

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2018 LEGISLATIVE SUMMARY

The following bills were signed and chaptered into law by Governor Edmund G. Brown, Jr., in 2018 and become effective January 1, 2019.

EMPLOYMENT

Conviction History

Current law makes it an unlawful employment practice for all employers – public and private – to seek conviction history information until a conditional offer of employment is made, or to include any question seeking disclosure of an applicant’s conviction history on a job application. As it relates to the Department’s work, AB 2845 added any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation to the list of items employers may not consider, distribute, or disseminate while conducting a conviction history background check in connection with any application for employment.

Bill Number: AB 2845 (Bonta) (Stats. 2018, ch. 824.)

Code Section Amended: Government Code section 12952; Penal Code sections 4812, 4852.06, 4852.16, and 4852.18.

Code Section Added: Penal Code section 4802.5.

Human Trafficking Awareness Training for Hotel and Motel Employees

SB 970 amended the Fair Employment and Housing Act to require hotel and motel employers to provide at least 20 minutes of human trafficking awareness training to “an employee who is likely to interact or come into contact with victims of human trafficking.” The bill authorized the Department to seek an order requiring compliance against any employer who violates the training requirement.

Bill Number: SB 970 (Atkins) (Stats. 2018, ch. 842.)

Code Section Amended: None.

Code Section Added: Government Code section 12950.3.

“Severe or Pervasive” Sexual Harassment Legal Standard, Optional Bystander Intervention Training, Claim Releases and Nondisparagement Agreements, and Defendants’ Attorney’s Fees

SB 1300 was an omnibus workplace sexual harassment prevention bill. First, the bill provided legislative intent regarding the meaning of the “severe or pervasive” sexual harassment legal standard by endorsing or rejecting certain appellate decisions. Second, the bill provided, though did not require, that employers may provide bystander

intervention training that includes information on how to recognize problematic behaviors and take action. Third, the bill prohibited employers from requiring a release of claims or rights under the Fair Employment and Housing Act or requiring nondisparagement agreements that prohibit disclosure of unlawful acts in the workplace except as part of a negotiated settlement agreement when a complaint has been filed. Finally, the bill would codify the standard for prevailing defendants to collect attorney's fees.

Bill Number: SB 1300 (Jackson) (Stats. 2018, ch. 955.)

Code Section Amended: Government Code sections 12940 and 12965.

Code Section Added: Government Code sections 12923, 12950.2, and 12964.5.

Sexual Harassment Prevention Poster and Training

SB 1343 amended the Fair Employment and Housing Act to require the Department to translate its statutorily-required workplace posters into at least five languages; expanded the number of employers required to provide sexual harassment prevention training to those with five or more employees and set a compliance deadline of January 1, 2020; and required the Department to produce and post a two-hour sexual harassment prevention online training course for supervisors and a one-hour course for non-supervisory employees to its website.

Bill Number: SB 1343 (Mitchell) (Stats. 2018, ch. 956.)

Code Section Amended: Government Code sections 12950 and 12950.1.

Code Section Added: None.

DISCRIMINATION IN BUSINESS, SERVICE, AND PROFESSIONAL RELATIONSHIPS

DFEH Enforcement

Civil Code section 51.9 imposes civil liability for sexual harassment in business, service, or professional contexts outside of traditional employment relationships. First, SB 224 added investor, elected official, lobbyist, director, and producer to the non-exhaustive list of professional relationships that are specifically enumerated in the law, even though the professions that SB 224 added were likely already covered by the statute's catch-all provision. Second, SB 224 made the Civil Code section 51.9 cause of action easier to prove by removing the requirement that a plaintiff prove that a professional relationship is not easy to terminate. Third, SB 224 expanded the cause of action to include prospective, rather than only existing, business, service, and professional relationships. Finally, SB 224 added Civil Code section 51.9 to the Department of Fair Employment and Housing's jurisdiction.

Bill Number: SB 224 (Jackson) (Stats. 2018, ch. 951.)

Code Section Amended: Civil Code section 51.9; Government Code sections 12930 and 12948.

Code Section Added: None.

DISPUTE RESOLUTION

Confidentiality in Settlement Agreements

SB 820 prohibited settlement agreements in certain types of cases from including confidentiality or nondisclosure terms preventing parties from disclosing factual information about sexual harassment and assault claims. Specifically, in any civil or administrative action, as a result of SB 820, settlement agreements are not permitted to include terms preventing disclosure of factual information related to (1) various acts of sexual assault, (2) sexual harassment in professional relationships, (3) workplace harassment or discrimination based on sex or the failure to prevent it, or retaliation for reporting it, and (4) harassment or discrimination based on sex, or retaliation for reporting it, by the owner of a housing accommodation. However, a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant, so long as the parties do not include government agencies or public officials.

Bill Number: SB 820 (Leyva) (Stats. 2018, ch. 953.)

Code Section Amended: None.

Code Section Added: Code of Civil Procedure section 1001.

