

Protecting Your Exemption Under California's the Fair Employment & Housing Act (FEHA)¹

FEHA recently tightened its requirements regarding sexual harassment training of employees so that by 2020, virtually California employer will be required to provide a minimum amount of training to their employees and document that the training occurred.

Some within the religious community have asked the question as to whether or not this new provision will apply to their organization. The answer is maybe, but not likely.

Here's what You Need to Know

- FEHA's anti-discrimination provisions apply to employers operating in California. For purposes of the ACT, an "employer" is defined as any person who employs five or more persons, subject to certain exceptions.
- Cal. Gov. Code § 12926(d) states that a "religious association or corporation not organized for private profit" is not an "employer" for the "unlawful practices" provisions of FEHA.
- Effective January 1, 2002, section 12926.2(f) was added, expanding the definition of "employer" to include religious non-profit educational institutions that are: organized as nonprofit "public benefit" corporations; formed by, or affiliated with, a particular religion; and operate an educational institution as its sole or primary activity.

So be careful. If you are organized under the "public benefit" section of the California Corporation Code, regardless of your actual activities and mission, you would likely be subject FEHA and the new training provision.

Court Challenges

Henry v. Red Hill Evangelical Lutheran Church (2011) 201 Cal. App. 4th 1041². In that case, the Court upheld the exemption when it found the school was part of the church's ministry, did not exist as a separate legal entity, was on church property and was adjacent to the church.

A 2017 court case heard in San Francisco Superior Court also supported the exemption. However, because of certain conduct on the part of the school, the judge and jury ruled that the school, by its conduct, waived its right to assert its religious entity exemption from FEHA.

Want to learn more?

On March 28, 2019, Ms. Rona Layton will once again be with us in San Jose to provide you

¹ FEHA an acronym for the **Fair Employment and Housing Act**, which is codified in the California Government Code beginning at section 12920. A main provision of FEHA is section 12940, which prohibits certain unlawful employment practices

² <https://caselaw.findlaw.com/ca-court-of-appeal/1587987.html>

with the latest information on employment regulations you need to be aware of. This would be a perfect time for you to explore this issue further to learn more about how you can protect your exemption under the law.

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