



## 906 Establishing an In-house Training Program: the Legal Implications of Employee Training

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## Faculty Biographies

### Michael L. DiTano

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### Kimberlee Ullner

Kimberlee Ullner is the senior attorney, labor and employment for Allegheny Energy Services Corporation in Greensburg, Pennsylvania. Her responsibilities include providing legal advice and counseling to internal company personnel on labor, employment, benefits, and workers' compensation matters. She actively manages outside counsel in employment litigation matters, including developing strategy, substantively reviewing filings, and attending depositions, mediations, and court appearances. Additionally, Ms. Ullner creates and conducts internal training sessions for human resources and managers on labor and employment law topics. She represents the company before federal and state agencies in employment charges and claims, including conducting mediations before such agencies. She drafts, reviews, and revises employment policies, reviews and amends benefit plan documents, drafts employment-related agreements and contracts, and oversees internal investigations.

Prior to joining Allegheny Energy, Ms. Ullner worked in-house at an insurance and risk management company and in private practice in Cincinnati and Atlanta.

Ms. Ullner is active in supporting celiac disease research and support groups.

Ms. Ullner received a B.A. from Wellesley College, an A.M. (History) from Duke University, and a J.D. from Duke University School of Law.

### Linda A. Whittaker

Linda A. Whittaker is the associate general counsel for compliance and training of the employment law practices division of Wal-Mart Stores, Inc. in Bentonville, Arkansas. Ms. Whittaker provides advice and counsel on a wide range of employment issues, and develops and assists in developing HR forms, procedures, policies, and training materials. Areas of responsibilities include partnership, non-insured benefits, compliance with state employment regulations, leaves of absence, immigration and work authorization, disabilities, and corporate training. Ms. Whittaker also serves as the ADA coordinator and oversees the reasonable accommodation program. She first worked at Wal-Mart as an in-house litigator.

Prior to joining Wal-Mart, Ms. Whittaker was a shareholder at Stanley, Lande & Hunter, in Muscatine, Iowa, where her litigation practice included employment, commercial, tort, and family law issues. Ms. Whittaker tried cases in jurisdictions throughout the United States. She describes herself as a "recovering litigator."

Ms. Whittaker received a B.A. and a B.S. from the University of Arizona. She graduated with High Distinction from the University of Iowa College of Law.

## ADULT LEARNING

Linda Whittaker  
Associate General Counsel  
Employment Law Practices Division  
Compliance, Policy, and Training  
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## Learning and Teaching

- Adults learn in a variety of ways:
  - Visual
  - Audio
  - Manual

## Adult Learning

- Adults tend to learn only what they *want* to learn
  - Real
  - Perceived

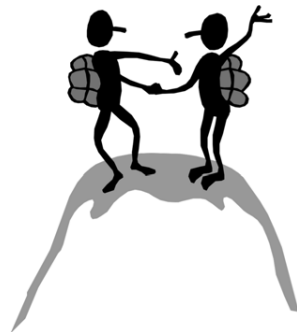
## Adult Learning

- *Who is your audience?*
- *What is their motivation to learn?*
  - **Social Relationships**
  - **External Expectations**
  - **Social Welfare**
  - **Professional advancement**
  - **Escape or stimulation**
  - **Cognitive interests**
  - **(Crisis or change)**

## Adult Learning

### ■ Motivation

- Achievement
- Affiliation
- Sense of self-control



## Adult Learning Delivery Formats and Factors

### ■ Formats

- Cybertraining
- Text
- Informal meetings
- Tours/ workshops
- Classroom
- Audio only
- Video-link

### ■ Factors

- Purpose
- Objective
- Outcome (measure)
- Number
- Budget / cost
- Equipment/  
Facilities
- Individual v. Group
- Subject Matter
- Audience
- Time

## Teaching Methods One-Way Communication

- Use to transmit information
- Learner has limited knowledge/skills
- Learner maturity is low

## Teaching Methods Two Way Communication

- Problem solving
  - Forked Road Solution
  - Possibilities-Factors
  - Effect > Cause
  - Situation-to-be-Improved
- Role Playing
- Brain Storming
- Case studies

