mean, practically? Well an e-learning program has to have a link in it somewhere on the screen where you can get directions on how to contact trainers or educators either working for the employer or retained by the e-learning provider to submit those questions of things that come up during training, so any e-learning program has to have a link to be able to ask questions. That's the easy part. Any e-learning program worth its salt is going to have the capability of having an e-mail link to ask questions. The bigger issue is how those questions are responded to, so under the regulation for self-paced e-learning, the employer has an obligation to respond to those questions within a reasonable amount of time and within no case more than two business days after a question has been asked. Now this is something that obviously is a much bigger deal than just having a link to capture the questions. You actually have to go through them and answer them, and the person who answers them has to be somewhat

knowledgeable and be able to provide guidance and assistance on harassment training issues. Sarah, why was this so important to the commission and to you?

Sarah Reyes: Well, when we were developing 1825, we recognized, obviously, in the law that the communications that we're used to when it comes to training in other forms has dramatically changed. We're going not only through classroom training, but through e-learning and through phone communications, such as we're doing today, and so recognizing that, we wanted to make sure that we could have a component of that type of training in 1825. However, we wanted to make sure that it wasn't something that those who were taking the training and those who were learning from the training would be able just to skip and move forward without really retaining the information or retaining the knowledge that they were getting and so we tried to make sure that we had that interactivity so that people who had questions, and many times those questions will lead people to a situation that maybe they can nip in the bud before it gets any worse and that they could get those answers back to them in a reasonable time and that they were just not waiting for somebody to get back to the answers or thinking that nobody really cared about this issue.

Shanti Atkins: That's right and actually that point leads into a great question for attendees today to think about. So knowing that if you're using e-learning you're going to be capturing these questions from attendees, who do you want answering those questions? Would you be OK with an outside vendor asking those, answering those questions for you, sort of outsourcing the entire function, not just the training program but the process through which questions are sorted through and answered? So we polled over 1,000 people on this question. Yes, maybe if the vendor could demonstrate appropriate legal expertise or no, all questions would be routed internally. The overwhelming response to this was C, which is not surprising for

two reasons. Often a question that arises out of harassment training will relate to an employer's specific policies and a training vendor, even if it has resources set up to answer questions about things that came up in the training, things that the vendor has control over, they're not going to necessarily understand the ins and outs of your policies. More importantly, and I've experienced this a lot doing live training for many years, often questions will be asked during training that are actually a complaint or something that would be putting the employer on notice of a problem and most employers that have a sophisticated HR and legal function would be very uncomfortable with the notion of an outside vendor determining whether something is an actual complaint and determining whether it needs to be escalated. I've seen some situations where some e-learning providers will say, you, you know, ask all the questions of us and we can only answer things that are limited to the training content and everything else we'll push back to the employer, which is I think a better solution, but you're still relying on the vendor to make that judgment call and as many of you know who are well-versed in harassment litigation, one of the number one reasons that we see big damage awards is when an employer fails to take heed of a complaint. So this is an area of risk that should be paid attention to, you know, failing to respond to these questions can create a lot of liability and just for baseline compliance with the 1825 regulations, you are supposed to be capturing those questions and actually answering them.

So we talked a little bit about the ability to ask questions in e-learning. This is true for webinars as well, which is the medium we're using today. For webinars, you also need the ability to ask questions and have them answered and also you have to document that each person attended the entire training and actively participated with interactive content, discussion, hypotheticals, quizzes, et cetera. So actually our webcast today is an example of

a non-AB 1825 compliant webcast. Why? Well, I'm not verifying who is attending and making sure that every single person stayed for the full length of the training. We're not able to send out those poll questions and I'm not able to audit whether those questions are being answered so I don't have the mandated interactivity, and the questions, unless I make sure I go through every chat question and follow up on every single one in two business days, that's also a problem.

So we saw in 2005 a lot of, a lot of webcast training that really would be completely non-compliant in 2007, very common practice of gathering people around a computer and signing into a webinar and having kind of a log in and listen experience. Sarah, do you want to talk a little bit about some of the concern the commission had around webcasts and webinars? I know that a hotly debated topic during the July hearings.

