LCW LIEBERT CASSIDY WHITMORE

PRIVATE EDUCATION LEGISLATIVE ROUNDUP

News and developments in education law, employment law and labor relations for California Independent and Private Schools, Colleges and Universities.

2018

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Private Education Legislative Roundup is published annually for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Private Education Legislative Roundup*** should not be acted on without professional advice.

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The Private Education Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and student related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are effective on January 1, 2019, unless otherwise noted. Urgency legislation will be identified as such. Several of the bills summarized below apply directly to independent and private schools. Bills that do not directly apply to independent and private schools are presented either because they indirectly apply, may set new standards that apply or would generally be of interest to our school clients.

EMPLOYEES AND STUDENTS

BILLS APPLICABLE TO ALL PRIVATE K-12, COLLEGES, AND UNIVERSITIES

SEXUAL HARASSMENT AND ASSAULT

AB 3109 – Voids Waivers of Right to Testify About Alleged Criminal Conduct or Sexual Harassment.

AB 3109 prohibits a contract or settlement agreement from limiting or waiving a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract where the party has been required or requested to attend the proceeding. Any such provisions will be void and enforceable in a contract or settlement agreement entered into on or after January 1, 2019. A party is deemed required or requested to attend a proceeding when it is pursuant to a court order, subpoena, or written request from an administrative agency or the legislature.

Schools must ensure that any contracts or settlements entered into on or after January 1, 2019 do not limit or waive a party's right to testify in a proceeding concerning alleged criminal conduct or sexual harassment.

(AB 3109 adds Section 1670.11 to the Civil Code.)

SB 820 – Settlement Agreements Cannot Prevent Disclosure of Sexual Harassment or Sexual Assault Information.

Effective with any settlement agreements entered into on or after January 1, 2019, SB 820 prohibit confidentiality provisions in settlement agreements that limit the disclosure of factual information related to:

1. Sexual assault;
2. Sexual harassment involving business, service, or professional relationships as defined in Civil Code section 51.9 of the Unruh Act; or

3. Workplace harassment or discrimination based on sex, 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 as provided under Government Code section 12940 of the Fair Employment and Housing Act.

Any such confidentiality provisions in settlement agreements, entered into on or after January 1, 2019, are void as a matter of law and against public policy.

Schools should note this restriction on settlement agreements and work with legal counsel to ensure that any settlement agreements entered into on or after January 1, 2019 do not limit or seek to limit a party's disclosure of information related to sexual assault, sexual harassment, or discrimination based on sex.

(SB 820 adds Section 1001 to the Code of Civil Procedure.)

AB 1619 – Extends the Statute of Limitations for any Civil Action Recovery Based on Sexual Assault.

Existing law provides that in a civil action for recovery of damages suffered as a result of domestic violence, an action must be commenced within 3 years from the date of the last act of domestic violence by the defendant against the plaintiff or within 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act of domestic violence by the defendant against the plaintiff.

This new law sets the time for commencement of any civil action for recovery of damages suffered as a result of sexual assault, where the assault occurred on or after the plaintiff's 18th birthday, to the later of within 10 years from the date of the last act, attempted act, or assault with intent to commit an act, of sexual assault by the defendant against the plaintiff or within 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with intent to commit an act, of sexual assault by the defendant against the plaintiff.

(AB 1619 adds Section 340.16 to the Code of Civil Procedure.)

SB 224 – Amends Elements for Sexual Harassment Claims Under the Civil Code.

Civil Code section 51.9 of the Unruh Act imposes liability for sexual harassment in a non-employment context involving business, service, and professional relationships (e.g., a teacher, physician, attorney, landlord, etc.). Currently, sexual harassment liability exists under Section 51.9 when a plaintiff shows that such a business, service, or professional relationship exists between the plaintiff and defendant and the following elements are met:

1. The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance, or engaged in other verbal, visual, or physical conduct that were unwelcome and pervasive or severe and based on gender;

2. The plaintiff could not easily terminate the relationship; and

3. The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of the defendant's conduct.

Thus, under current law, students and parents can bring sexual harassment actions against teachers under to the Unruh Act.

SB 224 removes the second element noted above – "The plaintiff could not easily terminate the relationship" – in order to bring a cause of action for sexual harassment under Section 51.9. This change in the law is likely not relevant in cases involving sexual harassment of a student by a teacher.

This bill also makes the Department of Fair Employment and Housing ("DFEH") responsible for enforcing sexual harassment claims under Section 51.9 and makes it unlawful to deny or aid, incite, or conspire in the denial of a person's rights related to sexual harassment claims.

(SB 224 amends Section 51.9 of the Civil Code, and Section 12930 and 12948 of the Government Code.)

EMPLOYEES

BILLS APPLICABLE TO ALL PRIVATE K-12, COLLEGES, AND UNIVERSITIES

DISCRIMINATION, HARASSMENT, AND RETALIATION

SB 1300 – Creates New Employee Protections Impacting FEHA Claims for Discrimination, Retaliation, and Harassment.

SB 1300 makes a significant number of changes related to the handling of and determining liability

for discrimination, retaliation, and harassment claims under the Fair Employment and Housing Act ("FEHA"), including the following:

New Section 12923 Expands Harassment and Discrimination Liability Under FEHA

SB 1300 creates a new Government Code section 12923 under FEHA, which mandates the following:

- The "*severe or pervasive*" legal standard is rejected, so that a single incident of harassing conduct is now sufficient to create a triable issue of fact regarding the existence of a hostile work environment;
- A plaintiff no longer needs to prove his or her "tangible productivity" declined as a result of harassment in a workplace harassment suit, and may instead show a "reasonable person" subject to the alleged discriminatory conduct would find the harassment altered working conditions so as to make it more difficult to work;
- Any discriminatory remark, even if made by a non-decision maker or not made directly in the context of an employment decision, may be relevant evidence of discrimination in a FEHA claim; and
- The legal standard for sexual harassment will not vary by type of workplace, and courts will therefore only consider the nature of the workplace in a harassment claim when *"engaging in or witnessing prurient conduct or commentary"* is integral to the performance of an employee's job duties.
- Establishes the Legislature's intent that "*[h]arassment cases [under FEHA] are rarely appropriate for disposition on summary judgment.*" This means that FEHA harassment claims will be more difficult to get dismissed in court before trial, regardless of the merit of the allegations.