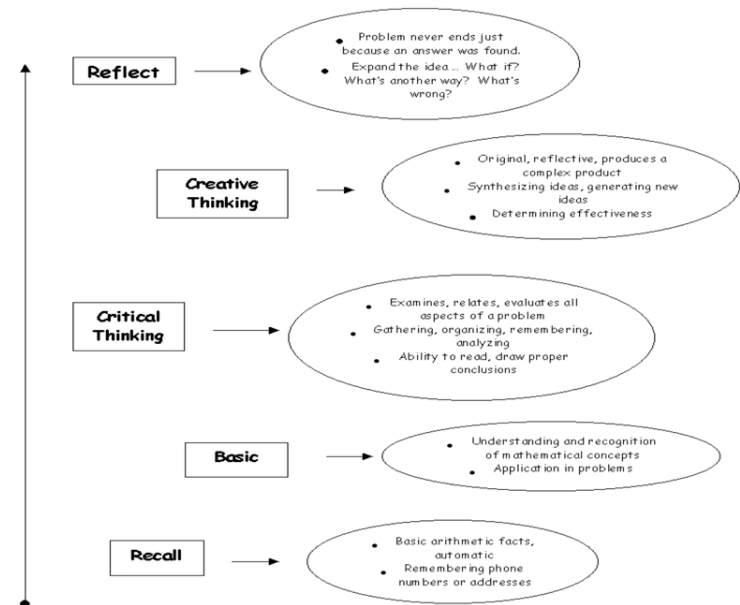
## ***Stages of Learning***

**▼Acquisition.**

**▼Fluency.**

**▼Generalization.**

**▼Adaptation.**



## Assessment

- Effectiveness
- Verification/  
Acknowledgment
- Assessment
  - Validation

### Complaint Notification


Version 1.1

Take the action that is appropriate to getting the situation under control and preventing further escalation.

The Company's Workplace Violence Policy complaint notification process requires you to:

- Contact a District Manager/Director of Operations
- Document the incident
- Talk with the Associate filing the complaint, along with any witnesses

All complaints must be investigated by the facility Manager, District Manager or Director of Operations, and the Regional Personnel Manager, in conjunction with the District or Regional Loss Prevention Supervisor.



Your Progress in this Module: Page 9

← BACK REPLAY NEXT → EXIT X




## Extreme Weather Conditions

In cases of extreme heat:

- Associates should have water or sports drinks available if there is a possibility they may be exposed to high temperatures and humidity.
- Associates should dress appropriately and take adequate breaks.

During periods of extreme cold:

- Associates need to ensure they have adequate attire.
- Layering of clothing is recommended.
- Footwear should protect the Associates' feet in cold, wet, and slippery conditions.



ON OFF ASL Your Progress in this Module: Page 18 BACK REPLAY NEXT EXIT X

## Pro-Active Measures

To proactively prepare for an emergency, you should:

- Check security systems, such as closed circuit television and alarms, are clean and ensure they are functioning properly
- Ensure emergency exits are not blocked
- Help Associates understand their roles in evacuation or severe weather situations
- Make sure security protocols are followed and suspicious behavior or circumstances is reported to the facility manager and Loss Prevention management



Your Progress in this Module: Page 3 BACK REPLAY NEXT EXIT X

### Introduction


Version 1.1



Hi. I'm Leslie, and I'm going to tell you about a great new application called Career Preference! Career Preference will help YOU in building your career with Wal-Mart Stores, Inc. With this tool you can access detailed information about

ON OFF ASL Your Progress in this Module: Page 1 BACK REPLAY NEXT EXIT X


### Stable Stacking



- Store merchandise on all shelving and risers in a straight and stable manner.
- Ensure the merchandise is not leaning and that heavier items are on lower shelves.
- Properly assemble and secure all displays.

ON OFF ASL Your Progress in this Module: Page 4 BACK REPLAY NEXT EXIT X

### Stable Stacking



Store merchandise on all shelving and risers in a straight and stable manner.

