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Claims of Workplace Harassment in California to Receive Greater Protections under New Law

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Beginning January 1, 2019, new California law creates several new protections for employees bringing harassment claims.

Highlights of Senate Bill 1300 (SB 1300) follows:

Employer Responsibility for Nonemployees

SB 1300 mandates that an employer may be responsible for the acts of nonemployees with respect to any type of harassment (not just sexual harassment) against employees and other nonemployees working as interns or volunteers and service contractors.

Restrictions on Employer Releases and Non-Disparagement Agreements

SB 1300 also makes it an unlawful employment practice under the California Government Code for an employer, in exchange for a raise or bonus or as a condition of employment or continued employment, to do the following:

- Require an employee to sign a release stating the employee does not possess any claim or injury against the employer or other covered entity, and include the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, law enforcement agency, court, or other governmental entity; or
- Require an employee to sign a non-disparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.

However, these provisions do not apply to negotiated settlement agreements to resolve an underlying claim in court, before an administrative agency or alternative dispute resolution forum, or through an employer's internal complaint process.

Legislature's Affirmation of the *Harris* Standard

SB 1300 formally adopts the standard in U.S. Supreme Court Justice Ruth Bader Ginsburg's concurrence in *Harris v. Forklift Systems,* 510 U.S. 17 (1993), that a sexual harassment plaintiff "need not prove that his or her tangible productivity has declined as a result of the harassment. It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to make it more difficult to do the job."

In addition, SB 1300 expressly provides that a "single incident of harassment is sufficient to create a triable issue 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."

Therefore, the statute rejects the opinion of the U.S. Court of Appeals for the Ninth Circuit in *Brooks v. City of San Mateo,* 229 F.3d 917 (2000), and prohibits its use in determining what conduct may be sufficiently severe or pervasive to constitute a violation of the California Fair Employment and Housing Act. The statute further declares the Legislature's intent to reject the "stray remarks doctrine" and affirms the California Supreme Court's *Reid v. Google, Inc.,* 50 Cal.4th 512 (2010), which found isolated remarks, if viewed in light of other circumstances, can be

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evidence of severe and pervasive harassing conduct.

In addition, SB 1300 expressly rejects the view that workplaces can be held to different standards regarding sexual harassment. Further, the Legislature declared these matters are often nuanced and factually intensive.

Bystander Training

Under SB 1300, employers may provide employees with bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe such behaviors. The training and education may include exercises to provide bystanders with the skills and confidence to intervene as appropriate. Such exercises also may provide bystanders with resources they can call upon that support their intervention.

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