Limitations on Recovery of Attorney's Fees by Prevailing Employer in FEHA Cases

SB 1300 limits a prevailing employer's ability in a FEHA case to recover attorney and expert witness fees unless a court finds a plaintiff's action was *"frivolous, unreasonable, or totally without foundation."*

Limitations on Use of Non-Disparagement Agreements, Confidentiality Agreements and Waiver of FEHA Claims

SB 1300 also prohibits an employer from requiring that an employee sign a non-disparagement agreement, confidentiality agreement, or any other document denying the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment. SB 1300 also makes it unlawful for an employer to require an employee to waive FEHA rights in exchange for a raise or bonus or as a condition of employment unless the release is a voluntarily negotiated settlement agreement filed by an employee in court or an alternative dispute resolution forum, before an administrative agency, or through an employer's internal complaint process.

Option for Employers to Provide Bystander Intervention Training

Finally, SB 1300 allows, but does not require, an employer to provide "*bystander intervention training*" to enable bystanders to identify problematic behaviors in the workplace, including sexual harassment, and intervene as appropriate.

In summary, SB 1300's changes to FEHA will make it much easier for employees to file, litigate, and prevail on harassment and discrimination claims against California employers. Accordingly, it is vital that employers take effective corrective action immediately when claims of harassment and/or discrimination arise. Schools should also review their harassment and discrimination policies to ensure they are compliant with these changes to FEHA. Schools should consult with legal counsel regarding the use of non-disparagement agreements, confidentiality agreements, and waivers of FEHA claims that may be limited by these new statutes.

(SB 1300 amends Sections 12940 and 12965 and adds Sections 12923, 12950.2, and 12964.5 to the Government Code.)

SB 1343 – Requires Employers to Provide Sexual Harassment Trainings to Supervisory and Non-Supervisory Employees.

The California Fair Employment and Housing Act ("FEHA") currently requires employers with 50 or more employees to provide at least two hours of training and education on sexual harassment, abusive conduct, and harassment based on gender to all supervisory employees within six months of attaining a supervisory position and once every two years. This is commonly referred to as "AB 1825 supervisor harassment trainings," named after the 2004 legislation that created this requirement.

SB 1343 now requires employers who employ 5 or more 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 trainings must be provided in a "*classroom or effective interactive training*" environment either individually or as part of a group presentation. Similar to the existing supervisory harassment trainings, the trainings must be provided to nonsupervisory employees within six months of their assumption of a position and once every two years thereafter.

Beginning January 1, 2020, an employer who employs at least 5 employees, including temporary or seasonal employees, must provide sexual harassment trainings to all seasonal employees, temporary employees, and any employee hired to work for less than six months within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. If a temporary employee is employed by a temp agency to perform services for a school, the temp agency shall provide the training and not the school.

SB 1343 also mandates that the California Department of Fair Employment and Housing ("DFEH") create two online trainings courses—one supervisory, and one nonsupervisory—to be made available on its website so employers may comply with these sexual harassment training requirements for both nonsupervisory and supervisory employees.

Schools should review all training materials and procedures to ensure they are satisfying not only their existing obligations, but also all new requirements established by these new bills. This is especially important now that personal liability under FEHA has been expanded to include unlawful retaliation under SB 1300 (referenced above).

(SB 1343 amends Sections 12950 and 12950.1 of the Government Code.)

AB 2770 - Provides that Certain Communications about Workplace Sexual Harassment Complaints are Privileged.

Civil Code section 47(c) defines privileged publications and broadcasts that can be used as a defense to claims of defamation. Included among these is the so-called "common interest privilege," which allows employers to provide factual information without malice about current or former employees to a prospective employer, including whether the employer would rehire the employee.

AB 2770 expands the categories of privileged communications not subject to defamation claims under this subsection to now include the following:

1. Complaints of sexual harassment made by an employee, without malice, to an employer based on creditable evidence;

2. Communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment; and

3. Communications from an employer, without malice, regarding a current or former employee to a prospective employer of that employee to note if they would rehire the current or former employee and whether such decision is based upon the employer's determination that the employee engaged in sexual harassment.

Schools should examine their policies about the disclosure of information to prospective employers about current and former employees to determine if such procedures should be modified in light of AB 2770. While AB 2770 does not mandate that an employer disclose any information regarding a current or former employee to a prospective employer, schools should also be cautious about what information to provide. The reference in Civil Code section 47(c) to "without malice" is generally interpreted to mean that the information disclosed must be objective and factual, and not based solely on an opinion. In addition, there is also case law noting that an employer may be liable for providing a positive reference to a prospective employer when the employer knew of employee misconduct, which could include sustained claims of sexual harassment.

(AB 2770 amends Section 47 of the Civil Code.)

HIRING

AB 2282 – Clarifies Elements of California's Salary History and Equal Pay Statutes.

California's salary history statute, Labor Code section 432.3, went into effect January 1, 2018. In short, Labor Code section 432.3 prohibits employers from seeking an applicant's salary history in previous employment, requires an employer to provide an applicant with the pay scale for the position upon reasonable request, and restricts how employers can use properly obtained salary history information.

