

PRIVATE EDUCATION LEGISLATIVE ROUNDUP

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



2019

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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, 2020, 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 SCHOOLS, COLLEGES, AND UNIVERSITIES

ARBITRATION

SB 707 – Sets Forth Sanctions For The Failure Of An Employer Or Company To Timely Pay Arbitration Costs.

For any employer that requires employees to enter into arbitration agreements, SB 707 establishes requirements for employers to pay arbitrations costs in a timely fashion or else face possible sanctions, including a waiver of the right to compel arbitration, liability for an employee’s attorney’s fees, and even possible evidentiary or termination sanctions.

SB 707 affirms previous state and federal court decisions relating to employment or consumer arbitration agreements where an employer or company fails to pay arbitration fees and sets forth penalties for failing to do so. As applied to employment arbitration agreements, the following penalties apply:

1. Failure to Timely Pay Arbitration Fees and Costs will Result in a Waiver of the Right to Compel Arbitration, and Permits the Employee/Consumer to Proceed in Court at His/Her Option

Pursuant to SB 707, in an employment or consumer arbitration in which the drafting party is required to pay certain fees and costs associated with arbitration, if the fees or costs are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration. The “drafting party” for purposes of SB 707 means “the company or business that included a pre-dispute arbitration provision in a contract with a consumer or employee. The term includes any third party relying upon, or otherwise subject to the arbitration provision, other than the employee or consumer.” SB 707 further provides that if the drafting party materially breaches the arbitration agreement and is in default of the arbitration, the employee or consumer may either withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction, or compel arbitration.

Further, AB 707 provides that if the drafting party fails to pay required arbitration fees and costs that are due during the pendency of the arbitration within 30 days of the due date, the employee or consumer may unilaterally withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction, or to compel arbitration, at the employee or consumer's option.

In all cases in which the employee/consumer proceeds in court based on the drafting party's failure to timely pay arbitration fees and costs, the statute of limitations period with regard to all claims brought or that relate back to any claim brought in arbitration are tolled as of the date of the first filing of a claim in any court, arbitration forum, or other dispute resolution forum.

2. Failure to Timely Pay Arbitration Fees and Costs will Result in the Employer/Company Being Liable for Employee's/Consumer's Attorney's Fees and Costs and May Result in Evidentiary or Terminating Sanctions

If the employee or consumer elects to compel arbitration after the drafting party materially breaches the arbitration agreement and is in default, as set forth above, SB 707 requires the drafting party to pay reasonable attorney's fees and costs related to the arbitration and to impose other sanctions.

If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, SB 707 requires the court to impose a monetary sanction on the drafting party who materially breaches an arbitration agreement, and authorizes the court to impose other sanctions.

A court is further authorized by SB 707 to impose other sanctions on a drafting party for failure to timely pay arbitration fees and costs, unless it finds that that the drafting party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust." These other sanctions include the following:

- (1) An evidence sanction by an order prohibiting the drafting party from conducting discovery in the civil action; or
- (2) A terminating sanction by one of the following orders:
 - (A) An order striking out the pleadings or parts of the pleadings of the drafting party.
 - (B) An order rendering a judgment by default against the drafting party.
- (3) A contempt sanction by an order treating the drafting party as in contempt of court.
- (4) Attorneys' fees and costs associated with the abandoned arbitration proceedings.

In addition to the above, SB 707 requires private arbitration companies to collect and report demographic data in the aggregate relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators, as specified.

Schools need to be cognizant that any failure to pay arbitration fees and costs in an employment arbitration or consumer arbitration could have a significant adverse impact on the continuation and cost of such proceedings as noted above.

(AB 707 amends Sections 1280 and 1281.96 of, and add Sections 1281.97, 1281.98, and 1281.99 to, the Code of Civil Procedure, relating to arbitration.)

SEXUAL ASSAULT

AB 1510 – Extends The Statute Of Limitations For Civil Actions Related To Sexual Assault.

Existing law sets the time for commencement of any civil action for recovery of damages suffered as a result of sexual assault, as defined, 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. Existing law provides that this limitation applies to any action of that type that is commenced on or after January 1, 2019.

AB 1510, which went into effect on October 2, 2019, clarifies that it is not necessary that a criminal prosecution or other proceeding have been brought as a result of the sexual assault or, if a criminal prosecution or other proceeding was brought, that the prosecution or proceeding resulted in a conviction or adjudication, in order for a plaintiff to bring a civil action.

AB 1510 revives claims for damages of more than \$250,000 arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician occurring at a student health center between January 1, 1988, and January 1, 2017, that would otherwise be barred prior to October 2, 2019, solely because the applicable statute of limitations has or had expired, and authorizes a cause of action to proceed if already pending in court on October 2, 2019, and if not filed by October 2, 2019, to be commenced between October 2, 2019, and December 31, 2020.

(AB 1510 amends Section 340.16 of the Code of Civil Procedure, relating to sexual misconduct.)

EMPLOYEES

BILLS APPLICABLE TO K-12 SCHOOLS, COLLEGE, AND UNIVERSITY EMPLOYEES

INDEPENDENT CONTRACTORS

AB 5 – Codifies The ABC Test For Determining Independent Contractor Status And Sets Forth Specified Exemptions.

In *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, delivery drivers alleged that the Dynamex company misclassified them as independent contractors. For purposes of the California wage orders, the Court established a new test, often referred to as the ABC test, for determining whether an individual works as an independent contractor or as an employee. The Court rejected the longstanding and more flexible multifactor standard established in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.

Under the *Borello* test, the primary consideration for determining whether an individual is an independent contractor or employee is whether the hiring entity had the right to control the manner and means of the work. The test also evaluates nine additional factors including the type of occupation, the length of time for which the services were to be performed, and the method of payment.

Under the ABC test in *Dynamex*, however, the presumption is that the individual is an employee unless the hiring entity demonstrates that all three of the following conditions have been satisfied in order for the individual to qualify as an independent contractor:

- (A) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract terms and in fact;
- (B) The individual performs work that is outside the usual course of the hiring entity's business; and
- (C) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

AB 5 codifies this ABC test, extends its application beyond California wage orders, and sets forth specified exemptions.

1. Codifies the ABC Test for Determining Independent Contractor Status

AB 5 codifies the "ABC" test for determining independent contractor status that the California Supreme Court adopted in its 2018 decision, *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903.

AB 5 creates Labor Code section 2750.3, which *Dynamex's* application beyond Industrial Welfare Commission (IWC) wage orders to the general Labor Code and Unemployment Insurance Code. Additionally, AB 5 applies this new Labor Code section 2750.3 to Labor Code section 3351, which relates to employment status for Workers' Compensation coverage. This portion of the law will be effective July 1, 2020.

AB 5 also amends Unemployment Insurance Code section 621 to incorporate *Dynamex's* ABC test. This amendment does not reference the exemptions for occupations in Labor Code section 2750.3 that remain subject to the old, multifactor *Borello* test. Thus, those independent contractors who fall into one of the exemptions in Labor Code section 2750.3 may not be exempt from the provisions of the Unemployment Insurance Code unless the conditions of the ABC test are satisfied.

AB 5 and Labor Code section 2750.3 now extend the ABC test in *Dynamex* to the general Labor Code and Unemployment Insurance Code. This means that if an individual is an employee under the ABC test, then corresponding Labor Code provisions applicable to employees would now apply to the individual, including workers' compensation coverage and paid sick leave benefits. Additionally, if an individual is an employee under the ABC test, he or she is also now entitled to unemployment benefits under the Unemployment Insurance Code.

Labor Code section 2750.3 does not constitute a change of the law, but rather declares the state of the existing law prior to its adoption. Accordingly, employers should evaluate all independent contractor arrangements under the ABC test and Labor Code section 2750.3, and work with legal counsel to determine whether to reclassify existing independent contractors as employees pursuant to the changes in law from AB 5.

2. AB 5 Provides Certain Exemptions from the ABC Test

AB 5 carves out a number of exemptions for occupations that remain subject to the old, multifactor *Borello* test. These exemptions include: insurance agents; medical professionals such as physicians, dentists, podiatrists, psychologists, and veterinarians; licensed professionals such as attorneys, architects, engineers, private investigators, and accountants; financial advisers; direct sales salespersons; commercial fisherman; some contracts

for professional services for marketing, human resources administrators, travel agents, graphic designers, grant writers, fine artists, freelance writers, photographers, photojournalists, and cosmetologists; licensed real estate agents; bona fide “business service providers;” construction contractors; construction trucking services; referral service providers; and motor club third party agents.

Professional services contracts for these specified services remain subject to the old, multifactor *Borello* test, and are exempt from the ABC test if the following factors are met:

- (1) The individual maintains a business location, which may include the individual’s residence, that is separate from the hiring entity.
- (2) If work is performed after July 1, 2020, the individual must have a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.
- (3) The individual must have the ability to set or negotiate their own rates for the services performed.
- (4) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual’s own hours.
- (5) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.
- (6) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

A bona fide business-to-business contracting relationship also remains subject to the old, multifactor *Borello* test, and is exempt from the ABC test, if the following apply:

- (1) A business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation contracts to provide services to another such business (i.e. to the school).
- (2) The business service provider is providing services directly to the school rather than to customers of the contracting business.
- (3) The contract with the business service provider is in writing.

