

WORKPLACE HARASSMENT PREVENTION POLICY SUMMARY

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Background:

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The isolated nature of janitorial work and general characteristics of the employee population leaves janitorial workers particularly vulnerable to sexual harassment and assaults. Janitorial staff often work at night in isolated environments with little security. Additionally, a high percentage of cleaning service workers do not speak English, many are immigrants, and the majority are female. Workers are further at risk when they are without training to protect themselves, do not know who to report an incident to, or choose not to report for fear of retaliation, deportation, or job loss.

In response, states are adding additional protections for cleaning service workers. ISSA continues to track the issue and work with policymakers to come up with solutions that will better protect cleaning services workers and ensure the proposals are workable for employers. The following document aims to provide our members with a summary of what requirements states are imposing on businesses to prevent harassment and protect cleaning service workers.

Requirements for sexual harassment training for workers of all industries, by state:

In 20 states, harassment training is not required: Alabama, Alaska Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, South Carolina, Wyoming.

In nine states, training is recommended or encouraged, but not required: Idaho, Nebraska, Ohio, Oregon, Rhode Island, Vermont, South Dakota, West Virginia, Wisconsin.

In 20 states and the District of Columbia, some form of training is required: California, Connecticut, Delaware, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, Washington.

Of these states...

- Training applies to all employees in five states: California, Connecticut, Illinois, Massachusetts, New York
- Training only applies to firms with above a threshold number of employees in two states: Delaware and Maine
- Training only applies to state agencies in 13 states: Kansas, Kentucky, Louisiana, Mississippi, Nevada, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Virginia (only to legislative workers), Washington
- Training only applies to tipped employees and is subject to congressional budget approval in D.C.

Link to more information: [Sexual Harassment Training Requirements by State](#)

Three states: California, Oregon, and Washington, have enacted laws that mandate additional trainings or protections specifically for “isolated” workers.

1. CALIFORNIA

The [Property Service Workers Protection Act](#), signed on September 15, 2016, requires all “janitorial employers” regardless of the number of employees (as opposed to the previous law which applied only to companies with 50+ employees) to register with the Labor Commissioner’s Office beginning **July 1st, 2018**, and provide employees with sexual violence and harassment prevention training once every two years beginning **January 1, 2019**. The law also states that training must now be done in person, rather than online.

“Janitorial services” are defined by the North American Industry Classification System code for Janitorial Services (561720) and do not include residential cleaning services.

An “employer” is any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for providing janitorial services by one or more covered workers.

Training content: The Director of Division of Labor Standards Enforcement is tasked with convening an advisory committee for developing training standards. Until they are established, employers may meet this obligation by giving employees [The Department of Fair Employment and Housing pamphlet DFEH-185, “Sexual Harassment,” in English or Spanish](#), as appropriate.

A detailed record must be kept by all employers for 3 years including:

- The names and addresses of all employees who perform janitorial or cleaning services.
- The hours worked daily by each employee, including the times the employee begins and ends each work period.
- The wage and hourly rate paid each payroll period.
- The age of all minor employees.
- Any other conditions of employment.
- The names, addresses, periods of work, and compensation paid to all other covered workers.

A “covered worker,” or employee, is a janitor, including any individual predominantly working, whether as an employee, independent contractor, or franchisee, as a janitor, as that term is defined in the Service Contract Act Directory of Occupations maintained by the United States Department of Labor.

To register, employers must complete the registration form and pay a **\$500 application fee**. The registration expires after one year and must be renewed annually, with a renewal fee also equivalent to \$500.

The registration process is peppered with transaction costs, an economics term for the costs we incur when we make economic exchanges. The transaction costs in this case are the \$500 application fee and the gathering of materials for registration. The steep application fee can pose

a significant burden for small business owners and is a barrier to new entrants. Additionally, some of the required materials, such as insurance certifications, are dependent on affordability, which may further disadvantage small and new businesses.

Penalties: An unregistered janitorial company could face a fine of \$100 for every day that it remains unregistered, up to \$10,000. Any business that contracts with an unregistered janitorial company may be charged \$2,000-\$10,000 for an initial violation and \$10,000-\$25,000 for a subsequent violation.

New Proposal: [AB 547](#), revised May 8, 2019, is a more burdensome bill which requires sexual harassment prevention training to be conducted by peer trainers. It proposes a mandate that these peer trainers have “at least 40 hours of training, two years of non-supervisory work in the janitorial industry, and are fluent in the language most spoken by the workers,” among other restrictions that can be found in section 6 of the bill.

