Saturday, October 6, 2018

On September 30, California Governor Jerry Brown signed into law California Senate Bill 826 (SB 826), which requires a publicly held corporation with shares listed on “a major United States stock exchange” and whose principal executive offices are located in California (as reported on the corporation’s annual report on Form 10-K) (Covered Corporations) to have at least one female director serving on its board of directors by December 31, 2019. By December 31, 2021, a Covered Corporation must have at least (a) three female directors if its board consists of six or more members, (b) two female directors if its board consists of five members or (c) one female director if its board consists of four or fewer members. Under SB 826, a female is defined as any individual who self-identifies as a woman, regardless of such individual’s designated sex at birth.

SB 826 also (1) requires the California secretary of state to publish reports concerning compliance with SB 826 and (2) authorizes the California secretary of state to adopt regulations to implement SB 826, including regulations that impose fines on Covered Corporations of: (A) $100,000 for failure to timely file required information with the California secretary of state (as specified in one or more future regulations) and (B) $100,000 for a Covered Corporation’s first violation and $300,000 for each subsequent violation. A violation occurs for each director seat on the board of directors of a Covered Corporation that, under SB 826, is required to be, but is not, held by a female during at least a portion of the applicable calendar year.

SB 826 includes various findings by the California Senate, including, among other things, that:

- More women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace and protect California taxpayers, shareholders and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS; and
- Numerous independent studies have concluded that publicly held companies perform better when women serve on their boards of directors.

Notwithstanding the California Senate’s findings in support of SB 826, commentators expect that the law is likely to be challenged in court, including under (1) the equal protection clauses of the California Constitution (which prohibits disqualifying a person from employment on the basis of such person’s sex) and the Fourteenth Amendment to the US Constitution or (2) because SB 826 applies to corporations with principal executive offices in California, regardless of their state of incorporation, the “internal affairs doctrine,” which is a conflict-of-laws principle that provides that the state of incorporation of a corporation should have the authority to regulate such corporation’s internal affairs (including with regard to its board of directors).

The full text of SB 826 is available [here](#).

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