(4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider must have the required business license or business tax registration.

(5) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(7) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(9) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(10) The business service provider can negotiate its own rates.

(11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(12) The business service provider is not performing the type of work for which a license from the Contractor’s State License Board is required.

3. Exemption for Staffing Companies for Unemployment Insurance Benefits

AB 5 amends the Unemployment Insurance Code to specify that a “temporary services employer” and a “leasing employer,” that supplies workers to perform services for a client or customer is the employer for unemployment insurance purposes if it performs all of the following functions:

- (1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.
- (2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.

- (3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.
- (4) Assigns or reassigns the worker to perform services for a client or customer.
- (5) Sets the rate of pay of the worker, whether or not through negotiation.
- (6) Pays the worker from its own account or accounts.
- (7) Retains the right to hire and terminate workers.

Importantly this exemption only applies to unemployment insurance benefits.

(AB 5 adds Section 2750.3 to the Labor Code, amends Section 3351 of the Labor Code, and amends Sections 606.5 and 621 of the Unemployment Insurance Code.)

WAGES

AB 673 - Authorizes An Employee To Collect Statutory Penalties For The Failure To Pay Wages, Either In A Labor Agency Administrative Claim Or In Civil Court.

Pursuant to Labor Code Section 210, employers may incur various penalties associated with specified labor code violations, including the failure to pay wages in a timely manner. The Labor Code requires employers to pay employees by a certain date depending on the employee's pay schedule (e.g., weekly, bi-weekly, or bi-monthly). Labor Code section 1197.5 further prohibits wage differentials on the basis of sex.

Per Labor Code Section 210, if an employer fails to pay the wages of each employee as provided in Labor Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, the employer is subject to the following penalties: "(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Existing law authorizes the Labor Commissioner to recover this penalty as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. Existing law requires that a specified percentage of the penalty recovered under that provision be paid into a fund within the Labor and Workforce

Development Agency dedicated to educating employers about state labor laws and that the remainder be paid into the State Treasury to the credit of the General Fund.

AB 673 now authorizes the affected employee to recover specified civil penalties against an employer as part of a hearing held to recover unpaid wages. AB 673 removes the authority for the Labor Commissioner to recover civil penalties in an independent civil action. AB 673 authorizes an employee to either recover statutory penalties or to enforce civil penalties, but not both, for the same violation. As a result of AB 673, employees may now choose to file a private civil action, an administrative action with the Labor Commissioner or a Private Attorneys General Act (PAGA) claim under a specified provision of PAGA.

(AB 673 amends Section 210 of the Labor Code, relating to employment.)

SB 688 – Extends Existing Citation And Penalty Provisions For Failure To Pay Minimum Wages To Wages Or Compensation Due Under Contract.

Existing law makes an employer or other person acting individually or as an officer, agent, or employee of another person who fails to pay or causes a failure to pay an employee a wage less than the minimum wage subject to citation by the Labor Commissioner, a civil penalty, restitution of wages, liquidated damages, and certain other applicable penalties.

SB 688 provides that if the Labor Commissioner determines that an employer has paid a wage less than the wage set by contract in excess of minimum wage, the Labor Commissioner may issue a citation to the employer to recover restitution of the amounts owed.

Existing law requires an employer seeking to file a writ of mandate with the court to contest an assessment of a civil penalty by the Labor Commissioner to post an undertaking in a specified amount. Existing law provides that some or all of the undertaking may be forfeited to the affected employee if the employer does not pay the court's judgment regarding wages or damages owed within 10 days of the entry of the judgment.

SB 688 provides that the undertaking will be forfeited to the Labor Commissioner for appropriate distribution in the event that the employer does not pay the court's judgment regarding wages and damages owed within 10 days of the entry of judgment.

(SB 688 amends Section 1197.1 of the Labor Code, relating to employment.)

ARBITRATION

AB 51 - Prohibits Employers From Requiring Arbitration Of FEHA Or Labor Code Claims As Condition Of Employment.

AB 51 prohibits employers, starting January 1, 2020, from requiring any applicant or employee to submit any claims under the California Labor Code or the California Fair Employment and Housing Act (FEHA) to mandatory arbitration, as a condition of employment, continued employment, or the receipt of any employment-related benefit.

AB 51 adds the new Section 432.6 to the Labor Code, which provides that:

“A person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.”

AB 51 also prohibits employers from using voluntary opt-out clauses in connection with these arbitration agreements. AB 51 states any employment arbitration agreement that requires an employee to affirmatively opt out of the agreement in order to preserve their rights would be deemed a “condition of employment.”

In addition, AB 51 prohibits an employer from threatening, retaliating, discriminating against, or terminating employees or applicants because they refused to waive any such right, forum, or procedure. Violation of Section 432.6 is an unlawful employment practice under FEHA, which means that violations can give rise to an independent cause of action under FEHA. A court may award a prevailing plaintiff injunctive relief and any other remedies available in addition to reasonable attorney’s fees.

There are limited exceptions to this new law, the most relevant being that this new law does not apply to post dispute settlement agreements or negotiated severance agreements. In addition, existing mandatory employment arbitration agreements in effect prior to January 1, 2020 are not impacted. Rather, these new restrictions will apply only to contracts for employment entered into, modified, or extended on or after January 1, 2020.

While this new law indicates that it is not intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act,

it is not entirely clear what that means. We anticipate that there will be litigation regarding whether AB 51 is preempted by the Federal Arbitration Act. Governor Brown vetoed similar legislation last year and cited that the legislation violated federal law. While AB 51 may be preempted by the Federal Arbitration Act, failure to comply with AB 51’s requirements could lead to costly litigation for schools, and it could take several years for any challenge to AB 51 to work itself through the courts.

In the meantime, we recommend that schools prepare to comply with AB 51 on January 1, 2020. We believe the safer course of action is to discontinue the use of employment arbitration agreements. One reason is that potential legal disputes over the enforceability of such arbitration agreements could take years to litigate, and it is uncertain what the outcome would be. In addition, there may be negative public relations repercussions as well as insurance coverage issues resulting from the continued use of employment arbitration agreements. However, if Schools want to continue using mandatory arbitration agreements, they should consult with legal counsel about how to increase the likelihood of enforceability, for example, by including appropriate carve out language to make it clear that state discrimination and Labor Code claims are not subject to mandatory arbitration. We do not recommend this option, though, since schools that use arbitration agreements that contain this carve out language face the costly and burdensome possibility of having to litigate a plaintiff’s claims in multiple forums, and receiving inconsistent decisions. For schools that would like to continue using mandatory arbitration agreements, we recommend contacting the school’s insurance carrier to ask if they have any recommendations or restrictions in light of AB 51.

We note that nothing in AB 51 affects schools’ ability to continue including arbitration provisions in enrollment agreements.

(AB 51 adds Section 12953 to the Government Code and adds Section 432.6 to the Labor Code.)

LEAVES

AB 1223 – Requires Employers To Offer Employees Additional Unpaid Organ Donation Leave.

Existing law, the Michelle Maykin Memorial Donation Protection Act, requires a private employer to permit an employee to take a leave of absence with pay, not exceeding 30 business days in a one-year period, for the purpose of organ donation.

AB 1223 requires a private employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, for the purpose of organ donation.

AB 1223 does not change the requirement that an employee must provide his or her employer with written verification that the employee is an organ or bone marrow donor and there is a medical necessity for the donation. The leave of absence is not a break in the employee's continuous service for purposes of salary adjustments, sick leave, vacation, annual leave, and seniority.

AB 1223 also prohibits life or disability insurance policies, other than health insurance or long-term care insurance, from discriminating against an organ donor.

(Amends Sections 89519.5 and 92611.5 of the Education Code, to amend Section 19991.11 of the Government Code, to add Sections 10110.8 and 10233.8 to the Insurance Code, and to amend Section 1510 of the Labor Code, relating to organ donation.)

DISCRIMINATION, HARASSMENT AND RETALIATION

AB 9 – Increases FEHA Statute Of Limitations From One To Three Years.

The California Fair Employment and Housing Act (FEHA) prohibits discrimination, harassment, and retaliation in employment based on protected classifications such as race, national origin, sex, sexual orientation, religion, age over 40, disability, and medical condition, among other protected categories. Currently, a covered individual (applicant, employee, or former employee) who alleges a violation under the FEHA has one year from the date of such unlawful practice to file a verified complaint with the Department of Fair Employment and Housing (DFEH) or the claim would generally be time-barred.

AB 9 will now increase the statute of limitations for bringing such an administrative charge so a covered individual will now have **up to three years** from the date of such unlawful practice to file a verified complaint with the DFEH. This new statute of limitations will go into effect on January 1, 2020. While AB 9 does clarify that its application will not revive any lapsed claims under the older one-year statute of limitations, this also seems to imply that any potential claims that did not lapse by December 31, 2019 would now get the benefit of the new three-year statute of limitations from the date of such unlawful practice.