Sarah Reyes: Yes and one of, I mean it's, obviously there's a, there's a lot of debate that goes around the webinars and the e-learning and the commission's concerns are obviously numerous and they fall somewhat inline with my concerns as well, and that is as you go through and do the types of webinars, you know, you have to have that interactivity, and I can't stress that interactivity enough. But in addition to that, you have to be able to make sure that people are gathering and retaining the knowledge that you're presenting to them and gathering people around, for example, a single computer for a live webinar really doesn't work because, you know, what else is going on? And there's no way to see what else is happening in the room and are they really paying attention to what's going on in the classroom as they're looking at that. You might as well just give them a video tape and tell them, watch this when you can and then sign on it, and so that's a big question. The other thing is, and I know a lot of debate in regard to this is also the timeframes of how long it would take

people to also go through this process as well, and so that interactivity, I would say, Shanti, is just a huge issue when it comes to dealing with webinars or to e-learning programs.

Shanti Atkins: That's right and I think that, you know, the webinar can be attractive perceived low-cost option, but as people are going to see as we get further into these regulatory requirements, if you're going to go the webinar route, you really have to go through a pretty intensive punch list to make sure that you're covering off on all the requirements, from distribution of the policy to mandatory interactive questions and we'll get into that in a little bit more detail.

So let's move to this second interactivity requirement. The first we talked about was the ability to ask questions and have them answered. For all forms of training under the AB 1825 regulations, live, e-learning, webcasts, you need all three of the following items that you see on this slide: questions that assess learning and skill building activities that assess the supervisor's application of the content and the hypothetical scenarios with one or more discussion questions to ensure that people are measurably engaged in the training. This is the first training law of its kind, AB 1825; this is true for harassment training and all kinds of compliance training in general, ethics training, et cetera. This is the first law to actually say, you don't just have to do the training and prove that you did it for X amount of time, it's actually telling you some of the components that need to be in the training from an instructional design standpoint and I have seen a lot of e-learning, and e-learning's gotten a bad rap because it can often be a text-driven, click to the next arrow experience. So essentially, it's like putting yourself through a PowerPoint slide and you lose the value of the speaker at the front of the room. The whole cache of e-learning and the benefit that it has if it's done well is that you can actually have forced interactivity per individual. And basically I

think the commission has been very wise and Sarah, you've been very wise to support this, to say, if you're going to do e-learning, it has to be that kind of e-learning, and as I mentioned at the beginning of the presentation, this is not groundbreaking for those of us in the learning industry. This is just good practice in terms of developing online training. So, as I mentioned though, for webcasts and live training, as well, you need to make sure you do this. That means that a live training class with a person speaking up at a podium and 100 people in the room, you're going to have trouble meeting these requirements with that kind of a live training experience.

So let's talk a little bit about best practices. I mean, I think this is fairly straightforward. We obviously want to avoid a one way information dump on every component of the program should be highly interactive. Think of it as needing to constantly apply the knowledge that is being learned. And for live training, ensure the presentation obviously included those exercises and hypotheticals and to my earlier point, manage the class size. Littler Mendelson, our partner, does a lot of live training and they typically recommend that you have no more than 25 to 30 people in a live training class to be able actually have effective interaction.

Let's go to another question for the audience to think about as we enter into the next topic, which is going to be expertise requirements. Another question we sent out to a lot of your peers, how is training at your organization provided? Is it developed in-house, is it purchased from outside vendors or a combination of both? We see a strong, a strong trend toward B and C. It's either purchased from outside vendors or it's supplemented with some in-house resources. They typical response we're seeing is that e-learning tends to be purchased from outside vendors. Live training is where we get more people doing a

combination of both. The common trend in live training is train the trainer services, where an outside vendor is brought in to help prepare the internal trainers to do effective and compliant training.

But in addition to interactivity, this issue of expertise has been another hotly debated topic in the regulatory process. And basically what it comes down to is defining, what is a subject matter expert when it comes to this kind of training in terms of the person doing live training or the person developing online programs? Well it boils down to someone who has a legal education coupled with practical experience or, so that we're not just focusing on lawyers, which would be not a good thing, and I can say that cause I'm a lawyer, also someone with substantial practical experience in harassment training, discrimination and retaliation prevention.

Sarah, why is the, why was the expertise threshold important to you? I know you've made a distinction in the past between knowledge and expertise.

