

## It's That Time of Year Again ...

### New California Employment Laws Taking Effect on January 1, 2019

by Randy A. Lopez

Many new laws affecting California employers will go into effect in 2019. Some of the significant changes involve restrictions when settling sexual harassment claims and the expansion of sexual harassment training. Some of the new laws not only require updating employee handbooks, but also updating employment applications and conducting training. Conducting a yearly review of handbooks and policies is vital to maintaining compliance with California and Federal laws.

The new laws for 2019 deal with the following issues:

- General Sexual Harassment Laws
- Amendments to FEHA
- Lactation Accommodation
- Female Board of Directors
- Talent Agencies
- Revisions to "Ban the Box"
- Salary History
- Copies of Wage Records
- Sexual Harassment in Professional, Business and Service Relationships

#### ***Sexual Harassment Laws***

- **Sexual Harassment Training:** The new law (SB [1343](#)) expands the current law requiring employers with 50 or more employees to provide anti-harassment prevention training to their California supervisors every two years. The new law requires:
  - Nonsupervisory employees in California receive anti-harassment prevention training.
  - Employers with **five or more employees** are required to provide this training to all employees.
  - Employers will be required to provide at least two hours of anti-sexual harassment training to all supervisory employees and one hour to all non-supervisory employees by January 1, 2020.
  - Initial training must be completed within six months of initial hire for all employees or promotion to a supervisory position, and once every two years thereafter.DFEH is required to develop online training courses that employers can utilize to satisfy these requirements.
- **Defamation re Workplace Sexual Harassment Complaints:** California implemented a law ([AB 2770](#)) regarding defamation as it relates to allegations of workplace sexual harassment. This protects victims of sexual harassment and employers from defamation claims made by the alleged harassers. It protects three types of allegations regarding sexual harassment from civil action:
  1. A complaint of sexual harassment that is based on credible evidence and made without malice by an employee to an employer;
  2. Communications between employers and anyone with an interest in a sexual harassment complaint (victims and witnesses) as long as the communication is made without malice; and

3. A response by former employers to an inquiry by prospective employers indicating that they would not rehire the former employee based on a determination that the former employee engaged in sexual harassment, so long as the statement is made without malice.
- **Non-Disclosure Agreements:** The new law ([SB 820](#)) prohibits a provision in a settlement agreement that prevents the disclosure of factual information related to a civil or administrative action that includes claims of sexual assault, sexual harassment, harassment or discrimination based on sex, the failure to prevent an act of workplace harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex. The law allows for a claimant to request language that prevents the disclosure of his/her identity or facts that could lead to the discovery of the claimant's identity. The law does not prevent provisions that maintain any settlement payments confidential.
  - **No Waiver of Right to Testify:** The new law ([SB 3109](#)) prohibits any provision that requires a person waive their right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment. The law applies only to official or written requests to testify (i.e., by court order, subpoena, or written request from an administrative agency or the legislature).

### ***Talent Agencies***

The new law (Labor Code §1700 - [AB 2338](#)) requires a talent agency to provide educational material that meets certain minimum requirements relating to sexual harassment prevention, retaliation and reporting resources, as well as information relating to nutrition and eating disorders. Agencies are required to provide the material in a language understood by the artist and this must be done within 90 days of agreeing to representation, or agency procurement of engagement, meeting or interview, whichever comes first. The agency is required to keep records confirming distribution of the material for 3 years.

For minors, the parent or legal guardian of a minor aged between 14 and 17, as well as the minor, shall receive and complete training in sexual harassment prevention, retaliation, and reporting resources. The sexual harassment training shall include, at a minimum, the components specified by the Dept. of Fair Employment and Housing. The training must be provided in a language understood by the minor and parent. This must be completed before a work permit can be issued and the agency must have a copy of the work permit before it can send a minor artist to an audition, meeting or interview.

### ***Sexual Harassment in Professional, Business and Service Relationships***

Current law prohibits sexual harassment in the context of business relationships with certain professionals and services providers such as physicians, psychotherapists, dentists, attorneys, real estate agents, accountants, bankers, trustees, landlords, and teachers. The new law ([SB 224](#)) expands this prohibition to include: investors, directors, elected officials, producers, and lobbyists.

The new law extends liability to those who hold themselves out as able to help a plaintiff establish such a relationship with the defendant or a third party. Also, the new law eliminates the previous requirement of proving that the relationship could not be easily terminated.

## ***Amendments to FEHA***

The changes to FEHA ([SB 1300](#)) seek to prevent harassment in the workplace. The changes also provide guidance to Courts in the application of FEHA. The changes taking effect include:

1. Employer is liable for any type of harassment (based on a protected class) committed by a non-employee if the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action.
2. New law makes it illegal for an employer, in exchange for a bonus, raise or continued employment, to require an employee to sign a release of FEHA claims or sign a statement that the person will not assert FEHA claims, or to sign a non-disparagement statement or an equivalent document that prevents the employee from disclosing information about unlawful acts in the workplace, including but not limited to, sexual harassment. This does not apply, in some respects, to settlement agreements negotiated to resolve a claim.
3. The new law weakens the “severe and pervasive” standard required for harassment claims. The new law declares that a single incident can be sufficient, a discriminatory remark not made in the context of employment or by someone who has no authority for making decisions about plaintiff’s employment, may be relevant and circumstantial evidence of discrimination.
4. The plaintiff need only show that the harassment made it more difficult to do the job. This is a departure from a plaintiff demonstrating that his/her work productivity actually declined.

