

To Be or Not to Be [a New Law]?
Countdown on Governor Brown's Review of California Employment-Related Bills
By: Lizbeth ("Beth") West, Esq.

The September 30th deadline for Governor Brown to act on numerous employment-related bills passed by the California Legislature during the 2017-2018 Legislative Term is fast approaching. This Blog summarizes only 21 of the more than 40 employment-related bills currently on the Governor's desk. Employers are encouraged to stay tuned to see which bills become law and which ones don't make the cut. **NOTE: employment laws are constantly changing and employers must ensure that they make the necessary changes to policies and practices so that they are in compliance with current legal requirements.**

1. **SB820. [Prohibition on Non-Disclosure Provisions re: Sexual Misconduct & Harassment]**. This bill would prohibit a provision in a settlement agreement that prevents the disclosure of factual information relating to certain claims of sexual assault, sexual harassment, or harassment or discrimination based on sex, that are filed in a civil or administrative action. After January 1, 2019, such a provision in a settlement agreement would be void as a matter of law and against public policy. The law would have certain exceptions, including: a) allowing a claimant to seek language in an agreement to shield his/her identity and all facts that could lead to the discovery of his/her identity, provided the party is not a government agency or public official; and b) authorizing provisions that preclude the disclosure of the amount paid in settlement.
2. **AB3080. [Prohibition on Non-Disclosures re: Sexual Harassment & Prohibition on Mandatory Arbitration Agreements re: FEHA claims]**. This bill would prohibit an employer from requiring, as a condition of employment, receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, that an applicant, employee, or independent contractor agree not to disclose issues of sexual harassment. The bill would also prohibit employers from requiring applicants or employees to waive any right, forum, or procedure for a violation of any provision of FEHA (e.g. by requiring they sign a mandatory arbitration agreement).
3. **AB3109. [Right to Testify re: Sexual Misconduct]**. This bill would make 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.
4. **AB1867. [Records of Sexual Harassment Complaints]**. This bill would require an employer with 50+ employees to maintain internal complaint records of employee complaints alleging sexual harassment for a minimum of 5 years after the last day of employment of the complainant or any alleged harasser named in the complaint, whichever is later.

5. **AB1870. [Extension of FEHA Statute of Limitations]**. Under existing law, a person claiming to be aggrieved by an alleged unlawful practice under FEHA to file his/her complaint with the DFEH within one year from the date upon which the unlawful practice occurred, unless otherwise specified. This bill would extend the one year period to three years for complaints alleging violations of the employment-provisions of the FEHA – e.g. employment discrimination, harassment, and retaliation.

6. **SB1300. [Prohibition re: Release of Claims & Non-Disparagements re: Sexual Harassment]**. The bill, with certain exceptions, would prohibit an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, from requiring the execution of a release of a claim or right under FEHA or from requiring an employee to sign a non-disparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment. The bill would provide that an agreement or document in violation of either of those prohibitions is contrary to public policy and unenforceable. The bill would also clarify that an employer may be responsible for the acts of nonemployees, with respect to any form of actionable harassment under FEHA (not just sexual harassment) of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. This bill would also authorize an employer to provide bystander intervention training, as specified, to their employees.

7. **SB1343. [Expansion of Training Requirements re: Sexual Harassment]**. Currently, California employers with 50+ employees are required to provide at least 2 hours of prescribed training regarding sexual harassment, abusive conduct, and harassment based upon gender to all supervisory employees within 6 months of their assumption of a supervisory position and once every 2 years. This bill would require an employer with 5+ employees, including temporary or seasonal employees, to provide at least 2 hours of sexual harassment training to all supervisory employees and at least one hour of sexual harassment training to all nonsupervisory employees by January 1, 2020, and once every 2 years thereafter. The bill would also require the DFEH to develop or obtain 1-hour and 2-hour online training courses on the prevention of sexual harassment in the workplace, and post the courses on the DFEH’s website. The bill would also require the DFEH to make existing informational posters and fact sheets, as well as the online training courses regarding sexual harassment prevention, available to employers and to members of the public in specified alternate languages.