Sarah Reyes: Well this is really important and we actually included this is 1825 because it was a fear that I thought was not going to come true and actually, Shanti, it has. The fact that when you do a new law like this and it requires a training, what you find out is there's so many people who say, well there's another cottage industry that I can start to make money on and so they all of a sudden one day turn around and become experts in sexual harassment training and start to do this type of business when, in fact, they've never dealt with harassment, retaliation or discrimination. They don't have the knowledge, they don't have the expertise, they've never been involved practically with any of these type of issue and so for me it was very important to make sure that people had not only the expertise and then,

of being able to do the training, to be able to communicate with people, to be able to reach those people and explain those people that they're training what the issues are, but also to understand the laws in California, the laws at the federal level and what would they need to go through and deal with if, in fact, a harassment complaint came before them. And so this is a big issue when it comes to companies looking to deal with 1825, to make sure you reach these standards of expertise.

Shanti Atkins: That's right. I mean, let's talk a little bit practically how this applies to e-learning. With e-learning, you have an instructional designer who's creating the program and the subject matter expert who is usually providing the content and material. I would be leery of any program where there's only one subject matter expert. I think that having more than one person providing content for an interactive e-learning program is desirable, but the big issue to keep in mind here is that there has to be a strong nexus between those two functions. So with an e-learning program, here's an example of a problematic nexus. There's a subject matter expert maybe retained from an outside law firm or used internally who writes out some bullet points and learning points about harassment prevention and hand them either to an external production company, an internal production team, it's irrelevant whether it's internal or external, and then a group of instructional designers who are very adept at programming and design put that program together, have very little consultation after they receive the learning points and then continue to maintain the program several years into the future for all the new hire training and the retraining. That's really problematic because I can tell you that when you develop e-learning programs, there's a lot of refining and tweaking that goes on as you translate something that is in a Word document or in a PowerPoint slide and create a multi-dimensional interactive training program. And you can have a copy editor, for example, editing things to fit on a page and

actually changing the legal meaning. If there's not a continued dialog and nexus between the instructional designer and the subject matter expert, you – there's a real problem there because the subject matter expertise is not actually being imbued into the program.

Secondly, these things change. The program has to be updated, so make sure that there's a strong nexus during the program's development as well as its ongoing updating. For live training and webinars, a qualified trainer to teach those we, those sessions either is a subject matter expert him- or herself, or they have to be an expert trainer, but here's the catch. If they're an expert trainer but they don't meet the threshold expertise of being a subject matter expert, which was having that legal background or the very specific experience in harassment prevention training, they have to have someone with them during the, during the session that can answer the questions that are asked by participants, or they have to gather all of those questions and have the subject matter expert answer them within two business days. I think the practical impact of that is that it's probably just better to have a person who meets the subject matter expert threshold doing your live training. And you can see on the screen here, we won't go through these in tedious detail, but there's some very specific knowledge and experience requirements detailed in the regulations that an expert in this area must have and by all means, you can get the specifics of these directly from our web site and you can also e-mail me and ask me for, in addition to these slides, we have a little white paper that explains these in a very basic way in chart format.

So the best practice, know thy trainers and vendors. I mean, Sarah, you really underscored this with the cottage industry that has sort of blossomed around this. There are some great vendors out there; there are some really poor ones. Ask tough questions. I think the threshold question is, would you be comfortable with your trainer, if it's internal, or an

outside vendor being cross-examined at a trial or in an administrative proceeding. Not just about their credentials, but about their actual involvement in the development of the harassment-training program. A trend that Sarah and I see a lot of is there's a lot of very aggressive sales and marketing messages that go out about how a program's been developed, but if you actually scratch the surface and take a look under the hood, there is not that strong nexus that we discussed in play and it creates a real problem. You know, it's something a plaintiff's council will be able to dig into fairly easily if really all that's happened is the licensing of a trademark of a law firm, for example, but there was actually very little developed, very little hands on development with the training program.

Sarah, let's move to the topic about how to measure two hours of e-learning. In the original regulations, two hours was measured based on an average anticipated run time. This was probably the single most controversial issue in terms of that needing to change. Do you want to give our attendees a little bit of background on that?