This bill will require schools to be prepared to defend against FEHA claims involving actions that took place up to three years ago and may involve former employees who an employer has not interacted with for some time. AB 9 will also cause a greater disparity between the ability to file discrimination, harassment, and retaliation claims under California's FEHA and its federal law counterparts under Title VII, where such

complaints must be filed within 300 days of the alleged unlawful practice with the federal Equal Employment Opportunity Commission (EEOC). While the EEOC and DFEH generally cross-file with the other agency any timely discrimination, harassment, and retaliation complaints that apply under both state and federal law, the DFEH will now only be able to process any such complaints under state law that are filed over 300 days and up to three years from the date of the alleged unlawful practice.

In response to AB 9, employers should prepare good written records in a contemporaneous manner of any claims of discrimination, harassment, and retaliation, and to properly maintain such records so they can be referenced and relied upon to defend against any FEHA claims.

(AB 9 amends Sections 12960 and 12965 of the Government Code.)

SB 188 – Expands Nondiscrimination Laws To Protect Traits Historically Associated With Race, Including Hair Texture And Hairstyles.

SB 188 extends California's workplace discrimination protections to cover race-related traits, including hair. The bill expands the definition of "race" under the Fair Employment and Housing Act. Effective January 1, 2020, "race" will include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." The law further specifies that "protective hairstyles" "includes, but is not limited to, such hairstyles as braids, locks, and twists." This change in the law includes protection from such discrimination against employees.

The bill appears primarily intended to prevent unequal treatment related to natural Black hairstyles. The bill includes a legislative declaration that "Despite the great strides American society and laws have made to reverse the racist ideology that Black traits are inferior, hair remains a rampant source of racial discrimination with serious economic and health consequences, especially for Black individuals." The declaration also states that "Workplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group."

Although the bill specifically references Black hairstyles, the statutory changes it establishes may be broader. For example, under the new statutory language, it appears employers are prohibited from discriminating based on any trait "historically associated with race."

Employers should ensure their policies (including, but not limited to, anti-harassment policies, dress codes and grooming standards) are updated in accordance with this change of law going into effect January 1, 2020.

(SB 188 amends Section 12926 of the Government Code and amends Section 212.1 of the Education Code.)

SB 229 – Expands The Labor Commissioner's Enforcement Of Retaliation Violations.

SB 229 expands the Labor Commissioner's mechanisms for enforcing an employer's violation of the Labor Code's anti-retaliation provisions. If the Labor Commissioner investigates a retaliation complaint and determines that a violation took place under the Labor Code, the Labor Commissioner may issue a citation to the person or employer responsible for the violation. SB 229 establishes procedural requirements and deadlines for the Labor Commissioner to file citations with the court for judicial enforcement and the collection of remedies. The bill also provides procedural requirements for any person or employer who wishes to contest such citation.

(SB 229 amends Section 98.74 of the Labor Code.)

SB 778 – Extends Effective Date For Implementation Of Harassment Prevention Training Requirements To Calendar Year 2020.

During the 2018 Legislative Session, the California Legislature passed SB 1343, which expanded harassment prevention training to include nonsupervisory employees and also require all employees to be trained in calendar year 2019. After the passage of SB 1343 there were a number of issues and concerns related to the implementation of the new law. Governor Newsom has now signed into law clean-up legislation SB 778 to address these issues. SB 778 will now delay the implementation of the new harassment training requirements and any refresher training until calendar year 2020. **As urgency legislation, SB 778 went into effect immediately upon Governor Newsom's approval of the law on August 30, 2019.**

SB 778 makes the following modifications to harassment training requirements that were added on January 1, 2019 as a result of last year's SB 1343:

1. Implementation of Harassment Prevention Training Not Required Now Until Calendar Year 2020.

The requirement to provide harassment prevention training to both supervisory and nonsupervisory employees is now not required until calendar year 2020,

as opposed to the previous SB 1343 requirement that all applicable harassment training be conducted in 2019. This new change in the law will allow employers more time to provide any required training to those employees not already trained – especially nonsupervisory employees who are now required to receive at least one hour of harassment training every two years.

This change will also provide the Department of Fair Employment and Housing (DFEH) more time to prepare and make available online harassment training for employers to use to comply with the requirements mandated by SB 1343. This new law should also give the DFEH more time to update their regulations on harassment prevention training to better define what is required for the new one-hour nonsupervisory harassment training. Currently, such DFEH regulations only reference the previous AB 1825 two-hour supervisory employee harassment training requirements that are not entirely applicable to nonsupervisory employees.

2. Any Compliant Harassment Prevention Training Conducted in 2019 Would Not Require Refresher Training Again Until Calendar Year 2021.

By extending out the timeline to provide harassment training to calendar year 2020, SB 778 addressed concerns raised by employers who already provided compliant harassment training for both supervisory and nonsupervisory employees in calendar year 2018 and would have had to re-train such employees a year earlier this year under SB 1343. With the new 2020 timeline for implementing this training, any previous 2018 harassment training would be on track for the standard two-year follow-up training in calendar year 2020.

Even for those employers who already provided SB 1343-compliant training to supervisory and nonsupervisory employees this year in 2019, the new law addresses this scenario by indicating that refresher training is not required again for another two years – which would be in calendar year 2021.

What Employers Should Do Now?

The main impact of SB 778 is that employers now have more flexibility in implementing the new requirement to provide at least one hour of harassment prevention training to nonsupervisory employees that was established by last year's SB 1343. Instead of providing this new training this year, employers now have until the end of calendar year 2020 to provide this training to nonsupervisory employees.

Now that SB 778 has been effective since August 30, 2019 as urgency legislation, employers who provided compliant harassment training to supervisory or nonsupervisory employees in 2018 do not have to

schedule refresher trainings earlier than the standard two-year track for refresher trainings – which would result in such trainings being scheduled next year (2020).

Finally, it is important to continue following the existing requirement that supervisory employees receive this training within six months of hire under the original AB 1825 training requirements. Therefore, regardless of whether an employer provided harassment prevention training to employees in 2018, any new supervisory employees would still need to receive this training within six months of their hire date if that timeline falls in calendar year 2019.

(SB 778 amends Section 12950.1 of the Government Code.)

DOMESTIC PARTNERSHIPS

SB 30 – Eliminates Same-Sex And Age Requirements For Forming A Domestic Partnership.

California law currently defines a registered domestic partnership as two adults who have chosen to share their lives with each other in an intimate and committed relationship of mutual caring and who have registered with their partnership with the Secretary of State's office. Where such a registered domestic partnership is established, the same rights and privileges as married spouses under California law are provided to the domestic partners. However, under current law a registered domestic partnership can only be established where: (1) both persons are members of the same sex; or (2) one or both persons is over 62 years of age.

Under SB 30, beginning January 1, 2020, domestic partners will no longer be required to be members of the same sex or be required to have one or both partners be over 62 years of age. Because California law confers that same benefits to registered domestic partners that are provided to married spouses, public agencies may have more employees who qualify for registered domestic partnership and may seek such benefits in the workplace. For example, the California Paid Sick Leave law in Labor Code sections 245-249 allows an employee to use paid sick leave for the diagnosis, care, or treatment of an existing health condition or preventative care for a family member, including a registered domestic partner. Similarly, the California Family Rights Act (CFRA) allows an eligible employee to use job-protected leave to care for a registered domestic partner. Schools should be aware of the change in definition of who may enter into a domestic partnership for purposes of complying with California law and applying agency policies.

(SB 30 amends Sections 297, 297.1, 298, 298.5, 298.6, 298.7, and 299.2 of the Family Code and repeals Section 299.3 of the Family Code.)

EMPLOYEE AND WORKPLACE SAFETY

AB 35 – Creates Reporting Requirements And Investigations For The Department Of Public Health Related To Employees With High Lead Levels.

The California Department of Public Health administers an Occupational Lead Poisoning Prevention Program to prevent and reduce lead poisoning in workplaces across California. As part of the Program, the Department of Public Health tracks blood lead levels in adults and investigates work-related lead poisoning cases in coordination with the Division of Occupational Safety and Health (Cal/OSHA).

AB 35 adds new requirements for the Occupational Lead Poisoning Prevention Program. The bill requires the Department of Public Health to consider any laboratory report of an employee's blood lead level at or above 20 micrograms per deciliter to be injurious to the health of the employee. AB 35 requires the Department of Public Health to report the case to Cal/OSHA within five business days of receiving the report.

Upon receipt of a report from the Department of Public Health, Cal/OSHA will consider the report to be a complaint that a place of employment is not safe or is injurious to the welfare of an employee. Cal/OSHA will initiate an investigation into the employer or place of employment within three working days. Upon completion of the investigation, any citations or fines the Cal/OSHA imposes will be publicly available.

(AB 35 amends Section 105185 of the Health and Safety Code and adds Section 147.3 to the Labor Code.)

AB 61 – Allows An Employer Or Coworker To File A Temporary Gun Restraining Order Against An Employee.