8. **AB3081. [Rebuttable Presumption of Retaliation against Sexual Harassment Complainant]**. Among other things, this bill would prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee’s status as a victim of sexual harassment, as defined by FEHA. The bill would establish a rebuttable presumption of unlawful retaliation based on the employee’s status as a victim of domestic violence, sexual assault, sexual harassment, or stalking if

an employer takes specific actions within 30 days following the date that the victim provides notice to the employer or the employer has actual knowledge of the status.

9. **AB2079**. [**Sexual Harassment Trainer Qualifications for Janitorial Workers**]. Existing law establishes certain protections for janitorial workers, including a biennial in-person sexual violence and harassment prevention training. The bill would prescribe certain minimum qualifications and requirements for qualified organizations and peer trainers that employers would be required to use to provide the biennial training. The bill would require the Director of the DLSE to develop, maintain, and update as prescribed a list of qualified organizations and qualified peer trainers.
10. **AB2338**. [**Sexual Harassment Training Requirements for Talent Agencies**]. This bill would require a talent agency to provide educational materials on sexual harassment prevention, retaliation, and reporting resources and nutrition and eating disorders to its artists, would require those educational materials to be in a language the artist understands, and would require 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. This bill would also require, prior to the issuance of a permit to employ a minor in the entertainment industry, that an age-eligible minor and the minor's parent or legal guardian receive and complete training in sexual harassment prevention, retaliation, and reporting resources.
11. **AB1976**. [**Acceptable Lactation Locations for Employees**]. 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 do so. This bill would instead require 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. The bill would deem an employer to be in compliance with the requirement of providing a lactation location if the employer makes available a temporary location that meets specified conditions, including that the temporary location be used only for lactation purposes while an employee expresses milk. The bill would deem an agricultural employer to be in compliance with the requirement of providing a lactation location if the employer provides an employee wanting to express milk with a private, enclosed, and shaded space, including, but not limited to, an air-conditioned cab of a truck or tractor.
12. **SB937**. [**Acceptable Lactation Locations for Employees**]. 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 do so. This bill would require an employer to provide a lactation location that includes prescribed features and would require an employer, among other things, to

provide access to a sink and refrigerator in close proximity to the employee's workspace. Among other things, this bill would also require an employer to develop and implement a policy regarding lactation accommodation and make it available to employees. The bill would also require an employer to maintain records of requests for lactation accommodation for 3 years and to give the Labor Commission access to those records. The bill would provide that specified employers could seek an exemption from any of the requirements of these provisions if the employer could show that the requirement posed an undue hardship.

13. **SB970. [Required Training of Hotel and Motel Employees re: Human Trafficking]**. Existing law requires specified businesses and other establishments to post a DOJ notice that contains information relating to slavery and human trafficking. This bill would amend FEHA to require hotel and motel employers to provide, in addition to any other training they already may be required to provide (e.g. sexual harassment prevention training), at least 20 minutes of prescribed training and education regarding human trafficking awareness to employees who are likely to interact or come into contact with victims of human trafficking. The bill would establish a schedule for compliance commencing January 1, 2020. The bill would authorize the DFEH to seek an order requiring compliance if a covered employer does not comply.
14. **AB2034. [Required Training of Mass Transit Employees re: Human Trafficking]**. Existing law requires specified businesses and other establishments to post a DOJ notice that contains information relating to slavery and human trafficking. This bill would require, on or before January 1, 2021, intercity passenger rail, light rail station, and bus station employers provide training to new and existing employees who may interact with, or come into contact with, a victim of human trafficking or who are likely to receive, in the course of their employment, a report from another employee about suspected human trafficking, in recognizing the signs of human trafficking and how to report those signs to the appropriate law enforcement agency.
15. **SB224. [Sexual Harassment in the Professional Relationship]**. Existing law provides for a claim of sexual harassment in a professional relationship if the plaintiff proves, among other things, that there is a business, service, or professional relationship between the plaintiff and defendant and there is an inability by the plaintiff to easily terminate the relationship. Professional relationships are said to exist between a plaintiff and certain persons, including an attorney, holder of a master's degree in social work, real estate agent, and real estate appraiser. This bill would add the following professions to that list: investor, elected official, lobbyist, director, and producer. Among other things, this bill would eliminate the element that the plaintiff must prove there is an inability by the plaintiff to easily terminate the relationship.
16. **SB1223. [Harassment & Discrimination Prevention Policy & Training in Construction Industry]**. Existing law authorizes the DLSE to investigate violations of, and to enforce the provisions of, the Labor Code that are not specifically vested in any other officer, board, or commission. This bill would require that the DLSE develop

recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry. The bill would also require the DLSE convene an advisory committee by March 1, 2019, consisting of specified representatives from the construction industry and state agencies to assist it in developing the policy.

17. AB2496. [**Rebuttable Presumption of Employment Status for Janitorial Workers**]. Existing law requires property service employers to register with the DLSE and to provide, among other things, recordkeeping and training for their employees, as specified. This bill would provide that a property service employer would be subject to the rebuttable presumption provisions that its workers are employees rather than independent contractors.
18. AB2732. [**Immigration Documents & “Workers Bill of Rights”**]. This bill would make it unlawful for an employer to knowingly destroy, conceal, remove, confiscate, or possess any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person in the course of committing, or with the intent to commit, trafficking, peonage, slavery, involuntary servitude, or a coercive labor practice. The bill would impose specified civil and criminal penalties for a violation. The bill would require an employer to post a prescribed workplace notice with information including the right to maintain custody and control of immigration documents and that the withholding of immigration documents by an employer is a crime. The bill would also require an employer to provide to an employee a document entitled the “Worker’s Bill of Rights,” to be developed and made available to employers by the Department of Industrial Relations on or before July 1, 2019, either prior to verifying an employee’s employment authorization pursuant to federal law or, if hired before July 1, 2019, when the department makes the document available. The bill would require an employer to provide the document in a language understood by the employee and to require such an employee to sign and date the document in acknowledgment that the employee has read and understood the employee’s rights. The bill would require the employer to keep the signed document in its records for at least 3 years and to give the employee a copy of the signed document.
19. SB1123. [**Expansion of PFL Wage Replacement Benefits**]. This bill would, on and after January 1, 2021, expand the scope of the family temporary disability insurance program (PFL) to include partial wage benefits to employees who take time off to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual’s spouse, domestic partner, child, or parent in the armed forces of the United States.
20. SB1412. [**Clarifications on “Ban the Box” Law re: Criminal History Inquiries of Particular Convictions**]. This bill would specify that the current law does not prohibit an employer from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if, pursuant to federal law, federal regulation, or state law, (1) the employer is required to obtain information regarding the

particular conviction of the applicant, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, (2) the applicant would be required to possess or use a firearm in the course of his or her employment, (3) an individual with that particular conviction is prohibited by law from holding the position sought, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or (4) the employer is prohibited by law from hiring an applicant who has that particular conviction, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation. The bill would define “particular conviction” for these purposes to mean “a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation, or state law that contains requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses.”

21. **SB826. [Females on Board of Directors of Publicly Held Corporations]**. This bill, no later than the close of the 2019 calendar year, would require a domestic general corporation or foreign corporation that is a publicly held corporation, whose principal executive offices, according to the corporation’s SEC 10-K form, are located in California to have a minimum of one female on its board of directors. For purposes of the bill, “Female” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth. The bill also provides that no later than the close of the 2021 calendar year, the required number of females will be increased to: 2 female directors if the corporation has 5 directors or to 3 female directors if the corporation has 6 or more directors. The bill would require, on or before specified dates, the Secretary of State to publish various reports on its website documenting, among other things, the number of corporations in compliance with these provisions. The bill would also authorize the Secretary of State to impose fines for violations of the bill.