

CALIFORNIA

EMPLOYMENT LAW LETTER

LEGISLATION

More new California employment and labor laws will take effect January 1

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In the last several months, the California Legislature has sent Governor Jerry Brown 1,217 bills for his consideration before he leaves office at the end of 2018. The governor has signed 1,016 of those bills into law. The following article offers a summary of some of the most important bills Governor Brown recently signed. All of the new laws will take effect January 1, 2019, unless otherwise indicated.

Police officer training related to child sex trafficking

Several new bills signed by Governor Brown, including Assembly Bill (AB) 2992, address the commercial sexual exploitation of children (CSEC) and human trafficking. CSEC is another term for what we often call child sex trafficking. According to the FBI's website, human trafficking is believed to be the third largest criminal activity in the world. Three of the nation's "high intensity child sex trafficking areas" are identified as being located in California (the San Francisco, Los Angeles, and San Diego areas).

On September 30, 2018, Governor Brown signed AB 2992, which was passed to ensure that California's police officers have the necessary training and skills to identify exploited children and victims of sex trafficking and to effectively respond to their needs in a supportive manner. AB 2992 requires the Commission on Peace Officer Standards and Training (POST) to develop a course on commercial sexual exploitation of children and victims of human trafficking. The training is required to address the following topics:

- (1) The dynamics of CSEC;
- (2) The impact of trauma on child development and how such trauma is manifested by exploited children;
- (3) Strategies to identify potential victims of child sex trafficking; and
- (4) Mandatory reporting requirements related to child sex trafficking.

All newly hired officers will be required to take the training course as part of their basic cadet academy

training on or after January 1, 2020. In addition, the POST will develop a training course covering the same topics to be completed by in-service police officers on or before July 1, 2021.

Police officer training related to sexual orientation and gender identity

On September 30, Governor Brown signed AB 2504, which requires police officers to undergo training on sexual orientation and gender identity. Similar to AB 2992, this law was passed to ensure that California's police officers have the necessary training and skills to effectively deal with LGBTQ individuals in the communities where they work.

In particular, AB 2504 requires the POST to develop a course on sexual orientation and gender identity groups. In developing the training, the POST must consult with LGBTQ individuals who are members of law enforcement as well as individuals in the community who have expertise in these issues, including at least one male member, one female member, and one transgender member. The training must include information on:

- (1) Understanding the difference between sexual orientation and gender identity;
- (2) Knowing the words used to identify and describe both sexual orientation and gender identity;
- (3) How to create an inclusive workplace within law enforcement for LGBTQ individuals;
- (4) Important milestones in history relating to sexual orientation and gender identity minorities and law enforcement; and
- (5) Ways law enforcement can effectively respond to domestic violence and hate crimes involving sexual orientation and gender identity minorities.

Existing laws already require law enforcement officers to undergo training on racial and cultural differences as well as disability awareness training. The new law requires additional training for all officers.

Investigation files related to allegations of police misconduct

AB 2327 is another bill pertaining to police officers that was signed into law by Governor Brown on September 30. AB 2327 is aimed at further efforts to control and stop police misconduct from occurring. Misconduct by police officers generally refers to inappropriate conduct or illegal actions taken in connection with their official duties. In the last several years, national attention has been focused on police misconduct that involves excessive force and other conduct that may be motivated by an officer's own racial bias.

Under existing law, law enforcement agencies are required to investigate complaints of police misconduct by

members of the general public. Any reports or findings related to such complaints must be retained for at least five years. AB 2327 expands existing law by requiring that any report or finding stemming from a complaint of misconduct must be maintained as part of the officer's general personnel file or as a separate file designated by the department or agency.

AB 2327 further requires police officers seeking employment with a different law enforcement agency in California to provide written permission for the hiring law enforcement agency to view their general personnel files and any separate disciplinary files.

Paid parental leave for school district and community college employees

Like private-sector employees, public school district and community college employees in California are eligible to take up to 12 weeks of parental leave in a 12-month period under the California Family Rights Act (CFRA). "Parental leave" refers to leave related to the birth of an employee's child or the employee's adoption or foster care of a child. Mothers who are on pregnancy disability leave during the first six to eight weeks (or longer) after a baby's birth are entitled under the CFRA to take 12 additional weeks of leave for baby bonding.

Under current law, to be compensated for time off under the CFRA, school and community college employees must use their available sick leave. In some school and community college districts, once she has exhausted her sick leave, an employee is entitled only to "differential pay" for the remaining portion of the 12 weeks of parental leave. Differential pay is calculated by subtracting the cost of a substitute employee from the district employee's salary. The current law addressing differential pay for school or community college districts overlooks part-time faculty and staff, who receive no pay if they exhaust their sick leave before their 12 weeks of parental leave end because the cost of a substitute is the same as or higher than their current salary.

To resolve that issue, Governor Brown signed AB 2012 into law on September 30. Under the new law, all teachers and staff who are eligible for up to 12 weeks of parental leave under the CFRA and have exhausted their sick pay will receive at least 50 percent of their regular salary for the remaining portion of the 12-week period of parental leave, regardless of the type of differential pay system used by the school district or community college district where they work.

Sexual harassment training for lawmakers in connection with lobbying

Many of the new laws signed by Governor Brown pertain to the #MeToo movement and are intended to ensure that sexual harassment doesn't occur in the workplace, regardless of industry or occupation. One

such law is AB 2055, which addresses members of the California Legislature. Under existing law, the ethics committee of each house of the legislature (the assembly and senate) semiannually conducts an orientation course on the relevant ethical issues and laws related to lobbying, in consultation with California's Fair Political Practices Commission.

AB 2055, which was signed into law by the governor on September 30, amends the law to require that the semiannual orientation course include information on each house's policies against harassment, including sexual harassment, in connection with lobbying activities. At least once during each biennial session (or once every two years), all members of the legislature and designated employees of both houses are required to attend one of the courses.

Sexual harassment prevention and eating disorder materials for artists

Another new law aimed at controlling sexual harassment in the workplace is AB 2338, which was signed into law by Governor Brown on September 30. AB 2338 pertains to talent agencies. A "talent agency" refers to any person or corporation that "engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." Talent agencies may also "counsel or direct artists in their careers." "Artists" primarily refers to actors, actresses, writers, musicians, and others who are employed in the entertainment or motion picture industry.

AB 2338 requires talent agencies to provide educational materials on sexual harassment prevention, retaliation, ways to report sexual harassment or retaliation, and nutrition and eating disorders to their artists within the first 90 days of engaging them. Talent agencies will have to retain records showing that the educational materials were provided for three years.

AB 2338 also requires that before a permit to employ a minor in the entertainment industry is issued, the minor and his parent or legal guardian must complete training on sexual harassment prevention, retaliation, and ways to report sexually harassing or retaliatory conduct. The talent agency must request and retain a copy of the minor's work permit before it can send a minor artist to an audition, meeting, or interview with a potential employer.

Bottom line

This will be the last round of bills considered for signature by outgoing Governor Jerry Brown. Even though he's a Democratic governor with ironclad Democratic control in Sacramento, he vetoed numerous bills he deemed to have gone too far.

We will learn whether Governor Gavin Newsom will exercise greater or lesser control when he takes the reins in 2019.

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