BCLP. Client Intelligent

BCLPatWork.com

NEW CALIFORNIA LAWS CHANGE SEXUAL HARASSMENT LANDSCAPE

Oct 03, 2018

On Sunday September 30, 2018, while many of us were busy setting our Fantasy Football lineups, outgoing Governor Jerry Brown signed a number of work-related bills arising in response to the #MeToo movement that will substantially alter employers' exposure to liability for workplace harassment, prohibit many common practices used to reduce adverse publicity surrounding workplace harassment claims, and impose additional training and inclusion requirements.

SEXUAL HARASSMENT OMNIBUS BILL, SB 1300

The most far-reaching of the new laws is SB 1300, the Sexual Harassment Omnibus Bill, which amends the California Fair Employment and Housing Act ("FEHA"). Under SB 1300, FEHA will now expressly affirm some harassment-related court decisions and disavow others, embedding into the statute the following legal concepts and ever-expanding scope:

- The plaintiff in a workplace harassment suit is only required 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 his or her job. It is not necessary to show a tangible decline in productivity.
- A single incident of harassing conduct is sufficient to create a triable issue regarding the existence 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. (Here, SB 1300 expressly rejects a decision authored by #MeToo casualty Alex Kolinski, a former judge on the Ninth Circuit Court of Appeals, which provided that a one-time physical encounter was not sufficiently severe or pervasive to support a hostile work environment claim.)
- Because the existence of a hostile work environment depends upon the totality of the circumstances, even an inappropriate stray remark not made directly in the context of an employment decision, or made by a non-decision-maker, may be relevant circumstantial evidence.

- The legal standard for sexual harassment should not vary by the type of workplace, except when "engaging in or witnessing prurient conduct and commentary is integral to the performance of job duties."
- Hostile work environment cases involve issues "not determinable on paper" and are rarely appropriate for disposition on summary judgement.
- An employer's potential liability under the FEHA for acts of harassment by nonemployees extends to all forms of prohibited harassment, not just sexual harassment.
- An employer is prohibited from requiring an employee to sign (as a condition of employment, raise or bonus) a release of FEHA claims or rights or a document prohibiting disclosure of information about unlawful acts in the workplace, including non-disparagement provisions. This provision does not apply to negotiated settlement agreements, which are the subject SB 820, discussed below.
- An award of attorney's fees and costs to a prevailing defendant is prohibited, unless the court finds that the action was frivolous, unreasonable, or groundless when brought or that the plaintiff continued to litigate after it clearly became so.

RESTRICTIONS ON CERTAIN CONFIDENTIALITY PROVISIONS IN SETTLEMENT AGREEMENTS, SB 820

After January 1, 2019, settlement agreement provisions which prevent the disclosure of information related to civil or administrative complaints of sexual assault, sexual harassment, and workplace harassment or discrimination based on sex are void as a matter of law and against public policy. The court may look to pleadings or other papers in the record or any findings in determining whether the factual foundation of the causes of action are of a nature such that confidentiality is precluded. For non-governmental employers, a provision that shields the identity of the claimant may be included at the request of the claimant,and a provision that prohibits the disclosure of the amount paid in settlement is not prohibited.

EXPANSION OF ANTI-HARASSMENT TRAINING OBLIGATIONS, SB 1343

California has long required that larger employers (50 or more employees) conduct anti-sexual harassment training for supervisory employees. SB 1343 extends the training requirement to employers with 5 or more employees, including temporary or seasonal employees. Covered employers must provide at least two hours of sexual harassment training to all supervisors and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020 and one hour every two years thereafter.

MANDATING WOMEN ON CORPORATE BOARDS OF DIRECTORS, SB 826

Beginning December 31, 2019, public companies with their principle executive offices in California must have on their boards of directors a set minimum number of females (i.e. those who self-identify as women regardless of their designated sex at birth). Corporations failing to comply with this mandate face significant monetary penalties. In signing this bill, Governor Brown noted that it faces potentially "fatal" legal challenges.

CALIFORNIA EMPLOYERS SHOULD:

- Carefully review anti-harassment policies and practices for conformance with the newly-enacted laws.
- Update any non-disclosure and settlement agreements.
- Prepare to meet expanded training requirements.
- If applicable, plan for meeting the mandate for female board membership.
- Consider how changes in the scope of FEHA and pronouncement against summary judgment in hostile environment cases will impact current litigation strategy.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers review their employee policies. If you or your organization would like more information on any state-specific workplace harassment laws or any other employment issue, please contact an attorney in the Labor and Employment practice group.

RELATED CAPABILITIES

- Employment & Labor

MEET THE TEAM

Pamela Carroll Calvet

Los Angeles

pamela.calvet@bclplaw.com
+1 310 576 2390

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be "Attorney Advertising" under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.

© 2025 Bryan Cave Leighton Paisner LLP.