

FINAL TRANSCRIPT

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****ACC - California Mandatory Harassment Training (AB 1825): Where are we now?**

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PRESENTATION

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Good afternoon, everybody. My name is David Bowman, and I am the head of Morgan Lewis Resources' training organization, and today I'm going to be presenting with Jodi Juskie at Agilent Technologies, and just to kind of start, what we're really going to be talking about today is the new California mandatory harassment training law that's out in California.

And we'd like to give you some guidance today as to some of the challenges that have come up with this law, and also some practical guidelines about how you can best comply with the law, and also get some benefit in terms of reducing litigation risk as well as improving your environment.

Donna Rumberg - *Morgan Lewis Resources - Training Manager*

Thank you. Let me thank you all for attending today's Webcast, and also let you know, my name is Donna Rumberg, and I am the training manager at Morgan Lewis Resources.

Before we begin, I would just like to remind you that at any point during the presentation, if you have questions, please send them directly to me at drumberg - that's all one word - drumberg@morganlewis.com. And I will go ahead and forward them to our speakers.

Okay, so now I'd like to introduce today's presenters. David Bowman, who, as you heard, is Managing Director of Morgan Lewis Resources Workplace Training and a counsel in the labor employment practice group. As Managing Director of Workplace Training, David, along with 15 attorney trainers, develops and delivers interactive training programs to companies across the world.

In addition, he has represented clients in a variety of legal proceedings and has represented employers in discrimination action and wrongful discharge cases in both state and federal courts. Prior to becoming an employment law attorney, David worked as a member of the HR department at Pepsi-Cola Company.

Our next presenter, Jodi Juskie, is an employment law attorney who has been practicing law in Colorado for 14 years. Prior to joining Agilent Technologies, Jodi was an associate at the firm Gibson, Dunn and Crutcher, where she represented companies in all phases of employment litigation.

Since 1999, Jodi has been U.S. Labor and Employment Counsel for Agilent Technologies, a spin-off of her former employer, Hewlett-Packard. Jodi provides advice to management and human resource clients throughout the United States on a variety of issues including harassment, discrimination, leave of absence, disability, workplace investigations and wage and hour matters.

Most recently, Jodi has been responsible for delivering a sexual harassment training program compliant with AB 1825 to over 1,200 managers throughout Agilent.

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So, at this time, please welcome David and Jodi.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Thank you, Donna. All right, let's go ahead and begin. We'll just start off to talk a little bit - hopefully, everybody has printed off the slides that are on the ACC Web site, and we'll start, of course, you'll see slide number one we kind of skipped through, and slide number two, which just discusses Jodi and me.

And let's go ahead and skip to slide number three and talk just quickly about Morgan Lewis Resources. I think the description is there, and Donna already laid that out. The key thing is what we specialize in with regard to training is really in the areas of leader-led training, Webcast training, as well as doing train the trainers for companies, which many of our clients have chosen to do.

As you'll see, following on slide four, we do offer a variety of different courses, not just harassment prevention, which we'll be talking about primarily today, but also a variety of other courses as well. So if you need any assistance, please don't hesitate to give us a call.

Skipping to slide number five, let's go ahead and jump in to some of the basics. I understand that most of you on the line probably are very familiar with AB 1825, and the core of what we're going to be doing today is talking about what are some of the stickier issues that Jodi and I have seen in seeing this law applied, and a lot of those sticky issues have come out of the fact that the law is actually rather ambiguous.

And then we're going to go in to talk a little bit more about how do you get this stuff done? For many of us, it can be a daunting task, particularly if you have a large number of employees, managers specifically, or you're geographically spread out across California, for that matter, even across the country. And so how do you get it done? And Jodi is going to help provide us with some advice as to what Agilent Technologies has done to kind of make that process at least work for them, and that may also work for you as well.

But before we do that, let's talk a little bit about the basics so that everybody's kind of up to speed. So turning quickly to slide six, the first question about this law is who is covered? Well, who has to comply? Well, essentially, the company, any employer with 50 or more employees, contractors or agents sitting in California, that is who needs to comply with this law.

Where they are headquartered is irrelevant. It's essentially whether you have those services coming out of California. And we're going to wrestle with that a little bit, because there are some sticky issues that have come up around that, and we have a hypothetical that we're going to discuss in just a few minutes.

Let's go ahead and skip to slide number seven for our separate question in terms of regard to some of the basics. That is what is required? What does the law require? What it requires is two hours of effective and interactive sexual harassment prevention training for all managers and supervisors.

So, some of the key words that we've been wrestling with in terms of complying with this is what is effective, what is interactive, and also some questions around what constitutes a manager or supervisor in California law. So we'll talk about that in a few minutes as well. But just in the context of laying a foundation, let's go ahead and move to slide number eight, and that is when must employers comply? What is the timeframe?

Well, first and foremost, employers must comply by the end of the year, that is, December 31st of this year, 2005. And then on, they must redo training every other year thereafter. Now, the law does provide for some exclusion for those companies who have recently done harassment training, sexual harassment training, and that is if you've done it since January 1, 2003, then you actually do not have to comply with the law until 2006.

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However, there is kind of a tough question here that we'll wrestle with today. That is, what does the training that you previously did have to contain? Does it have to comply with the exact stipulations of what AB 1825 asks for today, or can it be something less than?

So we'll discuss that issue. Of course, regardless of when you comply, what you do have to do is for any new supervisors or managers that come on board, whether they are lateral hires or they are promoted up through the ranks, they have to be trained within six months of assuming their managerial duties. So please keep that in mind as well.

All right, moving to slide nine, once again, just kind of quickly setting the foundation. What must the course cover? Well, this is a tough point. The law specifically says that it must be classroom or other effective, interactive training. Well, there are those two buzz words again, effective and interactive, but also that it has to be done in a classroom or some other classroom-type setting. So we'll talk about what that is. That really kind of raises the questions as to can you, for example, do Web-based training or Webcast training or videoconference or those types of things.