Current law allows a family member and law enforcement officer to petition a court to issue a gun violence restraining order against an individual who poses a significant danger by controlling a firearm. A gun violence restraining order prevents the subject of the petition from having custody or control of, owning, possessing, or receiving a firearm or ammunition. A court may issue an ex parte gun violence restraining order if it determines there is a substantial likelihood that the subject of the petition poses a significant danger of causing personal injury to him or herself or another by having a firearm and less restrictive alternatives have either been tried and found to be ineffective or are inadequate for the circumstances.

AB 61 expands the group of individuals who may file a petition to request a gun violence restraining order beyond family members and law enforcement. **Beginning September 1, 2020**, the following individuals may petition a court to issue a gun violence restraining order for a period between one and five years:

- An immediate family member of the subject of the petition;
- An employer of the subject of the petition;
- A coworker of the subject of the petition, if the coworker has had substantial and regular interactions with the subject for at least one year and has obtained approval of the employer;
- An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained approval from a school administrator or school administration staff member with a supervisory role; and
- A law enforcement officer.

The purpose of AB 61 is to allow people who have frequent and substantial interactions with an individual and who may see early warning signs of self-harm or harm to others, to petition for a gun violence restraining order directly with the court.

AB 61 also allows this group of individuals to request a renewal of a gun violence restraining order at any time within three months before the expiration of a gun violence restraining order. After notice and a hearing, a court may renew a gun violence restraining order if the court finds there continues to be a substantial likelihood that the subject of the petition poses a significant danger of causing personal injury to himself or herself or another by having a firearm and less restrictive alternatives are inadequate. **Beginning September 1, 2020**, a court may issue a renewal of a gun violence restraining order for the periods of one to five years.

AB 61 expressly provides that an employer or coworker is not legally mandated or required to file a petition for a gun violence restraining order against an employee. The bill provides that an employer or coworker “may” file a petition for a gun violence restraining order. Schools should be aware of their ability as “employers” to file such petitions against employees who show signs of posing a significant danger of causing harm by firearm. Schools also play a role in approving a request from an employee who seeks to file a petition for a gun violence restraining order against one of his or her coworkers.

While AB 61 goes into effect January 1, 2020, portions of AB 61 have delayed implementation until September 1, 2020 as noted above.

(AB 61 amends and adds Sections 18150, 18170, and 18190 of the Penal Code.)

AB 1804 – Allows Employers To Report Serious Injury, Illness, Or Death To Cal/OSHA Through A New Online System Or By Telephone.

Employers are currently required to file a complete report of every employee occupational injury or illness with the Department of Industrial Relations or an insurer, who must then immediately file with the California Division of Occupational Safety and Health (“Cal/OSHA”). A report must be filed within five days after the employer obtains knowledge of the injury or illness. Employers are also required make a report of every serious injury, illness, or death immediately with Cal/OSHA by telephone or email.

While telephone reports are effective in helping Cal/OSHA immediately assess a hazard, the California Legislature has assessed that email reporting does not provide optimum information because employers may neglect to provide meaningful information. Since email reporting can create a delay in Cal/OSHA’s response and jeopardize worker health and safety, AB 1804 will phase out the option for employers to report a serious injury, illness, or death by email. AB 1804 will direct employees to report by telephone or through a new online reporting system.

The bill directs Cal/OSHA to create and implement a new online reporting system. The online portal will ideally prompt employers to provide the information that Cal/OSHA specifically needs to assess a hazard in the workplace. Until Cal/OSHA is able to create the online reporting system, employers are permitted to continue to make reports by telephone or email. Once the online reporting system is in place, employers will only be able to make reports through the online reporting system or by telephone.

(AB 1804 amends Section 6409.1 of the Labor Code.)

AB 1805 – Redefines “Serious Injury Or Illness” For Reporting To Cal/OSHA.

Employers are required to report certain occupational injuries and illnesses occurring in a place of employment or in connection to employment to the federal Occupational Safety and Health Administration (OSHA) and California Division of Occupational Safety and Health (Cal/OSHA). AB 1805 revises the definition of “serious injury or illness” for purposes of reporting to Cal/OSHA. The specific changes to the “serious injury or illness” definition are:

- Removal of the requirement that inpatient hospitalizations, except for medical observation and diagnostic testing hospitalizations, last for at least 24 hours before qualifying as “serious injury or illness”;
- Deletion of the “loss of any member of the body” and the addition of amputation and the loss of an eye to the definition;
- Eliminates the previous exclusion of an injury or illness caused by certain violations of the Penal Code; and
- Clarifies that injuries, illness, or death caused by an accident on a public street or highway that occurred in a construction zone are included.

AB 1805 also defines the definition of “serious exposure” to include exposure of an employee to a hazardous substance when the exposure is in a degree or amount sufficient to create a “realistic possibility” that death or serious physical harm in the future could result from the actual hazard created by the exposure.

The changes to these definitions are intended to conform Cal/OSHA’s standards to the federal OSHA regulations on reportable injuries and illnesses.

(AB 1805 amends Sections 6302 and 6309 of the Labor Code.)

BENEFITS

AB 1554 – Employers Must Notify Employees Of Deadline To Withdraw Flexible Spending Account Funds.

Many employers offer employees the opportunity to participate in flexible spending accounts often as part of a Section 125 cafeteria plan or other type of flexible benefit plan. Different types of flexible spending accounts include health FSAs, dependent care flexible spending accounts (sometimes known as a dependent care assistance programs or DCAPs), and adoption assistance flexible spending accounts. Under federal law and regulations, flexible spending accounts are generally subject to a forfeiture rule. The forfeiture rule is a “use it or lose it” rule, whereby employees must seek reimbursement for eligible expenses from their flexible spending account by a certain date or else they forfeit the remaining funds in their accounts.

The exact deadline to seek reimbursement varies and is governed by an employers’ flexible spending account structure. Flexible spending accounts commonly allow a “run-out” period, which is the final period after the plan year ends when an employee may submit expenses

for reimbursement. Other flexible spending accounts allow grace periods (health FSAs may also have carryover periods), which further extends the deadline to withdraw funds.

AB 1554 requires employers to notify employees who participate in a flexible spending account of any deadline to withdraw funds before the end of the plan year. The purpose of AB 1554 is to decrease the amount of flexible spending account funds employees forfeit each year. AB 1554 will clarify to employees the exact deadline by which they must submit reimbursement requests.

AB 1554 requires the notice via *two different forms*, one of which may be electronic. Employers may notify employees of the withdrawal deadlines by e-mail, telephone communication, text message notification, postage mail notification, or in person. Beginning with the plan year encompassing January 1, 2020, public agencies should prepare to communicate such information by the end of each plan year.

(AB 1554 adds Section 2810.7 to the Labor Code.)

LACTATION ACCOMMODATIONS

SB 142 – Creates New Lactation Accommodation Requirements.

Currently, California employers are required to allow an employee to use their break time to express breast milk, and to provide a private location other than a bathroom for such lactation accommodation. Under SB 142, an employer must now provide a private lactation room other than a bathroom that must be in “close proximity to the employee’s workspace” with the following features:

- Is shielded from view and free from intrusion while the employee expresses milk;
- Contain a surface to place a breast pump and personal items;
- Contain a place to sit;
- Have access to electricity or alternative devices (such as extension cords or charging stations) needed to operate an electric or battery-powered breast pump.

An employer may comply with this new law by designating a lactation location that is temporary due to operational, financial or space limitations so long as such space still meets the above-referenced requirements.

Separately, employers must also provide access to a sink with running water and a refrigerator or other cooling device suitable for storing milk in close proximity to the

employee's workspace. While this requirement to provide a sink and a refrigerator does not necessarily require that they be provided in the lactation room, it is unclear if providing these in a bathroom will satisfy this requirement.

If an employer uses a multipurpose room as a lactation room, such use shall take precedence over other uses but only for the time it is in use for lactation purposes. An employer in a multitenant building or multiemployer worksite may comply with this new law by providing a space shared among multiple employees within the building or worksite if the employer cannot provide a lactation location within the employer's own workspace. Employers or general contractors that coordinate a multiemployer worksite shall either provide lactation accommodations or provide a safe and secure location for a subcontractor employer to provide lactation accommodation on the worksite, within two business days, upon written request of any subcontractor employer with an employee that requests accommodation.

The only potential exemption to these new requirements is for employers with fewer than fifty (50) employees who can demonstrate that this requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business. An employer who can establish such undue hardship shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.

An employer who fails to provide break time or adequate lactation accommodations may be fined one hundred dollars (\$100) for each day an employee is denied reasonable break time or adequate space to express milk.

In addition, SB 142 requires that California employers develop and implement a policy regarding lactation accommodation requirements that includes the following:

- A statement about an employee's right to request lactation accommodation;
- The process by which the employee makes the request;
- An employer's obligation to respond to the request; and
- A statement about an employee's right to file a complaint with the Labor Commissioner for any violation of the law.

