REPORT TO AUDIT COMMITTEE

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Staff Report
June 12, 2012

Honorable Members of the Audit Committee

Title: *Audit of the City's Compliance with AB 1825 Requirements*

Location/Council District: Citywide

Recommendation: Accept the Auditor's *Audit of the City's Compliance with AB 1825 Requirements* and forward to City Council for final approval.

Contact: Jorge Oseguera, City Auditor 808-7270

Presenters: Jorge Oseguera

Department: Mayor and City Council

Division: Office of the City Auditor

Organization No: 01001201

Description/Analysis

Issue: This audit was incorporated into the 2011-2012 Audit Plan by the City Auditor. According to City Code Chapter 2.18, the City Council should be kept apprised of the City Auditor's work. The Audit Committee shall receive, review, and forward to the full Council the City Auditor's updates and reports.

Policy Considerations: The City Auditor's presentation of the *Audit of the City's Compliance with AB 1825 Requirements* is consistent with the Mayor and City Council's intent to have an independent audit function for the City of Sacramento.

Environmental Considerations: None.

Sustainability Considerations: None.

Rationale for Recommendation: The report includes one finding and makes nine recommendations to help improve the City's compliance with the requirements established by AB 1825.

Financial Considerations: The costs of performing this audit were funded out of the 2011-12 Office of the City Auditor Budget.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.

Respectfully Submitted by: _____
Jorge Oseguera, City Auditor

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Attachment 1

CITY OF SACRAMENTO
CALIFORNIA

Office of the City Auditor
Jorge Oseguera, City Auditor

June 7, 2012

Honorable Mayor and
Members of the City Council
915 I Street - Fifth Floor, New City Hall
Sacramento, CA 95814-2604

Enclosed is the *Audit of City's Compliance with AB 1825Requirments*. We conducted this audit in accordance with generally accepted government auditing standards and City Code Chapter 2.18.

The report contains one finding and makes nine recommendations for improving the City's compliance with the requirements established by AB 1825. The written response to this report is found on page 11. I will present this audit at the June 12, 2012 *Audit Committee* meeting.

We would like to thank the Human Resources Department, Fire Department, City Manager's Office and City Attorney's Office for their assistance and cooperation during this audit.

Should you have any questions, please feel free to contact me.

Respectfully submitted,

Jorge Oseguera
City Auditor

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Attachment 2

Report # 2012-02

Audit of the City's Compliance with AB 1825 Requirements

Approximately 16 Percent of Employees Required to Complete AB 1825 Sexual Harassment Prevention Training Did Not Complete the Training Within the Reporting Period

Jorge Oseguera
City Auditor

Office Of The City Auditor
June, 2012

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Introduction

In completing our recent Assessment for Establishing a Whistleblower Hotline, it came to our attention that many City employees might be out of compliance with Assembly Bill (AB) 1825. This law requires that supervisors complete sexual harassment prevention training every two years. As such, we initiated a limited scope audit to determine the City's compliance with AB 1825 and recommend any necessary changes to City practices to ensure future compliance.

We have completed an *Audit of the City's Compliance with AB 1825 Requirements*. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of the City Auditor thanks the Human Resources Department, the Fire Department, and the City Attorney's Office for their time, information, and cooperation during the audit process.

Background

AB 1825

AB 1825 established California's sexual harassment prevention training requirements. This bill was sponsored by California Assembly Member Sarah Reyes. Her basic argument in proposing the law was that current laws, while prohibiting sexual harassment, had not done enough to eliminate the problem. Assembly Member Reyes recognized the significant impact and cost of sexual harassment and believed that required training would help reduce those costs.

AB 1825 was incorporated into California Government Code section 12950.1. According to this section, California employers with 50 or more employees must provide sexual harassment training and education to each supervisory employee once every two years and to new supervisory employees within six months of their assumption of a supervisory position. Government Code section 12926 subdivision (s) defines a supervisor as:

> "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

AB 1825 is interpreted and enforced by the California Fair Employment and Housing Commission (FEHC). The FEHC enforces California civil rights laws regarding discrimination in employment, housing, and public accommodations; pregnancy disability leave; family and medical leave; and hate violence.