This is an equalizer as it brings all training sessions up to the same standard by ensuring that workers both comprehend their training and are provided with the necessary tools to protect themselves from sexual harassment.

However, the bill significantly limits the group of acceptable trainers, as only peer trainers who fit the very specific requirements are qualified.

Further, the bill states that a “‘qualified organization’ may work with a ‘training partner to provide the required training.’” A qualified organization, on its own or through its training partners, must abide by the following:

1. Have at least 100 qualified peer trainers or educators.
2. Have access to local and regional sexual violence-related trauma services and resources for local referrals documented through letters of support from service providers.
3. Be committed to ongoing education and development as documented by a minimum of 10 hours of professional development each year for qualified organization staff in areas of research and strategies to prevent and respond to sexual assault and sexual harassment.
4. Have experience working with immigrant low-wage workers on issues of sexual assault and harassment doing advocacy or training.

A “training partner” is a nonprofit, worker center, or labor organization, provided that the nonprofit, worker center, or labor organization has at least 10,000 working janitor members in the janitorial industry in the State of California.

These restrictive guidelines limit both the number of acceptable trainers and training partners. The restriction on trainers may lead to a shortage of trainers and subsequent competition between employers for hire, which may increase the rate at which training costs. While initially set to be “at least twice the state minimum wage per hour,” there is no upper bound on how high of a rate training might go for. The restriction on training partners results in the union being one of the only qualified organizations, which may award them bargaining power over important decisions.

If passed, the date of compliance for AB 547 is January 1, 2020.

New Law: [SB 396](#), signed October 15, 2017 and effective January 1, 2018, mandates that all employers in California ensure their programs include prevention of harassment based on gender identity, gender expression and sexual orientation.

Training content: The training must provide examples of such harassment, and the trainer must have knowledge or expertise in this area.

For more information, visit:

[Janitorial Registration FAQs](#)

[Janitorial Service Providers and Contractors](#)

Sources:

[Janitorial Workers: Sexual Violence and Harassment Prevention Training](#)

[Boost for Janitors as Historic Law is Passed](#)

[A Group of Janitors Started a Movement to Stop Sexual Abuse](#)

[Janitorial Service Providers and Contractors](#)

[Sexual Harassment Prevention Training for Janitorial Services Employers](#)

2. OREGON

A "property services contractor" is any person that: "1) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another person to provide services that include janitorial services; 2) Enters into a subcontract with another for any of the activities described in paragraph (1) above."

contractor," as well as their "knowledge of an employer's responsibility to prevent sexual assault and sexual harassment" must be passed.

The law also requires labor contractors to share "the name and address of the owner of all operations where the worker will be working" with the Bureau of Labor and Industries, information that would become public record.

Residential housecleaning services, building security services, and new construction cleanup, among others, are excluded from the law and do not need to obtain a license. Also excluded from

The [Oregon House Bill 3279](#), passed in 2017, requires that "property service contractors" obtain a license through the Oregon Bureau of Labor and Industries beginning **January 1, 2018**. The law also requires that these employees, along with their managers and supervisors, undergo sexual harassment, discrimination, and anti-retaliation training.

Additionally, an examination which tests the applicant's "ability, knowledge, and proficiency to conduct business as a labor

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licensure are “individuals who operate as sole proprietors under their own names and assumed business names, who work alone, and who are not recruiting, soliciting, supplying or employing workers are not required to obtain a labor contractor license.”

To Register: The licensure registration process can be found in detail [here](#) and involves filling out forms, gathering materials, and submitting an application **fee of \$250**. Businesses will obtain a temporary permit for 60 days pending successful completion of the license examination. This is a lengthy process, which, like California, imposes a burden on small business owners and acts as a barrier to new entrants. The property services contractor expires after one year, and the application fee remains \$250 with each annual renewal of the license. Also in step with California, obtaining licensure requires materials that are dependent on affordability such as insurance certifications. In addition, registration requires materials dependent on legal status, such as tax compliance certifications.

The inclusion of the sexual harassment and assault section on the examination, while not alone sufficient, is an important starting point for measuring preparedness and preventing incidents.

The Commissioner of the Bureau of Labor and Industries may assess a civil **penalty** not to exceed \$2,000 for failure to comply with the law.