AB 2282 clarifies that a current employee who applies for a different position with the same employer is not considered an "*applicant*" as referenced in Section 432.3. This clarification to the law avoids placing the

employer in the untenable position of being required to avoid consideration of salary history information that is already in their possession. For purposes of clarification, AB 2282 defines "*pay scale*" as "*a salary or hourly wage range*." AB 2282 further revises subdivision (c) of Labor Code 432.3 to define a "*reasonable request*" for a pay scale as "*a request made after an applicant has completed an initial interview with the employer*." Therefore, an employer is not required to comply with a request for a pay scale from an applicant who has not yet completed an interview. AB 2282 also clarifies that employers are not prohibited from asking an applicant about his or her salary expectation for the position he or she is applying for.

California's Equal Pay Act (Labor Code section 1197.5) currently prohibits employers from relying solely on an applicant's previous salary in making pay determinations. AB 2282 revises Section 1197.5 to maintain that prohibition, but to also specifically permit an employer to make a compensation decision for one of its current employees based on that current employee's existing salary, so long as any wage differential resulting from that compensation is justified by one of the bona fide factors noted in the law. This includes a seniority system, a merit system, a system that measures earning by quantitate or quality of production, or a bona fide factor other than race or ethnicity, such as education, training, or experience.

(AB 2282 amends Sections 432.3 and 1197.5 of the Labor Code.)

SB 1412 – Clarifies Employers Are Not Prohibited from Seeking Criminal History Information When Required by State or Federal Law.

Labor Code section 432.7 currently prohibits employers from asking an applicant to disclose or considering information related to a criminal conviction that has been judicially sealed or ordered sealed. However, Section 432.7 does not prohibit employers from asking about criminal convictions that have been judicially sealed or expunged if the employer is required to obtain such criminal conviction information pursuant to state or federal law.

SB 1412 confirms that employers are not prohibited from seeking or receiving an applicant's criminal conviction history, including those convictions that have been judicially sealed or expunged, if the employer is required by state, federal, or local law to conduct criminal background checks for employment purposes. However, SB 1412 limits the ability of an employer to gather such criminal conviction history only to those "*particular convictions*" that are either required by state or federal law to be reviewed or that would preclude the applicant from holding the position sought by state or federal law. In most (if not all) cases, schools are required by law to conduct criminal background checks on employees before they are hired, and this new law does not prohibit schools from seeking or receiving an applicant's criminal conviction history, including those convictions that have been judicially sealed or expunged. However, this new law limits a school's ability to ask about and review judicially sealed and expunged convictions unless those convictions that are required to be considered under California or federal law.

The purpose of this new law is to limit the review by employers of judicially sealed and expunged convictions only to those particular convictions that are required to be considered under any applicable state or federal law. Schools should ensure that when asking for criminal conviction information in the hiring process involving convictions that have been judicially sealed or expunged, they are asking about convictions that they are required to review and consider under state or federal law. Education Code Sections 45122.1, 44010, and 44011 set forth the relevant convictions that disqualify an employee from working at a school.

(SB 1412 amends Section 432.7 of the Labor Code.)

HEALTH AND BENEFITS

AB 1976 – Ensures Employers Provide Lactation Accommodations in Rooms or Spaces Other than Bathrooms.

California law currently requires every employer to provide a reasonable amount of break time to accommodate employees who want to pump or express breast milk for an infant child. Existing law requires employers to make reasonable efforts to provide employees with the use of a room or other location, other than a toilet stall, close to the employee's work area to express breast milk in private.

While existing law provides that the lactation location cannot be a toilet stall, AB 1976 expands this to now require that the lactation location not be anywhere in a bathroom. According to the bill's author, the purpose of this change is to avoid requiring employees to express breast milk in a bathroom environment that is neither comfortable nor sanitary.

AB 1976 provides that an employer complies with this law if the employer provides a temporary lactation location that meets all of the following requirements:

1. The employer is unable to provide a permanent lactation location because of operational, financial, or space limitations;

2. The temporary location must be private and free from intrusion while an employee expresses milk;

3. The temporary location is used only for lactation purposes while an employee expresses breast milk; and

4. The temporary location otherwise meets the California law requirements for lactation accommodations. (Labor Code sections 1030-1033.)

AB 1976 also creates an exemption for employers who can demonstrate to the Department of Industrial Relations ("DIR") that providing a room or location, other than a bathroom, would impose an undue hardship when considering the size, nature, and structure of the employer's business. If an employer is granted an exemption by the DIR, the employer is still required to make reasonable efforts to provide an employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area to express breast milk in private.

Schools should review their lactation accommodation policies to ensure that any rooms or spaces used for lactation accommodations satisfy these new requirements.

(AB 1976 amends Section 1031 of the Labor Code.)

AB 2587 – Clean-Up Bill to PFL Benefits Law to Clarify Elimination of Seven-Day Waiting Period.

California offers the Paid Family Leave ("PFL") program to provide wage replacement benefits to employees who 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 with a family. The PFL program is part of the state disability insurance ("SDI") program. While PFL provides wage replacement benefits for an employee who is out of work for a qualifying reason, it does not provide the employee an entitlement to a leave of absence for such reason.

In 2016, California passed AB 908 to amend PFL benefits. The amendment eliminated the seven-day waiting period an employee had to wait to receive PFL benefits effective January 1, 2018.

Since there is no longer a seven-day waiting period for PFL benefits, AB 2587 is clean-up legislation that deletes an outdated reference to the former seven-day waiting period in Unemployment Insurance Code section 3303.1, but does not otherwise substantively change the PFL benefits program.

(AB 2587 amends Section 3303.1 of the Unemployment Insurance Code.)

SB 1123 – Expands Scope of PFL to Cover Covered Active Duty for Employees or Family Members in the Armed Forces.

California offers the Paid Family Leave ("PFL") program to provide wage replacement benefits to employees who 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 with a family.