Ensure the merchandise is not leaning and that heavier items are on lower shelves.

Properly assemble and secure all displays.

▶ PLAY   || PAUSE   ■ STOP

CLOSE

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IMAGE ↖

ON OFF ASL   Your Progress in this Module: Page 4   ← BACK   REPLAY   NEXT →   EXIT X

### Stable Stacking

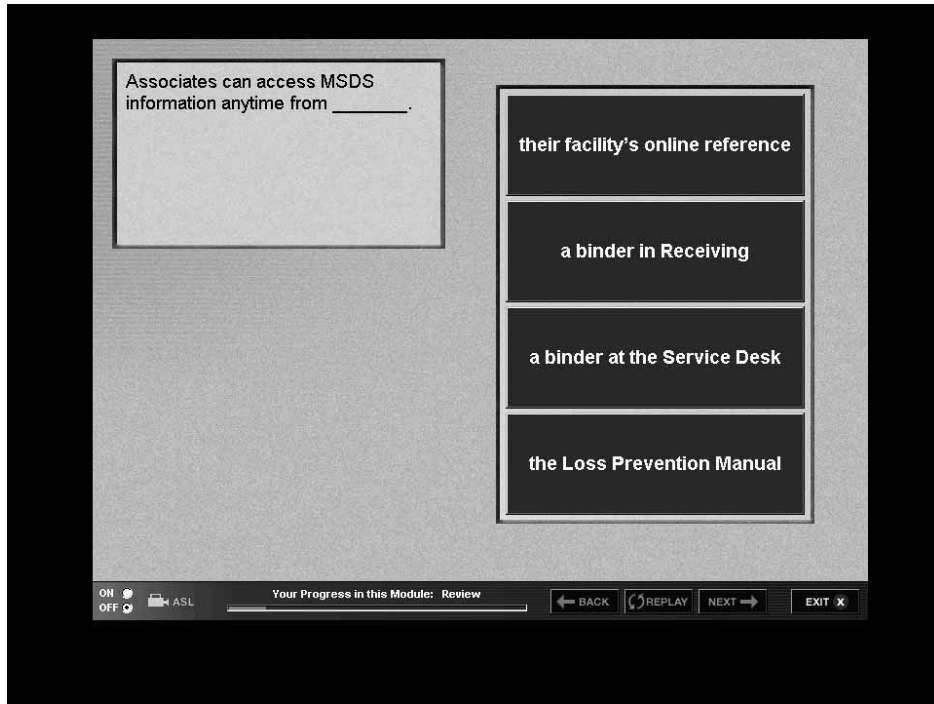


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ON OFF ASL   Your Progress in this Module: Page 4   ← BACK   REPLAY   NEXT →   EXIT X



## TODAY'S LESSON IS . . .

- Who?
- What?
- Why?
- How?
- How Much?

**EMPLOYER TRAINING REQUIREMENTS: FEDERAL AND STATE**

**HIPAA  
OSHA  
SEXUAL HARASSMENT**

Prepared by the Employment Practices Division, Wal-Mart Stores, Inc.

*These materials are for informational purposes, and should not be considered legal advice. No warranty is made for the accuracy of the information. You should always consult your counsel for legal advice.*

TRAINING REQUIREMENTS UNDER FEDERAL/STATE LAW				
STATE	HIPAA	WAGE & HOUR	WORKERS' COMP	MEDICAL LEAVE
Federal	45 CFR 164.530(b) Train all members of workforce, by compliance date, re: PHI policies as necessary for employees to carry out functions; new employees w/in reasonable time after employment; as needed w/in reasonable time of material changes (for those affected) 45 CFR 164.308(A)(5) requires security awareness and training for all members of workforce incl. mgt. re: security reminders, protection ff malicious software, log-in monitors, password management	No Training Requirements	No Training Requirements	No Training Requirements
Alabama	Same	None	None	None
Alaska	Same	None	None	None
Arizona	Same	None	None	None
Arkansas	Same	None	None	None
California	Same	None	None	None
Colorado	Same	None	None	None
Connecticut	Same	None	None	None
Delaware	Same	None	None	None
Florida	Same	None	None	None
Georgia	Same	None	None	None
Hawaii	Same	None	None	None
Idaho	Same	None	None	None
Illinois	Same	None	None	None