The Department of Fair Employment and Housing (DFEH) is the sister agency of the FEHC. The DFEH receives, investigates, conciliates, and prosecutes complaints by individuals alleging discrimination in employment, housing and public accommodation and hate violence. As part of its routine investigation

of any complaints filed, the DFEH asks every employer subject to AB 1825 in every employment discrimination case whether it has provided its supervisors sexual harassment training.

According to FEHC regulations[1], the mandated training shall include but is not limited to:

(1) A definition of unlawful sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964.
(2) FEHA and Title VII statutory provisions and case law principles concerning the prohibition against and the prevention of unlawful sexual harassment, discrimination and retaliation in employment.
(3) The types of conduct that constitutes sexual harassment.
(4) Remedies available for sexual harassment.
(5) Strategies to prevent sexual harassment in the workplace.
(6) "Practical examples," such as factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources which illustrate sexual harassment, discrimination and retaliation using training modalities such as role plays, case studies and group discussions.
(7) The limited confidentiality of the complaint process.
(8) Resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment.
(9) The employer's obligation to conduct an effective workplace investigation of a harassment complaint.
(10) Training on what to do if the supervisor is personally accused of harassment.
(11) The essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed.

The regulation also defines who may provide the AB 1825 training. The regulation states, a trainer shall be one or more of the following: 1) attorney, 2) human resource professionals or harassment prevention consultants, 3) professor or instructor.

Individuals who do not meet the qualifications of the positions listed above may team teach with a trainer in classroom or webinar trainings provided that the trainer supervises these individuals and the trainer is available throughout the training to answer questions from training attendees.

According to the FEHC, consequences for not complying with AB 1825 are primarily related to increased liability exposure for breach of employer's duty to "take all reasonable steps to prevent harassment from occurring." Providing sexual harassment prevention training can limit damages for employers. Additionally, if an employer is found to be out of compliance with AB 1825, the FEHC may issue an order of this finding and require such compliance within 60 days of its order.

Human Resources Department

The City's Human Resources Department is responsible for administering the City's AB 1825 training program. This responsibility is handled out of the Risk Management Division by the City's Program Specialist. In this capacity, the Specialist manages a process to identify supervisors, provide training, and document completion of training within the reporting period.

[1] See 2 Cal. Code Regs § 7288.0.

The Human Resources Department has established various risk management related policies:

- EEO policy Prohibiting Discrimination, Harassment and Retaliation
- Drugs/alcohol in the Workplace
- API-34 Discipline Procedures and Review Standards
- API-44 Workplace Violence Policy
- API-11 Reasonable Accommodations Policy

Similar topics are covered in the City's Employee Handbook, which contains sections that specifically speak to the City's expectations regarding Discrimination and Harassment, Drug-free Workplace Policy, Sexual Harassment, Disability Discrimination, Americans with Disabilities Act, and Domestic Violence.

The City contracts with TargetSolutions to provide the City's Supervisors with AB 1825 compliant training. TargetSolutions is a web-based training service for public entities that offers a variety of training classes.

Objective, Scope and Methodology

The objective of this audit is to assess the City's compliance with AB 1825. The focus of this review is the most recent reporting period, January 1, 2010 to December 31, 2011. In assessing the City's compliance, we reviewed the California Government Code and related guidance documents, interviewed City staff associated with the program, and analyzed the City's records for tracking training completion.

