On September 30, 2020, Governor Newsom signed Assembly Bill (“AB”) 979, which requires publicly held corporations headquartered in California to diversify their boards of directors with directors from “underrepresented communities” by December 31, 2021. This bill is similar to Senate Bill 826, signed into law in 2018, which required publicly held corporations headquartered in California to include women on their boards.

AB 979 defines “director from an underrepresented community” as “an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.” Foreign and domestic publicly held corporations with principal executive offices in California must have at least one director from an underrepresented community on their boards by December 31, 2021. By December 31, 2022, covered corporations with boards of nine or more directors must have a minimum of three directors from underrepresented communities on their boards, and
covered corporations with boards of more than four but less than nine directors must have a minimum of two directors from underrepresented communities. Corporations may increase the number of directors on their boards to comply with these requirements.

Starting no later than March 1, 2022, the California Secretary of State will publish annual reports on its website documenting compliance with these diversification requirements. Companies that fail to timely comply will be fined $100,000 for the first violation and $300,000 for subsequent violations.

**Takeaways**

Similar to SB 826, which required gender diversity on boards, AB 979 will likely be challenged on constitutional and other grounds. Nonetheless, covered corporations and their boards of directors should begin planning for the December 31, 2021 compliance deadline. Moreover, AB 979 provides covered corporations an opportunity to complement existing diversity and inclusion strategies if the changes are implemented with intentionality by selecting candidates that fit the organization’s business needs and help the organization achieve its diversity and inclusion goals.

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