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California Governor Signs Numerous #MeToo Laws

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In the wake of the #MeToo movement and resulting nationwide conversation about sexual harassment, California lawmakers recently passed legislation intended to combat sexual harassment in the workplace. On September 30, 2018, Governor Jerry Brown of California signed several of these bills into law.

Anti-harassment training

Existing law requires that employers with 50 or more employees provide supervisors with at least two hours of training and education on sexual harassment, "abusive conduct" (or bullying), and gender-based harassment.

SB 1343 broadens this training requirement considerably.

Under the current law, employers with **five or more employees** must provide at least two hours of "classroom or other effective interactive" sexual harassment training to all supervisory employees ***and*** at least one hour of such training to all nonsupervisory employees by January 1, 2020 (and once every two years thereafter). The bill requires the California Department of Fair Employment and Housing (DFEH) to develop one- and two-hour online training courses, informational posters and fact sheets, and make them available online and in multiple languages.

Additionally, SB 1300 authorizes (but does not require) employers to provide employees with "bystander intervention training," in which employees are given practical guidance on how to recognize potentially problematic behaviors, and are encouraged to take action and intervene appropriately when they observe those behaviors.

Confidentiality and nondisparagement

SB 820 is designed to ensure greater transparency with respect to claims of sexual harassment and assault.

It is commonplace for employers and employees, when settling claims of discrimination or harassment, to include a provision that prohibits the parties from disclosing the terms of the settlement, as well as the allegations presented in the claim or suit. SB 820 affects that practice – specifically, it prohibits the inclusion of confidentiality provisions in settlement agreements executed **after January 1, 2019** that would restrict the disclosure of *factual information* relating to claims of sexual assault, sexual harassment, or harassment or discrimination based on sex, unless the claimant requests a confidentiality provision.

Along the same lines, another bill approved by Governor Brown (SB 1300) prohibits an employer from requiring an employee to sign, as a condition of employment, any agreement that would prohibit the employee from disclosing information about unlawful conduct in the workplace.

Expansion of employer liability

Under existing law, the California Fair Employment and Housing Act (FEHA) imposes liability upon employers for sexual harassment employees are subjected to by nonemployees of the company (such as contractors, consultants, vendors, and customers), if the employer or its supervisors knew or should have known of the conduct and failed to take corrective action. SB 1300 expands this potential liability for acts of harassment, not just sexual harassment.

Expansion of protections against harassment by investors

Aimed at combating sexual harassment in the venture capital industry, SB 224 prohibits harassment by individuals who are offering to help another individual establish a business, such as investors.

Specifically, under Revised Section 51.9 of the Civil Code (which reflects to the requirements of SB 224), a person is liable for sexual harassment if the plaintiff can show that (1) there is a business, service, or professional relationship between the plaintiff and defendant, or the defendants holds himself or herself out as being able to help the plaintiff establish a business; (2) the defendant has made sexual advances or solicitations, or engaged in other verbal, visual, or physical conduct of a sexual nature, that were unwelcome and pervasive or severe; and (3) the plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of such conduct.

Action items

What should California employers do?

- Provide one hour of training on sexual harassment and abusive conduct to nonsupervisory employees by the end of next year (and every two years thereafter).
- Provide two hours of training on sexual harassment and abusive conduct to supervisory employees (if not already doing so) by the end of next year, and every two years thereafter.
- Review agreements with employees to ensure the agreement does not inadvertently bar discussion of harassment claims or other unlawful conduct.
- Continue to take all complaints of harassment and discrimination seriously, in compliance with the company's policies.
- Be mindful of confidentiality (and limits on imposing confidentiality) when exploring settlement of harassment or discrimination claims.
- Venture capital firms should educate and train investment professionals on the anti-harassment protections now extended to current and prospective portfolio company entrepreneurs.

Please feel free to contact us with any questions about the new laws or how to comply.

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