Indiana	Same	None	None	None
Iowa	Same	None	None	None
Kansas	Same	None	None	None
Kentucky	Same	None	None	None
Louisiana	Same	None	None	None
Maine	Same	None	None	None
Maryland	Same	None	None	None
Massachusetts	Same	None	None	None
Michigan	Same	None	None	None
Minnesota	Same	None	None	None
Mississippi	Same	None	None	None
Missouri	Same	None	None	None
Montana	Same	None	None	None
Nebraska	Same	None	None	None
Nevada	Same	None	None	None
New Hampshire	Same	None	None	None
New Jersey	Same	None	None	None
New Mexico	Same	None	None	None
New York	Same	None	None	None
North Carolina	Same	None	None	None
North Dakota	Same	None	None	None
Ohio	Same	None	None	None
Oklahoma	Same	None	None	None
Oregon	Same	None	None	None
Pennsylvania	Same	None	None	None
Puerto Rico	Same	None	None	None

Rhode Island	Same	None	None	None
So. Carolina	Same	None	None	None
South Dakota	Same	None	None	None
Tennessee	Same	None	None	None
Texas	Same	None	None	None
Utah	Same	None	None	None
Vermont	Same	None	None	None
Virginia	Same	None	None	None
Washington	Same	None	None	None
West Virginia	Same	None	None	None
Wisconsin	Same	None	None	None
Wyoming	Same	None	None	None

OSHA Training			
STATE	Bloodborne Pathogens	Emergency Action Plan/ Fire Prevention Plan	Hazard Communication
Federal [TAB 1]	29 CFR 1910.1030 Train employees w/ occupational exposure (reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood/other potentially infectious materials that may result from performing duties) (1) at initial assignment to task w/ possible exposure, (2) w/in 90 days after effective date of standard, (3) at least annually thereafter and w/in one year of previous training, (4) add'l training when changes in tasks/procedures affect exposure See (2)(vii); training requirements	29 CFR 1910.38 Train designated employees to assist evac (Non-Mandatory Guidelines 1:20 ratio); review EAP with all employees covered by plan (1) when plan developed or at employee's initial assignment to job, (2) when employee's responsibilities under plan change, (3) when plan is changed;  29 CFR 1910.39 Inform employee, at initial assignment, of fire hazards to which they are exposed, and review relevant portions of fire prevention plan	29 CFR 1910.1200(h) Train employees who may be exposed to hazardous chemicals in their work area 1. at initial assignment 2. when new physical or health hazard introduced "Exposed" = subjected to haz chem in course of employment thru any route of entry; includes potential exposure; training need only extend to protection from spill or leak if only handling sealed containers See (h)(2)-(3); training requirements
Alabama	Same	Same	Same
Alaska *	[TAB 2] Same [8 AAC 61.1010 incorporates]	Same [8 AAC 61.1010 incorp. both]	Same [8 AAC 61.1010 incorporates]
Arizona *	[TAB 3] Same [AAC R20-5-602 incorporates]	Same [AAC R20-5-602 incorp. both]	Same [AAC R20-5-602 incorporates]
Arkansas	Same	Same	PLUS Training requirement for physical agents in work area at initial assignment and when new physical agent introduced [8 AAC 61.1110]
California *	[TAB 4] Same [8 CFR 5193(g) similar language]	Same [8 CCR 3220 similar language] Same [8 CCR 3221 similar language] PLUS keep plan in workplace available for employee review	Same [8 CCR 5194 similar language] (see also CLC 6401.7); this section does not apply to retail food sale and trade establishments, except processing/repair work areas; subject, (6) sets forth additional requirements under Proposition 65 to follow before exposing employee to a haz. substance
Colorado	Same	Same	Same
Connecticut **	Same	Same	Same
Delaware	Same	Same	Same