Sarah Reyes: Yes, and actually, I would agree with you on this is really the one issue that caused so much controversy in all of the discussions, not only at the commission, but outside of those discussions as well. It was always the intention in 1825 as we drafted this to have it be two hours of training, whether you did it in classroom form or e-learning form, and as we went to the legislature it was the understanding that it was two hours. As the Governor signed the law, it was the understanding was two hours. In the original regulations it gave a caveat to the two hours on an average anticipated run time or depending on a person's ability to learn the content and the current regulations are two hours and you ensure that the two hour training actually is completed in two hours, so you could actually have quite a bit more information because, through an e-learning process, it may get, go a little faster. And so you

can use bookmarks, which I think is very important, in order for people, so if you don't want to have people sit at a computer to go through this for two hours, they could bookmark it at an hour and then pickup the, you know, a little later, the next hour. But it does have to be in length of two hours and the run time of the program must be two hours.

Shanti Atkins: So, I get asked a lot, Sarah, well how do you do that with online training? I mean, with live training, that's pretty clear how you do it. It's two hours. You make sure that the session is two hours long.

Sarah Reyes: Right.

Shanti Atkins: With e-learning, there are two ways to do it. One requires that you have some bandwidth and capability for audio and it's an enhanced audio version of the course that takes at least two hours to complete because you can measure definitively the length of mandatory audio files. The same way if you pop in a DVD, you know the run time of the DVD, we know how long audio files are and we can guarantee that there's no way to subvert the process and get to the end prior to two hours because that's how many minutes of audio are running in the program. The second option, which we find is more popular among our clients, is either an audio or a non-audio version. This is popular, obviously, because it can support a non-audio rollout as well, that has a built in timer that requires learners who complete in less than two hours to view the training content. Now in the e-learning world, timer can be a dirty word because there's some really badly designed timers out there. The, you know, I'll give you an extreme example of a bad timer. There's actually only, you know, 10 minutes of content but a timer just hangs on each screen till the clock counts down two hours. That's obviously a bad timer. You don't want an e-learning timer like that. A good

timer is one that's inserted into a program that has enough content and has been really well designed so that the average person would take two hours anyways. And all the timer is doing is giving them a warning at certain parts of the program of whether they're going too fast and whether they need to slow down, their anticipated completion time and the required completion time. And so they get, you know, they get that warning throughout the program and then if they still complete in less than two hours, they're taken to view additional training content. So that's just to answer, sort of, the practical questions. I know we get a lot about, well how do you do this with online training?

Let's talk a little bit about documenting compliance. This is something new that came out in the regulations. Employers must now track compliance by keeping records of the harassment training. The records have to include the supervisor's name; the training date, the type of training and the name of trainer, educator or instructional designer and you have to maintain those records for a minimum of two years. Practically speaking, what is a great way to tackle that requirement? I would really encourage those of you on the line to consider the power of a learning management system. A learning management system that can actually document by individual learner when a course has been launched, when the course is completed, whether a policy has been acknowledged and the last time a learner logged in. And so for online training, when you, when you launch online training from a learning management system, you're getting all of this tracking seamlessly. It just happens automatically. And you can also automate re-enrollment through a learning management system, which is great.

E-learning aside, with live training, you can also import data from live training records into a learning management system. And I just think that employers really have to pay attention

to the fact that this is not a one-time training requirement. There's going to be a lot of records management and documentation that's needed, so when you're looking at your 1825 requirement, don't just think of, oh I need to find a great training program. You also need to think about how you're launching and tracking that program. It's an equally important component.

Let's move to the topic of how we have to calendar this retraining that Sarah and I have been talking a lot about. I'm going to go through this fairly quickly because in the last round of regulations, this is one of the areas that got revised to actually simplify the switch, I'm sure everyone will be very pleased about. So there's basically three ways that you can track the every other year requirement. Individual tracking, training year tracking, or you can use a combination of both methods for different portions of your employee population.

Individual tracking is really simple. Here's the example. Doug completes training on January 26th, 2005. Doug has to be retrained no later than January 26th, 2007. So you're tracking it to the individual date of when Doug completed his first round of training. So that's fairly simple and a lot of smaller em, a lot of small employers are using this method of tracking training.