Additionally, employers are encouraged to train employees to identify problematic behavior and to motivate bystanders to take action when they observe problematic behavior.

## ***Criminal History – Modification to “Ban the Box”***

The new law ([SB 1412](#)) provides clarity to employers about inquiries into criminal history, either by asking or seeking information. An employer may ask or seek information about criminal history if one of the following applies:

1. An employer is required by law to obtain information regarding a particular conviction , even if it has been expunged, sealed or dismissed;
2. The applicant would be required to possess or use a firearm in the course of employment;
3. An individual with that particular conviction is prohibited by law from holding the position sought by the applicant, regardless of whether that 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 that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

## ***Lactation Requirement***

The new law ([AB 1976](#)) amends the existing law which required employers to make reasonable efforts to provide an employee with a room or another location (which may include the bathroom just not a stall) to express breast milk. The law requires employers to make reasonable efforts to provide use of a room or location, other than a bathroom, for lactation. Employers may make temporary lactation locations so long as that location is used only for lactation purposes.

## ***Salary History***

The new law ([AB 2282](#)) clarifies aspects of California's Fair Pay Act which requires an employer, upon reasonable request, to provide the "pay scale" for a position for which the applicant is applying. "Pay scale" is defined as the salary or hourly wage range (excluding bonuses) and "reasonable request" is defined as a request made *after* the applicant has completed an interview. The law makes it clear that employers **CAN** ask applicants about their salary expectations for the position.

Additionally, the law provides that an employer may make compensation decisions based on an employee's current salary, so long as any wage differential resulting from that decision is based on a bona fide factor (i.e., seniority system or merit system) other than sex, race or ethnicity. Remember, the purpose of this law is to decrease and eliminate the wage gap. Therefore, be very cautious when setting wage/salary. As recently held by the 9<sup>th</sup> Circuit Court of Appeals, employers cannot justify a wage differential between men and women by relying on prior salary. The court went on to say that prior salary alone or in combination with other factors cannot justify a wage differential.

## ***Female Board of Directors***

The new law ([SB 826](#)) requires foreign and domestic publicly held corporations whose principal executive offices are located in California to have a minimum number of female board members. By the end of 2019, California-based corporations are required to have at least one female director. By the end of 2021, corporations with five directors must have at least two female directors. And corporations with six or more directors must have three female directors. The California Secretary of State can impose fines for violation of the law.

## ***Payroll Records***

The new law ([SB 1252](#)) provides that employees are not only entitled to inspect their payroll records but they have the right to receive a copy of their wage records.

## ***Minimum Wage Increase***

Employers should also not forget the minimum wage increase beginning on January 1st:

\$11.00 per hour for employers with 25 or fewer employees.	\$12.00 per hour for employers with 26 or more employees.
--	---

Please be aware that local cities and/or counties may have their own minimum wage ordinances, including but not limited to, Los Angeles City, Los Angeles County, Santa Monica, and San Francisco.



The Long Law Group, PC is a woman and minority-owned firm in Pasadena. Our practice areas include:

- Corporate Law
- Entertainment and Sports
- Mergers & Acquisitions
- Labor and Employment
- Business Litigation
- Securities Litigation

Our firm takes a tactful yet practical approach to dealing with the variety of issues our clients face. We seek to handle each matter as though we are representing ourselves. We offer legal advice tailored to each client's unique needs. Viewing business issues from our client's perspective, we form a collaborative relationship to develop a strategy with a business focus that produces the best possible outcome.

We provide customized legal solutions to professionals and businesses of all sizes, from sole proprietors to startups to middle-market companies. We offer big firm experience coupled with the affordability and efficiency of a smaller firm, without compromising the quality that clients expect.

Our attorneys are true advocates. We learn our clients' businesses so that we may give relevant advice that preserves and advances their business goals. And, we do so while advocating both zealously and ethically on our clients' behalf.

For more information, please contact:

**Toni Y. Long**  
(213) 631-3993 x 1  
[toni@tyllaw.com](mailto:toni@tyllaw.com)

**Randy A. Lopez**  
(213) 631-3993 x 4  
[randy@tyllaw.com](mailto:randy@tyllaw.com)

**Jamie E. Wright**  
(213) 631-3993 x 2  
[jamie@tyllaw.com](mailto:jamie@tyllaw.com)

**DISCLAIMER:** The information contained in this newsletter is solely provided for informational purposes and does not constitute legal advice. All readers should consult with legal counsel for additional and/or current information, and before acting on any of the information presented in this newsletter.