RELATED STATUTES NOT ENFORCED BY DFEH

Legislative Employee Whistleblower Protection Act

AB 403 imposed criminal and civil liability on a Member of the Legislature or legislative employee, as defined, who interferes with, or retaliates against, a legislative employee's exercise of the right to make a protected disclosure, which is defined as a good faith allegation made by a legislative employee to specified entities that a Member of the Legislature or a legislative employee has engaged in, or will engage in, activity that may constitute a violation of law, including sexual harassment, or a violation of a legislative standard of conduct.

Bill Number: AB 403 (Melendez) (Stats. 2018, ch. 2.)

Code Section Amended: None.

Code Section Added: Government Code sections 9149.30, 9149.31, 9149.32, 9149.33, 9149.34, 9149.35, and 9149.36.

Affirmatively Further Fair Housing

AB 686 required a public agency, as defined, to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and to not take any action that is materially inconsistent with this obligation, as provided.

Bill Number: AB 686 (Santiago) (Stats. 2018, ch. 958.)

Code Section Amended: Government Code sections 65583 and 65583.2.

Code Section Added: Government Code section 8899.50.

Lactation Accommodation

Existing law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. AB 1976 instead required an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes and outlined what constitutes compliance.

Bill Number: AB 1976 (Limón) (Stats. 2018, ch. 940.)

Code Section Amended: Labor Code section 1031.

Code Section Added: None.

Third Party Rental Payments

AB 2219 required landlords to accept third party rent payments in certain circumstances. The bill included protections for landlords if the assistance check bounces and stated these third parties do not have the right to occupancy.

Bill Number: AB 2219 (Ting) (Stats. 2018, ch. 233.)

Code Section Amended: Civil Code section 1947.3.

Code Section Added: None.

Talent Agency Sexual Harassment Prevention

AB 2338 required a talent agency to provide educational materials on sexual harassment prevention, retaliation, and reporting resources and nutrition and eating disorders to its artists; required those educational materials to be in a language the artist understands; and required the licensee, as part of the application for license renewal, to confirm with the Labor Commissioner that it has and will continue to provide the relevant educational materials.

Bill Number: AB 2338 (Levine) (Stats. 2018, ch. 967.)

Code Section Amended: None.

Code Section Added: Labor Code sections 1700.50, 1700.51, 1700.52, 1700.53, and 1700.54.

In-Home Supportive Services Sexual Harassment Prevention

AB 3082 required the State Department of Social Services, in consultation with interested stakeholders, to develop, or otherwise identify, standard educational material about sexual harassment and the prevention thereof to be made available to In-Home Supportive Services (IHSS) providers and recipients and a proposed method for uniform data collection to identify the prevalence of sexual harassment in the IHSS program.

Bill Number: AB 3082 (Gonzalez Fletcher) (Stats. 2018, ch. 948.)

Code Section Amended: None.

Code Section Added: Welfare and Institutions Code section 12318.

Contractual Waiver of Right to Testify in Criminal or Sexual Harassment Proceeding

AB 3109 made a provision in a contract or settlement agreement void and unenforceable if it waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment.

Bill Number: AB 3109 (Mark Stone) (Stats. 2018, ch. 949.)

Code Section Amended: None.

Code Section Added: Civil Code section 1670.11.

Legislative Discriminatory Harassment Retaliation Prevention Act

SB 419 prohibited the California State Senate and Assembly from retaliating or discriminating against any legislative advocate or employee who opposes unlawful conduct under the Fair Employment and Housing Act, Unruh Civil Rights Act, or Civil Code section 51.9, or who files a complaint, testifies, or assists in a proceeding related to a complaint filed under those laws. Violations are subject to civil liability and a fine of up to \$10,000. SB 419 also required each house of the Legislature to maintain records of harassment complaints for a period of at least 12 years.

Bill Number: SB 419 (Committee on Judiciary) (Stats. 2018, ch. 952.)

Code Section Amended: Government Code section 9149.32.

Code Section Added: Government Code sections 9149.38, 9149.39, 9149.40, and 9149.41.

Gender Composition of Corporate Boards of Directors

SB 826, by no later than the close of the 2019 calendar year, required a domestic general corporation or foreign corporation that is a publicly held corporation, as defined, whose principal executive offices, according to the corporation's SEC 10-K form, are located in California to have a minimum of one female, as defined, on its board of directors, as specified. No later than the close of the 2021 calendar year, the bill increased that required minimum number to two female directors if the corporation has five directors or to three female directors if the corporation has six or more directors.

Bill Number: SB 826 (Jackson) (Stats. 2018, ch. 954.)

Code Section Amended: None.

Code Section Added: Corporations Code sections 301.3 and 2115.5.

Mediation Confidentiality Disclosure

SB 954, except in the case of a class or representative action, required an attorney representing a person participating in a mediation or a mediation consultation to provide their client, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, with a printed disclosure, as specified, containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions.

Bill Number: SB 954 (Wieckowski) (Stats. 2018, ch. 350.)

Code Section Amended: Evidence Code section 1122.

Code Section Added: Evidence Code section 1129.