Employers are required to include the policy in an employee handbook or set of policies that are made available to employees, and distribute the policy to new employees at the time of hire and when an employee makes an inquiry about or requests parental leave. If an employer cannot provide break time or a location that complies with their policy, the employer must provide a written response to the employee.

Because this law goes into effect on January 1, 2020, schools should conduct an audit at each of their worksites to determine what potential on-site locations can be used for a lactation accommodation, and to begin making contingency plans to address any existing inability to provide such accommodations at a worksite. In addition, schools need to begin working on drafting a lactation accommodation policy to provide employees in accordance with this new law.

(SB 142 amends Sections 1030, 1031, and 1033 of and adds Section 1034 to the Labor Code.)

SETTLEMENT AGREEMENTS

AB 749 – Prohibits Settlement Agreement Term Restricting Employees From Working For Employer Or Being Rehired By The Employer In The Future.

AB 749 prohibits settlement agreements from containing a provision that restricts an employee from obtaining future employment with the employer if that employee has filed a claim or civil action against the employer. These provisions are commonly referred to as "no rehire" provisions since they require that the employee or former employee not seek re-employment with the employer. If an employee files a claim against the employer in court, before an administrative agency, in an alternative dispute resolution forum, or under the employer's internal complaint process, any settlement agreement to resolve the dispute cannot contain a "no rehire" provision. AB 749 also prohibits "no rehire" provisions that restrict the employee from obtaining future employment with a division, affiliate, or contractor of the employer.

The bill does not prohibit an employer and employee from entering into an agreement to end a current employment relationship. Rather, AB 749 restricts agreements for not rehiring former employees in the future. AB 749 does provide an exception permitting "no rehire" provisions if the employer has made a good faith determination that the employee engaged in sexual harassment or sexual assault. Furthermore, nothing in AB 749 requires an employer to continue to employ or rehire a person if there is a legitimate,

nondiscriminatory and non-retaliatory reason for terminating the employment relationship or refusing to rehire the person.

Schools sometimes settle claims filed by employees and include “no rehire” provisions requiring the former employee not to seek future employment with the School. As a result of AB 749, schools should stop including any such provisions in their settlement agreements to resolve claims filed by employees. Schools need to ensure any agreements to settle claims or civil actions filed by employees do not contain a “no rehire” provision on or after January 1, 2020. After that date, any provision in a settlement agreement that contains a “no rehire” term will be void as a matter of law and against public policy.

(AB 749 adds Chapter 3.6, commencing with Section 1002.5, to Title 14 of Part 2 of the Code of Civil Procedure.)

STUDENTS

BILLS APPLICABLE TO ALL PRIVATE K-12, COLLEGE, AND UNIVERSITY SCHOOL STUDENTS

STUDENT SEXUAL ASSAULT

AB 218 – Significantly Extends The Statute Of Limitations Period For Claims Of Childhood Sexual Assault.

Under existing law, the statute of limitations period for filing a civil lawsuit seeking recovery for damages suffered as the result of childhood sexual abuse against a person or entity is the later of: (1) 8 years after the individual reaches the age of majority or; (2) within 3 years of the date the individual discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual abuse.

AB 218 expands the definition of childhood sexual abuse, and instead refers to this as childhood sexual assault. AB 218 also increases the time limit for an individual to bring a civil lawsuit initiating an action to recover damages suffered as a result of childhood sexual assault to the later of: (1) 22 years after reaching the age of majority; or (2) 5 years of the date the individual discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by the childhood sexual assault.

The law further provides that in an action for liability against a person or entity for intentionally or negligently causing the childhood sexual assault that resulted in the injury, the action may not be commenced after the plaintiff’s 40th birthday “unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault.” The law states that “providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.”

AB 218 allows courts to compel a defendant to pay up to three times the amount of actual damages to a plaintiff if an attempted cover up of the childhood sexual assault was involved, unless prohibited by another law. A “cover up” is defined as “a concerted effort to hide evidence relating to childhood sexual assault.”

AB 218 provides a three-year revival period for previously lapsed claims. AB 218 states that for any claims for damages in which the statute of limitations would otherwise be barred as of January 1, 2020, the time limit is now extended, and may be commenced within the later of: (1) three years from January 1, 2020; or (2) the statute of limitations period established by this new law.

One of the effects of the #MeToo movement is that more people are coming forward and reporting claims of sexual assault that occurred in the past, sometimes even decades ago. In light of AB 218, it will be easier for individuals alleging childhood sexual assault to establish that the conduct occurred within the significantly expanded statute of limitations period. Further, AB 218 provides a three-year revival window, which will allow individuals to assert previously lapsed claims.

AB 218 does not change our advice regarding best practices for appropriately responding to student sexual assault claims and reducing liability. It is important for schools to be pro-active in safeguarding students, which includes complying with criminal background check requirements for employees and volunteers, ensuring proper supervision of students at school and during school sponsored events and field trips, and having robust, written, conduct policies that protect students. Any time a school receives a report that a student under the age of 18 was subject to sexual assault by another individual, the school employee or administrator who received the report is required by law to make a mandated report.

It is also important for schools to promptly investigate reports of student sexual assault, although these investigations should be coordinated with law enforcement when there is a pending criminal

investigation. When schools receive reports from current or former students that they were sexually assaulted, it is critical for schools to investigate if there are allegations that: (1) the conduct took place at school or a school sponsored event; 2) a school employee was made aware of the conduct but did not take appropriate action, or (3) the conduct was by a school employee or current student. If the claim involves conduct that allegedly took place a long time ago, the school should find out who its insurance company was at the time in question so it knows who to tender a claim to in the event of a lawsuit.

Although it can be more difficult to investigate claims by former students if the reported conduct took place many years ago, it is important to investigate these claims regardless of how much time has passed. If any of the key individuals involved in the former student's complaint are still members of the school community, the school should take prompt action to investigate in order to prevent future misconduct. For example, if the claim is against a teacher who is still employed by the school, the school should investigate the complaint because it is possible that the teacher could still be engaging in misconduct with others. In other cases, if the allegation is against a former employee, it is still important to investigate what occurred in order to determine whether any current employee or administrator had knowledge at the time about the misconduct and failed to take appropriate action.

(AB 218 amends Sections 340.1 and 1002 of the Code of Civil Procedure, and amends Section 905 of the Government Code, relating to childhood sexual assault.)

SEXUAL HARASSMENT AND ASSAULT

AB 543 – Requires A Copy Of The School's Student Sexual Harassment Policy Be Provided As Part Of An Orientation Program For Continuing Students.

Existing law, as set forth in Education Code section 231.5, requires each educational institution in the state to have a written policy on sexual harassment and to display that policy in a prominent location, as defined, in the main administrative building or other area of the educational institution's campus or schoolsite. Existing law further requires a copy of that policy, as it pertains to students, to be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

AB 543 further requires that a copy of that sexual harassment policy be provided as part of an orientation program conducted for continuing students, at the beginning of each quarter, semester, or summer session,

as applicable. Thus, pursuant to AB 543, when schools conduct an orientation program for continuing students, the orientation program must include a copy of the School's student sexual harassment policy.

AB 543 further requires each schoolsite in a school district, county office of education, or charter school, serving pupils in any of grades 9 through 12, to create a poster that notifies students of the sexual harassment policy and to prominently and conspicuously display the poster in each bathroom and locker room at the schoolsite. Although this requirement does not apply to private schools, private schools may want to consider implementing this practice as well.

(AB 543 amends Section 231.5 of, and to add Section 231.6 to the Education Code, relating to education.)

STUDENT ATHLETES

AB 1 – Requires Youth Sports Organizations That Sponsor Or Conduct Tackle Football To Comply With Specific Requirements Regarding Training, Practices, And Information Provided To Parents.

AB 1, known as the California Youth Football Act, requires a youth sports organization that sponsors or conducts youth tackle football to comply with certain requirements by January 1, 2021. AB 1 defines a youth sports organization broadly as "an organization, business, or nonprofit entity that sponsors or conducts amateur sports competition, training, camps, clinics, practices, or clubs." Schools that sponsor or conduct amateur youth tackle football competitions, camps, clinics, practices, or clubs or participate in a youth football league will be required to comply with AB 1 requirements.

Under existing law, a private school that elects to offer a tackle football program is prohibited from allowing a high school or middle school football team to conduct more than two full-contact practices per week during the preseason and regular season. Existing law also prohibits the full-contact portion of a practice from exceeding 90 minutes in any single day and completely prohibits full-contact practice during the off-season.

Pursuant to AB 1, youth sports organizations that sponsor or conduct tackle football amateur sports competitions, camps, clinics, practices, or clubs will be required to take the following measures by January 1, 2021:

- The full-contact portion of a practice shall not exceed 30 minutes in any single day.
- A youth tackle football coach shall annually receive a tackling and blocking certification from a nationally recognized program that emphasizes shoulder tackling, safe contact and

blocking drills, and techniques designed to minimize the risk during contact by removing the involvement of youth tackle football participant's head from all tackling and blocking techniques.

