

California Governor Signs Spate of #MeToo Era Bills Into Law

by Gabrielle Wirth, Nisha Verma, and Pavlina Kochankovska Rafter

In his last bill signing of his final term, Governor Jerry Brown signed into law several bills affecting employers' obligations relating to sexual harassment. Those imposing the most sweeping changes are described briefly below.

- **Nondisclosure Provisions in Settlement Agreements Unenforceable:** This bill prohibits provisions in settlement agreements which seek to keep confidential "factual information" relating to claims of "sexual assault, sexual harassment, or harassment or discrimination based on sex." It does contain an exception which allows the *plaintiff or claimant* to protect his or her identity, but no such allowance would be made upon a request of the *defendant*. The bill also permits settlement provisions which protect from nondisclosure the amount of the settlement. The new law applies to settlement agreements entered into on or after January 1, 2019.
- **Prohibition on FEHA Releases in Connection with Future Employment:** Another bill prohibits an employer from seeking a release of claims covered by the Fair Employment Housing Act ("FEHA") (i.e., claims of discrimination, retaliation, or harassment), in exchange for a raise, bonus, or as a condition of continued employment. It also prohibits employers from conditioning these employment actions on the employee's execution of a nondisclosure or nondisparagement agreement regarding "unlawful acts in the workplace" (not just relating to sexual harassment).
- **Sexual Harassment Training Required for Nearly All Employees:** Prior law required employers of 50 or more employees to provide sexual harassment training for supervisors within six months of their assumption of a supervisory position, and then at a schedule of every two years. The new law requires the training to be provided to *all* employees. Further, it applies these requirements to employers with *five or more* employees (i.e., all employers covered by FEHA). The law requires a training of two or more hours for supervisors, and of one or more hours for nonsupervisory employees. Employers have until January 1, 2020 to implement the required trainings.
- **Legislative Declaration Regarding Standard for Sexual Harassment Claims:** The FEHA was also amended to add specific declarations of legislative intent with respect to courts' review of sexual harassment claims, including that "[h]arassment cases are rarely appropriate for disposition on summary judgment," approving of the holding in *Nazir v. United Airlines, Inc.*, in which the California appellate court stated that harassment cases often involve issues "not determinable on paper."

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Importantly, the Governor vetoed a bill which would have prohibited employers from requiring, as a condition of employment, arbitration agreements that cover claims under FEHA or the California Labor Code, stating that the bill “plainly violates federal law,” referring to the Federal Arbitration Act and the Supreme Court’s interpretation of the Act.