Beginning January 1, 2021, SB 1123 expands the scope of providing PFL benefits to include time off to participate in a qualifying exigency related to covered active duty or a call to covered active duty for an individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. SB 1123 adds a new Unemployment Insurance Code section 3302.2, which outlines a list of "*qualifying exigencies*" that matches those provided under the federal Family Medical Leave Act ("FMLA") for a qualifying exigency leave of absence, including the following:

1. Short-Notice Deployment
2. Military Events and Related Activities
3. Childcare and School Activities
4. Financial and Legal Arrangements
5. Counseling
6. Rest and Recuperation
7. Post-Deployment Activities
8. Parental Care
9. Additional Activities

(SB 1123 amends, repeals, and adds Sections 3301, 3302.1, 3303, and 3303.1 and adds Sections 3302.2 and 3307 to the Unemployment Insurance Code.)

MANDATED REPORTERS

AB 2302 – Extends Statute of Limitation for Mandated Reporter's Failure to Report Sexual Assault.

The Child Abuse and Neglect Reporting Act makes certain people mandated reporters, including teachers, social workers, peace officers, and firefighters. A mandated reporter is required to make a report whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, observes or has knowledge of a child

whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A mandated reporter's failure to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor, the prosecution of which is to commence within one year after the failure to report occurs. Current law also provides that if a mandated reporter intentionally conceals his or her failure to report an incident, the failure to report is a continuing offense.

AB 2302 extends the statute of limitations for filing a case against a mandated reporter who fails to report an incident known or reasonably suspected to be sexual assault to five years from the date the offense occurred. This extends the period of liability for mandated reporters if they fail to report known or reasonably suspected sexual assault.

(AB 2302 amends Section 801.6 of the Penal Code.)

WAGE AND HOUR

SB 1252 – Provides Employees the Right to Receive a Copy of their Pay Statements.

Existing law requires an employer, semimonthly or at the time of payment of wages, to furnish an employee an accurate, itemized, written statement containing specified information regarding the amounts earned, hours worked, and the employee's identity, among other things, subject to certain variations. Existing law grants current and former employees of employers who are required to keep this information the right "to inspect or copy" records pertaining to their employment, upon reasonable request. Existing law requires an employer to respond to these requests within a specified time and prescribes a penalty of $750 for an employer's failure to permit a current or former employee to inspect or copy records within that time, to be recovered by the employee or the Labor Commissioner.

SB 1252, which states that it is declaratory of existing law provides that employees have the right to receive a copy of the employment records described above.

(SB 1252 amends Labor Code section 226.)

WORKPLACE SAFETY

AB 2334 – Amends Cal/OSHA's Six-Month Period for Issuing Citations for Ongoing Workplace Violations.

Currently, the California Division of Occupational Safety and Health (Cal/OSHA) has six months from the date the violation occurred to issue a citation to an employer for violations related to the life, safety, and health of employees.

AB 2334 modifies the application of this six-month period for Cal/OHSA to issue a citation and defines when an occurrence of a violation is ongoing for purposes of issuing a citation. While the law remains unchanged in that Cal/OHSA still shall not issue a citation more than six months after the "*occurrence*" of a violation, under AB 2334, an "*occurrence*" continues until either it is corrected, until Cal/OSHA discovers the violation, or until the duty to comply with the violated requirement ceases to exist.

Schools should be aware that if there are any life, safety, or health violations in the workplace, these violations will now be ongoing until the school corrects them, Cal/OSHA discovers them, or the requirement related to the violation ceases to exist. As a result, Cal/OSHA could now potentially have a prolonged period of time to discover the violations and issue a citation. Schools should use ensure they are correcting any potential life, safety, or health violations in a timely manner so as not to maintain continuous occurrences of violations.

(AB 2334 amends Sections 138.7, 3702.2, and 6317 of the Labor Code and adds Sections 6410.1 and 6410.2 to the Labor Code.)

STUDENTS

BILLS APPLICABLE TO K-12 SCHOOL STUDENTS

ATHLETICS

SB 1109–Requires Schools that Sponsor or Conduct Sports Competitions to Annually Provide an Opioid Factsheet to Athletes.

Existing law requires a school district, charter school, or private school that elects to offer an athletic program to take specified actions if an athlete is suspected to have sustained a concussion and to obtain a signed concussion and head injury information sheet from the athlete and athlete's parent or guardian before the athlete initiates practice or competition.

This new law requires a youth sports organization, as defined, to annually give a specified Opioid Factsheet to each athlete, and requires each athlete and his or her parent to sign a document acknowledging receipt of that factsheet, as specified.

For purposes of this new law, a "Youth sports organization" is defined as an organization, business,

nonprofit entity, or a local governmental agency that sponsors or conducts amateur sports competitions, training, camps, or clubs in which persons 17 years of age or younger participate in any of the following sports:

(A) Baseball.
(B) Basketball.
(C) Bicycle motocross (BMX).
(D) Boxing.
(E) Competitive cheerleading.
(F) Diving.
(G) Equestrian activities.
(H) Field hockey.
(I) Football.
(J) Full contact martial arts.
(K) Gymnastics.
(L) Ice hockey.
(M) Lacrosse.
(N) Parkour.
(O) Rodeo.
(P) Roller derby.
(Q) Rugby.
(R) Skateboarding.
(S) Skiing.
(T) Soccer.
(U) Softball.
(V) Surfing.
(W) Swimming.
(X) Synchronized swimming.
(Y) Volleyball.
(Z) Water polo.
(AA) Wrestling.

(SB 1109 amends Sections 1645, 2190.5, 2191, 2196.2, 2454.5, 2746.51, 2836.1, 3059, and 3502.1 of, and adds Section 4076.7 to, the Business and Professions Code, and adds Section 49476 to the Education Code, and Sections 11158.1 and 124236 to the Health and Safety Code, relating to controlled substances.)

TRANSPORTATION

AB 1798 – Requires that all Schoolbuses in use in California be Equipped with a Passenger Restraint System on or before July 1, 2035.

