As States “reopen” and employees “return to work,” employers are presented with a fresh opportunity to revisit their pre-pandemic policies. McKinsey reported in the fall of 2020 that women, LGBTQ and people of color were more likely to report acute challenges in the pandemic. The Pew Research Center found that Black and Asian Americans reported increased discrimination during the COVID 19 pandemic. While employees return to the workplace it’s a great opportunity for employers to revamp, re-educate and revitalize their protocols to protect their workforce from discrimination and harassment.

Companies have long included workplace discrimination, harassment and retaliation prevention policies in their handbooks as a matter of practice. But now is the time to re-examine and update those policies. Some things to keep in mind:

- If your policy was created at the time your company was established, it may need updating. Make sure your policy lists all current protected categories covered under both federal and state laws.
- Policies should state that the law prohibits coworkers and third parties, as well
as supervisors and managers, with whom the employee interacts from engaging in conduct prohibited by federal and state laws.

- Provide a complaint mechanism that does not require an employee to complain directly to his or her immediate supervisor. Consider designating a company representative, such as a human resources manager and/or an anonymous complaint hotline.

- Indicate that when the company receives allegations of misconduct, it will conduct a reasonable and appropriate, timely, and thorough investigation that provides all parties fair treatment and reaches objective conclusions based on the evidence collected, as well as appropriate remedial measures if misconduct is found.

- Make clear that employees will not be exposed to retaliation as a result of lodging a good faith complaint or participating in good faith in any workplace investigation. See Cal. Code Regs. tit. 2, § 11023 (b) (1)-(3) (2021).

As employees return to the workplace, redistribute those workplace discrimination, harassment and retaliation prevention policies. It serves as a reminder to employees of what the company expects in terms conduct and reinforces to employees the company’s commitment to provide a workplace free of discrimination, harassment and retaliation. Also, companies should consider training supervisors and managers to build a culture of tolerance and cooperation. Encourage supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can respond appropriately. Last, companies should consider whether they are prepared to handle a complaint. The time to ensure you have an appropriate investigation process is place is before you receive a complaint. When creating an investigation process, companies should consider implementing measures to ensure that complaints receive:

- An employer’s designation of confidentiality, to the extent possible;
- A timely response;
- Impartial and timely investigations by qualified personnel;
- Documentation and tracking for reasonable progress;
- Appropriate options for remedial actions and resolutions; and
- Timely closures.


Companies should take advantage of this opportunity created by the pandemic to improve and focus on promoting and rebuilding diversity and inclusion in the workplace, as well as early warning and conflict prevention.