

The 12 Days of California Labor & Employment Series – Day 12 “Expansion of Employer Liability under FEHA”

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It is the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2019. In the spirit of the season, we have used the “12 days of the holidays” to blog about one California law a day and that law’s impact on California employers. Without further ado, on the twelfth day of Christmas, my Labor and Employment attorney gave to me—twelve lords a leaping and SB 1300. We saved SB 1300 for the end because it is chock full of important changes for employers.

SB 1300 amends portions of the Fair Employment and Housing Act (FEHA). The new law prohibits an employer, as a condition of employment or for a raise, bonus, or continued employment, from executing a release of FEHA rights, an agreement preventing the employee from disclosing information about unlawful work acts, including, but not limited to, sexual harassment, or any statement from the employee that he/she does not possess any claim or injury against the employer. However, these new limitations do not apply to negotiated settlement agreements. “Negotiated” is defined as when the employee agrees voluntarily, deliberately and knowingly after notice and an opportunity to seek/retain counsel and wherein the employee receives valuable consideration.

SB 1300 also makes employers liable not only for claims of sexual harassment, but for any kind of unlawful harassment by a non-employee, where the employer knew or should have known of the harassment and the employer failed to take appropriate corrective action. Employers should think of the various people their employees come into contact with—postal workers, delivery workers, clients, suppliers, catering companies, guest speakers, independent contractors, and the list goes on. If any of these people unlawfully harass any employee, and an employer knows about it, or should have known about it, an employer can be liable if corrective action is not taken. Employers need to listen to their employees and take any complaint seriously. Investigation will be key.

SB 1300 adds a legislative declaration that harassment claims are rarely appropriate for resolution upon summary judgment. As such, this will make it more difficult for employers to resolve harassment claims brought

under short of trial or settlement. In effect, SB 1300 lowers the burden of proof to establish harassment and provides that a single incident of harassment is sufficient to create a triable issue of whether a hostile work environment existed. It also clarifies that the legal standard for sexual harassment does not vary by type of workplace.

SB 1300 also prohibits an employer from requiring an employee to sign a non-disparagement agreement or other document restraining the employee from disclosing information regarding unlawful acts in the workplace.

Lastly, SB 1300 provides guidance on bystander intervention training. At this time, it is not required.

And with that, the 2018 12 Days of Labor and Employment comes to an end. This is not an exhaustive list of all changes in 2019 but it did include a large amount. Employers should monitor what new laws apply to them and do what is needed to comply.

Until next year. We wish you all a very Happy New Year and a successful 2019.

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Topics

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