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Stuart Kane LLP

#MeToo Momentum Leads To Significant Changes In California Employment Laws For 2019

The #MeToo movement has been an omnipresent force in society over the past year. The movement is credited with shining a light on a wide variety of sexual misconduct, and has been associated with many high-profile sexual harassment and assault scandals including those involving Harvey Weinstein, Bill Cosby, Kevin Spacey, Les Moonves, Matt Lauer, Steve Wynn, Russell Simmons, Al Franken, and countless others.

The #MeToo movement is now able to take credit (at least partial credit) for several new California laws or changes to existing laws regarding sexual harassment in the workplace.

SB 820 – No More Non-Disclosure Provisions In Sexual Harassment Settlements

The most significant change comes in the form of SB 820, which adds a new Section 1001 to the Code of Civil Procedure. The law invalidates provisions in sexual harassment settlement agreements which purport to prevent the disclosure of factual information related to the claim, other than the identity of the plaintiff. Specifically, any provision within a settlement agreement entered into on or after January 1, 2019 that "prevents the disclosure of factual information related to the claim . . . is void as a matter of law and against public policy."

The legislative history of the bill mentions "the now notorious case of Harvey Weinstein" by name, and states that the law is intended to "stand with victims of sexual harassment and assault by ending [the] unjust practice of secret settlements that keep these aggressors unaccountable and able to prey on other victims." According to the bill's author, State Senator Connie M. Leyva: "These perpetrators should not be allowed to endanger others or evade justice simply because they have a fat wallet at their disposal. SB 820 will not prevent people from mutually agreeing to settle, but it will simply prevent the perpetrator from requiring the victim to remain silent about the harassment as a condition of settlement."

Critics of the bill argue that false accusations do occur, and that defendants in these cases may be less likely to settle with plaintiffs or will offer less money in such settlements if they are not able to gain the advantage of confidentiality in a settlement.

SB 1343 – New And More Onerous Requirements For Employer Sexual Harassment Training

Another new bill, SB 1343, specifically mentions the #MeToo movement as an impetus for the change in law. SB 1342 amends Gov't Code 12950 to require sexual harassment training for any employer having 5 or more employees, instead of the prior requirement for employers having 50 or more employees. The new law also requires one hour of sexual harassment training for *nonsupervisory* employees every two years, in addition to the prior requirement of two hours of training for supervisory employees every two years. The upshot is that many more employers will now be subject to mandatory sexual harassment training requirements and a far larger group of employees for each employer (i.e. supervisory *and* nonsupervisory employees) will now be subject to such training.

SB 1300 – Easier Burden Of Proof For Plaintiffs Alleging Hostile Work Environment Harassment

A third bill, SB 1300 will amend Gov't Code 12923 to decree that *a single incident of harassing conduct* is sufficient to create a triable issue of fact regarding the existence of a hostile work environment if harassing conduct has unreasonably interfered with the plaintiff's work performance. Prior law had stated that if the harassing conduct was not severe in the extreme, more than a few isolated incidents must have occurred to prove a hostile work environment claim. The result is that it may now be easier to prove hostile work environment claims, and it certainly will be easier for plaintiffs to allege colorable claims that can get past summary judgment. In fact, amended Gov't Code 12923(e) specifically codifies that "harassment cases are rarely appropriate for disposition on summary judgment."

SB 1300 also adds Government Code Section 12964.5 which provides that it is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to require an employee to sign a release of FEHA claims (including sexual harassment claims) or non-disparagement agreements. The new Section does not expressly apply to severance pay, meaning that the practice of providing severance pay in exchange for releases of FEHA claims (including sexual harassment claims) should still be lawful, although this is somewhat unclear. The law expressly does not apply to negotiated settlement agreements entered into after an employee has filed a FEHA action.

About Stuart Kane LLP

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Shane Criqui

Shane Criqui is a trial attorney with a focus on employment litigation (employer-side), employment counseling, as well as real estate and business litigation. Mr. Criqui engages in aggressive legal representation to achieve clients' objectives in litigation, and provides accurate and thoughtful counseling to clients regarding their legal, business, and employment needs. He has been selected as a Southern California "Rising Stars" by Super Lawyers magazine continuously since 2015. He can be reached at (949) 791-5126 or scriqui@stuartkane.com.