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California Legislature Amends Section 1542: Are Employer Settlement Agreements Now More Vulnerable to Attack?

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On January 1, 2019, California's [Senate Bill No. 1431](#) went into effect, making a slight, but potentially significant amendment to Civil Code Section 1542. The prior version of the statute read: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." SB 1431 amended Section 1542 to now read: "A general release does not extend to claims that the creditor **or releasing party** does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, **would** have materially affected his or her settlement with the debtor **or released party**." The amended version of the Code adds "releasing party" and "released party" alongside creditor and debtor, respectively, and also changes "must have materially affected" to "would have materially affected" the releasing party's decision to settle.

Although the legislative history indicates that the legislature intended a non-substantive change declarative of existing law, it is possible that a court could conclude that "would have materially affected" is a lesser standard than "must have materially affected." Thus, settlement and release agreements lacking an express waiver to Section 1542 may now be more vulnerable to attack as applied to unknown claims. Whether this amendment is ultimately a distinction without a difference remains to be seen. Regardless, employers should take caution to ensure that their settlement and release agreements always include an express waiver to Section 1542, and that any internal template agreements are updated to reflect the recent revisions.

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