

Ringling in the New Laws

2019 California Employment Roundup

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As 2018 draws to a close, California employers have a busy new year ahead of them with expanded legal obligations.

SB 1300 – Sexual Harassment Omnibus Bill—Under SB 1300, employers may now be held responsible for the acts of nonemployees with respect to any kind of harassment due to protected status (including, among other things, harassment based on sex, gender, race, color, disability, national origin or sexual orientation). It will also lower the employees' burden of proof in harassment suits. Key takeaways include: defending against harassment suits will be substantially more difficult; training and avoidance of issues are more important than ever.

AB 3109 – No Waiver of Right of Petition or Free Speech in Contracts—This measure is designed to target provisions within settlement agreements that prohibit individuals from speaking about issues related to workplace harassment settlements. It makes unenforceable any provision in a contract or settlement agreement that waives a party's right to testify.

SB 820 – Prohibition against Secret Settlements—Code of Civil Procedure Section 1001 now makes void any provision in a settlement agreement that prevents the disclosure of information related to civil or administrative complaints of (a) sexual assault, (b) sexual harassment and (c) workplace harassment or discrimination based on sex. This bill seeks to stop perpetrators from silencing victims through use of provisions in settlement agreements that prohibit disclosure. SB 820 suggests that any violation of these provisions may give rise to a cause of action for civil damages.

SB 1343 – Expanded Sexual Harassment Training—Under existing law, Government Code Sections 12950 and 12950.1, employers with 50 or more employees must provide at least 2 hours of supervisor training on sexual harassment, abusive conduct and gender-based harassment within 6 months of their assuming those roles, and once every 2 years. With the addition of SB 1343, by January 1, 2020, and once every 2 years thereafter, employers with as few as 5 employees must provide at least 2 hours of sexual harassment training to all supervisory employees and at least 1 hour to nonsupervisory employees. SB 1343 requires that the Department of Fair Employment and Housing (DFEH) develop 1-hour and 2-hour online training courses and post the courses on its website. Employers are required to display a poster developed by the DFEH regarding transgender rights and distribute an information sheet on sexual harassment.

AB 2770 – Prohibits Sexual Harassers from Suing for Defamation—Amending Section 47 of the Civil Code, AB 2770 makes privileged additional communications regarding individuals, such that they cannot be the basis for a defamation claim. These communications include sexual harassment complaints by an employee to an employer, based on credible evidence and made without malice; communications between an employer and an interested person (i.e., a witness) regarding a sexual harassment complaint; as well as responses by an employer to a reference check as to (1) whether the employer would rehire an employee and (2) if not, whether the decision not to rehire is based on the employer's determination that the former employee engaged in sexual harassment.

AB 2282 – Part 1: Salary History Information—AB 2282 clarifies previously ambiguous terms in California's Equal Pay Act. "Applicants" are any individuals who seek employment with the employer – not current employees. "Pay scale" is the salary or hourly wage range. Employers are not required to disclose bonuses or equity ranges. Additionally, employers cannot seek salary history information from individuals seeking employment and employers must provide the company's salary or hourly wage range to applicants who request this information after the applicant successfully completes an initial interview.

AB 2282 – Part 2: Equal Pay—AB 2282 prohibits employers from paying wages lower than those paid to employees of the opposite sex or another race or ethnicity for substantially similar work, unless the wage disparity is based on seniority, merit or other bona fide factors other than sex, race or ethnicity (such as education, training or experience). The bill also prohibits employers from justifying wage disparities based on prior salary.

SB 826 – Corporate Board Representation—With the addition of Corporations Code Sections 301.3 and 2115.5, all publicly held corporations with principal executive offices in California are required to have at least one female director on its board by the end of 2019. By the end of 2021, corporations must comply with additional requirements based on the size of the board (e.g., if the board has six or more directors, the corporation must have at least three female directors). The Secretary of State will be publishing a corresponding report with related information, including how many corporations are subject to this requirement and were in compliance over the past year. The fine for a violation is \$100,000 for the first violation and \$300,000 for a second violation and any subsequent violations.

SB 1412 – Criminal Records—Last year, California passed a “ban the box” law (Labor Code Section 432.7), which prohibits inquiry into certain criminal records. This bill narrows the scope of the convictions into which employers may inquire and makes clear that an employer may consider only the specific conviction that falls within the exception, but not other convictions.

This article highlights new laws with broad impact, but employers should be aware that there are other new laws that may impact them in 2019. We recommend that California employers consult with experienced employment counsel to ensure compliance, as many of these new laws expand the scope of risk for employers and require changes to existing workplace policies.

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