Existing law currently requires that schoolbuses manufactured on or after July 1, 2004, or July 1, 2005, depending on vehicle capacity and weight, and purchased or leased for use in California be equipped with a passenger restraint system at all designated seating positions, unless specifically prohibited by the National Highway Traffic Safety Administration. The result of this is that not all schoolbuses that transport children currently have a passenger restraint system (i.e. seatbelts). Existing law specifically defines a passenger restraint system as any one of the following: (1) A restraint system that is in compliance with Federal Motor Vehicle Safety Standard 209, for a type 2 seatbelt assembly, and with Federal Motor Vehicle Safety Standard 210, as those standards were in effect on the date the schoolbus was manufactured; or (2) A restraint system certified by the schoolbus manufacturer that is in compliance with Federal Motor Vehicle Safety Standard 222 and incorporates a type 2 lap/shoulder restraint system.

Pursuant to this new law, on or before July 1, 2035, all schoolbuses in use in California must be equipped with a passenger restraint system. A violation of this law is a crime.

(AB 1798 amends Section 27316 of the Vehicle Code.)

AB 1840 – Requires Schoolbuses, School Pupil Activity Buses, and Youth Buses to be equipped with an Operational Child Safety Alert System.

Existing law requires, on or before the beginning of the 2018–19 school year, schoolbuses, school pupil activity buses, youth buses, and child care motor vehicles, except as provided, to be equipped with an operational child safety alert system. This new law pushes the deadline for compliance from the beginning of the 2018-2019 school year to March 1, 2019, and provides that additional six-month extensions may be granted if certain documentation is submitted to the Department of the California Highway Patrol on or before March 1, 2019. An operational child safety alert system is defined as a device located at the interior rear of a vehicle that "requires the driver to either manually contact or scan the device before exiting the vehicle, thereby prompting the driver to inspect the entirety of the interior of the vehicle before exiting."

The law also requires the Department of the California Highway Patrol to consult with the State Department of Education to develop frequently asked questions related to the implementation of these requirements.

(AB 1840 amends Section 28160 of the Vehicle Code.)

INSTRUCTION

AB 2319 – Deletes Reference to the Term "Foreign Language" and Replaces it with "World Language."

Current law refers to the study of a language other than English by students as the study of a foreign language. Current law refers to the term "foreign language" in various provisions of the Education Code. This bill deletes references in the Education Code to the term "foreign language" and replaces those references with the term "world language." This new law does not require schools to make modifications to foreign language programs.

(AB 2319 amends Sections 30, 19325.1, 33126, 33195.4, 33533, 44256, 44257, 44610, 44611, 44615, 44616, 44856, 48223, 51212, 51220, 51225.3, 51243, 51244, 51245, 51460, 51461, 51865, 52167, 60119, 60603, 60605.3, and 66081 of, and to add Section 91 to, the Education Code, relating to foreign language education.)

FOOD SERVICE

AB 3043 – Authorizes Schools that Participate in the Federal School Breakfast Program to Provide Universal Breakfast.

Existing law requires a school district or county superintendent of schools maintaining a kindergarten or any of grades 1 to 12, inclusive, to provide a needy pupil, as defined, one nutritionally adequate free or reduced-price meal during each schoolday, and authorizes the school district or county superintendent of schools to use funds available from any federal program, including the federal School Breakfast Program, or state program to comply with that requirement, as provided.

This new law authorizes a school district, county office of education, private nonprofit school, charter school, or residential child care institution, as defined, that participates in the federal School Breakfast Program, commencing with the 2019–20 school year, after submitting certain documentation to the State Department of Education for approval, to provide universal breakfast, to the maximum extent practicable. The bill defines "universal breakfast" to mean a nutritionally adequate breakfast that complies with, and qualifies for reimbursement under, the federal School Breakfast Program and that is provided to every pupil at no charge.

(AB 3043 amends Sections 38100, 38101, 49531, 49531.1, 49550.3, and 49590 of, and to add Section 49550.5 to, the Education Code, relating to pupil nutrition.)

BILLS APPLICABLE TO SCHOOLS SERVING STUDENTS IN GRADES 7-12, AND COLLEGES AND UNIVERSITIES

SUICIDE PREVENTION

SB 972 – Requires All Schools Serving Students in Grades 7-12 and Postsecondary Institutions to Provide the Phone Number for the National Suicide Prevention Lifeline on Pupil Identification Cards.

This law requires, commencing on July 1, 2019, that public schools, charter schools, private schools that serve students in any of grades 7 to 12, inclusive, and public and private institutions of higher learning and that issue pupil identification cards to have printed on either side of the pupil identification cards the telephone for the National Suicide Prevention Lifeline, 1-800-273-8255. The law further providers that these schools at their option may also have printed on either side of the pupil identification cards, the Crisis Text Line and a local suicide prevention hotline telephone number, and institutions of higher learning may also include the campus police or security telephone number. This law permits schools that have a supply of identification cards that do not comply with these requirements, to continue to use their supply of noncompliant pupil identification cards until the supply is depleted.

(SB 972 amends the heading of Article 2.5 (commencing with Section 215) of Chapter 2 of Part 1 of Division 1 of Title 1 of, and adds Section 215.5 to the Education Code.)

BILLS APPLICABLE TO COLLEGES AND UNIVERSITIES

SEXUAL ASSAULT

AB 1896 – Clarifies the Scope of the Sexual Assault Counselor-Victim Privilege as Applicable to Counselors Providing Services to Students on College Campuses.

Existing law, pursuant to Evidence Code section 1035.2, establishes a privilege for a victim of a sexual assault to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault counselor, if the privilege is claimed by the holder of the privilege, a person who is authorized to claim the privilege by the holder of the privilege, or the person who was the sexual assault counselor at the time of the confidential communication,

except as specified. Because there has been uncertainty among practicing sexual assault counselors as to whether this privilege extends to counselors who provide these services and support to students on college campuses, this new law was passed in order to clarify that the privilege does extend to sexual counselors providing services and support to students on college campuses.

