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Governor Brown Signs Slew Of #MeToo-Inspired Laws

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This weekend Governor Brown signed many laws that were authored and gained traction in response to the #MeToo movement:

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New Restrictions On Confidentiality Of Sexual Harassment/Discrimination Settlements

Senate Bill 820 prohibits confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct – unless the party alleging the harm desires confidentiality language to protect his or her identity. The bill, which adds Section 1001 to the California Code of Civil Procedure, renders void as against public policy any provision in a settlement agreement that prevents the disclosure of factual information regarding sexual assault, sexual harassment (as defined in Section 51.9 of the Civil Code), workplace harassment or discrimination based on sex (as described in Section 12940 of the Government Code), along with failure to prevent, or retaliation for reporting, harassment or discrimination based on sex.

The law does not void confidentiality provisions that prevent disclosure of the amount paid in settlement of a claim. Importantly, the new law also contemplates a cause of action for civil damages for failing to comply with the new requirements.

New Restrictions Regarding Preventing Future Testimony

Assembly Bill 3109, which adds Section 1670.11 to the Civil Code, voids provisions in settlements that would prevent someone from testifying about alleged criminal conduct or alleged sexual harassment in an administrative, legislative, or judicial proceeding where the individual is requested to attend the proceeding pursuant to a court order, subpoena or written request from an administrative agency or the legislature.

New Requirements For Sexual Harassment Workplace Training

Senate Bill 1343 radically changes the requirements for workplace sexual harassment prevention training in the #MeToo era. The bill amends California Government Code Section 12950.1 and changes several workplace training requirements, including the following:

- Training required by small businesses: Employers with at least ***5 employees*** are now required to provide training to their employees (the bar was lowered significantly from the previous 50-employee threshold);
- Training is no longer limited to supervisory employees: Employers are now required to provide sexual harassment prevention training to ***all employees, including non-supervisory*** employees. Specifically, one hour of classroom or other effective interactive training and education regarding sexual harassment must be provided to all non-supervisory employees, and two hours of the same to supervisory employees.
- Training required within six months of job commencement: Employees are currently required to undergo training within six months of starting their jobs. Seasonal or temporary employees (or any employees that will be employed less than six months) need to undergo training within 30 days or 100 hours, whichever comes first.

The new bill will force many employers to overhaul their current training protocols in light of the new requirements. The bill also directs the DFEH to create online training modules that employees could take to fulfill the new requirements. However, if employers simply require employees to "comply" with the new law by clicking through government-supplied online training, that may not deliver the right message regarding the employer's commitment to prevent and remedy workplace harassment. Employers should consider carefully how and what training to provide to all of their employees in order to ensure that the training is perceived by employees to be genuine. As the EEOC noted in its report on sexual harassment published in 2016, an "organization's commitment to a harassment-free workplace must not be based on a compliance mindset, and instead must be part of an overall diversity and inclusion strategy."

"Hostile Work Environment" Is Redefined; Release/Non Disparagement Agreements as a Condition of Employment or Promotion Are Banned

Senate Bill 1300 decrees that a single incident of harassing conduct is sufficient to create a triable issue of hostile work environment if the conduct interfered with a plaintiff's work performance or otherwise created an intimidating, hostile, or offensive work environment. The law also explicitly rejects the prior standard for hostile work environment set by the 9th Circuit in *Brooks v. City of San Mateo*, 229 F.3d 917 (9th Cir. 2000), an opinion written by former Judge Alex Kozinski who retired from the court in 2017 amidst allegations of improper sexual conduct while on the bench.

The law also makes it unlawful for an employer to require an individual to sign a release or non-disparagement agreement in exchange for a raise, bonus, or continued employment. The prohibition does not apply to a release or non-disparagement provision in a settlement that is negotiated with respect to alleged claims wherein the employee is represented by counsel.

Corporate Boards Are Required To Include Women

Senate Bill 826 requires that, by the end of 2019, all California publicly held companies have a minimum of one female on their board of directors; and by the end of 2021 a minimum of 2 female directors if 5 total directors, or 3 female directors if 6 or more total directors. Failure to comply will result in fines ($100,000 for the first violation and $300,000 for subsequent violations).

Sexual Harassment Claims Permitted Against a Defendant Who Holds Himself/Herself Out As Being Able to Help Plaintiff

Aimed at preventing directors and producers from taking advantage of young talent looking for a break, Senate Bill 224 creates a cause of action for sexual harassment where

- Plaintiff proves there is a business, service, or professional relationship between plaintiff and defendant, or defendant holds himself or herself out as being able to help plaintiff establish a business, service, or professional relationship with the defendant or a third party;
- Defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance, or other verbal, visual, or physical conduct of a sexual or hostile nature based on gender that were unwelcome and pervasive or severe; and
- Plaintiff suffered or will suffer economic loss or personal injury.

Talent Agencies Required to Provide Talent with Educational Materials on Sexual Harassment

Assembly Bill 2338 requires that a talent agency, as a condition of the requirement that it be licensed with the Labor Commissioner, provide educational materials on sex harassment prevention, retaliation, and reporting resources to its talent (the artists). Failure to comply will result in $100 fines for each violation.

Human Trafficking Awareness Training Required of Certain Employees

Senate Bill 970 requires that employees who are likely to interact or come into contact with victims of human trafficking (e.g., those who have recurring interactions with the public such as receptionists, housekeepers, and drivers) go through 20 minutes of classroom or other interactive training regarding human trafficking awareness.