What also must it include? Well, it must include practical guidance on state and federal laws. So, certainly under California law there is the antidiscrimination law commonly referred to as FEHA, the Fair Employment and Housing Act. That certainly must be discussed in the training, as well as Title 7 must be discussed. And more specifically, you have to discuss issues around the prevention, correction and remedies under those respective laws.

Now, let's talk to the last piece, practical examples of harassment discrimination and retaliation. Well, this is kind of interesting, because what it says is that the examples that are used have to be practical. We usually determine that to be relevant to the actual participant. That might raise some issues for different ways that you may choose to deliver training as well.

All right, let's move to slide 10.

Donna Rumberg - *Morgan Lewis Resources - Training Manager*

David, we do have a question in regards to slide nine.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Oh, good.

Donna Rumberg - *Morgan Lewis Resources - Training Manager*

In regards to remedies, what actually needs to be discussed during the training?

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Well, that's a very good question, and the honest answer is is that the law is silent exactly on the terms of what those remedies - what actually has to be said in the training. At a minimum, as I said before, you would certainly need to discuss the state and federal law, and you would need to also discuss that there are both equitable and monetary damages available to any employee that can establish that they were unlawfully discriminated against in California.

So, at a minimum, those are the remedies that you have to discuss. At the maximum, in some cases, some employers have chosen to go with a litany of exactly what type of damages - front pay, back pay, and so on and so on, emotional distress, punitive damages, et cetera, et cetera.

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And I personally don't think it's necessary to go into that much detail. I think it's okay just to say equitable monetary and we apply some of the remedies that can be obtained by employees who are found to have been harassed in the workplace, and of course that harassment rose to the level of being unlawful under state and/or federal law.

So, let's go ahead and skip to slide number 10 and kind of answer our last questions, just in the context of setting some foundation, and that is, what are the consequences to this law? Well, we found it very interesting, I think both on the plaintiffs and on the defense bar, and the fact of the matter is that this law really has no teeth standing alone. There's really no - it's not very enforceable, because there is nothing in the California law that allows an employee to sue simply for the fact that there was no compliance with the law.

Secondly, the state agency, the Department of Fair Employment and Housing out in California, the law did not condemn the authority to fine or punish in any way any employers that failed to comply.

The only thing that they do have the ability to do is they can issue a written order indicating that said employer did not comply with AB 1825. So on its face, the law really is something that in some ways you may not really have to worry about, but in a practical aspect, in fact we really do. Because the greatest concern for employers that do not successfully comply with AB 1825, either because they don't do training at all, or because they do training that is not satisfactory under the law, the risks actually are rather high.

And the risks come from the mere fact that any future lawsuits that you may have regarding sexual harassment, we are certainly expecting that the plaintiff's bar in California, which is notorious for being very aggressive, is going to be looking as part of their evidence to establish not only did harassment occur, but that the employer did not take steps to prevent harassment. In other words, they didn't comply with AB 1825.

Now, we perceive in the next two or three years, this is going to be a courtroom battle in many ways, really kind of asking not only did the company train, but also what was the quality of the training, what was the quality of the trainers, how was it delivered? Was it interactive and was it effective? All of those types of things are now going to be questions that will be raised in trial, and ultimately questions for the jury.

What we fear the most, of course, and what you should fear is that there will likely be jury instructions that will ask did the defendant employer comply with AB 1825 and the jury will need to decide as to whether he did. The feeling of course is that if it's established that you didn't, that it could be extremely damaging to your case, and that the damages, possibly even punitive damages, could be assessed for not complying. So it's something that we really want to be careful about.

All right, with that foundation kind of laid out, let's get to some of the real tough questions that most people are wrestling with. Starting on slide number 12, which employees are covered? Well, let's kind of explain this. I think it's easier to explain it by using a hypothetical. The ABCD company is headquartered in New York City and has an office in Los Angeles.

In the Los Angeles office, the company employees 40 employees and regularly receives services from around 15 contractors from a personnel agency. So they have roughly about 55 people that they're receiving services from in California. The question is, is the employer covered by AB 1825, and it appears that in fact they are, because what the law is specific about is it's not the number of employees, but is also the number of contractors. So this raises the technical question of who actually needs to be trained.

Remember, the law only requires that managers and supervisors be trained, so it raises the question of do the managers and supervisors sitting in California, managing those California employees have to be trained, or do supervisors anywhere in the company or the world for that matter who happen to be supervising employees in California need to be trained. And the answer is, we're not really sure. Unfortunately, the law is not specific as to what that really means, but it appears, I think in the abundance of caution, and also recognizing that California has expected, not by law, but certainly this guidance is, that there's an expectation in both state and federal law, that companies will be doing training not only for managers and supervisors but also for employees

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as well. And, therefore, we think that it is certainly advisable to be training those managers and supervisors that are management and employees in California, even if they are not specifically residing or living in California.

All right, let's skip to slide number 13 and to kind of hit some of the high points on this. In any of the regularly received services in California from 50 or more employees of the following - that is, employees, independent contractors or agents - clearly comes within the purview of the law. An entity with 50 employees in California, no matter where the employee is headquartered, also arguably is going to come within the purview of the law as well. So its headquarter location is completely irrelevant.

As was mentioned, the last bullet's not clear if the employer is covered, if it has fewer than 50 employees in California, but to be safe, as I just mentioned, it's a good idea to train them.

So let's go look at another hypothetical, and it raises the question as to who is a supervisor, but before I do that, let me just remind everybody that's on the line that we would certainly love to take questions from you as we're proceeding through this presentation. The best way for you to do questions is to actually send an e-mail to Donna Rumberg, and her e-mail address is drumberg@morganlewis.com. And if you send an e-mail there, she'll read those questions over this conference call, and Jodi and I will be able to answer those questions specifically for you.

All right, let's go to our next one on slide 14. Who is considered a supervisor? Well, let's take this scenario. Mary is a senior project manager in the IT department. She does not manage any people directly, but she is regularly involved with cross-functional project teams or task forces. She often has primary responsibility over success of the project, and is tasked with directing how and when the project gets completed. Does Mary have to be trained?