Florida	Same	Same	Same
Georgia	Same	Same	Same
Hawaii *	[TAB 5] Same [WCHR 12-205.1 incorporates]	Same [WCHR 12-71.1 incorp. both]	Same [WCHR 12-203.1 incorporates]
Idaho	Same	Same	Same
Illinois	Same	Same	Same
Indiana *	[TAB 6] Same [620 IAC 1-1-1 adopts]	Same [620 IAC 1-1-1 adopts both]	Same [620 IAC 1-1-1 adopts]
Iowa *	[TAB 7] Same [875 IAC 10.20(88) adopts]	Same [875 IAC 10.20(88) adopts both]	Same [875 IAC 10.20(88) adopts]  PLUS Can conduct training in any form but employer must keep written summary, cassette tape or videotape recording of training for employee access [875 IAC 3.22(88,89B)]
Kansas	Same	Same	Same
Kentucky *	[TAB 8] Same [803 KAR 2:320 incorporates]	Same [803 KAR 2:304 incorp. both]	Same [803 KAR 2:320 incorporates]
Louisiana	Same	Same	Same
Maine	Same	Same	Same
Maryland *	[TAB 9] Same [according to MOSH Consultation Services]; see also Md. Lab. & Empl. Code 5-308.1 which directs Commr to adopt regs to implement fed standard (no regs available)	Same [according to MOSH Consultation Services]	Same [Md. Lab. & Empl. 5-403 adopts]
Massachusetts	Same	Same	Same
Michigan *	[TAB 10] Same [MAC 325.70016 tracks the training outlined in the federal standard (except that annual training does not have to be w/in a year of the previous training) for Category A employees - those with exposure or reasonably anticipated exposure to blood/other potentially infectious material [325.70003]	Same [MACR 408.10623 similar lang. - designate sufficient number of employees] [see also 408.10608]  Same [MACR 408.10624 similar lang.]	Same [MACR 325.77002 adopts through 12/22/94 amendments];  PLUS MCLS 408.1014a (14a) states that employers who are not standard industrial classification 20-39 only have to train employees exposed or likely to be exposed at work; MCLS 408.1014g(14g) exempts employers who handle sealed packages; (14k) requires employers to keep MSDS and train employees how to locate them

Minnesota * [TAB 11]	Same [Minn. R. 5205.0010(2) adopts]	Same [Minn. R. 5205.0010(2) adopts both]	Same [Minn. R. 5205.0010(2) adopts]
Mississippi	Same	Same	Same
Missouri	Same	Same	Same
Montana	Same	Same	Same
Nebraska	Same	Same	Same
Nevada * [TAB 12]	Same [no code or regulation in NV that leads otherwise; also per NV Safety Consultation and Training Section]	Same [no code or regulation in NV that leads otherwise]	Same [no code or regulation in NV that leads otherwise; also per NV Safety Consultation and Training Section]
NRS 618.376 requires employers to provide employees with a document or video (described in 618.544) setting forth rights and responsibilities of employer/employee for safety at work; evidence of receipt required in file		NOTE: The only reference to 1910.38 occurs in NAC 459.95442 Regulation of Highly Haz Substances/Materials which requires compliance with the fed. standard for facility operators subject to Tier A or B programs, or facilities in which employees will not respond to an accidental release (see NAC 459.9544)	
New Hampshire	Same	Same	Same
New Jersey **	Same	Same	Same
New Mexico * [TAB 13]	Same [NMAC 11.5.2.9 incorporates]	Same [NMAC 11.5.2.9 incorporates both]	Same; [NMAC 11.5.2.9 incorporates]
			PLUS exception that new employee is deemed trained if employer can show employee trained on same hazards in last 12 months
New York **	Same	Same	Same
No. Carolina * [TAB 14]	Same [13 NCAC 7F.0101 incorporates]	Same [13 NCAC 7F.0101 incorporates both]	Same [13 NCAC 7F.0101 incorporates]
13 NCAC 7A.0606 provides minimum training topics, and general training schedules that track fed OSHA			