Finding 1: Approximately 16 Percent of Employees Required to Complete AB 1825 Sexual Harassment Prevention Training Did Not Complete the Training Within the Reporting Period

According to AB 1825, California employers with 50 or more employees must provide sexual harassment prevention training and education to each supervisory employee once every two years and to new supervisory employees within six months of their assumption of a supervisory position. As such, the City should have in place an adequate system to ensure that the City complies with all the terms of the law. However, our review of the City's practices identified several areas that could use improvement. Specifically, we found that:

- The City's mechanism for identifying employees and tracking compliance with the required training is inadequate
- The City could benefit from extending this training to all employees

As a result of these shortcomings, the City could be increasing its liability exposure for breach of employer's duty to "take all reasonable steps to prevent harassment from occurring." In order to significantly reduce this increased liability, the City should improve its process for complying with the requirements established by AB 1825.

The City's mechanism for identifying employees and tracking compliance with the required training is inadequate

In order to comply with the requirements established by AB 1825, the City must accurately identify who should receive the training, provide appropriate training, and retain records regarding such training.

FEHC regulations state that an employer shall keep documentation of the training it has provided its employees to track compliance, including the name of the supervisory employee trained, the date of training, the type of training, and the name of the training provider. The employer is also required to retain training records for a minimum of two years. However, our review of the City's current processes identified several shortcomings.

Ensure Training and Maintain Accurate Records

In tracking its compliance with the training requirement, the FEHC allows employers to use the "individual method," "training year method," or a combination of the two methods to track compliance. Using the "individual" tracking method, the employer tracks and schedules its training requirement for each individual supervisor. Using the "training year" method, the employer designates a year in which it trains its supervisors and thereafter will again retrain these supervisors by the end of the next "training year," two years later. Therefore, using the "training year" method, supervisors trained in "training year" 2009 should be retrained in 2011. The City currently is using the "training year" method of tracking training for its supervisors. [2]

However, when using the "training year" method, the FEHC's regulations caution that an employer shall not extend the training year for new supervisors beyond the initial two year training year. For example, if an employer trained supervisors in 2011 and set 2013 as the next training year, a new supervisor who

[2] The most recent training year for the City was 2011.

was trained in 2012 would also need to be trained in 2013. This would result in the new supervisor being trained in consecutive years, but would avoid creating a situation in which a supervisor exceeds two years between training.

Currently, Human Resources coordinates and tracks AB 1825 training for all Non-Fire City Supervisors. To track compliance, the City maintains an Excel spreadsheet that lists the City's supervisors and tracks whether training was completed. The Fire Department coordinates and tracks its own training. According to their respective records, the Fire Department identified 176 Fire employees and Human Resources identified 905 non-Fire City employees as supervisors who were required to complete AB 1825 training between January 1, 2010 and December 31, 2011 as shown in the Exhibit 1.

Exhibit 1: Identified Supervisors requiring AB 1825 Training During CYs 2010-11

Department	Total Supervisors
City Attorney	10
City Clerk	4
City Manager	6
City Treasurer	4
Convention Culture & Leisure	46
Department Of Utilities	151
Development Services Dept	46
Economic Development Dept	4
Finance Dept	15
Fire Department	176
General Services Dept	56
Human Resources	34
Parks & Recreation Dept	205
Police Dept	205
Technology Dept	10
Transportation Dept	109
City Grand Total	**1081**

Source: Auditors Analysis based on City and TargetSolutions records

In providing the City's supervisors with AB 1825 compliant training, the City primarily uses TargetSolutions.[3] Supervisors who are assigned to complete their training using this service are required to spend a minimum of 120 minutes reading, learning and interacting with the system. If the system does not register the participant's interaction, time credits towards meeting the 120 minute minimum will not be awarded and will result in additional training being required. Once the time requirement has been met, the supervisor will be required to pass a test answering a minimum of 70 percent of the questions correctly. If the examination is passed, a unique record identification number is created and recorded in the system. Supervisors can also print their certificates of completion.

[3] TargetSolutions is a web-based training service for public entities that offers a variety of training classes.

Our review of the City's supervisor records and the TargetSolution system show that of the 1,081 supervisor's identified, approximately 888 completed the training within the reporting period and 193 did not comply with the requirements of the training as shown in Exhibit 2 below.

