



Delivering essential employee benefit and commercial insurance information to customers and our members



HUMAN RESOURCES

Don't Forget Anti-Harassment Training for Your Staff



If you have not yet started providing anti-sexual harassment training to your staff, you need to get working on it now.

State law effective this year requires most employers to provide anti-sexual harassment training to their staff every two years.

To be compliant, you must conduct training before Jan. 1, 2020. Training must then be provided every two years thereafter.

TIMING OF TRAINING

Starting this year, employers with five or more workers must provide training as follows:

All employees – All non-supervisory employees must undergo anti-harassment training this year and every two years thereafter.

Supervisory employees – Supervisors and managers must receive at least two hours of anti-harassment training within six months of becoming a supervisor, and at least every two years thereafter.

New employees – New employees must receive at least one hour of anti-harassment training within six months of being hired, and every two years thereafter.

Seasonal and temporary workers – This includes any employee that is hired to work for less than six months.

These workers are required to receive training within 30 calendar days after the date they were hired, or within 100 hours worked, whichever comes first.

Temp workers provided by an outside agency must receive training by the agency.

TRAINING

Under the regulations training must be conducted by professionals who specialize in employment law or harassment prevention.

Traliant, which specializes in compliance training, can help you. Take advantage of the special offer for VMA members (see column on right).

VMA MEMBERS GET DISCOUNT ON TRAINING PROGRAM

VMA Insurance has negotiated a group discount with Traliant to provide our members with access to their newly released California Edition of Preventing Discrimination and Harassment, which complies with all training requirements under state law.

The web-based, interactive training is available in two versions: a one-hour course for employees, and a two-hour course for managers and supervisors.

Our negotiated rate is more than 50% less than standard rates for major compliance training options on the market, while considered the best product on the market as it is engaging, user-friendly and realistic.

"We've been blown away by Traliant. Look no further if you are seeking engaging content for your workforce. Their training is the best we've seen, by far!"

– Ali Tankiewicz
HR Associate
Apex Clean Energy

TRAINING DEADLINE IS DECEMBER 31

CONTACT: DAVID@VMA.BZ

VMA MEANS VALUE-ADDED

For a quote on workers' comp insurance, business insurance, or health insurance, please contact David Katz.

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DOL Issues Joint Employer Rules to Ease Burden on Businesses

The Department of Labor has proposed a new rule that will make it much easier for employers to comply with laws governing the use of independent contractors, staffing agencies and temp workers.

Joint employment liability has become increasingly murky in light of the gig economy and more employers using staffing agencies and outside contractors to perform key functions. This has spawned thousands of lawsuits, with the employers accused of misclassifying individuals as outside contractors when they should be classified as employees.

The stakes are high since employers have to pay workers' comp, benefits and other expenses for bona fide employees.

Now the DOL has issued a proposed four-prong test for employers to help them determine if someone is actually an employee.

A joint employer is someone who shares responsibility for a worker, like a firm that uses workers from a staffing or temp agency or a contractor on their worksites.

FOUR-FACTOR TEST

The proposal includes a "four-factor balancing test" to help businesses determine if they are a joint employer:

1. They must have the authority to hire or fire the employee in question.
2. The company supervises and controls the employee's work schedule or employment conditions.
3. The company determines the rate and method of payment; **and**
4. The company maintains the worker's employment records.



Besides the above, the DOL may also use other factors to determine joint employer status, such as:

- The company exercises significant control over the terms and conditions of the employee's work; or
- Otherwise acts directly or indirectly in the interest of the employer in relation to the employee.

HOW IT AFFECTS EMPLOYERS

This proposed rule would go a long way towards setting the record straight as more employers use independent contractors and staffing agencies.

The change, if finalized, would also be significant, as it would limit a potential joint employer's exposure for wage and hour liabilities of the primary employer.

The new rules aim to simplify a six-factor test that was introduced by the Obama administration and has been blamed for muddying the waters further for employers. Those rules were rescinded after President Trump took office.

The Obama guidance would have allowed a company like McDonald's to be held liable for minimum-wage violations committed by a franchisee even if it did not directly supervise workers or hire and fire them.

The DOL said it aims to simplify the test: "Only actions taken with respect to the employee's terms and conditions of employment, rather than the theoretical ability to do so under a contract, are relevant to joint employer status under the [Fair Labor Standards] Act."



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WHY VMA INSURANCE

VMA Insurance Services offers preferential group rates and other cost-saving benefits

Four Ways to Employ Better Driving Employees

A careless driving employee can result in a substantial liability claim, particularly if a third party is injured. If one of your drivers is found to have been engaged in distracted driving, any judgment or settlement for a personal injury could easily cost more than \$1 million.

While you can hold meetings about the dangers of distracted driving and what your driving employees can do to reduce the chances of crashing, in the end it comes down to trusting that they will do the right thing.

So what can you do? We suggest a holistic approach to the issue.

1. UNDERSTAND DISTRACTED DRIVING

Just how bad is the distracted driving problem? In 2015 alone, 3,477 people were killed and 391,000 were injured in motor vehicle crashes involving distracted drivers.

But smartphones are not the only source of distraction. Road safety experts say there are three other types of distraction for drivers:

- **Manual** – This can include looking around for a lost object in the car, reaching under or behind the seat.
- **Cognitive** – This can include a driver who is lost in thought and not paying full attention to driving.
- **Visual** – Anything that makes a driver take their eyes off the road, like looking at the GPS or tuning the radio.

All of your training for your driving employees must address all types of distracted driving, and should include scenarios to help them make proper decisions when behind the wheel.