The other way of tracking training, which has really been brought back into the regulations, this originally disappeared earlier in the year and came back, is training year tracking, and the reason that it's been put into the regulations is to recognize, you know, for really large employers, tracking hundreds of individual training completion dates can become really cumbersome and impractical. So an employer can designate a training year to train some or all of its supervisors and then retrain those supervisors by the end of the next training year or

two years later. So how does that practically work? Let's go back to our friend, Doug. So if Doug got training on January 26th, 2005, he could actually be retrained at the end of 2007 because '05 is designated as the training year, '07 is designated as a training year. So you can see this can actually lengthen the deadline for existing employees, but it can shorten it for new hires. How does that work? Well, if a new hire is hired the year after the training year, for ex – in that example, if we hire someone in 2006, the training year has been designated 2007, so we're going to have training happening two years in a row. If you want to avoid that, you can do the combination approach. You can train the bulk of your employees using the training year tracking and then doing new hires and promotions; you can choose to do individual tracking for those folks.

The practical reality of this is, and we talked to hundreds of clients about this and they almost invariably want to do the training year tracking because it's easier to administrate in the long term and that back-to-back training incidence I just described would only occur after the first year. And so let me walk you through an example of that and go back to Doug. So if Doug is a new hire on June 1st of 2006, that was someone hired just this summer, his initial training has to be completed by December 1st, 2006. That's that, that's that initial six-month training deadline. But if we've designated '05, '07, '09 as our retraining years, we've got to retrain Doug at the end of December 31st, 2007, which is less than two years from the initial training date. But then when we go to the second round of retraining, we have until the end of 2009, so it's just a way to really simplify the process of determining when employees need to be trained. If anyone has specific questions about this, I'm more than happy to answer them. We get a lot of confusion and very detailed questions about how to calendar the retraining.

So Sarah, let's talk a little bit about who's covered by 1825. I'd really like you to lead this part because I know that, again, it's a, it's an area that there's a lot of confusion and perhaps we can start with a hypothetical that you can walk people through.

Sarah Reyes: Well this is, I will do that, thank you Shanti. And this is one of the first questions that we got asked today by the participants and I'll give you this hypothetical. Two-thousand person Boston-based company only has 32 California-based employees and a handful of California contractors. Does the company have to worry about AB 1825 requirements? If in fact that 32 and the contractors that they have reaches the 50 threshold, the answer to that would be yes, they do have to be AB 1825 compliant. What you will find if we go to the next slide is the regulations define a employer as any person who is engaged in business or enterprise who employs, in California, who employs 50 or more employees – and I think it's important to read the entire sentence cause people tend to stop there – to perform services for a wage or salary or contractors or any person acting as an agent of an employer, directly or indirectly. So that actually expands the number of people that you would calculate under that 50 person threshold and I think that that is really important and there is really no requirement that those 50 employees work at the same location or even all reside in California. So when you start doing those calculations, you're going to find that most companies will reach that 50-person threshold in a very quick time.

Shanti Atkins: This is going so quickly, Sarah. So the answer to this question is yes.

Sarah Reyes: Is yes.

Shanti Atkins: So we only have 32 California-based employees and so these, any supervisors resident in California are going to need to be trained.

Sarah Reyes: Correct.

Shanti Atkins: My apologies.

Sarah Reyes: Correct.

Shanti Atkins: Please go ahead.

Sarah Reyes: OK. And so I think it's really important, and Shanti, it's very important for people to do that because this is one of the questions we get a, asked a lot about, and that is well, I only have 20 employees, but you know, we have some part-time employees or we have some contractors or we have others and if we add all those people up, we get to 60. Well, then you are going to be AB 1825. You're going to have to come under the regulations of 1825 and so it's very important now, there is the threshold of the issue that those 50 or more employees or contractors for each working day in any 20 consecutive weeks in the current calendar year or preceding year. So, you know, if you have them involved or you're employing them in that amount of time, then you will become under that and they are calculated under your 50 person threshold.

If you go to the next slide, a lot of people ask, well, what happens when we reach that, you know, if we all of a sudden expand and we're now at 51 employees? Well the regulations are very clear. New businesses must provide training within six months of their incorporation or

forming and then, again, follow every two years after that. Businesses that expand to 50 or more in that, in that number of people have six months, again. After you hit that threshold, six months after that you must have trained all those supervisors in California, and then again, 1825 requires every two years after that.