- Each youth tackle football administrator, coach, and referee shall annually complete all of the following:
 - (1) Concussion and head injury education pursuant to Health and Safety Code Section 124235.
 - (2) The Opioid Factsheet for Patients pursuant to Health and Safety Code Section 124236.
 - (3) Training in the basic understanding of the signs, symptoms, and appropriate responses to heat-related illness.
- Each parent or guardian of a youth tackle football participant shall receive concussion and head injury information for that athlete pursuant to Section 124235 and the Opioid Factsheet for Patients pursuant to Section 124236.
- Each football helmet shall be reconditioned and recertified every other year, unless stated otherwise by the manufacturer. Only entities licensed by the National Operating Committee on Standards for Athletic Equipment shall perform the reconditioning and recertification. Every reconditioned and recertified helmet shall display a clearly recognizable mark or notice in the helmet indicating the month and year of the last certification.
- A minimum of one state-licensed emergency medical technician, paramedic, or higher-level licensed medical professional shall be present during all preseason, regular season, and postseason games. The emergency medical technician, paramedic, or higher-level licensed medical professional shall have the authority to evaluate and remove any youth tackle football participant from the game who exhibits an injury, including, but not necessarily limited to, symptoms of a concussion or other head injury.
- A youth tackle football coach shall annually receive first aid, cardiopulmonary resuscitation, and automated external defibrillator certification.
- At least one independent nonrostered individual, appointed by the youth sports organization, shall be present at all practice locations. The individual shall hold current and active certification in first aid, cardiopulmonary

resuscitation, automated external defibrillator, and concussion protocols. The individual shall have the authority to evaluate and remove any youth tackle football participant from practice who exhibits an injury, including, but not limited to, symptoms of a concussion or other head injury.

- Safety equipment shall be inspected before every full-contact practice or game to ensure that all youth tackle football participants are properly equipped.
- Each youth tackle football participant must comply with Section Health and Safety Code section 124235 regarding youth sports organization concussion protocols. The injury must be reported to the youth tackle football league.
- Each youth tackle football participant must complete a minimum of 10 hours of noncontact practice at the beginning of each season for the purpose of conditioning, acclimating to safety equipment, and progressing to the introduction of full-contact practice. During this noncontact practice, the youth tackle football participants shall not wear any pads, and shall only wear helmets if required to do so by the coaches.
- Each youth sports organization must annually provide a declaration to its youth tackle football league stating that it is in compliance with these requirements, and must either post the declaration on its internet website or provide the declaration to all youth tackle football participants within its youth sports organization.

AB 1 also imposes requirements on youth tackle football leagues, which is defined "the organization that groups together youth sports organizations that conduct youth tackle football, administers rules, and sets game schedules." On and after January 1, 2021, AB 1 requires a youth tackle football league to:

- Establish youth tackle football participant divisions that are organized by relative age or weight or by both age and weight.
- Retain information from which the names of individuals shall not be identified for the tracking of youth sports injuries. This information shall include the type of injury, the medical treatment received by the youth tackle football participant, and return to play protocols followed by the participant pursuant to subdivision (l) of Health and Safety Code Section 124241.

(AB 1 adds Article 2.7 (commencing with Section 124240) to Chapter 4 of Part 2 of Division 106 of the Health and Safety Code, relating to youth athletics.)

AB 1518 – Authorizes A Student Athlete To Enter Into A Contract With An Athlete Agent Without Losing Their Status As A Student Athlete.

Existing law, the Miller-Ayala Athlete Agents Act, regulates various activities of an athlete agent in representing student athletes and professional athletes, including contact with athletes, contract negotiations, and required disclosures with the Secretary of State. A student athlete means any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.

Existing law removes an individual's status as a student athlete, if they enter into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract. Existing law prohibits an athlete agent or their representative from offering or providing money or any other thing of benefit or value to a student athlete. An "athlete agent" means any person who, directly or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.

AB 1518 authorizes a student athlete to enter into a contract with an athlete agent without losing their status as a student athlete, if: (1) the contract complies with the policy of the student athlete's educational institution and the bylaws of the National Collegiate Athletic Association; and (2) includes a provision that the contract terminates if the student chooses to not seek employment with a professional sports team or organization as a professional athlete, and instead returns to school. AB 1518 also authorizes an athlete agent or their representative to offer or provide money or any other thing of benefit or value to a student athlete if it is authorized and complies with the policy of the student athlete's educational institution and the bylaws of the National Collegiate Athletic Association.

AB 1518 requires an athlete agent who provides money or any other thing of value to a student athlete to file an itemized report of those payments with the athletic director, or their designee, of the student athlete's educational institution or the educational institution where the student athlete intends to enroll, as specified. AB 1518 does not preclude an educational institution from adopting and enforcing stricter policies, rules, or regulations addressing athlete agent solicitations or athlete agent interactions with student athletes attending their institution.

(Amends Sections 18895.2, 18897.6, and 18897.73 of, and to add Section 18897.74 to, the Business and Professions Code, relating to athletes.)

STUDENT SAFETY

SB 316 – Requires Private Schools And Universities Who Issue Pupil Identification Cards To Students To Include The Telephone Number For The National Domestic Violence Hotline On The Card.

Existing law requires a public school, including a charter school, or a private school, that serves pupils in any of grades 7 to 12, inclusive, that issues pupil identification cards, and a public or private institution of higher education that issues student identification cards, to have printed on the identification cards the telephone number for the National Suicide Prevention Lifeline, and authorizes those schools to have printed on the identification cards certain other suicide-prevention and emergency-response telephone numbers.

Commencing October 1, 2020, SB 316 additionally requires a public school, including a charter school, or a private school, that serves pupils in any of grades 7 to 12, inclusive, that issues pupil identification cards to have printed on either side of the identification cards the telephone number for the National Domestic Violence Hotline, which is **1-800-799-7233**.

SB 316 also requires that, commencing October 1, 2020, a public or private institution of higher education that issues student identification cards to have printed on the identification cards the telephone number for the National Domestic Violence Hotline or a local domestic violence hotline.

(SB 316 Amends Section 215.5 of the Education Code, relating to pupil and student safety.)

BILLS UNIQUE TO PRIVATE K-12 SCHOOL STUDENTS

VACCINATIONS

SB 276 AND AB 714 – Provides New Requirements And Procedures For Establishing Medical Exemptions From California Required Student Vaccinations.

SB 276 and SB 714 materially change the medical exemption process for student required vaccinations. SB

276 was drafted as the initial bill, and SB 714 is a clean-up bill, which contains revisions to SB 276.

Under existing law, all private schools must require documentary proof of each entrant's immunization status, and may not admit for attendance any student unless he or she has received the required immunizations prescribed by the State Department of Public Health. However, existing law also provides a medical exemption for students from these immunization requirements. Under this medical exemption, a written statement by a licensed physician must be submitted to the school that provides information that the student has a physical condition or medical circumstances that make immunizations unsafe for the student, indicating the specific nature and probable duration of their medical condition or circumstances, including, but not limited to, family medical history. (Health and Safety Code, § 120370, subd. (b)).

Recently issued regulations (17 CCR § 6051) further require that commencing July 1, 2019, in order to obtain a valid medical exemption from immunizations, a parent or guardian must submit a signed, written statement from a physician licensed in California which states: (1) The specific nature of the physical condition or medical circumstance of the child for which a licensed physician does not recommend immunization; (2) each specific required vaccine that is being exempted; (3) whether the medical exemption is permanent or temporary; and (4) If the exemption is temporary, an expiration date no more than 12 calendar months from the date of signing.

SB 276 and SB 714 change the requirements for this medical exemption, and impose the following requirements for physicians, parents, schools, and the State, as set forth below:

1. Use of Standardized Medical Exemption Form

Under SB 276, the State Department of Public Health, by January 1, 2021, is required to develop and make available for use by licensed physicians and surgeons an electronic, standardized, statewide medical exemption request form that would be transmitted using the California Immunization Registry (CAIR) and which, commencing January 1, 2021, would be the only documentation of a medical exemption that a school may accept.

At a minimum, the medical exemption form must require all of the following:

- The name, California medical license number, business address, and telephone number of the physician and surgeon who issued the medical exemption, and of the primary care physician of the child, if different from the physician who issued the medical exemption.

- The name of the child for whom the exemption is sought, the name and address of the child's parent or guardian, and the name and address of the child's school or other institution.
- A statement certifying that the physician has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this law.
- Whether the physician who issued the medical exemption is the child's primary care physician. If the issuing physician is not the child's primary care physician, the issuing physician shall also provide an explanation as to why the issuing physician and not the primary care physician is filling out the medical exemption form.
- How long the physician has been treating the child.
- A description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought.
- Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year. All medical exemptions shall not extend beyond the grade span, as defined by this law.
- An authorization for the department to contact the issuing physician for purposes of this law and for the release of records related to the medical exemption to the department, the Medical Board of California, and the Osteopathic Medical Board of California.
- A certification by the issuing physician that the statements and information contained in the form are true, accurate, and complete.