This new law specifically includes within the definition of "sexual assault counselor" any person who is engaged in a program on the campus of a public or private institution of higher education, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas:

(A) Law.
(B) Medicine.
(C) Societal attitudes.
(D) Crisis intervention and counseling techniques.
(E) Role playing.
(F) Referral services.
(G) Sexuality.

(AB 1896 amends Evidence Code section 1035.)

MILITARY LEAVE

AB 2894 – Requires Postsecondary Institutions to Provide Students Called to Active Military Duty During an Academic Term the Right to Withdraw, Receive an Incomplete, or be Graded Based on Work Completed.

Existing law requires public and private postsecondary educational institutions to refund 100% of the tuition and fees paid by a student to the institution for the academic term in which the student was required to report for military service, regardless of whether the student was called to military service before the academic term had commenced or after the academic term had commenced.

This new law provides that, subject to applicable federal, state, and institutional refund and withdrawal policies, when a student, as defined, is called to active military duty during an academic term, the student may either: (1) choose to withdraw from the institution, retroactive to the beginning of the academic term; (2) choose to request that the faculty member assign a grade for the course based on the work the student has completed if the student has completed at least 75% of the academic term; or (3) elect to receive a grade of Incomplete and be provided with a minimum of 4 weeks from the date of return to the Institution to complete the course requirements.

(AB 2894 adds Chapter 2.7 (commencing with Section 99130) to Part 65 of Division 14 of Title 3 of the Education Code).

STUDENT HOUSING AND FOOD

AB 1961 – Requires All Institutions of Higher Education in the State to Separately List the Cost of Housing and Meal Plans.

This new law requires each institution of higher education with a physical presence in this state to separately list the cost of institutionally operated housing and meal plans on all Internet websites and documents it provides to students for purposes of advertising or otherwise displaying the student costs associated with institutionally operated housing.

(AB 1961 adds section 69503.6 to the Education Code.)

AB 1894 – Requires a Campus Food Facility that Participates in the Restaurant Meals Program to meet all of the Requirements for Participation in the Program.

The California Restaurant Meals Program allows eligible homeless, disabled, and/or elderly (ages 60 and above) CalFresh benefit recipients to use their CalFresh benefits to purchase hot, prepared food from participating restaurants. Existing law requires each public and private postsecondary educational institution that is located in a county that participates in the Restaurant Meals Program (RMP) to apply to become an approved food vendor for the program, if the institution operates any qualifying food facilities, as defined, on campus, or to provide contracting on-campus food vendors, as defined, with specified information about the program. This law requires an approved on-campus qualifying food facility that participates in the RMP to meet all of the requirements for participation in that program. This law also provides that, for purposes of this provision, a qualifying food facility is a facility administered by the postsecondary educational institution.

(AB 1894 amends Section 66025.93 of the Education Code.)

CHILDCARE AND PRESCHOOLS

AB 605 – Creates a Single Integrated License for Child Care Centers.

California currently requires a separate infant-toddler license for private fee, state, and federally funded child care programs. Community Care Licensing (CCL) provides and administers separate licenses for Infants (Birth-2yrs) and Preschoolers (2yrs-entering first grade). The "Toddler Component" refers to the component of an infant or preschool care program license designed for children between the ages of 18 months and 36 months.

This new law requires the State Department of Social Services, in consultation with stakeholders, to adopt regulations on or before January 1, 2021, to create a single integrated license for child care centers license to serve infant, toddler, preschool, and schoolage children with all respective health and safety requirements. The new law also requires the State Department of Social Services to develop guidelines for an optional toddler program for children 18 months to 3 years of age and creates new health and safety standards for this program, including setting an adult/child ratio of six children to each teacher.

(AB 605 amends Sections 1596.76, 1596.955, and 1596.956 of, and to add Section 1596.951 to, the Health and Safety Code, relating to care facilities.)

AB 2370 – Requires Training on Lead Exposure as a Condition of Licensure, Distribution of Information on Lead Exposure, and Regular Testing of Drinking Water.

Under existing law, the California Child Day Care Facilities Act, the State Department of Social Services ("the Department") licenses and regulates child day care facilities, as defined, and family day care home licensees. The act requires that, as a condition of licensure and in addition to any other required training, at least one director or teacher at each day care center, and each family day care home licensee who provides care, have at least 15 hours of health and safety training, covering specified components, including a preventive health practices course or courses on recognition, management, and prevention of infectious diseases and prevention of childhood injuries.

This new law additionally requires, as a condition of licensure for licenses issued on or after July 1, 2020, the health and safety training to include instruction in the prevention of lead exposure as a part of the preventive health practices course or courses component. This new law also requires the child day care facility, upon enrolling or reenrolling any child, to provide the parent or guardian with written information on the risks and effects of lead exposure, blood lead testing recommendations and requirements, and options for obtaining blood lead testing, as specified.

This bill also requires a licensed child day care center that is located in a building that was constructed before January 1, 2010, to have its drinking water tested for lead contamination levels on a specified schedule and to notify parents or legal guardians of children enrolled in the day care center of the requirement to test the drinking water and the results of the test. If a licensed child day care center is notified that it has elevated lead levels, the law requires the day care center to immediately make inoperable and cease using the affected fountains and faucets and obtain a potable source for water for children and staff. The law requires the State Water Resources Control Board to post all test results received pursuant to these provisions on its Internet Web site and requires the department, in consultation with the State Water Resources Control Board, to adopt regulations implementing these provisions no later than January 1, 2021. The law authorizes the department to implement and administer these provisions through all-county letters or similar written instructions until regulations are adopted. Because a violation of certain requirements of this law or regulations adopted under the law would be a crime, this law imposes a state-mandated local program.