And one of the bigger questions I think, Shanti, that we get asked is on the next slide and that is, well, what about, and there's a little bit of far reaching by the commission, what about those supervisors working outside of California? Are they covered? There was a little bit of far reachingness, I think, from the commission originally when they said, yes, you have to train everybody, all the supervisors. Actually, not anymore. You do not have to train those supervisors working outside of California. The regulations were adjusted because of a bill that was introduced when the commission, I think, far reached in this – in this area, the legislature brought them back with the introduction and passage of AB 2095, which was signed into law in September, 2006, just recently, a couple of months ago, before the legislature end – and just, legislature ended its session, and so currently, they do not have to train those supervisors that live outside of California.

Shanti Atkins: That's right, so just to clarify and give people a recap cause I'm seeing some questions come in, the law applies extra-territorially in the sense that the 50 person threshold does include people outside of California.

Sarah Reyes: Correct.

Shanti Atkins: So an extreme example, you know, you have 100 employees across the country. You have one supervisor in California. You've got to train that supervisor in California. Where

there isn't the extra-territorial effect is in supervisors who supervise people who are resident in California, but aren't themselves physically residing in California. Under the old regulations that came out at the end of last year, you had to train all of those Cal, all of those supervisors who might have exerted supervisor influence from outside the state of California. You now only have to train inside California. So when you're thinking of the 50 threshold, it goes outside the state; when you're thinking of the people who actually need to receive the training, think about them being inside the state.

All right, so …

Sarah Reyes: And it's all very confusing, but again it's all geared to hopefully making it a lot easier for businesses to be able to understand who they have to train in California.

Shanti Atkins: That's right. And another question that comes up often, especially with organizations that have a lot of turnover is, well, you know, can we use training from a prior employer. So someone was trained within the last, within the last two years. Can we, can we use that as our scheduling date? The answer to that is yes, only if you provide that person with a copy of your harassment prevention policy and required them to read and acknowledge it within the six-month timeframe. So that isn't just handing it to them, obviously. You've got to get their documented acknowledgements. However, and this was this is one of the tweaks that came out in the last set of regs, October 2nd of this year, the burden of establishing that prior training was legally compliant is on the current employer. So in terms of a best practice, you really have to ask yourself, are you willing to rely on a prior employer's training programs and their records, and how much time and effort are you saving going through that process versus just training that new person or that promoted

employee with your own content? Among our clients, we're seeing very few that are interested in relying on prior employers' training programs. I mean, we started the presentation out today really identifying just how specific some of these regulatory requirements are and you can see how detailed they are, and most employers are just not comfortable relying on a prior employer's efforts in that respect.

Sarah Reyes: Probably not a good idea.

Shanti Atkins: Yes. A question for those of you attending today to think about as we move to our next topic: Does your training at your, at your organization go beyond sexual harassment to cover other protected categories? So are you covering race and disability and age and national origin? We get this question a lot. This is probably the question I got asked the most last year, where the perception was two hours means two hours of only sexual harassment training and if spend two minutes on a hypothetical on racial harassment, I've got to deduct that two minutes from my two hours. That is categorically incorrect. The actual statutory language requires practical examples aimed at instructing supervisors in harassment; note the loss of the sex modifier, discrimination and retaliation. And then to clarify this, the regulations have detailed that you can cover protected categories under FEHA beyond sex harassment and you can also discuss how harassment of an employee can cover more than one basis.

This is really common sense stuff, I mean, but one of the biggest errors that Sarah and I see is what we call the silo effect, which is an employer saying, I'm going to do away with all kinds of other harassment and discrimination prevention training so I can get my two hours of sex harassment training. Now obviously, your training should focus on sex harassment,

but the notion that you have to exclude all other kinds of training is absurd. Under the federal standards that we talked a little bit about that came out in '98 and '99, those standards are not limited to sex harassment. They are limited to harassment based on all of the protected categories under Title VII. I think even more recently and also very disparities of this issue is the update to the EEOC Compliance Manual that took place in May of this year. And the EEOC sent a message out to all employers saying that they really need to pay attention to issues of intersectional discrimination, and basically what that means is that, you know, practically speaking, in the real work place, when these issues happen, they often happen in combination; sex and race, sex and disability, sex and age or national origin and disability. So really, you should be thinking about a program focused on sex that goes to some of those other areas as well.