Well, this raises an interesting question as to who is a supervisor, and I think the answer, if you turn to slide 15, actually is right there. That is that the law, AB 1825 specifically, does not specifically say what a supervisor is, but it certainly makes logical sense that what we rely on is the statutory definition of a supervisor under California law, which is defined as follows on slide 15 - an individual with the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them or to address their grievances, or effectively to recommend that action. And so that's a very, very broad definition.

As a matter of fact, I think it's actually one of the broadest definitions under any state law as to what a supervisor is, and so you can imagine in the vast definition, if we were to apply that back to our scenario number one regarding Mary, I think there's a good argument in fact that Mary could be determined to be a supervisor, because even though she does not directly manage anybody, she could very well have an impact on their careers.

She could be certainly directing them in terms of what they are doing on a fairly regular basis. If she were to write leads (ph) out of sort of performance evaluation that was used in deciding promotions or compensation or anything like that, that would strongly suggest that she does in fact have some supervisory authority.

Also, I would draw your attention to the fact that do they have the ability to adjust their grievances. So, if an employee could reasonably - reasonably, that is, see that Mary is someone they could go to to complain about a grievance, I think that that's not conclusive, but that certainly is evidence to suggest that Mary was operating in some sort of supervisory position.

Also, for those of you who have manufacturing environments, sometimes the manufacturing environments, we call them leads. They're not supervisors, but they're leads, and they sometimes look and feel and smell like supervisors. You'll need to be very careful to determine whether they should go through this supervisory training or not.

All right, let's move to slide 16 and look at scenario two, which kind of wrestles in a different way with the issue of who is a supervisor. Louise, who is the Vice President of Sales for a large company, has 1,400 salespeople across the company, 73 of whom are located in California. At her office in Chicago, she only directly manages 13 regional directors of sales, none of whom work in California.

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And here is the question - must Louise receive training under AB 1825. Well, I think here, the law - it becomes a little bit more ambiguous here, because what you have is that Louise is kind of two generations away from the people that she's supervising. Not only is she not sitting in California, but the people who she directly supervises, none of them are in California, and so it does raise the question as to whether she needs to be trained. The law is unclear, but out of an abundance of caution - and in all honestly, what we have done for many years this way, in many jurisdictions, although it's not law, it is expected, is that yes Louise should be trained.

And she should be trained for a series of reasons. Number one, she is arguably, although not a direct supervisor over those 73 salespeople in California, she is an indirect supervisor. She certainly has the power to direct and control, hire and fire and make decisions that will affect their careers.

Secondly, I will tell you from a litigation standpoint, it is horrendous to us when we are defending our clients in court and it's established that training was done for managers and supervisors, particularly in jurisdictions where it was lawfully required, but for whatever reason the company felt that it wasn't necessary to do training elsewhere.

And that becomes somewhat problematic for us to discuss with the jury. It is antsy, or the stakes go even higher, when the people that we didn't train were the senior executives of the company, because it strongly suggests that the senior executives felt that they were above the law. So you want to be very careful with that, and I would strongly encourage you, as we actually do at our firm and our partners', we train everybody for that reason that are directly or indirectly controlling people in California.

What about her directors? Those regional directors, well, of course, as we spoke about before, they certainly need to be trained, since in fact they are not sitting - even though they are not actually residing in California, but they clearly have employees in California.

All right, let's take our next tough questions that we've really seen clients wrestling with, and that starts on slide number 17, and the question reads as this - by when must the training take place? What is the timeframe? Well, let's take another look at another hypothetical.

The Acme Company provided two hours of sexual harassment training to all supervisors in June of 2003. Bob joined the company as a supervisor in June of 2004. Lisa was promoted to a supervisory position in August of 2005. Which supervisors must receive sexual harassment prevention training by January 1 of 2006.

Well, let's go ahead and take them in order, from Bob, Lisa, and, C, all supervisors. First and foremost is the question with regard to Bob. Even assuming that the training done in June of 2003 did comply with AB 1825, we know that Bob was not there in June of 2003. He actually didn't arrive until June of 2004. So our advice is to you is that Bob does need to go through sexual harassment training by the end of 2005 in order to be able to comply.

Now, there is an argument that he may not have to go through until 2006, but we think it's a risky argument, because the law is kind of unclear on that, so we would encourage you to go ahead and train.

Secondly, with regard to Lisa, Lisa was promoted to a supervisory position in August of 2005, and so does Lisa now have to go through - assuming that she was there in June of 2003 when the training occurred, or also recognizing that she actually did not have to go through training because she was not a supervisor at that time in June of 2003, does she have to do it now?

Well, I think, actually, I think employees would be safe if Lisa was not trained by December of 2005. I think there's a good argument that as long she's trained within the next six-month timeframe of assuming her duties or responsibilities as a manager or supervisor, I think that she would then be okay. So what that would push is that she would need to be trained by the end of February 2006, and then she should be fine. And it should fall within that six-month timeframe.

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Finally, as to all supervisors, that is letter C, do all supervisors need to be trained? Well, that raises the question as to what was the quality of the training that occurred in June of 2003? Well, let's go ahead and turn to slide 18 and kind of look at that in a little more depth, because it raises the question as to is your prior training, that in this case June of 2003, is your prior training sufficient? So, if you provided sexual harassment training since January 1, 2003, you do not need to train again until 2006, as long as the prior training met all the requirements of AB 1825.

Now, we strongly believe that that's really what the law contemplates, is that it should be comply with what AB 1825 requires now. So what are some of these key criteria areas? First of all, it's got to be two hours. So if you did 30 minutes or an hour of training back in June of 2003, what needs to happen is you need to do some additional training to get those managers up to two hours.

What I think is certainly acceptable, though, is if you did an hour in June of 2003, and you do another hour now in 2005, I think that that would absolutely be fine. I don't think you need to do another full two hours now just because the first time didn't comply. Who was trained? You need to certainly make sure that all of those managers and supervisors under our definition of what a supervisor is in California who were trained, so revisit when the right people were trained, and also make sure that you look at people who were recently promoted that at a minimum get beyond that six-month cycle.