This law requires the state board to provide grants for testing drinking water lead levels in licensed child day care centers and other specified activities, from any funds appropriated to the state board for those purposes.

(AB 2370 amends Sections 1596.866 and 1596.8661 of, and to add Sections 1596.7996 and 1597.16 to, the Health and Safety Code, relating to lead exposure.)

AB 108 – Creates Uniform Standards for County Child Care Pilot Operations.

Existing law authorizes the Counties of Alameda, Contra Costa, Fresno, Marin, Monterey, San Benito, San Diego, Santa Clara, Santa Cruz, Solano, and Sonoma, as individual pilot projects, to develop an individualized county child care subsidy plan. Existing law also authorizes the City and County of San Francisco and the City of San Mateo to develop and implement individualized county child care subsidy plans that include specified elements.

This new law creates more uniform standards for pilot operation and CDE review. It also eliminates the requirement that 50% of the children in California state preschool be at least 4 years old, and adds six months to the sunset date of each pilot.

(AB 108 amends Sections 8212, 8332, 8332.1, 8332.2, 8332.3, 8332.4, 8332.5, 8332.7, 8335.1, 8335.3, 8335.4, 8347.2, 8347.3,

8347.4, and 8499.5 of, to amend the heading of Article 15.1 (commencing with Section 8332) of Chapter 2 of Part 6 of Division 1 of Title 1 of, to add Sections 8332.25, 8332.8, and 8335.5 to, to repeal Section 8335.2 of, and to repeal Article 15.1.1 (commencing with Section 8333), Article 15.1.1 (commencing with Section 8334), Article 15.3 (commencing with Section 8340), Article 15.4.1 (commencing with Section 8348), and Article 15.4.2 (commencing with Section 8349) of Chapter 2 of Part 6 of Division 1 of Title 1 of, the Education Code, to amend Sections 99101, 99102, 99106, 99108, and 99109 of, and to repeal Section 99104 of the Government Code.)

AB 2698 –Provides an Adjustment Factor for Reimbursement Rates for Child Care Providers who Provide Mental Health Consultation Services.

The Child Care and Development Services Act currently establishes a system of child care and development services for children up to 13 years of age, and requires the Superintendent of Public Instruction to implement a plan establishing assigned reimbursement rates, per unit of average daily enrollment, to be paid by the state to provider agencies for the provision of those services. Existing law also provides for an adjustment factor to be applied to units of average daily enrollment if a provider agency serves children who meet specified criteria.

This law provides an incentive for child care providers to provide early childhood mental health consultation services available to more children by allowing providers to use existing state funding for early childhood mental health consultants working with California State preschools programs or general child care programs. Pursuant to this law, programs for children who are served in a California state preschool program, infants and toddlers who are 0 to 36 months of age and are served in general child care and development programs, or children who are 0 to 5 years of age and are served in a family child care home education network setting funded by a general child care and development program, have an adjustment factor of 1.05 applied where early childhood mental health consultation services, as defined, are provided, pursuant to specified requirements.

Existing law prohibits reporting a child who meets the criteria for more than one adjustment factor under more than one adjustment factor category. This law, notwithstanding that prohibition, requires, for a child who meets the criteria for one of specified adjustment factors and for the adjustment factor added by this law, that the reported child days of enrollment for that child be multiplied by the sum of the specified applicable adjustment factor and 0.05.

(AB 2698 amends Section 8265.5 of, and adds Section 8265.2 to the Education Code, relating to child care.)

BUSINESS AND FACILITIES

AB 2557 – Creates an Explicit Provision Providing for the Appointment of Ex Officio Directors for Nonprofit Corporations and Cooperatives.

Many schools presume that ex officio directors are permitted under the law. However, the law actually lacks an express authorization for ex officio directors to serve on the boards of nonprofit corporations. This bill adds this express authorization to the Corporations Code.

This bill provides that ex officio directors may sit on the boards of nonprofit public benefit corporations, nonprofit mutual benefit corporations, nonprofit religious corporations, and cooperative corporations. The law defines an ex officio director as a person who holds office as a director by virtue of holding another specified position, either within or outside the corporation. The term of office of an ex officio director coincides with that director's time in the specified position entitling them to serve on the board. Once that time ends, that person's term as an ex officio director ends. For example, a nonprofit school's bylaws may provide that upon retiring the principal or head of the school will serve as an ex officio director of the board. Under AB 2557, that person will serve in that role until their successor retires as principal, at which point the successor steps into the ex officio board role.

Nonprofits should revisit their bylaws to assess how ex officio members are treated. For example, unless bylaws specifically state otherwise, all directors – including ex officio directors – have voting rights. Ex officio is not a synonym for non-voting. Instead, as codified by AB 2557 an ex officio director is someone that gets to sit on the board simply because they had or have another official position with the organization. Unless specified otherwise in the bylaws, that ex officio director has all the same rights as other directors on the board, including voting rights.

(AB 2557 amends sections 5211, 5220, 7220, 9920, and 12360 of the Corporations Code.)

AB 2986 – Requires Transportation Network Companies to Disclose Driver Information.

Many private schools permit or even utilize transportation network companies, such as Uber and HopSkipDrive. This new law requires a transportation network company to provide information about the transportation network company driver to the passenger on its online-enabled application or platform at the time that the passenger is matched to that driver, including the transportation network company driver's first name and a picture of the driver, an image of the

make and model of the driver's vehicle, and the license plate number of the vehicle.

(AB 2986 adds Section 5445.1 to the Public Utilities Code, relating to transportation).

AB 375 – The California Consumer Privacy Act of 2018.

This bill creates the California Consumer Privacy Act of 2018, which gives California residents ("consumers") the right to:

1. Know what personal information a business has about them, and where information came from or was sent (e.g., who it was sold to);
2. Delete personal information that a business collects from them;
3. Opt-out of the sale of personal information about them; and
4. Receive equal service and pricing from a business, even if they exercise their privacy rights under the law, with some exceptions.