North Dakota	Same	Same	Same
Ohio	Same	Same	Same
Oklahoma	Same	Same	Same
Oregon * [TAB 15]	Same [OAR 437-002-0360 adopts]	Same [OAR 437-002-0040 repeals the adoption of the federal statute and replaces the EAP with 437-002-0042 and the Fire Prevention with 437-002-0043 - but language is similar]	Same [OAR 437-002-0360 adopts]
OAR 437-001-0765 provides training requirements for Workplace Safety Committee members			
Pennsylvania	Same	Same	Same
Puerto Rico * [TAB 16]	Same	Same	Same
Rhode Island	Same	Same	Same
So. Carolina * [TAB 17]	Same [SCCR 71-1-6 adopts]	Same [SCCR 71-1-6 adopts both]	Same [SCCR 71-1-6 adopts]
South Dakota	Same	Same	Same
Tennessee * [TAB 18]	Same [TCRRR 0800-1-1-.06 adopts]	Same [TCRRR 0800-1-1-.06 adopts both]	Same [TCRRR 0800-1-1-.06 adopts]
			PLUS TCA 50-3-2010 requires training for employees who use/handle haz chem when (1) new employee, (2) new chem (3) new info on chem; annual refresher unless Comm'n'er exempts; see also TCRRR 0800-1-9-.07 (refresher training and minimum requirements)
Texas	Same	Same	Same
Utah * [TAB 19]	Same [UAC R616-1-4 incorporates]	Same [UAC R616-1-4 incorporates both]	Same [UAC R616-1-4 incorporates]
Vermont * [TAB 20]	Same [CVR 24-050-004 incorporates]	Same [CVR 24-050-033 incorporates both]	Same [CVR 24-050-004 incorporates]
Virginia * [TAB 21]	Same [16 VAC 25-90-1910 adopts]	Same [16 VAC 25-90-1910 adopts both]	Same [16 VAC 25-90-1910 adopts]



Washington * [TAB 22]	Same [WAC 296-823-12005 and 12010 similar lang.] except no provision for 90 days after standard in effect, and training may be in person, by phone, or e-mail as long as employee can ask questions and receive answers during  PLUS WAC 296-823-16005 requires employers to advise employees of potential hazards per biosafety manual and read/follow instructions re: practices and procedures	Same [WAC 296-24-567 similar lang. for both]	Same [WAC 296-800-17030 similar lang.]; training for chem. employees will be exposed to during normal work conditions and foreseeable emerg. [WAC 296-800-170]  PLUS reasonable effort to post notices in employees' native language if trouble w/ English; interactive computer or video training allowed
West Virginia	Same	Same	Same
Wisconsin	Same	Same	Same
Wyoming * [TAB 23]	Same [WCWR 025-120-001 incorps]	Same [WCWR 025-120-001 incorps both]	Same [WCWR 025-120-001 incorps]
* Has Approved State Safety and Health Plan			
** State Safety and Health Plan applies to Public Employees Only			

SEXUAL HARASSMENT		
STATE	TRAINING REQUIRED	SPECIFIC REQUIREMENTS
Federal [TAB 1]	SUGGESTED	29 CFR 1604.11(f) "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 developing methods to sensitize all concerned."
Alabama	No	
Alaska	No	
Arizona	No	
Arkansas	No	
California [TAB 2]	YES	Cal. Gov't Code § 12950.1 (Employers with 50+ employees) - 2 hours of classroom or other interactive training by 1/1/06 for - all supervisory employees employed as of 7/1/05 - all new supervisory employees w/in 6 mos of assuming supervisory position (if training was provided after 1/1/03, 1/1/06 deadline does not apply) - After 1/1/06, training required for all supervisory employees once every 2 years  *must include info/guidance re: fed and state statutes on prohibition, prevention and correction of sexual harassment; remedies to victims; practical examples *training shall be part of 80 hours required for supervisors under 19995.4(b)
Colorado [TAB 3]	ENCOURAGED	3 CCR § 708-1, Rule 80.11 "The commission encourages all persons subject to the Act to take 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 the Act, and developing methods to sensitize all concerned."