Third, who provided the training? Well, the law specifically requires that the people who are doing the training have to be experienced and knowledgeable on the prevention of harassment discrimination or retaliation, so make sure we revisit who delivers (technical difficulty). We've received interestingly some somewhat recent information that's just that suggests that this is a very high standard. So if you have people for example on your HR team who are experienced trainers but not experienced in this area of the law, they are likely not going to qualify.

Similarly, if you have HR folks that are fairly new, they haven't really done any significant EEO investigations, they haven't trained on the topic, they're not familiar with handling the litigations, they will probably not qualify. So make sure that you have the right people who are qualifying to do the training.

And then finally, what was the content? What was the content? Well, if you turn to slide 19, it lists out kind of a bullet list of some of the key aspects of what the content should be. That is, it needs to be two hours, it needs to be effective and interactive, it needs to provide information and practical guidance to the learners. It needs to cover relevant federal and state law, explain the prohibitions against and the prevention and correction of sexual harassment, and it needs to include practical examples to instruct supervisors in presenting harassment discrimination. And, finally, it needs to describe remedies available to those victims of sexual harassment. So make sure that that content is accurate.

All right, let's go ahead and move to slide 20, who can teach the course? Who can teach the course? Well, we talked about this a little bit, so I'll go kind of quickly through this slide, but it does raise the question, does the provider possess the knowledge and experience in the prevention of harassment, discrimination and retaliation?

Well, who can definitely lead (ph) the training course? Were convinced that experienced labor and employment lawyers with decent training skills can comply with AB 1825. The HR professionals we talked about, be very careful about who they are. Also, be very weary of consultants. I can tell you, since this law has come into play, you could be amazed about how many people we see now that have started brand-new businesses, and they are advertising that they do AB 1825 training. And I think you really need to look carefully at what their credentials are. I'm sure many of them are fine, but many of them also could raise questions and could cause problems for you at a later date, so make sure that they're qualified.

Also, don't even look in terms of their qualifications but it says does the training provider have - I don't think it's just about their qualifications, but I also would use one more test. I think it's very important when you're looking at the trainer to ask yourself, if they ever have to testify on my company's behalf, are they qualified to do it, and will they present well at trial.

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So I would really think about in terms of how their presentation is, their style, their tone of voice, all those types of things, as to whether they could be credible to a jury, because this could be significant in future litigation.

All right, let's move to slide 21, should we train solely on sexual harassment prevention. Well, the answer to this I think is kind of actually a no-brainer. The law specifically anticipates - the spirit of the law is that they do not want this law to suggest that you should not do other training in the areas of other harassment bases and other protected classes, or any other areas that impact the employee-employer relationship.

So I think it is a good idea to definitely do other types of training regarding not just harassment but more traditional discrimination, unreasonable accommodation, leaves of absences and those types of things.

Of course, in the area of harassment, I think it is advisable, and we actually always do this, is to do not just sexual harassment but other forms of harassment regarding other protected classes. If you look at slide 22, you'll see that the laws, California Fair Employment and Housing Act, suggests that employers such take such reasonable steps, including providing training to all employees on sexual harassment, not just the managers and supervisors. So although these are not specific laws, these are an expectation that - expectation typically from the DADH (ph) that additional training will be done.

Clearly, at the EOC, there are EOC guidelines that encourage employers - not require, but do encourage employers to provide periodic harassment prevention training to all employees, not just the managers and supervisors, as you see on slide 23.

All right, so that takes us to the big question of how do you get this done? And particularly since it is now about to be September, eventually we have about four months left to comply for most of you unless you're qualified that you've done prior training.

Jodi, do you want to take it from here?

Jodi Juskie - *Agilent Technologies - Senior Attorney*

Sure. Thanks, David.

So let's spend a couple of minutes talking about how you actually do get this training done, and if many of you are like I am, the prospect of doing this kind of training for managers globally is probably pretty daunting. It certainly was for me. You have a lot of options to choose from, and more so it seems every day, and so we're going to talk about those options, some of which are more effective than others, but they're all out there and available to you.

And there are several things you need to keep in mind as you're evaluating your options. Let's move on to the next slide. One of the first things that you need to do is identify your goals, and your goals may be different, depending on the size of your organization, the number of people you have in your organization.

One of the first things that you're going to want, in most instances, is for your training to be compliant with AB 1825. Obviously, you are going to be held accountable potentially for your training or your failure to train under this law, and so compliance is probably a primary goal for most of you.

Unfortunately, although we have some guidance as to what actually is going to be considered compliance, there are lots and lots of questions out there that still need to be answered, as you obviously heard from David's portion of the presentation. Certainly, in making my training choices, I decided to err on the side of caution.

So where there were questions about whether a certain methodology was compliant, or whether a certain individual might be qualified to do the training, I made the decision to err on the side of being conservative so that we wouldn't find ourselves having spent a lot of time and effort, put a lot of managers through training, only to find that in the course of a lawsuit a judge

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or a jury, depending on who was making the decision, looked at our training and decided that in fact it was not compliant. And the worst possible circumstance that I can imagine is that in fact our training ends up being used against us, because we either took an easy or a cheap way out.

So compliance was certainly a goal for me, I'm assuming it's probably a goal for most of you as well. Going hand in hand with the training being compliant, one of my goals, and certainly one of yours, I would assume is also that the training is defensible in a court of law.

To that end, there are certain things you obviously need to keep in mind, and David touched on most of these, so I'll go through them fairly quickly, one of which is that the training needs to be two hours in length, and although California has certainly not given us guidance as to what that looks like there are states who have looked at mandatory training requirements and have provided some amount of guidance, Connecticut being one of them, and Connecticut looks at the two-hour requirement as being a two-hour requirement geared towards your fastest learner.