Companies will need to provide information to consumers about these rights in privacy policies and will need to provide consumers with the ability to opt out of the sale of personal information by supplying a link titled "Do Not Sell My Personal Information" on their home page. The Act further provides that a business must not sell the personal information of consumers younger than 16 years of age without that consumer's affirmative consent or for consumers younger than 13 years of age, without the affirmative consent of the consumer's parent or guardian.

The Act defines "personal information" broadly as any information that identifies or can be used to identify a consumer or their household, such as: records of products purchased, browser search histories, educational information, employment history, and IP addresses.

Non-profit schools do not need to comply because the law only applies to: for-profits doing business in California, that: (a) have annual gross revenues in excess of $25 million; or (b) receive or disclose the personal information of 50,000 or more Californians; or (c) derive 50 percent or more of their annual revenues from selling California residents' personal information.

However, when contracting with covered companies, schools will want to ensure that the obligations and risks of the law rest squarely with the for-profit business. Those risks are real. The Attorney General has enforcement authority over the Act. Consumers may bring class actions against non-compliant companies that allow sensitive consumer personal information to be stolen or wrongfully disclosed. In these cases, consumers may seek statutory damages between $100 and $750 per California resident per incident.

(AB 375 adds Sections 1798.100 to 1798.198 to the Civil Code.)

AB 1565 – Limits Liability of General Contractors for Sub-Contractor's Failure to Comply with the Labor Code.

Last year, the Legislature enacted Labor Code Section 218.7, which holds direct contractors liable, under certain types of construction contracts, for unpaid wages, benefits, or contributions that a subcontractor owes to its workers. Labor Code Section 218.7 allows direct contractors to require subcontractors to provide certain payroll records so that the direct contractor can evaluate the subcontractor's compliance with wage and hour laws. The direct contractor may withhold payments until the subcontractor provides those records.

When Labor Code Section 218.7 was enacted, Governor Brown explained that in 2018 the sponsors of that law would pass clarifying legislation regarding the scope of liability for contractors. This bill is that clarifying legislation. AB 1565 strikes language providing that the direct contractor's liability for unpaid wages or benefits is in addition to any other existing rights and remedies. AB 1565 also provides that in order to withhold payments, the direct contractor must specify in its contract with the subcontractor, what specific documents and information that the subcontractor is required to provide.

(AB 1565 amends Section 218.7 of the Labor Code.)

AB 3058 – Inspectors of School Buildings with the Department of General Services Will be Required to Take New Examination and Undergo New Education and Training.

The Field Act requires the Department of General Services ("DGS") to supervise the design and construction of school buildings or reconstruction or alteration of school buildings. DGS is also tasked with periodically inspecting school buildings to ensure compliance with the law. This bill revises the training and testing requirements for school construction project inspectors. Specifically, DGS must revise the inspector exam no later than three years after the last exam. Inspectors must be re-tested at least every four years. The evaluation and reevaluation of inspectors must meet education and training requirements determined by

DGS. These new requirements will allow the DGS to keep up with changes in building codes, construction materials, and construction methods.

(AB 3058 amends Section 17311 of the Education Code.)

SB 1115 – Increases Welfare Tax Exemption for Property Owned by Nonprofits and Used for Affordable Housing from $10 Million to $20 Million.

Under the welfare tax exemption, non-publicly financed affordable housing owned and operated by a nonprofit corporation is exempt from County property taxes if the property is managed solely by a nonprofit organization and 90% of the occupants are low to very low income. However, this exemption is subject to a cap. Currently, nonprofits renting affordable housing must still pay tax on any amount of property value that exceeds $10 million, which applies to all of a nonprofit's properties statewide. As a result, the $10 million cap deters charities that want to construct or acquire additional affordable housing, especially those in areas of the state with higher housing markets.

This bill is designed to increase affordable housing by increasing the cap from $10 million to $20 million. SB 1115 increases the total exemption amount allowed from $10 million to $20 million in assessed value with respect to lien dates occurring on and after January 1, 2019. The bill also requires any outstanding qualified ad valorem property tax in excess of the $10 million levied in 2017 or 2018 to be canceled to the extent that the amount canceled does not result in a total assessed value exemption amount in excess of $20 million.

(SB 1115 amends Section 214 of the Revenue and Taxation Code and adds section 214.9 to the Revenue and Taxation Code).

SB 100 – California Must Achieve 100 Percent Clean Energy by 2045.

SB 100 requires the State of California to achieve 100 percent clean and renewable energy by 2045. SB 100 will be known as The 100 Percent Clean Energy Act of 2018. When Governor Brown signed SB 100, he also signed an executive order establishing that California's new statewide goal to achieve carbon neutrality is 2045. Current law requires that the State achieve 50 percent carbon neutrality by 2030. The ambitious modification increases from 50 percent to 60 percent by 2030, and doubles that 50 percent goal by requiring that renewable energy and zero-carbon resources supply 100 percent of electricity for California end-use customers and state agencies by 2045. California is only the second state after Hawaii to require that all of its energy come from clean renewable sources.

The California Air Resources Board will work with state agencies to develop a framework for implementing and measuring carbon neutrality goals. State agencies will request the support of colleges, businesses, communities, and others to help California obtain all of its energy from clean sources.

Schools and colleges can get a help in achieving these goals by spreading the word across your communities and setting an example by achieving carbon neutrality within your organization.

LCW is happy to assist educational institutions in all their clean and renewable energy resource needs. Our attorneys include a LEED Green Associate, an accreditation by LEED as a professional with extensive knowledge of green design, construction, and operations.

(SB100 amends Sections 399.11 through 299.30 of the Public Utilities Code and adds Section 454.53 to the Public Utilities Code.)

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