

New California Employment Laws For 2019

Governor Brown signed into law a number of bills, which significantly impact employers. Unless otherwise indicated, each new law takes effect January 1, 2019. For an in-depth analysis of how each law might affect your organization, contact one of Hanson Bridgett's experienced labor and employment lawyers.

Harassment & Discrimination

Sexual Harassment Prevention Training for Non-Supervisory Employees (SB 1343): By the end of 2019, employers with 5 or more employees (including seasonal and temporary employees) must provide sexual harassment prevention training to all nonsupervisory employees. Thus, in addition to the 2 hours of training required for supervisory employees, non-supervisory employees must receive at least 1 hour of training. SB 1343 also requires the DFEH to develop online training courses that employers can use to satisfy these requirements. (See *Gov't Code §§ 12950 and 12950.1.*)

Sexual Harassment Omnibus Bill (SB 1300): SB 1300 significantly amended the Fair Employment and Housing Act (FEHA), especially as it relates to sexual harassment. Recognizing that the purpose of FEHA is "to provide all Californians with an equal opportunity to succeed in the workplace," the Legislature made several declarations regarding the application of harassment laws:

- (1) Actionable harassment need only make it *more difficult to do the job*. Harassment creates a hostile environment when it "disrupt[s] the victim's emotional tranquility in the workplace, affect[s] the victim's ability to perform the job as usual, or otherwise interfere[s] with and undermine[s] the victim's personal sense of well-being."
- (2) A *single incident of harassment* is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment.
- (3) The existence of a hostile work environment is based on the totality of circumstances and a *single discriminatory remark*

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may be relevant evidence of discrimination.

(4) The legal *standard for harassment should not vary by type of workplace*. "[C]ourts should only consider the nature of the workplace when engaging in or witnessing prurient conduct and commentary is integral to the performance of the job duties."

(5) Harassment cases are *rarely appropriate for summary judgment*.

In addition to these legislative declarations, SB 1300 also makes substantive amendments:

(a) Employers may not require employees to sign, in exchange for a raise or bonus, or as a condition of employment: (1) a release of FEHA claims or (2) documents prohibiting disclosure of unlawful acts in the workplace, including non-disparagement agreements. This provision does not apply to negotiated settlement agreements.

(b) Prevailing defendants will not be awarded attorney's fees and costs in FEHA litigation, unless the court finds the action was frivolous, unreasonable, or groundless when brought or that the plaintiff continued to litigate after it clearly became so.

(c) Employers may (but are not required to) provide "bystander intervention training" to employees, which includes information and practical guidance on how to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behaviors. (See *Gov't Code* §§ 12940, 12965, 12923, 12950.2, and 12964.5.)

Restrictions on Confidential Sexual Harassment Settlement Agreements (SB 820): Settlement agreements may not include provisions that prevent disclosure of factual information related to a claim of sexual assault, sexual harassment, sex discrimination, or retaliation, which is filed in a civil or administrative action. The agreement may preclude disclosure of the amount paid in settlement. SB 820 also allows claimants' identities, and facts that could reveal their identities, to be protected if the claimant requests anonymity, *except* if a government agency or public official is a party to the settlement agreement. (See *Code of Civ. Proc.* § 1001.)

Ban on Waivers of Right to Testify About Alleged Sexual Harassment or Criminal Conduct (AB 3109): Any contract or settlement agreement provision that waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment is unenforceable. (See *Civ. Code* §1670.11.)

Expanded Liability for Sexual Harassment in Business, Service or Professional Relationships (SB 224): "Investors, elected officials, lobbyists, directors and producers" have been added to the list of persons who may be held personally liable for sexual harassment in "business, service or professional" relationships. (See *Civ. Code* § 51.9; *Gov't Code* §§ 12930, 12948.)

Wage & Hour

Employer Must Pay for Requested Copies Of Pay Statements (SB 1252): SB 1252 provides that employees have the "right to receive" a copy of their wage statements upon request. Employers may not require employees to make or pay for copies of their payroll records themselves. (See *Lab. Code* § 226.)

Workplace Accommodation & Paid Family Leave

Expanded Obligations for Lactation Accommodation (AB 1976): Employers must provide a space other than a bathroom and "in close proximity to the employee's work area," to express breast milk. AB 1976 authorizes a temporary lactation location if certain conditions are met and provides a narrow hardship exemption. (See *Lab. Code* § 1031.)

Expanded State-Paid Family Leave Benefits for Military Families (SB 1123): Beginning January 1, 2021, eligible employees are entitled to state-paid family leave benefits for time off to attend to a "qualifying exigency" related to the covered active duty of the employee's spouse, domestic partner, parent, or child in the armed forces. (See *Unemp. Ins. Code* §§ 3301, 3302.1, 3302.2, 3303, 3303.1, 3307.)

Human Trafficking Training

Human Trafficking Training for Operators of Mass Transit (AB 2034): By the end of 2020, businesses and establishments that operate in mass transportation, specifically including intercity passenger rail systems, light rail systems, and bus stations, must provide at least 20 minutes of training to their employees regarding how to recognize the signs of, and report, human trafficking. (See *Civ. Code* § 52.6.)

Human Trafficking Training for Hotel and Motel Employers (SB 970): By the end of 2019, hotel or motel employers must provide at least 20 minutes of human trafficking awareness training and education to new and existing employees who are likely to come into contact with victims of human trafficking. Examples of such employees include employees who work in a reception area, perform housekeeping duties, help customers in moving their possessions, or drive customers. After 2019, this training must be provided once every two years. (See *Gov't Code* § 12950.3.)

Corporate Board of Directors

Women on Corporate Boards (SB 826): Each publicly held corporation whose principal executive offices are located in California must have at least one female director on its board by the end of 2019. If no board seat opens up on an all-male board before that date, a corporation must increase its authorized number of directors by one and must fill that seat with a woman. This bill also imposes minimum board seats that must be filled by women, proportional to the number of board seats, by the end of 2021. (See *Corp. Code* §§ 301.3 and 2115.5.)

New Laws Impacting Construction Industry

PAGA Exemption for Certain Unionized Construction Industry Employees (AB 1654): The Private Attorneys General Act (PAGA) will not apply to construction industry employees covered by a collective bargaining agreement, if the agreement: (1) provides for a regular hourly pay rate of not less than 30% more than the minimum wage and a premium wage for overtime hours worked; (2) expressly waives PAGA requirements; (3) prohibits certain Labor Code violations; (4) contains a grievance and binding arbitration procedure to redress alleged Labor Code violations; and (5) authorizes the arbitrator to award remedies available under the Labor Code. (See *Lab. Code* § 2699.6.)

Joint Liability for Construction Contractors and Subcontractors (AB 1565): This bill, *signed as urgency legislation and effective September 19, 2018*, repealed Labor Code 218.7's provision that relieved

direct contractors for liability for anything other than unpaid wages and fringe or other benefit payments or contributions, including interest owed. Additionally, for contracts entered into on or after January 1, 2019, in order to withhold disputed payments, the direct contractor must identify, in its contract with the subcontractor, the specific documents or information that the direct contractor will require the subcontractor to provide. Subcontractors also may include the same requirements in their contracts with lower-tiered subcontractors and may withhold as disputed all sums owed, as specified. (*See Lab. Code § 218.7.*)

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