So when they're talking about two hours, they're really talking about a solid two hours of training, if not more than that. The training needs to be interactive, again, a very ill-defined concept, and one that we keep asking ourselves and talking through is whether clicking a mouse and answering some questions on a computer screen is interactive enough, and the bottom line is that it is simply not clear.

One thing that does appear to be fairly clear is that you need to have a means by which you can get your questions answered, so, perhaps, a Web site that you could submit questions to or an individual who's live and personally available in order to answer those questions.

Another requirement is that the trainer obviously needs to be somebody who is qualified, and David has spent some time talking about this. Now, I have to tell you that my interpretation of this law is that this element of having a qualified trainer would seem to me to indicate that the law's preference seems toward having a leader-led type of training, or at least training where there is a live person who is available to respond to questions and to talk through some of the grayer areas, as opposed to software, that is simply available for an individual to work through.

And then, finally, in order to have defensible training, you need to make sure that you have practical examples, clear, practical examples of issues that might arise under state and federal law and that you can allow the employee population, the manager population, to work through those examples.

Another goal that you might have is cost effectiveness. Obviously, there are lots and lots of different ways of doing this. Some are far more costly than others, and you need to be thinking about cost not just in terms of the dollars that you're going to spend, but obviously human resources, so the amount of time that either your in-house attorneys or your human resource professionals are going to be devoting to conducting training or perhaps developing training, depending upon what your organization decides.

We can go to the next slide, here. There are a variety of different training methods that are available to you, and I'm going to go through the listing of them here. One of them, the first one, is the classroom or leader-led training.

Now, I certainly think that this is an ideal solution. Probably one of the best solutions for your organization is one that can allow for you to do that. There are certain advantages to leader-led training, one of which, and I think it's a really important advantage, is that it keeps people engaged.

When you've got somebody standing in front of you, asking questions, calling on people and interacting directly you're not going to have people who are as likely to be looking at their laptop, checking their cell phone and doing a variety of other things that many of us do when we are involved in training that isn't actually sitting in a classroom.

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Now, in order to achieve that advantage, in fact, you probably need to have a fairly small classroom setting, so having groups of hundreds of people in a classroom probably waters down that particular advantage. So given that you're looking at a fairly small group of people in a classroom, one of the disadvantages of this type of training is that it can certainly be fairly costly. Your organization may be fairly large, so you may need to set numerous classes, or it may be geographically dispersed, and in that case, it may be simply impossible for you to have that kind of classroom leader-led training.

Some things to make sure that you consider, depending on who is actually doing leader-led training or classroom training are to make sure that the content that you are delivering is not simply generic content that you purchased from a vendor, but in fact that content is customized to your organization, so it includes information about our policy. It includes information about reporting procedures and what to do if you experience retaliation.

You also will obviously want to make sure that you're checking the credentials of the individuals who's leading the class and make sure that they do qualify as an experienced trainer under the law.

Another option that may be a good option for you is the Webcast. The Webcast I think of as the ability to provide leader-led training in a virtual environment. So one of the advantages is that it can be delivered at any time to people in really any location, and that you can structure a Webcast such that you actually have a great degree of interaction.

In fact, one of the things that I might recommend to you if you were to consider doing leader-led Webcast training is that you make sure that you have a list of attendees sitting in front of you. So your leader is able to see who is on the line, where those people are located and can in fact call on people directly through the Webcast.

One of the things that that can do for you is take care of, frankly, one of the disadvantages of a Webcast, and that is the multitasker. If you're calling on people, they're going to realize pretty quickly that they can't afford to be disengaged from this training, that they actually may find themselves with their name being called during the Webcast and they actually have to respond to a question or discuss an issue, and so it tends to keep people a little bit more engaged.

Now, one of the disadvantages, obviously, to a Webcast, is there are some people who will never be fully engaged. They may be checking a cell phone. They may be checking e-mail on a Blackberry or doing other work as you're moving through the Webcast, and it's very difficult to monitor that.

While you can certainly monitor attendance, usually through technology, you can monitor the number of people that are actually online or connected onto a Webcast, you can't generally see how engaged they are and you don't have as great an ability to alter your training or to try to get those people engaged. So that certainly is a disadvantage. Some of the considerations you should think about, you need to develop a training format that does keep those employees engaged. You need to figure out how to include polling questions, perhaps, or activities that are a part of the Webcast.

You need to make sure that your leader is an engaging individual and has energy that comes across. Sometimes you have people who are great leaders or great trainers in person who on a Webcast lose their energy and they just don't come across with the same level of energy, so you want to make sure you've got somebody who's energetic and engaging in that context.

And, again, I cannot overemphasize, to the extent that you can include means by which people can be called and can be forced to interact, you're going to have people who are continuing to be engaged, even on a Webcast.

Computer-based training I'll talk about a little more in a minute here, because that is certainly the method of training that I've seen most people gravitate to, in part because of its apparent ease. There are certain advantages over taking advantage of the various Web-based trainings or computer-based trainings that are available. Obviously, one of those is that people can do it on their own time, but there are also some disadvantages, and I'll discuss those more in detail.

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Videoconferencing is sometimes an option. There really are kind of two methods of videoconferencing that you might consider. I think both of them have their flaws. The first is what I would sort of refer to as the talking head methodology, and that would be an individual who is not actually teaching in front of a larger classroom but is in fact focused on the videoconference environment. And so you've got an individual who is really speaking out to a virtual audience.

That's probably the better of the two videoconferencing options, because that individual at least is going to be focused on all of those people in that virtual environment. Depending on how good your videoconferencing technology is, you may actually have the ability to see which people are disengaged and try to work on reengaging those individuals, so that's certainly one option. Again, you need to be thinking about the content, making sure that it's customized and making sure that you've got an engaging and well-qualified trainer who's doing this.

A second videoconferencing option is really having people dial into a live classroom where the trainer is actually doing a class for a group of people who are in the same geographic location. I think that has some serious disadvantages attached to it.

