

insights

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California says #MeToo: What employers need to know

California Governor Jerry Brown has signed into law several pieces of legislation inspired by the #MeToo movement. Governor Brown also vetoed several bills designed to curtail harassment and discrimination. The highlights:

New laws

Sexual harassment training

California's Sexual Harassment Training requirements have been expanded to apply to all employers with 5 or more employees and to include training for non-supervisors, as well as supervisors. Training must be provided once every two years, and within six months of an employee's hiring, by January 1, 2020.

Non-disclosure provisions banned in sexual harassment settlements

Effective January 1, 2019, Code of Civil Procedure section 1001 is added to prohibit confidentiality or non-disclosure provisions in settlement agreements preventing disclosure of factual information related to claims filed in civil actions or administrative complaints alleging sexual assault, sexual harassment, workplace harassment, discrimination based on sex, failure to prevent or retaliation for reporting harassment, or discrimination based on sex.

The new law does not prevent a provision in a settlement agreement which precludes the disclosure of the amount paid in settlement of a claim.

Corporate boards required to include women

By the end of 2019, all California-based publicly traded corporations must have at least one female director on their board of directors. By the end of 2021, the requirement increases to a minimum of 2 female directors if there are a total of 5 directors, and to 3 female directors if there are 6 or more directors. Penalties for failure to comply with this new law are steep: \$100,000 for the first violation and \$300,000 for subsequent violations.

Lactation accommodation

AB1976 requires employers make reasonable efforts to provide a room "other than a bathroom" to accommodate lactating mothers.

Liability expanded under FEHA

SB1300 lowers the burden of proof to establish harassment and provides that a single incident of harassing conduct is sufficient to create a triable issue of hostile work environment if the conduct interferes with an employee's work environment or otherwise creates an intimidating, hostile, or offensive work environment.

Human trafficking

Certain industries - hotels, motels and mass transit operators - must provide 20 minutes of training to employees who are likely to come into contact with victims of human trafficking by 2020. After that, the training must be provided every two years.

Bills vetoed

Governor Brown vetoed the following bills:

- **AB3080** - This bill would have banned mandatory arbitration agreements as a condition of employment.



- **AB1870** - This bill would have extended the statute of limitations on Fair Employment and Housing Act claims from one year to three years.
- **AB1867** - This bill would have required employers to retain records of sexual harassment complaints for five years after the employee's termination of employment.

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