Exhibit 2: Approximately 16 percent of identified City supervisors did not complete the required AB 1825 training during the reporting period of January 1, 2010 to December 31, 2011.

Department	Did not Comply	Complied	Left City	Total Supervisors
City Attorney	1	9		10
City Clerk	2	2		4
City Manager	1	5		6
City Treasurer	1	3		4
Convention Culture & Leisure	4	42		46
Department Of Utilities	15	134	2	151
Development Services Dept	5	40	1	46
Economic Development Dept	1	3		4
Finance Department		15		15
Fire Department	14	162		176
General Services Dept	5	47	4	56
Human Resources	10	23	1	34
Parks & Recreation Department	39	165	1	205
Police Department	51	146	8	205
Technology Department	1	8	1	10
Transportation Department	25	84		109
City Grand Total	**175**	**888**	**18**	**1081**

Source: Auditors Analysis based on City and TargetSolutions records

Of the 193 that did not complete the training within the reporting period, approximately 18 left City employment or retired during the reporting period and 37 completed the training late[4].

[4] Late training is any training completed after December 31, 2011, and before we reviewed training records on March 14, 2012. Some of the employees listed as completing training late may be in compliance with AB 1825 requirements as new supervisors have six months to complete the training.

As of March 14, 2012, 138[5] City supervisors had yet to complete the required training, as shown in Exhibit 3.

Exhibit 3: As of March 14, 2011, 138 identified City supervisors had yet to complete the required AB 1825 training for the reporting period of January 1, 2010 to December 31, 2011.

Department	Yet to Train
City Attorney	0
City Clerk	2
City Manager	1
City Treasurer	1
Convention Culture & Leisure	2
Department Of Utilities	14
Development Services Dept	4
Economic Development Dept	1
Finance Dept	0
Fire Department	9
General Services Dept	2
Human Resources Dept	8
Parks & Recreation Dept	23
Police Dept	46
Technology Dept	1
Transportation Dept	24
City Grand Total	**138**

Source: Auditors Analysis based on City and TargetSolutions records

Approximately 84 percent of the City's identified supervisors completed AB 1825 training during the most recent reporting period. As previously noted, many City employees also completed the training late[6]. However, completing the training late should not be an acceptable option. The City should ensure that it fully complies with the requirements established by the law. If the City becomes aware that a supervisor exceeded two years between AB 1825 training, training should be provided as soon as possible.

We recommend that Human Resources and Fire Department:

1. **Provide training as soon as possible to those City supervisors who did not complete the AB 1825 training for the January 1, 2010, to December 31, 2011 period.**

[5] Some of the employees listed as yet to complete training indicated that they were not supervisors. Since we did not audit for the accurate classification of supervisors, we did not remove these employees from the analysis.

[6] Some employees completed the training after March 14, 2012, but are not accounted for in our review as they fell outside our analysis period.

Issues Regarding Supervisor Identification

The City's current process for identifying City supervisors is straightforward. First, at some point during the second year of the reporting period, the City's Program Specialist sends an e-mail to department contacts to solicit a list of employees who meet the City's definition of a supervisor[7]. Based on the responses received, the Specialist manually enters the information onto an Excel spreadsheet. This file serves as Human Resources' primary record of supervisors and whether they have completed the required training.

During our review, we noticed instances where credit for completing the training was noted in error, credit for completing the training was not provided, and where identifying employee information was miskeyed. Inaccuracies can be attributed to the reliance on manual entry of information and the lack of a process to check the data entry for accuracy.

If the City had in place a process to reconcile the City's record with the Training System, the errors noted in our review could have been remedied within the reporting period. Without a system of controls to help ensure accuracy, the City's list of supervisors serves a limited function to ensure compliance with AB 1825.