For the most part, that trainer is going to be focused on that live classroom environment as opposed to those people in the virtual environment. Those people tend to become observers. There's very little engagement with those individuals, and I think you're going to lose effectiveness in terms of being able to get those people engaged. And then, finally, there's the video, and with the video, you are really simply rolling the tape and asking people to take a look at that tape.

In most instances, there will be no ability for people to ask live questions. You may have a Web site that you can send people to, and so at the end of the day, I think you're going to actually end up delivering training that is probably not compliant, but as well may not be effective, and that will certainly be a problem, and probably not meet one of your goals.

In fact, one of the things that I failed to mention when we discussed various goals that you may have in delivering training is simply effectiveness. Having compliant training is obviously a must and obviously a high goal for most people, but having training that is effective and actually prevents the behavior that we're concerned about is probably one of your goals and should be one of your goals.

In fact, I think you actually probably make your situation worse if you've got an individual who's been accused of some bad acts who has sat through AB 1825 training, obviously failed to get the message that you were trying to deliver. I think what ends up happening under those circumstances is that first of all the effectiveness of your training is immediately suspect, and secondly, it may appear that your bad actor was in fact intentional or willful or malicious in their behavior, and so it actually may make your situation worse than if you'd never provided any training whatsoever.

So I think the video, pure video training, is probably not only not very compliant, it's probably not effective either.

Moving to the next slide, let's talk a little bit more about computer-based training. And I'm calling this one out specifically because it really has a great lure for a great number of people. Again, it is easy, or at least it appears to be easy at the front end. It's something that you can put in place once, give people access to it. There's usually an ability to monitor the fact that people have attended the training, and so it sort of seems like the perfect solution, especially if you can provide any insight in which people are asking questions.

But the real question that's come up along the way is computer-based training going to be considered compliant? And, unfortunately, the answer is, we simply don't know at this point. There are some things that you need to consider, and one of those things is whether the CBT, computer-based training, is going to be considered effective.

Now, I don't know about all of you, but I'm going to sort of put out there my true confession, and here at Agilent we do have a number of training requirements, many of which are offered in computer-based form. And I know that when I am up to go ahead and review one of our various computer-based trainings, I tend to find I try to get through those as quickly as I can.

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In many instances, it's training that I've taken before. Sometimes, it's training that I actually deliver, but because I'm an employee of the company, I have to go through the computer-based version as well. So I flip through that training as quickly as I can get through it, pressing buttons along the way, figuring out how to get the right quiz score and getting on to the other things that I need to do in my day. And I think that's the way a lot of people view computer-based training.

In that particular circumstance, if that's happening, you're going to have two problems that you find yourself with, one of which is the individual who is participating may not actually meet the two-hour requirement. The other, of course, is that they probably haven't learned a whole lot along the way, so effectiveness is going to be called into question.

The second is whether it's really interactive. Again, we just don't know whether computer-based training is going to be deemed to be interactive enough to meet the requirements of AB 1825. Some say that if you include polling questions and quizzes and a means by which people can get questions answered, that will be sufficient.

Others say if you've got a question about a gray area, you don't have anybody immediately available to ask those questions, and if somebody has to sit down and actually go to a Web site to send a question, remember which slide the question was about, set up the context for the question, most people aren't going to do it. And so in many instances, through computer-based training, people's questions, when they arise, aren't going to be answered.

I think another issue that you may have is that sometimes the computer-based training is unclear in its content and it doesn't give you an ability to ask clarifying questions as you're moving through.

The third issue, and this one was a big one for me as I evaluated computer-based training was the two-hour requirement. Again, if California interprets the two-hour requirement like Connecticut did, it's going to be two hours geared toward your fastest learner. It's going to be awfully hard to create a computer-based training session that will be two hours in length for the fastest learner. It's going to be a long session for the vast majority of the rest of the population.

So what you're going to find yourself with is in most instances people who have gone through the computer-based training that's available, who may have completed the training in an hour and 20 minutes, or maybe an hour and 45 minutes, it may be different for every person who takes the training.

And at the end of the day, you're going to have a list of people who attended, but have not actually completed the two-hour requirement, and you're going to be left to figure out how to fill in that gap.

And so for my own purposes, I realized as I was evaluating computer-based training that although it seemed like an easy solution on the front end, there was probably a lot of work that I was going to need to do on the back end to both monitor those who have attended the training, how long they were there, and to try to figure out what the backup solution might be.

And then, again, you have to make sure that the trainer is somebody who has knowledge and experience. In this particular case, the question that comes up is who actually is the trainer here? There is no live trainer. Is it the person who put together the program, or is this law really requiring that there be a live person available in every training session. Again, we don't know the answer to that. I've erred on the side of being conservative and have said yes to that question.

Training to classroom delivery methods on slide 28. There are actually a variety of ways to deliver this training in a classroom, as well, and I want to go through a few of those with you. One is by use of an outside vendor. In that particular case, you need to think about a couple of things. You want to make sure that you're not purchasing generic training off the shelf that does not take into account the peculiarities of your particular environment.

So I think if you are using an outside vendor, you need to use an outside vendor who is willing to customize their training and customize it to include your policy, your reporting procedures, your policy on retaliation, and make sure that the examples that

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are being represented in the course of the training and discussed in the course of the training are examples that are relevant to your particular population.

Again, the downside of this is that it may be fairly costly for your organization. Again, I can't emphasize enough David's previous point that since this law has come into effect, there are a lot of consultants that have popped up along the way. I have no idea what they've done previously or how they qualify as trainers in this regard. That's something you need to really seriously evaluate before you would select a vendor.

The second classroom delivery method is a train the trainer method, and that may be using an outside vendor and their particular package to train your people in house to then deliver the training to your managers. In that case, you've got all of the same considerations you might think about in looking at outside vendor-led training, but in addition to that, you need to make sure that the people who are delivering the training in your environment are qualified people.

The in-house delivery and design method, you probably don't have many concerns at that point about customizing the training to your particular environment, because it will obviously have been delivered in house, or developed in house. You obviously want to make sure that the people who are delivering the training and developing the training are qualified to do so and that the training content is compliant with AB 1825.