Connecticut [TAB 4]	YES	<p>Regs, Conn. State Agencies § 46a-54-204 (Employers with 50+ employees)</p> <p>~ 2 hours training by 10/1/03 for all supervisory employees</p> <p>~ 2 hours training for all new supervisory employees w/in 6 mos of assuming supervisory position</p> <p>*must be classroom-like setting, clear/understandable, question/answer allowed</p> <p>*must include discussion of fed and state statutes on prohibition, definition, conduct that constitutes sexual harassment, available remedies, civil/criminal penalties, prevention strategies</p> <p>*see statute for add'l suggested topics</p> <p>*encouraged to conduct update of all supervisory employees once every 3 years</p>
Delaware	No	
Florida	No	
Georgia	No	
Hawaii	No	
Idaho	No	
Illinois	No	
Indiana	No	
Iowa	No	
Kansas	No	
Kentucky	No	
Louisiana	No	

Maine [TAB 5]	YES	<p>26 MRS § 807(3) (Employers with 15+ employees)</p> <p>~ training for all new employees w/in 1 year of employment</p> <p>~ must include information on illegality of sexual harassment, definition under fed and state laws and fed regs, description of sexual harassment with examples, internal complaint process, legal recourse/complaint process w/ ME Human Rights Commission and contact info, protection against retaliation</p> <p>~ additional training for supervisory and managerial employees w/in 1 year of employment that includes specific responsibilities of supervisory/managerial employees, methods to ensure immediate and appropriate corrective action when addressing complaints</p>
Maryland	No	
Massachusetts [TAB 6]	ENCOURAGED	<p>ALM GL ch. 151B, § 3A</p> <p>~ encourages training for new employees w/in 1 year of employment that includes the information in § 3A</p> <p>~ encourages additional training for new supervisory/managerial employees w/in 1 year of employment that includes the information in § 3A(b) plus responsibilities of supervisory/managerial employees, methods to ensure immediate and appropriate corrective action when addressing complaints</p> <p>~ provide employees w/ written copy of policy when hired and annually thereafter</p>
Michigan	No	
Minnesota	No	
Mississippi	No	
Missouri	No	
Montana	No	
Nebraska	No	
Nevada	No	
New Hampshire	No	
New Jersey	No	
New Mexico	No	

New York	No	
North Carolina	No	
North Dakota	No	
Ohio [TAB 7]	SUGGESTED	OAC § 4112-5-05(J)(6) "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 Chapter 4112. of the Revised Code, and developing methods to sensitize all concerned."
Oklahoma	No	
Oregon	No	
Pennsylvania	No	
Puerto Rico [TAB 8]	HINTED	29 LPRA § 1551 -employers obligated to keep work place free from sexual harassment and must *clearly express to supervisors and employees a strong policy against sexual harassment *practice methods to create awareness and make prohibition against sexual harassment known *give sufficient publicity to rights and protection under the law of P.R. *establish adequate internal procedures for complaints
Rhode Island [TAB 9]	ENCOURAGED	R.I. Gen. Laws § 28-51-3 "Employers are encouraged to conduct an education and training program on sexual harassment consistent with the aims and purposes of this chapter for all employees, including, but not limited to supervisory or managerial personnel, on or before September 1, 1997."
So. Carolina	No	
South Dakota	No	
Tennessee	No	
Texas	No	
Utah	No	

Vermont [TAB 10]	ENCOURAGED	21 VSA § 495h -encourages training for all current employees w/in 1 year after 9/30/93 -encourages training for all new employees w/in 1 year of employment that includes the information in § 459h -encourages additional training for current supervisory/managerial employees w/in 1 year of 9/30/93 and for current supervisory/managerial employees w/in 1 year of employment that includes the information in § 459h(b) *must also provide written copies of policies to employees upon hiring
Virginia	No	
Washington	No	
West Virginia	No	
Wisconsin	No	
Wyoming	No	