We recommend that Human Resources and Fire Department:

2. **Develop controls to help test and reconcile AB 1825 training records.**

While the process described above may identify most City supervisors, it does not provide a method to identify all new supervisors. According to AB 1825, new supervisory employees are to receive sexual harassment training within six months of their assumption of a supervisory position. Although the City does require that a Personnel Action Report (PAR) be completed for new positions, it does not include a mechanism to identify new supervisors for AB 1825 training purposes. Consequently, the City may overlook some new supervisors and thereby fail to train them within the required six-month period.

Additionally, FEHC also requires that new supervisors read and acknowledge receipt of the employer's anti-harassment policy within six months of appointment. However, the City does not currently require employees to sign a document indicating that they have received and read key City policies.

We recommend that Human Resources:

3. **Modify the City's (PAR) form to require that the appropriate person be notified of all new supervisors so that Human Resources can assign AB 1825 training to be completed within the six months of new supervisors' appointments.**

4. **Incorporate into the City's new employee orientation process a requirement that all City employees read and acknowledge receipt of the City's anti-harassment policy as well as any other critical City policies.**

[7] Per the training announcement e-mail sent by the City's Program Specialist, a supervisor is "anyone that assigns and evaluates work."

As previously mentioned, the City's current process for identifying its supervisors relies on department contacts correctly identifying their supervisors. During our review of the City's AB 1825 contact list, we noticed that the City's list of contacts does not include a representative for the Mayor and City Council. As a result, no employees of the Mayor and City Council[8] were identified as supervisors who were required to receive AB 1825 training during the last reporting period.

Relying solely on contacts to identify supervisors could result in identifying employees as supervisors in error or, conversely, failing to identify supervisors. As such, it would be beneficial if the department heads and appointed officials[9] confirmed the departments' lists of supervisors.

We recommend that City department heads and appointed officials:

5. **Provide written documentation that they have verified that their departments' list of supervisors is accurate and complete.**

We recommend that Human Resources:

6. **Establish a Contact person for the Mayor and City Council, and determine which employees need to complete AB 1825 training.**

Opportunity to rebid and negotiate terms

The City currently utilizes TargetSolutions to provide the majority of its AB 1825 training. TargetSolutions is a web-based training service for public entities that offers a variety of training classes. The City's contract with this entity expires June 30, 2013. The cost to the City for non-fire employees is based on a per user schedule. Under the terms of the contract, the City incurs a charge of $12.98 per user in FY 2010-11, $15.74 per user in FY 2011-12 and $19.28 per user in FY 2012-13.

As noted above, the cost to provide this training has been gradually increasing. Given the scheduled price increases, the annual cost for TargetSolution training services may soon exceed the City's threshold for requiring a Request For Proposal (RFP). Assuming that the costs to provide this training continue to increase, the City would be prudent to begin considering an RFP process for its web-based training.

We recommend that Human Resources and Fire Department:

7. **Consider entering a competitive bid process to identify a web-based training service for public entities that offers a variety of training modules**

[8] The Office of the City Auditor is part of the Mayor and City Council and did not complete training within 6 months of appointment. However, as of March 30, 2012, all employees of the City Auditor's Office had completed the AB 1825 training.
[9] Appointed officials consist of Charter Officers and any other Council appointed officials like the City Auditor or the Independent Budget Analyst.

The City could benefit from extending and expanding this training to all employees

The FEHA makes it an unlawful practice for an employer to fail to take "all reasonable steps" necessary to prevent harassment from occurring. AB 1825 does not "discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination." The FEHC clarifies that attending training does not create an inference that an employee is a supervisor or that a contractor is an employee or a supervisor. The statute provides a floor, not a ceiling, for an employer's harassment prevention efforts.

According to a FindLaw article titled *Sexual Harassment Prevention Training Now Mandatory for California Employers*, the statute's invitation to go beyond its minimum requirements should be accepted by employers. In particular, employers should provide extra training (additional classes or training longer than two hours) that covers all the protected categories under both federal and state anti-discrimination laws. The author of the article warns that training that is limited exclusively to sexual harassment will be of little or no value in defense of a race, national origin, color, age, or disability harassment case. In fact, such limited training could backfire. For example, a plaintiff could argue that the employer was such a "minimalist" that only the statutory sexual harassment training was done.