The downside of this training in particular is, depending on the size of your organization, it may be an enormous sink of time for the resources involved, both in development in the training and as well in the delivery of the training, so those are things to consider as you're thinking about using in-house delivery and design methods.

And then finally, there are public seminars that are popping up. This is probably the least desirable of all of the types of classroom training. Generally, they're going to be done in a very large setting. You may have sometimes hundreds of people. That certainly is going to cut down on interaction. The customization will certainly not be there. It is going to be a generic form of training. The vendor may be talking about a policy that your company may have, or how your company may engage in reporting procedures or what your company may say about retaliation, but obviously none of it will be specific to any of the individuals sitting in the room, nor will the examples be specific.

Again, I think you run the risk that when you're sitting in one of those large settings, you're going to have a bunch of people who are multitasking and doing other things and are not terribly engaged in the training that's being presented. So I think that's the least attractive of those alternatives.

So what should you do? Probably a blended solution is the best solution. In your environment, you may have certain groups that you can pull together and you can actually conduct live training in a classroom where people have a chance to ask questions. You may need to provide some virtual training, maybe through a Webcast, to people who are sitting in remote locations. But the best alternative is probably not to stick to a single methodology, but look at the variety of solutions that may work best in your environment.

Moving to slide 30, some other things that you might want to consider. You want to make sure that your training is not overly legalistic. So it's something that people can understand and walk away from. When you think about it in sort of the broader and maybe most simple terms, you want your managers to walk away from this, understanding what they should do or not do, what they should say or not say, and what kind of behavior they're expected to model on a day-to-day basis. Legal terms aren't going to provide them with that, so you want to provide them with practical examples. You want to help them work through the gray areas.

Most of them can fairly easily respond to extremes, but it's the gray areas that tend to hang people up, and so that's where you probably need to focus the vast majority of your attention. You want to make sure that the program is available in languages other than English. To the extent that you have managers that are sitting in countries other than the U.S. who may be managing

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California employees, you want to be sure that they are able to take away the right message from your training, and you may need to offer the training in languages other than English.

And then, finally, you want to make sure that your program is obviously available to individuals with disabilities, not just for the purpose of making sure that you're compliant with the Americans with Disabilities Act, but again, to make sure that these people are actually getting the message that you're trying to send.

Finally, I wanted to give you just a quick story, quick run through, of my experiences when I was trying to figure out how to conduct this training at Agilent. I first started looking at this back in the December of '04 timeframe, and in doing so, I took a look at the size of the population that I was going to have to get trained and realized that I was looking at 1,200 managers globally. As you might imagine, my heart stopped for a moment as I realized that I had a fairly large task in front of me and tried to figure out how to do it.

So I went through the various options that we've reviewed here. The first thing I considered really was the computer-based training. Again, the lure of putting a package out in front of people, letting them log on as they choose to and all I really was going to have to was follow up and nag people to do the training was really, really attractive to me.

At the end of the day, however, I realized in evaluating the various packages that were available, that there really wasn't a great means to make sure that the training was a full two hours worth of training. And what I realized was that at the end of it all, I was going to have to closely monitor each and every individual who took the training to find out how much time they spend, and then to come up with some sort of solution to fill in the gaps for those who actually hadn't completed the full two hours worth of training. And suddenly what seemed like an easy solution at the front end really looked like a fairly complicated solution for me in the long term, so I rejected that.

I also looked at doing an in-house developed and delivered type of training. Here at Agilent, we have four labor and employment attorneys, and my initial vision was to have the four labor and employment attorneys really develop and deliver this training with the help of David and his team at Morgan Lewis. The thought that I had was that if we could prerecord most of the content, we could have one of the labor and employment attorneys available on a phone to answer questions and to discuss some gray areas.

Well, in looking at the means for developing this, I realized we were not going to really have an ability, if everything was going to be prerecorded, we really weren't going to have an ability to talk through gray areas and examples. We could certainly provide some discussion of examples, but it wouldn't be an interactive discussion, it would be us simply talking at these managers. And the more I thought about it and the more I looked into it, that that interactive discussion was really what was going to make our training effective, and it was certainly going to be the erring on the side of conservative that I talked about earlier in terms of compliance, and I wanted to make sure that our training was both effective and compliant.

So I was a little bit concerned about this rolling a tape method. It was kind of like the video method that I talked about earlier, but without the visuals attached to it. It was just an audio method.

In addition to which I realized that this was going to be an enormous time sink for the four labor and employees. With 1,200 people, we were going to have to offer this session over and over and over again over the course of this year in order to make sure that we were offering the sessions at times that were convenient for our 1,200 managers so that they could all attend.

So once I realized that we were really not going to be able to simply push a button and record training and then just be available to answer questions but were in fact going to have to be on the phone, delivering the training, time after time, and interacting, I realized that we first of all didn't have the kind of time to develop that kind of training, to get ourselves to a place where we were expert enough in the training methodology to be able to deliver it effectively. And, just simply the amount of time was too much for the four resources we had internally.

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And so what I ultimately ended up doing again in working with Morgan Lewis and David and his team was to develop a Webcast methodology of training. What we have done is use Morgan Lewis trainers to deliver the material over Webcasts. They are live as we are delivering this material, so the participants are viewing slide sets that are moving in front of them on their computer screen, but they are hearing, at the same time, an individual how is life in the moment doing the training.

The trainer that we've been using is extremely dynamic and energetic. She has a list of attendees in front of her and she will call on Bill in Sydney, Australia, can you help me out with this question?

And Bill gets on the line and Bill helps her out with the question and talks through it, and it's been amazing to me how engaged the population has been. So Bill may answer the question and then we'll get three other follow-on questions or comments from people, frankly, all over the world. So it's been an extremely effective means of doing the training. We've offered it at several different times during the course of the day and several different days over the course of the month.