2. Obligations of Physicians and Surgeons to Provide Notice of Requirements to Parents

Commencing January 1, 2021, if a parent or guardian requests a licensed physician and surgeon to submit a medical exemption for the parent's or guardian's child, the physician and surgeon shall inform the parent or guardian of the requirements set forth in SB 276. If the parent or guardian consents, the physician and surgeon shall examine the child and submit a completed medical exemption certification form to the State Department of Public Health.

3. Requirements by Schools to Submit Annual Reports on Immunization Status to the State

Existing law requires the governing authority of a school to file a written report on the immunization status of new students to the school with the State Department of Public Health and the local health department at times and on forms prescribed by the State Department of Public Health. SB 276 requires these reports to be filed on at least an annual basis.

4. State's Review of Medical Exemptions

SB 276 requires the State Department of Public Health to annually review immunization reports from schools and institutions to identify schools with an overall immunization rate of less than 95%, physicians and surgeons who submitted 5 or more medical exemption forms in a calendar year, and schools and institutions that do not report immunization rates to the department. SB 276 requires a clinically trained department staff member who is a physician and surgeon or a registered nurse to review all medical exemption forms submitted meeting those conditions. SB 276 authorizes the medical exemptions determined by that staff member to be inappropriate or otherwise invalid to be reviewed by the State Public Health Officer or a physician and surgeon designated by the State Public Health Officer, and revoked by the State Public Health Officer or physician and surgeon designee, under prescribed circumstances. SB 714 provides that medical exemptions issued prior to January 1, 2020, will not be revoked unless the exemption was issued by a physician or surgeon that has been subject to disciplinary action by the Medical Board of California or the Osteopathic Medical Board of California.

5. Appeal Process

SB 276 authorizes a parent or guardian to appeal a medical exemption denial or revocation to the Secretary of California Health and Human Services. The appeal would be conducted by an independent expert review panel of licensed physicians and surgeons established by the secretary. SB 276 requires the independent expert review panel to evaluate appeals consistent with specified guidelines and to submit its decision to the secretary. SB 276 requires the secretary to adopt the determination of the independent expert review panel and promptly issue a written decision to the child's parent or guardian. The final decision of the secretary would not be subject to further administrative review.

SB 276 allows a child whose medical exemption revocation is appealed to continue in attendance at the school without being required to commence the immunization schedule required for conditional admittance, provided that the appeal is filed within 30 calendar days of revocation of the medical exemption.

SB 276 requires the Department of Public Health and the independent expert review panel to comply with all applicable state and federal privacy and confidentiality laws and would authorize disclosure of information submitted in the medical exemption form in accordance with requirements set forth in the law.

6. Medical Exemptions obtained Prior to January 1, 2021

Prior to January 1, 2021, if the parent or guardian files with the governing authority a written statement by a licensed physician and surgeon to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician and surgeon does not recommend immunization, that child shall be exempt from vaccination requirements.

A child who has a medical exemption issued before January 1, 2020, is allowed to continue enrollment at the School until the child enrolls in the next grade span, which is each of the following: (A) Birth to preschool, inclusive; (B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten; and (C) Grades 7 to 12, inclusive.

On and after July 1, 2021, a school may not unconditionally admit or readmit or advance any student to 7th grade level, unless the student has been immunized or has a medical exemption through a procedure that includes the completion of a compliant statewide form.

(SB 276 and 714 amend Sections 120370, 120375, and 120440 of the Health and Safety Code, and add Sections 120372 and 120372.05 to the Health and Safety Code, relating to public health.)

BILLS UNIQUE TO PRIVATE COLLEGE AND UNIVERSITY STUDENTS

SEXUAL HARASSMENT

AB 381 – Sets Forth Requirements For Programs And Services Addressing Sexual Violence, Domestic Violence, Dating Violence, And Stalking.

Existing law requires governing boards of independent postsecondary institutions, in order to receive state funds for student financial assistance, to enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, to the extent feasible, to refer students

for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused. Current law includes rape crisis centers as one of the types of organizations with which colleges can partner with to fulfill this requirement. AB 381 adds domestic violence centers as another type of organization with which a college can partner with.

Existing law further requires independent postsecondary institutions, as a condition of receiving state funds for student financial assistance, to implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. Outreach programming is required to be included as part of every incoming student's orientation.

AB 381 provides that this required outreach programming for new students must include informing students about all of the following:

- The warning signs of intimate partner and dating violence.
- Campus policies and resources relating to intimate partner and dating violence.
- Off-campus resources and centers relating to intimate partner and dating violence.
- A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.

AB 381 provides that informing students about "intimate partner and dating violence" must include information about violence that occurs between individuals within a current or previous intimate or dating relationship. This outreach programming must be provided to all incoming students, including graduate, transfer, and international students, and give special consideration to the different needs, interactions, and engagements with campus of those student groups.

(AB 381 amends Section 67386 of the Education Code.)

STUDENT ATHLETES

AB 1573 - Authorizes A Student Athlete To Enter Into A Contract.

Existing law provides for a Student Athlete Bill of Rights that applies to Postsecondary institutions that maintain intercollegiate athletic programs.

AB 1573 adds to the Student Athlete Bill of Rights: (1) provisions authorizing institutions of higher education to establish a degree completion fund, in accordance with applicable rules and bylaws of the governing body of the institution and applicable rules and bylaws of any athletic association, as defined, of which the institution is a member, (2) provisions requiring institutions of higher education to prepare notices detailing specified rights of student athletes and contact information for filing complaints under the Student Athlete Bill of Rights, and (3) provisions prohibiting institutions of higher education from intentionally retaliating, as defined, against a student athlete for any of the following actions with respect to student athlete rights granted under any applicable statute, regulation, or policy; making or filing a complaint, in good faith, about a violation; testifying or otherwise assisting in any investigation into violations; or opposing any practices that the student athlete, in good faith, believes are a violation. AB 1573 does not restrict the authority of an institution of higher education to impose interim measures or, upon a finding of responsibility, permanent consequences on a student athlete who has been accused of sexual harassment or violence.

(AB 1573 amends Section 67451 of, and to add Sections 67452.3, 67454, and 67455 to, the Education Code, relating to collegiate athletes.)

SB 206 – Authorizes Payments To College Athletes For The Use Of Their Name, Image Or Likeness.

Existing law, known as the Student Athlete Bill of Rights, requires intercollegiate athletic programs at 4-year private universities or campuses of the University of California or the California State University that receive, as an average, \$10,000,000 or more in annual revenue derived from media rights for intercollegiate athletics to comply with prescribed requirements relating to student athlete rights. Commencing January 1, 2023, AB 206 prohibits California postsecondary educational institutions except community colleges, and every athletic association, conference, or other group or organization with authority over intercollegiate athletics, from providing a prospective intercollegiate student athlete with compensation in relation to the athlete's name, image, or likeness, or preventing a student participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness or obtaining professional representation relating to the student's participation in intercollegiate athletics. AB 206 further prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a postsecondary educational institution other than a community college from participating in intercollegiate athletics as a result of the compensation of a student athlete for the use of the student's name, image, or likeness.

In addition, AB 206 requires professional representation obtained by student athletes to be from persons licensed by the state. AB 206 specifies that athlete agents must comply with federal law in their relationships with student athletes. AB 206 further prohibits the revocation of a student's scholarship as a result of earning compensation or obtaining legal representation as authorized under this bill.

AB 206 also prohibits a student athlete from entering into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness if a provision of the contract is in conflict with a provision of the athlete's team contract. AB 206, however, prohibits a team contract from preventing a student athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in official team activities, as specified.

These provisions set forth in AB 206 go into effect on January 1, 2023.

(SB 206 adds Section 67456 to, and adds and repeals Section 67457 of, the Education Code, relating to collegiate athletics.)

FINANCIAL AID

AB 697 – Requires Educational Institutions To Report Preferential Treatment Based On Relationships To Donors And Alumni As A Condition of Receiving Financial Aid From The Cal Grant Program.

In response to the recent college admissions scandal, the legislature passed, and the Governor signed into law AB 697 as an effort "to bring more fairness and transparency to college admissions in the state."

Under existing law, the Cal Grant Program, establishes the Cal Grant Awards under the administration of the Student Aid Commission, and establishes eligibility requirements for awards under these programs for participating students attending qualifying postsecondary educational institutions. Existing law requires each participating postsecondary educational institution to annually report specified information regarding its undergraduate programs in order to be a qualifying institution.

AB 697 requires, on or before June 30, 2020, and on or before June 30 of every year thereafter through 2024, the trustees, the regents, and the appropriate governing bodies of each independent institution of higher education that is a qualifying institution as defined under the Cal Grant Program to report to the appropriate budget subcommittees and policy committees of the Legislature whether their respective institutions provide

any manner of preferential treatment in admission to applicants on the basis of their relationships to donors or alumni of the institution. If the institution provides such preferential treatment, AB 697 requires the institution to report the following specified admissions and enrollment information regarding these applicants for the academic year commencing in the previous calendar year:

- (1) The number of applicants who did not meet the institution's admission standards that apply to all applicants, but who were offered admission.
- (2) The number of applicants reported pursuant to paragraph (1) who accepted admission to the institution.
- (3) The number of applicants reported pursuant to paragraph (2) who enrolled at the institution.
- (4) The number of applicants who met the institution's admission standards that apply to all applicants and who were offered admission.
- (5) The number of applicants reported pursuant to paragraph (4) who accepted admission to the institution.
- (6) The number of applicants reported pursuant to paragraph (5) who enrolled at the institution.