Oh, we're just having a little slide problem there. So finally, another sort of housekeeping issue required under the regulations, you must give each supervisor a copy of your anti-harassment policy and require each supervisor to read and acknowledge receipt of the policy. That means in a live training program, you want to sort of keep a register of that. In an e-learning program, you want to make sure that you are tracking, along with the course completion, the received acknowledgement of the policy.

So what do you do now? You've been given an overview of a lot of the detailed requirements of the 1825 regulations. Now let's just, let's just reiterate this next slide and talk about retroactivity. Do you want to go over that for the audience?

Sarah Reyes: Yes. And this is something that is, with the regulations not being adopted yet, what needs, a lot of people are asking, well I did my training already. Do I have to retrain them

before these regulations or right after these regulations come out? The training that everybody did in 2005 has been accepted by, as one-time exception I guess I should say, by the commission as being AB 1825 compliant. However, that will change for this next retraining year because the new regulations are expected to be adopted in the next couple of weeks. So the training that you did before, you're OK with. It's the training that comes now, in 2007, is what you're going to have to come and make sure is under compliance with the new regulations that are going to be adopted. So the retroactivity is very important and you don't have to race and think, oh I have to do two trainings, you know, one now and then one in 2007. And I, and I think that that's very important, but it's also really important to remember, you must, must come under the new regulations with your 2007 training.

Shanti Atkins: So let's recap briefly for everyone, as we're in our final minutes here, what are, what are those things you need to pay attention to? Maybe you have to tweak your current training program that you developed internally and modify it, or perhaps you outsource training and you're realizing the program you purchased is non-compliant and so you need to ask your vendor for an update, or perhaps you need to find a different provider. Let's recap what you need to be paying attention to.

If you're using e-learning, you need the sufficient interactivity. That means those questions, skill-building activities, hypothetical scenarios and secondly, the ability to ask questions and then, internally, you need to set up a process to have them consolidated, reviewed and responded to within two business days, pretty high threshold there.

Second, ensure that your classroom and webinar trainers or the developer of your e-learning programs can meet the stringent subject matter expert requirements. That means that you can't self-declare to be a harassment prevention expert. You either have to have that legal background with practical experience or you have this substantial experience in providing training in this area.

Step three, if you have more than 50 employees; assume 1825 applies to you, even if you don't have more than 50 employees residing in the state of California. However, if you have supervisors supervising people who are in California but the supervisors themselves aren't resident in California, you no longer need to train those folks, although, under the federal standards, it's probably a really good idea, which takes us to step four. Carefully audit who is exerting supervisory influence in California. Push to include those supervisors who do not reside in California, in fact push to train everyone organization wide. If people would like further details on the federal requirements, they're fairly stringent; they've been around for almost 10 years. You really should be doing this on a broad scale basis.

Step five, train beyond sex harassment to cover other forms of unlawful work place harassment and finally, step six, carefully review the content of your training program. The regulations contain some content that's not specifically mentioned in the statute. The statute has some content not contained in the regulations and you need to make sure that you've covered both.

A final question for people to think about as the holiday season approaches and we are almost at 2007, we've polled many people on the following question: At my organization, the timeframe to deploy training is: one to three months, four to seven months, eight to

twelve months or over a year. And this is meaning the time to either develop a training program and get it live or to procure a training program and get it live. Remember that your deadlines also need to leave time to complete the training, so this is just, this is just the timeframe to get it out there and started. The overwhelming majority of respondents chose B, four to seven months. Now if we go four to seven months from today's date, you are well into 2007, leaving yourself not that much time to actually get people through the training and to get those completion records in place, so we really can't stress enough that you need to be acting now in terms of how you're going to meet with these new requirements.

So I want to thank everyone very much for being on the line today. We are exactly at the top of the hour. I'm just going to push the next slide out, which has my e-mail address for questions, the web site you can go to for lots of details on the 1825 requirements. If you click on that link you will see a yellow feature box that has wonderful downloads and substantive information that you can access, and finally, if you'd like to see a demo of an interactive training program, we have a link to that as well.

I want to thank Sarah so much for co-presenting to me, with me today. Sarah, it's always a pleasure. I know we have a few minutes left and I though perhaps we can tackle some of the questions that have been coming in.