Currently, we've managed to develop a training that includes our policy, it includes our reporting procedure, and there's a lot of discussion about hypotheticals and gray areas, and we've I think been very successful in helping our managers work through what kind of behavior we expect of them here at Agilent. Of the 1,200 managers that we have, we've probably got about 400 of them that have been trained, and really with wonderful, glowing evaluations from those people who have been through the training.

In fact, most of them, as you might imagine, were dreading the thought of two hours worth of Webcast training, and the vast majority of them have gotten off and are telling their friends and family members that it was not only worth doing, but it was a fun process to go through.

One last comment that I'd like to make, and then I'll turn this back over to David or to all of you for questions, is that we actually also made a decision here talking about the blended solution to train our executive team, and that is our CEO and his immediate staff, in a live session that was conducted by David.

And we decided to do that not only because these are busy folks, and getting them all together and getting them to get on a Webcast was going to be awfully difficult, but because we wanted to set a tone early that said this is important and this training is endorsed by this executive team and that they are going to be modeling this behavior. And our CEO was very clear about that fact, about the fact that our tolerance for inappropriate behavior is very low, and that this is critical that people understand this and they model this behavior.

And so it's also been really helpful for us as we've gone through this training with managers to be able to say, well, when we did the executive session, here are the kinds of things that came out of this, and here's the kind of discussion that came from the CEO and his staff, because it really drives the point home with the managers that this is critical, and if you're out there playing with your Blackberry while you should be paying attention to what's going on here, this might be a good time to stop. Because you had to explain to somebody why it was important enough for our CEO to go through, but it's not important enough for you to go through. So the blended solution worked very well for us.

QUESTIONS AND ANSWERS

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Great, thank you, Jodi. Let's now turn to kind of our question and answer period, and, once again, if you have any questions, please e-mail those directly to Donna Rumberg at drumberg@morganlewis.com. And, Donna, are you on the line?

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Donna Rumberg - *Morgan Lewis Resources - Training Manager*

Yes, I am. We do have some further questions. The first question is will training that complies with AB 1825 also comply with similar training requirements for other states - for example, New Jersey or Connecticut.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Yes, I think that's a critical question, and as Jodi just talked about, in some ways we don't necessarily know. There are, at least under California laws, ambiguous as to whether AB 1825 is going to allow Web-based training for many of the reasons that Jodi suggested. I do think that - it's also unclear actually under New Jersey as well.

I will tell you, in the state of Connecticut, the state of Connecticut does have as part of their law, but as an advisory opinion, that AB 1825 is acceptable - I'm sorry, not AB 1825. That Web-based training, or commonly called computer-based training is acceptable to comply with the Connecticut law, as long as it meets a series of requirements.

Now, two of those requirements that a lot of companies double over is, one, is it interactive? That is is that the Connecticut is very specific that people need to be able to ask questions and get those questions answered in a very quick period of time.

Now, what I thought was interesting as I talked to a few of the e-learning providers and asked them, when you set up the online solutions and you have like an 800 number the last slide of the presentation that people can call and ask questions, how many employees actually ask questions. And I did ask the president of one of the major kind of vendors, and his response was very, very few. We hardly ever get questions.

So I think that does kind of question a little bit as to whether it's acceptable. The other challenge, of course, that needs to comply with the Connecticut law is that it has to be two hours to your fastest learner, to your fastest participant, and so I think that that becomes a challenge.

So, really, what they do is they'll look at the program and they'll take a very talented, fast-reading labor and employee attorney that can whiz through this thing, and it's got to take them at least two hours. So those are some of the challenges, but yes, Connecticut, as long as those challenges are met with the others or in the advisory opinion, it is acceptable.

Donna Rumberg - *Morgan Lewis Resources - Training Manager*

Okay, and we do have a second question, and it's along the lines of Web-based training. What is your view on Web-based training courses in this area?

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

I think it's - Jodi, I don't know if you have anything to add. I think that's kind of a similar question to what we've been discussing that may have already been answered in many ways. I definitely look at the arena - if you put the arena of different options on a kind of a continuum, that is, leader-led classroom training on one side, and computer-based training on the other side, clearly, the advantage is computer-based can be logistically easier and sometimes a little less expensive.

And leader-led is highly interactive. Most training professionals will tell you that the best way to train in terms of for effectiveness, but it does have some logistical and cost challenges to it that I think that Webcast training really fits right in the middle, that it gives you a lot of those benefits that people don't have to be on planes to go to your training.

Like Jodi mentioned, for Agilent, we are literally training - we are using Webcasts to train in four separate continents around the world, and so I think it's really effective, and yet it is more interactive because you have a live person. It's much more interactive

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than what you will find in computer based. And we do get numerous questions that come up during our Webcast training. So whether it's to us or it doesn't have to be - even if you're setting up a Webcast on your own, I think that's a good option to look for.

Jodi Juskie - *Agilent Technologies - Senior Attorney*

And, David, I would actually add to that, I have been shocked by how interactive this training has actually been. We have continuously - we've set up three hours for the training, and we have continuously tried to pare it down to about 2.5, and I think in terms of delivery of the content we're able to do that, but the classes have almost, to the class, gone for the entire three hours. And it's been because people have questions and they want to continue asking questions, so we have really had people who are very, very engaged in this, and it's come through loud and clear on the evaluation.

So I personally think that this Webcast methodology is one that can work and can work extremely well and can save you a lot of money in terms of putting people on planes and getting them out to a place where you're doing live training and eliminate much of the concern that I had about the computer-based training.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Donna, any other questions?

Jodi Juskie - *Agilent Technologies - Senior Attorney*

No, I think we've answered all the questions that have come in.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Okay, very good. Well, I think we are actually right on time. It's 4:03. Karen (ph), did you have anything to add?

Unidentified Company Representative

No, nothing to add, thank you.

David Bowman - *Morgan Lewis Resources - Managing Director, Workplace Training*

Well, as you can see in the presentation, you certainly have my address as well as Jodi's address. If you have any questions, certainly feel free to shoot us an e-mail or give us a call, and thank you very much for participating today, and we will look forward to possibly working with you soon.

Take care.

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