Recognizing the potential benefits of providing sexual harassment prevention training, the City's Fire Department recently informed its non supervisory employees that they were expected to complete sexual harassment training. Like the Fire Department, the City should consider extending and expanding sexual harassment training to all City employees. A gesture like this would help to reinforce the City's commitment to afford equal opportunity to all persons and to prohibit discrimination or harassment based on race, color, religion, sex, age, national origin, ancestry, physical or mental disability, sexual orientation, medical condition, pregnancy-related conditions, or marital status unrelated to job requirements.

Based on the terms set forth by the current contract with TargetSolutions, once a user fee has been incurred for a training course, an employee can take unlimited additional courses as listed in the training catalog. Some of the additional courses available include Health & Wellness, Workplace Diversity, Preventing Discrimination in the Workplace, Back Injury Prevention, CPR Academic, and Disaster Preparedness. Given the 2012-13 costs per employee of $19.23, the City should evaluate whether utilizing TargetSolutions is an effective means through which to provide additional training.

We recommend that Human Resources:

8. **Consider extending harassment prevention training to all City employees.**

9. **Consider expanding the City's AB 1825 harassment prevention training to include the many forms of discrimination and harassment.**

Attachment 3

CITY OF SACRAMENTO
HUMAN RESOURCES DEPARTMENT
OFFICE OF THE DIRECTOR

MAY 29, 2012

TO: JORGE OSEGUERA, CITY AUDITOR

FROM: GERI HAMBY, DIRECTOR OF HUMAN RESOURCES

RE: RESPONSES TO AB1825 AUDIT

Human Resources responses to AB1825 Audit:

1. Provide training as soon as possible to those City supervisors who did not complete the AB 1825 training for the January 1, 2010, to December 31, 2011 period.

   All City employees required to complete AB 1825 training have completed the training.

2. Develop controls to help test and reconcile AB 1825 training records.

   Human Resources concur with this recommendation.

3. Modify the City's (PAR) form to require that the appropriate person be notified of all new supervisors so that Human Resources can assign AB 1825 training to be completed within the six months of new supervisors' appointments.

   The Benefits Division has revised the Personnel Action Request (PAR) form but is still developing a process to verify that new supervisors receive training.

4. Incorporate into the City's new employee orientation process a requirement that all City employees read and acknowledge receipt of the City's anti-harassment policy as well as any other critical City policies.

   The Benefits Division has incorporated into the revised PAR a section where the new employee has to sign and acknowledge receipt of the City's anti-harassment policy as well as other critical City policies.

5. We recommend that City department heads and appointed officials provide written documentation that they have verified that their departments' list of supervisors is accurate and complete.

   Human Resources is in the process of developing a form whereby all Executive Management will be able to sign a statement verifying that all of their supervisory staff is accurate and complete.

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6. We recommend that Human Resources establish a contact person for the Mayor and City Council, and determine which employees need to complete AB 1825 training.

   Lisa Serna-Mayorga, Office Supervisor for the Mayor and City Council is the contact person to determine which employees need to complete AB 1825 training.

7. We recommend that Human Resources and Fire Department consider entering a competitive bid process to identify a web-based training service for public entities that offers a variety of training modules.

   Risk Management staff will begin a RFP process for web-based training in early FY13 in collaboration with Fire and other operating departments citywide. Office of Civil Rights will be consulted with regard to the content of harassment training modules.

8. Consider extending harassment prevention training to all City employees and consider expanding the harassment prevention training to include the many forms of discrimination and harassment.

   Human Resources staff will evaluate the possibility of extending harassment training to all City employees considering factors such as cost, availability of appropriate content and exposure to liability. Human Resources will develop a policy recommendation for extending harassment training to all City employees.