
New California employment laws in effect in 2019

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California is known for its progressive employment laws that provide employees with more protection than federal law and the laws of many other states. California lawmakers have enacted many new laws, which went into effect January 1, 2019, that impact employer operations in California. Some of these laws were passed in response to the #MeToo movement and impose new requirements regarding workplace harassment. Employers without California operations may also wish to consider these legal requirements, as California legal developments often find their way into the laws of other states. Employers should take note of the following new laws:

- **2018 SB 224:** This law will amend the California Fair Employment and Housing Act (FEHA) to make it easier for plaintiffs to plead and prove sexual harassment claims against employers and third parties. The law has eliminated the element requiring an inability for the plaintiff to easily terminate the business, service, or professional relationship between the plaintiff and the employer or third party. The law further amends FEHA to establish that it is an unlawful employment practice to deny or aid, incite, or conspire in the denial of rights to an individual related to sexual harassment actions.
- **2018 SB 820:** This law limits the ability of employers to include nondisclosure provisions in settlement agreements that cover claims of sexual harassment. Once an employee or former employee has filed a lawsuit or an administrative complaint, such as a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), California employers may not include provisions in a settlement agreement that would limit the individual's ability to disclose information related to a claim for sexual assault, sexual harassment, or retaliation related to sexual harassment. Any such provisions in agreements entered into on or after January 1, 2019 will be void. A limited exception to the law provides that employers may still include a provision shielding the identity of the claimant at the claimant's request, though this exception covers only the facts that could lead to the discovery of the claimant's identity. The settlement amount may still be classified as confidential and covered by a nondisclosure provision. This law applies to the settlement of lawsuits and administrative actions, and not to resolution of demand letters or informal complaints.
- **2018 SB 826:** This law requires all publicly held corporations whose principal executive offices are located in California to have a minimum of one female on their board of directors by the end of 2019, increasing to two females on their board by the end of 2021 if they have five or more directors or three if they have six or more directors. Employers who do not comply with this law may be assessed a fine.
- **2018 SB 1123:** California's statewide disability insurance program, known as paid family leave, currently requires employers to provide up to six weeks of leave to employees who must take time off to care for a seriously ill family member or to bond with a minor child within one year of birth or placement. Paid family leave runs concurrently with any federally-required FMLA leave. Effective January 1, 2021, this law will expand the scope of California paid family leave to include time off related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the armed forces of the United States.

- **2018 SB 1252:** California law currently requires employers to furnish employees with regular itemized statements regarding amounts earned and hours worked. Employers must also respond to employees' requests for records pertaining to their employment within 21 days or may be assessed a penalty. This new law clarifies that employees have a right to receive a copy of their pay statements in addition to their right to inspect or copy their pay statements.
 - **2018 SB 1300:** This law introduces various unfavorable changes for employers concerning workplace harassment and litigating harassment claims, including the following:
 - The law prohibits employers from requiring current employees to sign nondisparagement agreements that prevent employees from disclosing information about unlawful acts in the workplace, specifically including sexual and other forms of harassment. This is quite broad, and it will require an employer to review any form nondisparagement provisions that will require an employee agreement. Because this law applies only to nondisparagement provisions required as a term of employment or continued employment, it should not impact nondisparagement provisions in separation or severance agreements.
 - The law explicitly states that employers may be responsible under California law for harassing conduct by nonemployees, such as independent contractors. Employers must take "all reasonable steps" to prevent harassment from occurring by nonemployees. The extent of employer liability for harassment by nonemployees has yet to be tested, but the law indicates that courts will consider the level of control the employer exercises and its legal responsibility over the conduct of the employee in other regards will be considered.
 - The law specifies that "[h]arassment cases are rarely appropriate for disposition on summary judgment." This language may discourage favorable rulings on motions for summary judgment.
 - The law specifies that "[a] single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment," under the California Fair Employment and Housing Act (FEHA), in rejection of a prior Ninth Circuit opinion.
 - The law confirms that California rejects the "stray remarks" doctrine, under which certain remarks would not be considered evidence of discrimination if they had no bearing on an adverse employment decision.
 - **2018 SB 1343:** This law requires employers with five or more employees to provide all employees with at least one hour of sexual harassment training and all supervisory employees with at least two hours of sexual harassment training by the start of 2020. Thereafter, employers must provide similar training again once every two years. This is more expansive than the requirement currently in place under FEHA.
 - **2018 AB 1976:** This law amends California's lactation break law to require employers to make reasonable efforts to provide employees with a room or other location, other than a bathroom, to express milk.
 - **2018 SB 970 and 2018 AB 2034:** These laws will require specific categories of employers (including hotel or motel operators, passenger rail carriers, and bus station operators) to provide at least 20 minutes of training on human trafficking to certain employees on or before January 1, 2021.
 - **2018 AB 3109:** This law voids any provisions in settlement agreements that will waive a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment on the part of the other party to the agreement.
- California employers should review their policies and settlement practices to ensure that they comport with these recent legal changes. Employers with questions about these laws and how they may impact their operations should consult experienced employment law counsel. Norton Rose Fulbright is prepared to advise you about the impact of these laws on your operations and to ensure that you are in compliance with these and other new legal developments.

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