2. HIRE GOOD DRIVERS

When hiring personnel who drive, consider what their primary responsibility is. For example, if you own a plumbing operation, your drivers are not necessarily going to be professional drivers, since their primary duty is fixing plumbing issues.

If you think any prospect will be driving as part of their job, you should pull their DMV records. Look for anything serious like DUIs or frequent citations for moving violations.

In addition, check their resumes to see whether they were driving as part of any of their prior jobs, and if they have experience driving the same type of vehicle they would be driving for you.

Also ask about any medications the applicant may be taking, as some can affect their driving. Finally, consider requiring candidates that would be driving to take a road test as part of the recruitment process.

3. COACH CURRENT EMPLOYEES TO BE SAFE DRIVERS

You should attack this in a three-pronged approach:

- Pull their DMV driving records annually.
- Conduct road tests where they are graded on their driving.
- Hold an annual meeting to go over safe driving policies; reinforce the dangers of distracted driving and stress the need to always focus on the task at hand.

You should also have driving policies in writing that are enforceable and list all the behaviors that are prohibited while driving, like:

- Never answer the phone while driving, even if you have a hands-free device.
- Bar programming a GPS while on the move and require that they pull over when safe to do so.
- Never hold your smartphone in your hand while driving.

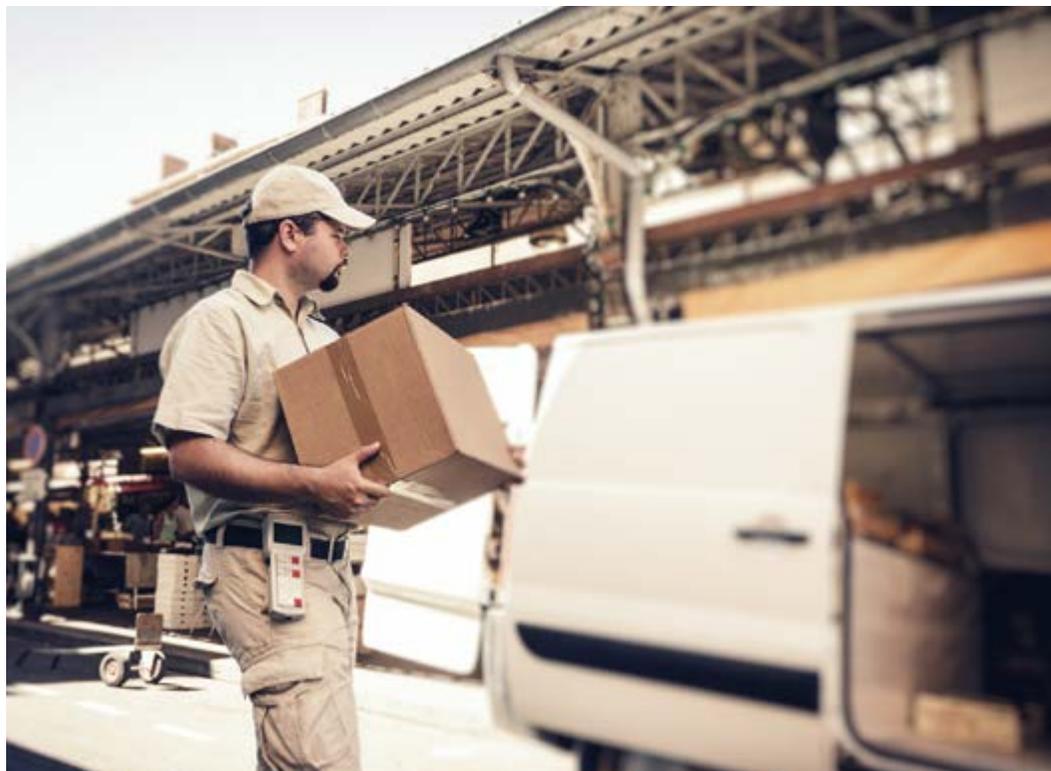
Your policy should also specify the consequences and any disciplinary action for breaking the rules.

You should maintain records of these policies. This is of utmost importance if one of your employees is in an accident and accused of negligence. Your policy and proof of training can protect your organization.

4. TAKE ADVANTAGE OF TECHNOLOGY

GPS tracking devices in their vehicles allow firms to receive real-time information about a vehicle's location and rate of speed. This gives you valuable insight into any dangerous habits your drivers may be engaging in.

You can also install technologies that will block cell phone signals while the vehicle is moving.





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**For more information on VMA's workers' comp,
health or voluntary benefits programs,
please contact VMA Insurance Services.**

Visit insurance.vma.bz for details.



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RISKreport

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ABOUT US

The *Risk Report* is provided to members of Visual Media Alliance and clients of Visual Media Alliance Insurance Services, its wholly owned subsidiary. VMA Insurance Services provides a full suite of insurance programs including property and liability, commercial auto, management liability, professional liability (errors & omissions), and group health programs to over 750 firms.

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VMA's 2019 Wage + Benefits Survey & Report

We need your input for this year's Wage + Benefits Survey. If you participate in the survey you will receive a FREE copy of the results – \$595 in value – and a \$5 Starbucks Gift Card!

The report is the most complete industry wage and compensation practices report from both a regional and national perspective. This information is available nowhere else.

Data is compiled from over 500 companies with more than 17,000 employees across the United States.

Heads up: The survey will be arriving in your e-mail and mail inboxes soon.

Want to know more?

Visit vma.bz/wagesurvey