Sarah Reyes: I saw one of the questions, Shanti, was somebody asked about a ratio. Should it be 50 percent sexual harassment and versus other forms of harassment? There really is not a ration or percentage. The majority of your presentation, your two-hour presentation training should be in sexual harassment and then you can cover all the other forms. Just make sure that you understand that the majority of it should be in sexual harassment and then bring in

the other ones. And I know another one asked, should you train outside of Californian? Those supervisors continue to train those and I think, Shanti, you and I would both agree that that's a good idea, that you should train all your supervisors whether they're living in California under 1825 or not. I think it's just a good best practice for businesses to do that.

Shanti Atkins: I totally agree. Another great question here; does a company have to verify that third party vendors it contracts with the law? On the front end, no, there's no requirement in the statute or the regulations that you have to sort of go through some sort of certification process. Where this would become relevant is in the event of a problem; litigation or an administrative proceeding where you were either being accused of not complying with the law or you found yourself the subject of a harassment lawsuit and the training that you provided was being attacked, this is when these compliance standards would be incredibly important. And that actually brings up an issue, Sarah, that I know you and I talk a lot about. Eighteen twenty-five does not have any penalties, so it is illegal to not provide this training under the government code, however there are no monetary penalties for failing to do it. The real penalty is if you find yourself in hot water, in the even of litigation or a problem arising in your work place. And where you're going to pay for non-compliance is likely in punitive damages. And really, the size of those punitive damages would far outweigh any method of penalty that the – that the state government would impose and this is why, really, this mandatory training in California, which has gotten a lot of buzz, isn't that different from the federal training requirement, which has been around since 1998. The downside of not, of not complying with the federal guideline is exactly the same. If you can't show that you had effective training and preventative procedures and you have a harassment lawsuit arise, you're very likely going to pay a high punitive damage award.

Sarah Reyes: And that's actually was on purpose, and I tell people we left out the penalties because there is really no penalty that the state of California can levy against an employer that would be any larger than what a good plaintiff attorney could get if they found that people were out of compliance to 1825.

Shanti Atkins: Another great question. Supervisory influence: Do we need to use the DFEH definition of supervisor or the new (NLRB) standard? It is the, it is the DFEH definition for supervisor. I know that's not as high as the (NLRB) standard, however it's still higher than, from a business perspective, how some people define supervisor. Often in an organization, supervisor is defined by title or how many direct reports you have. The DFEH standard, the Department of Fair Employment and Housing in California, it's really about whether you exert supervisory influence over employees and that tends to, fairly significantly, increase the size of the trainable population. So at ELT, when we use the business definition of a supervisor, you know, it's usually 10 to 15 percent of the population. When you use the DFEH definition, that tends to blossom from about 15 to 25 percent of the organization.

I know we have a couple of more questions. I'm getting a lot of questions about, can I receive a copy of the slides? I cannot see your e-mail addresses in the chat window. So if you would like a copy of the slides please do e-mail them to the e-mail address, e-mail your request to the e-mail address you see on screen and I will provide you with a copy of the deck.

Sarah Reyes: The one question that I noticed here, somebody was asking about, do the seasonal workers, that they employ seasonal workers, it, so the employee, the statute does not define

part-time, seasonal, full-time employees. It's anybody that you employ, so you do have to calculate those in your 50.

Shanti Atkins: That's right.

Well, we are almost at five past the hour, which I know is when we are, we are supposed to be ending this and we've gone a few minutes over in an effort to answer to answer your questions. We have a lot of people on the line today, so we apologize if we didn't get to all of your questions. By all means, please don't hesitate to contact me directly. I am very passionate about this area and I'll make every effort to answer your question immediately.

I want to thank Sarah again, so much, for her time today, helping to educate the employer community and the legal community about these new regulations and in a few short weeks they should be finalized, so that will be, that will be a nice milestone to get to in this long process.

Sarah Reyes: Thank you, Shanti.

Shanti Atkins: All right, Sarah. Thank you so much. Thank you everyone for joining today. I want to encourage all of you again to fill out the webcast evaluation form, which you will see. You can double click on that on the links section. To fill out that evaluation, you just want to click on today's date, and again, you can get additional information through the links that you see here, links to our web site and finally, again, any questions, need the PowerPoint, just e-mail me directly at satkins@elt-inc.com. Thank you so much for joining us today.

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