Training requirements: According to [Chapter 839 Rules Regulating Labor Contractors](#), Training must be:

- a. Delivered by a qualified trainer either in a live presentation which includes an end-of training discussion to solidify the concepts and principles covered in the training; or in an interactive webinar, the content of which must be provided both in writing and verbally and which includes an assessment of the trainee’s understanding of the topics covered in the training;
- b. Draw upon various training methodologies and be of an appropriate length to cover the required content at a reasonable pace; and
- c. Be provided in a language understood by the trainee, either by providing the training directly in such language or by having a certified interpreter interpret the training in a language the trainee understands.
- d. In the case of a community rehabilitation program which is qualified by the State of Oregon as a qualified rehabilitation facility and which employs workers with various mental, physical, social, emotional, and linguistic abilities, the content and delivery methods of the training required by this rule may be modified to accommodate such workers, provided that the modified training addresses the topics specified in section (4) in a manner that is reasonably expected to promote understanding of those topics.

Training content: A training curriculum that includes all of the following elements will be considered to be approved by the Bureau of Labor and Industries:

- a. Definitions of sexual assault, sexual harassment and discrimination in the workplace;

- b. Strategies for prevention of sexual assault, sexual harassment and discrimination in the workplace;
- c. Cultural competency;
- d. Legal protections for employees who report violations of state or federal laws, administrative rules or regulations;
- e. A summary of protected classes under state and federal civil rights laws;
- f. A discussion of the concepts of “severe or pervasive” conduct and subjective and objective standards of unwelcome conduct;
- g. The employer’s duty to protect employees from assault and harassment by managers, coworkers and non-employees in the workplace;
- h. Strategies for preventing assault and harassment, including effective policies and enforcement, reporting and monitoring, and preventing retaliation; and,
- i. The employer’s specific policies regarding prohibited conduct, reporting misconduct, conducting investigations, measures to effectively correct and eliminate misconduct, the reinforcement of inclusive cultures and values relative to the environment, and the dynamics and demographics that may be unique to the organization or industry.

"Employee" means an individual who spends a majority of her or his working hours alone, or whose primary work responsibility involves working without another coworker present, and who is employed by an employer as a janitor, security guard, hotel or motel housekeeper, or room service attendant.

Effective March 12, 2018, [Oregon House Bill 4058](#) tightened the guidelines for how training must occur. It specifies that training must occur “at least once during the year in which a property services contractor license is first issued to a property services contractor; for new employees, within 90 days of the employee’s initial hiring date; and at least once every two years after the renewal of a license.” This is an improvement to the training process because it equalizes the standard which everyone must be held to. However, the **cost** associated with the passage of this bill is **unknown**.

Failure to comply with the requirements of this paragraph is subject to civil **penalty** under ORS 652.900. The exact amount is unknown.

The Oregon BLI has detailed compliance assistance and a description of the licensing process in a [handbook for property services contractors](#).

For more information on the new licensing requirements, visit the [Oregon BLI website](#).

Sources:

- [New Oregon Law Addresses Sexual Abuse Against Janitors](#)
- [Cleaning Up Oregon's Janitorial Industry](#)
- [Oregon.gov FAQs](#)
- [Rules Regulating Labor Contractors](#)
- [New Oregon Law Addresses Sexual Abuse Against Janitors](#)

3. WASHINGTON

On April 26, 2019, Washington's [SB 5258](#) was passed, creating strengthened requirements aimed at protecting "isolated workers" from sexual harassment and assault. The bill requires "every hotel, Motel, retail, or security guard entity, or property services contractor employer to register with the state, to adopt a sexual harassment policy, provide mandatory sexual harassment training, provide a list of resources to employees, and provide a panic button to each isolated worker."

A "Property services contractor" is: "any person or entity that employs workers: (i) To perform labor for another person to provide commercial janitorial services; or (ii) on behalf of an employer to provide commercial janitorial services."

"Employer" means any person, association, partnership, property services contractor, or public or private corporation, whether for-profit or not, who employs one or more persons.

For hotels and Motels with more than 60 rooms, employers must register by **January 1, 2020**, and all other employers (retail, or security guard entity, or property services contractor, who employs an employee) must register by **January 1, 2021**.

Washington ISSA members played a key role in determining the way in which a property service contractor is defined. The language of the

"Panic button" means an emergency contact device carried by an employee by which the employee may summon immediate on-scene assistance.

definition is critical to the interpretation of the law, due to residential cleaning services being excluded from the "property services contractor" category, a precedent that would follow suit after Oregon, as "the name and address of the owner of all operations where the worker will be working" is publicized. Because the well-crafted definition sets up residential clearing services to likely be excluded, we can hope that these services in Washington, like in California and Oregon, will also avoid this compliance issue.

The training content, costs, and penalties of the policy are not yet known.

For more information on Washington's Sexual Harrassment Training Policy, click [here](#).

Sources:

[\[Washington\] State Passes Law Protecting Janitors From Harassment](#)