(AB 697 adds Section 66018.5 to the Education Code, relating to postsecondary education.)

AB 853 – Golden State ScholarShare College Savings Trust And Third Parties.

ScholarShare is a state-sponsored, tax-advantaged 529 college savings plan for costs associated with higher education. Current law authorizes the ScholarShare trust to enter into participation agreements with participants on behalf of beneficiaries pursuant to specified terms and agreements. Current law also authorizes the ScholarShare trust to make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

AB 853 allows students to use their ScholarShare savings plans to directly pay third parties pursuant to participation agreements on behalf of beneficiaries.

(AB 853 amends Section 69981 of the Education Code.)

DEBT COLLECTION

AB 1313 – Prohibits Postsecondary Schools From Withholding Of Transcripts.

Under existing law, the Donahoe Higher Education Act, requires public higher education entities to adopt regulations to withhold institutional services, including the withholding of transcripts, upon notice to students that they are in default of their loans.

Notwithstanding those provisions, AB 1313 prohibits any public or private postsecondary school, or any public or private entity that is responsible for providing transcripts to current or former public or private postsecondary students, from refusing to provide a transcript for a current or former student on the grounds that the student owes a debt. AB 1313 further prohibits charging a higher fee for obtaining a transcript or providing less favorable treatment of a transcript request because a student owes a debt, or using a transcript issuance as a tool for debt collection.

(AB 1313 adds Title 1.6C.7 (commencing with Section 1788.90) to Part 4 of Division 3 of the Civil Code, and to amend Sections 66022 and 76225 of the Education Code, relating to student debts.)

ELECTIONS

AB 59 – Requires County Election Officials To Consider A Vote Center Location On A Public Or Private University Or College Campus.

Existing law requires the Secretary of State to annually provide every high school, community college, and California State University and University of California campus with voter registration forms. Existing law also expresses the intent of the Legislature that every eligible high school and college student receive a meaningful opportunity to register to vote.

Existing law authorizes certain counties, on or after specified dates, to conduct any election as an all-mailed ballot election if, among other conditions, the county elections official permits a voter to vote using ballot at a vote center. Existing law requires a county elections official conducting an all-mailed ballot election to consider various factors in determining the location of vote centers.

AB 59 directs a county elections official conducting an all-mailed ballot election to consider a vote center location on a public or private university or college campus.

(AB 59 amends Sections 4005 and 12283 of the Elections Code, relating to elections).

BUSINESS AND FACILITIES

AB 1548 – Provides Grant Funding For Nonprofits At Risk Of Violent Attacks Because Of Ideology, Beliefs, Or Mission.

This bill establishes the California State Nonprofit Security Grant Program (CSNSGP), to provide grant funding to improve the physical security of nonprofit organizations, including schools, clinics, community centers, churches, synagogues, mosques, temples, and similar locations that are at high risk for violent attacks or hate crimes due to ideology, beliefs, or mission. The coming budget is expected to appropriate \$15 million in grant funding for the program, which nonprofits may use for items such as security guards, reinforced doors, lighting, and alarms. CSNSGP will be administered through the California Office of Emergency Services (Cal OES), which already distributes funding from the federal National Security Grant Program (NSGP). The CSNSGP differs from the federal program because it allows funds to be spent on security guards and increases the amount of funds an applicant may receive to \$200,000. Interested nonprofits organizations should watch the Cal OES website for information about eligibility and application requirements.

Nonprofit organizations should proceed cautiously in applying for CSNSGP funding, since receipt of these funds could subject the organizations to various state laws, such as anti-discrimination laws, that otherwise would not apply. For example, Education Code section 220 notes states, “No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.” For religious schools there is a limited exception. Moreover, the California Code of Regulations expressly prohibits educational institutions receiving state or federal financial assistance from various forms of discrimination and harassment. (5 C.C.R. § 4900 et seq.) There are no apparent exemptions for religious organizations.

In addition, Article IX, Sec. 8 of the California Constitution, provides: “No public money shall ever be appropriated for any school not under the exclusive control of the officers of the public schools...” It is possible that AB 1548 could be challenged as violating this section of the California Constitution.

(AB 1548 adds Section 8588.9 to the Government Code)

SB 540 – Allows Nonprofits Schools To Offer Split-Dollar Life Insurance Policies As Compensation When Secured By The Cash Value Or Death Benefits Of The Policies.

Existing law allows nonprofit public benefit corporations to pay life insurance premiums for a director or officer, as long as there is a mechanism to repay the corporation from the life insurance policy. One tool available to corporations wishing to recruit and retain high-value employees is a split-dollar life insurance policy. When such a policy is used, the employer and employee execute an agreement, separate from the life insurance policy, which outlines how the employer and employee will share the premium cost, cash value, and death benefit of the life insurance policy. Existing law requires that the policy be secured by both the death benefit and the cash surrender value. This bill revises the Corporations Code to more closely match IRS regulations allowing either the death benefit or the cash surrender value of the life insurance policy to secure repayment of the life insurance premiums paid by the corporation.

(SB 540 amends Section 5236 of the Corporations Code.)

SB 677 – Bans The Use Of Latex Gloves In Food Facilities.

Existing law requires that workers in certain food facility, including public and private school cafeterias, wear gloves whenever they have any cuts, sores, rashes, artificial nails, nail polish, rings (other than a plain wedding band), uncleanable orthopedic support devices, or fingernails that are not clean, smooth, or neatly trimmed. To protect individuals with latex allergies, this bill prohibits the use of latex gloves whenever gloves must be worn. Types of nonlatex gloves that are acceptable include, but are not limited to, nitrile, polyethylene, and vinyl.

(SB 677 amends Sections 113961 and 113973 of the Health and Safety Code.)

AB 287 – Businesses Must Provide Organic Waste Recycling Bins On Or Before July 1, 2020.

In an effort to accomplish California’s climate change goal to reduce short-lived climate pollutants, Governor Brown signed into law Senate Bill (SB 1383) in 2016, which established targets to reduce the disposal of organic waste into landfills by 50% by 2020 and by 75% by 2025 from the levels measured in 2014. According to CalRecycle, the methane emissions from decomposing organic waste in California’s landfills are a significant source of greenhouse gas emissions that contribute to climate change.

In order to achieve the targets established in SB 1383, Assembly Bill 287 (AB 287) was signed into law in October 2019. Under existing law, most businesses that generate four cubic yards or more of commercial solid waste or four cubic yards or more of organic waste per week must arrange for recycling services. The definition of a covered business is broad and includes any “commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity, or a multifamily residential dwelling.”

AB 287 now requires a covered business that provides customers access to the business to provide, on or before July 1, 2020, an organic waste recycling bin or container to collect material purchased on the premises for immediate consumption that (1) is adjacent to each bin or container for trash other than recyclable organic waste, except in restrooms; (2) is visible and easily accessible; and (3) is clearly marked with educational signage indicating what is appropriate to place in the bin or container. CalRecycle will develop the educational signage on or before July 1, 2020.

Full-service restaurants are generally exempt from AB 287 as long as the restaurant provides its employees an organic waste recycling bin or container and implements a program to collect recyclable organic waste. A full-service restaurant is defined as an establishments with the primary business purpose of serving food, where food may be consumed on the premises, and employees of the establishment (1) escort or assign consumers to an eating area; (2) take consumers’ orders after consumers are seated; (3) deliver food, beverages, or other ordered items directly to consumers at their eating area; and (4) deliver checks directly to consumers at their eating area.

AB 287 means that schools, universities, and colleges that sell food on their campuses for immediate consumption, must provide organic waste recycling bins or containers that meet the bill’s requirements on or before July 1, 2020 unless those sales occur in an establishment that qualifies as a full-service restaurant.

(AB 287 amends sections 42649.1, 42649.2, 42649.8, and 42649.81 of the Public Resources Code.)

Announcing LCW's On-Demand Harassment Prevention Training Tool



In 2018, the California legislature passed **SB 1343** expanding the requirement for who has to be trained on sexual harassment issues, largely in response to the #MeToo movement. The law requires organizations with **five or more employees** to provide harassment prevention training to **all employees**. Supervisors must receive 2 hours of training every two years or within 6 months of their assumption of a supervisory position. Non-supervisory staff must participate in the **1-hour course every two years**.

If it sounds like a daunting task to get **ALL** of your employees trained, not to fear! LCW has you covered. Leaders in preventative training, we have training programs designed to meet your needs and ensure that your organization remains compliant.

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Our engaging, interactive, and informative on-demand training satisfies California's harassment prevention training requirements. This training is an easy-to-use tool that lets your employees watch at their own pace. Our on-demand training has quizzes incorporated throughout to assess understanding and application of the content and participants can download a certificate following the successful completion of the quizzes.

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