

Legislative Roundup

We've been keeping an eye on a variety of legislation as it makes its way through the California legislature. Now that this year's legislative session has come to an end, here's an update on what was signed into law...and what was not.

Signed into Law

- **SB 826: Female corporate board membership** – Requires publicly held corporations with principle offices in California to have at least one female on their Board of Directors by December 31, 2019; this increases to two or three females (depending on the overall size of the Board) by December 31, 2021. This law is expected to be challenged almost immediately on equal-protection grounds and is likely to face an uphill battle in court.
- **SB 1412: Job applicant criminal history inquiry** – If you use criminal background checks to screen job applicants, you must be careful when looking at expunged or judicially sealed convictions. Under this law (which is in addition to the rules you must follow under AB 1008, the “Ban the Box” ordinance), you may only consider these types of convictions in situations where conviction of that crime legally prohibits someone from holding the job in question. For example, an applicant for a job with a bank cannot have any prior convictions of fraud or money-laundering, even if they were expunged.
- **SB 1300: Sexual harassment omnibus bill** – Expands your potential liability under the California Fair Employment Housing Act (FEHA) for acts committed by nonemployees to all types of harassment, not just sexual harassment as under current law. Prohibits you from requiring employees to sign a release of claims under FEHA in exchange for a raise or bonus, or as a condition of employment. Prohibits you from requiring an employee to sign a non-disparagement agreement or other document that may deny the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment. Authorizes—but does not require—you to provide bystander intervention training to your employees. And includes other measures related to harassment as well.
- **AB 3109: Banning waivers of rights to testify** – If you enter into a contract or settlement agreement on or after January 1, 2019, any provision that waives a party's right to testify in a legal proceeding regarding criminal conduct or sexual harassment on the part of the other party is void and unenforceable.
- **SB 820: Settlement agreement provisions** – If you enter into a settlement agreement on or after January 1, 2019, any provision that prevents the disclosure of information related to complaints of sexual assault, sexual harassment, workplace harassment or discrimination based on sex is void and unenforceable. However, at the claimant's request, the agreement can include a provision that shields the claimant's identity.
- **SB 1343: Workplace sexual harassment training** – Extends the requirements to provide workplace sexual harassment training to employers with just five or more employees. Mandates that this training be provided every two years to all employees, both supervisory and non-supervisory. Beginning in 2020, mandates that this training must also be provided to seasonal and temporary workers.
To make it easier to provide this training, the law also requires the Department of Fair Employment and Housing to develop one- and two-hour online training courses and make these courses available on the agency's website.
- **AB 1976: Workplace lactation accommodations** – Requires you to make a reasonable effort to provide a room “other than a bathroom” (not just “other than a toilet”) to accommodate lactating employees.
- **AB 2334: Cal/OSHA recordkeeping** – As an employer you are required to record workplace injuries and illnesses in your OSHA Form 300 Log. Starting January 1, 2019, you will be on the hook for recordkeeping violations well beyond the federal six-month statute of limitations. A failure to record an injury or illness will now be deemed a “continuing violation” until it is discovered by Cal/OSHA, corrected by you, or reaches a point where the duty to maintain the record no longer exists.

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- **AB 1753: Controlled substances Rx forms** – Reduces the number of printers approved to print prescription forms for controlled substance prescriptions from about 40 currently to just three statewide.

Vetoed by Governor Brown

- **AB 3080: Non-disparagement clauses and mandatory arbitration agreements** – Meant to address two legal tactics commonly used in relation to employment contracts that have been used to silence victims and witnesses of workplace sexual harassment.
- **AB 3081: Workplace sexual harassment** – Would have prohibited certain types of discrimination against employees who are victims of sexual harassment and would have required employers and labor contractors to share responsibility and liability for all workers supplied by that labor contractor.
- **AB 1867: Sexual harassment record keeping** – Would have required employers with 50 or more employees to retain records of internal sexual harassment complaints for five years from the separation date of the complainant or the alleged harasser, whichever date was later.
- **SB 937: Workplace lactation accommodation** – There were two bills regarding workplace lactation accommodations. AB 1976 was signed into law, while SB 937, which was extremely specific regarding the exact nature of the lactation accommodations to be provided, was vetoed.
- **AB 1870: Employment practice claims timing** – Would have extended the period during which employees can file complaints with the California Department of Fair Employment and Housing from one year to three years.

