



LEGAL BRIEFING

California Employers Faced with New Requirements for Sexual Harassment Training

By Allison Martin Nelson

Beginning January 1, 2005, California employers that regularly maintain at least 50 employees must abide by new sexual harassment training requirements.

Government Code Section 12950.1 requires that employers provide sexual harassment training to supervisors. The statute itself does not define “supervisor,” but the Fair Employment and Housing Act states that a supervisor is a person having authority to “hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them, adjust their grievances, or to effectively recommend that action, if the exercise of that authority...requires the use of independent judgment.”

Prior to January 1, 2006, employers must provide a minimum of two hours of interactive sexual harassment, discrimination, and retaliation training for its supervisors. Only supervisors who received training from their employer between January 1, 2003, and January 1, 2005, are excused from this training if that training meets the requirements of the statute. All newly hired or newly promoted supervisors are required to participate in at least two hours of harassment training within six months of their hire or promotion. As of January 1, 2006, employers are required to provide at least two hours of training for all supervisors every two years.

The new law also provides a statutory standard with respect to the substance of the sexual harassment training. The training must be provided by an educator with knowledge and expertise in harassment, retaliation, and discrimination. The training must include information concerning sexual harassment laws and detail the type of behavior that is prohibited, as well as the remedies that are available to employee victims of harassment. Additionally, the training must be “interactive.” While the term interactive is not defined, this requirement likely means that the trainer should at a minimum provide a question-and-answer session.

It is important to note that the statute does not mean that California employers with less than 50 workers are exempt from sexual harassment liability. These employers still must take “reasonable steps” to prevent harassment. While the detailed substance training requirements of the law do not apply to these companies, smaller employers would be advised to provide informative harassment, discrimination, and retaliation training to all of their employees.

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Growth in Condo Conversions Raises Concern Over Construction Defect Liability

By Gregory L. Dillion and V. Alan Bergfeld

It seems everything these days is going retro, and the construction industry is no exception. Many developers are reviving the decades old technique of converting existing apartment units and commercial buildings into for-sale condominiums. Even though condominium conversion was popular in the 1980s, the construction defect liability case law for developers doing conversions is not well established.

Some of the issues that present themselves include the liability of the original builder of the building (and his subcontractors)

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Civil Litigants Helping to Balance State Budget

By Jay B. Freedman

Those who are currently prosecuting a claim for punitive damages may actually be working for the state. This “unintended consequence” arose out of an effort to help balance the state budget, in which the California legislature appropriated 75% of punitive damage awards obtained through July 1, 2006 to the state’s Public Benefit Trust Fund.

Civil Code Section 3294.5 was enacted as urgency legislation to address “extraordinary and dire budgetary needs.” However, the relatively short life-span of the code section will limit its benefit to the state. As it currently stands, the statute only applies to actions filed after August 16, 2004, and finally adjudicated (including all appeals) prior to July 1, 2006. Thus it is unlikely that many lawsuits seeking punitive damages will progress from filing to trial court judgment to conclusion of all appeals within the timeframe of this section.

The code section is also not without its ironies. Once the judgment is final, the judgment debtor is required to pay 75% of the punitive damages to the Director of the Department of Finance and the remaining 25% to the plaintiff’s or cross-complainant’s attorney. To add salt to the wound, the judgment debtor must also notify the creditor’s attorney of the amount paid to the Public Benefit Trust Fund. But all is not lost for the successful attorney, who is also entitled to 25% of the amount provided to the Trust Fund, though the payment is not automatic. The attorney must file a claim and wait until July 1 of the next fiscal year.

Given its short duration, the statute’s likely effect will be minimal. However, don’t be surprised if the legislature extends the term of the statute if the budget-deficit crisis continues.

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We are pleased to announce that *Los Angeles Magazine's* annual survey recognized **Greg Dillion** as one of Orange County's "Top 50 Super Lawyers" and **Tom Newmeyer, John O'Hara, and Tom Reilly** as "Super Lawyers." The publication also recognized **Joe Ferrentino** and **Joan Mayer** as "Orange County Rising Stars."

Jay B. Freedman and **Dwight C. Hirsh**, resident in the firm's Newport Beach office, have been named partners. Freedman concentrates on business and construction litigation, and has been the lead attorney representing developers in numerous complex litigation cases. Hirsh's practice focuses on residential and commercial real estate transactions, as well as real estate development, construction law and general corporate matters.

Louis K. Raymond has joined the real estate transactional practice as Of Counsel in Newport Beach, where he will emphasize retail leasing. Raymond most recently was executive counsel with The Walt Disney Company in Burbank.

Jane M. Samson, a transactional real estate partner in Newport Beach, has been elected president of The Orange County Forum for the second consecutive year. The non-profit group is one of the premier non-partisan current-affairs organizations in California.



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and the liability of the condominium converter (and his subcontractors).

A great deal depends on the timing of the lawsuit. In an area that is murky at best, one clear result is that the original builder of the building cannot be sued by the condominium purchaser for construction defects more than ten years after the initial

construction of the building. The fact that the building was converted to condominiums by someone else does not serve to extend the original builder's liability to the new condominium owners.

If the ten-year statute has run, the condominium owners are left with a lawsuit against the condominium converter. The owner can assert causes of action for violation of statute (e.g. Civil Code Section 1134), nondisclosure, breach of warranty, and negligence. The liability of the converter for negligence will depend on the amount of work undertaken in the course of the conversion. For example, if only minor refurbishing, such as new paint and carpet, was performed prior to selling condominiums, it is unlikely that any cause of action would stand against the condominium converter for construction defects.

If, on the other hand, significant reconstruction has been performed as part of the conversion, it is likely that the courts will consider the conversion process a "development or improvement" and the ten-year statute of limitations will begin to run at the completion of that improvement. Condominium owners would be able to assert causes of action for negligence and, if appropriate, breach of express warranty. In the event the condominium converter is sued for the negligence of the original builder or his subcontractors, the complaint against the converter would be barred by the ten-year statute of limitations.

There is presently no legal authority that would impose strict liability or implied warranties on isolated improvements to a pre-existing building, nor does the converter presently have a duty to undertake an exhaustive investigation to discover and disclose existing defects to purchasers. These are issues which can be expected to be litigated in the future.

Greg Dillion is co-founding partner and practices in the Newport Beach office. He specializes in the representation of developers, institutional lenders, general contractors and other businesses in complex business, construction and insurance-coverage disputes. He may be reached at greg.dillion@ndlf.com. Alan Bergfeld is an associate practicing in the fields of business, construction and real estate litigation. He may be reached via e-mail at alan.bergfeld@ndlf.com.

About Newmeyer & Dillion LLP

Newmeyer & Dillion LLP, originally formed in 1984, is comprised of creative, highly motivated business attorneys who possess outstanding credentials, training and experience in their respective fields of practice. The firm represents a wide variety of clients, which include national and local financial institutions, real estate development companies, manufacturers and service organizations, as well as individuals.

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