

2019 COMPLIANCE CHECKLIST

SB 1343 - EXPANDED SEXUAL HARASSMENT TRAINING REQUIREMENTS

- Develop training protocol for non-supervisory employees to provide one hour of harassment training to all employees (including temporary or seasonal employees) within 6 months of hire.
 - o Smaller employers who did not previously provide AB1825 training will need to develop protocol for training of both supervisory and non-supervisory employees.
- Provide one-hour harassment training to non-supervisory employees before January 1, 2020.
- Provide harassment training to seasonal and temp workers hired for fewer than 6 months **within 30 calendar days of hire or within 100 hours worked**, whichever occurs first.
- Watch for updates on availability of DFEH-developed training and consider using this training for both supervisory and non-supervisory employees.
- Going forward, provide harassment training to all employees every 2 years.
- If hiring employees through a temporary services provider, ensure the provider has supplied the required harassment training.

SB 1300 - MULTI-FACTOR SEXUAL HARASSMENT PREVENTION BILL

- Consider whether to add “bystander intervention training” to AB1825 harassment training.
- Through training, ensure HR personnel and all levels of management understand the organization may be liable for unlawful harassment of employees, interns, and volunteers by **non-employees**, such as vendors. Reports of harassment by third-parties must be followed up on in the same manner as reports of harassment by employees.
- Review procedures to ensure your organization does not require employees to sign any type of release or non-disparagement agreement in exchange for a raise or bonus, or as a condition of continued employment. As a general rule, employees should never be asked to sign any document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.
 - o Exceptions for negotiated settlement agreements to resolve FEHA claims filed in court, with an administrative agency, or alternative dispute resolution forum (including employer’s internal complaint process).

SB 820 - PROHIBITION ON CONFIDENTIALITY IN SEXUAL HARASSMENT SETTLEMENT AGREEMENTS

- Modify form separation agreements/settlement agreements used by your organization to eliminate provisions which require confidentiality/non-disclosure of factual information underlying claims of sexual assault, sexual harassment, sex discrimination or retaliation against a person for reporting sex harassment or discrimination under the FEHA that has been filed in a civil action (i.e., court, arbitration) or with an administrative agency (such as DFEH or EEOC).
- Note that plaintiffs in such actions may request non-disclosure agreements to shield a plaintiff's identity and all facts that could lead to the discovery of his or her identity. If requested by the plaintiff the agreement should specifically state that such confidentiality was requested by plaintiff as a condition of settlement.

AB 3109 - NO PRECLUSIONS ON SEXUAL HARASSMENT-RELATED TESTIMONY

- Revise any form separation or settlement agreements (or any other contracts) to remove language that waives a sexual harassment victim's right to testify pursuant to a subpoena, court order or written request by the legislature or administrative agency about the alleged misconduct.

AB 2770 - DEFAMATION PROTECTIONS FOR EMPLOYMENT REFERENCES MENTIONING SEXUALLY HARASSING CONDUCT

- Consider whether to revise reference policy to allow disclosure during reference checks that a former employee is not eligible for rehire because there was a factual determination that he/she engaged in sexually harassing behavior while employed at the organization.
- Consider revising policy/procedures for checking applicant references so that in the event an applicant is not eligible for rehire by a former employer to ask that former employer if the decision not to rehire is based on the employer's determination that the former employee engaged in sexual harassment.

AB 2282 - CLARIFICATION OF BAN ON PRIOR SALARY INQUIRIES

- Have documentation available reflecting the salary or hourly wage range of open positions to provide to applicants who request a "pay scale."

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- Consider whether you wish to ask applicants about salary expectations for the position applied for as part of the recruiting/interviewing process.

AB 1976 - LACTATION ACCOMMODATION

- Provide employees with the use of a room or other location “other than a bathroom” for purposes of expressing breast milk at work.
- Lactation room must be in close proximity to the employee’s work area.
- Employer may provide a temporary lactation location if all of the following are met: (1) employer is unable to provide a permanent lactation location because of operational, financial or space limitations; (2) the temporary location is private and free from intrusion; (3) the temporary location is used only for lactation purposes; and (4) the temporary lactation location otherwise meets California requirements on lactation accommodation.

SB 1123/AB 2587 - CHANGES TO CALIFORNIA PAID FAMILY LEAVE BENEFITS

- Revise policies if needed to reflect that beginning January 1, 2021, California Paid Family Leave may be used for time off due to qualifying exigencies related to the service by the employee’s spouse, domestic partner, child or parent in the U.S. armed service.
- Update any policies that impose a waiting period for Paid Family Leave benefits.

SB 826 - FEMALE DIRECTOR REQUIREMENT FOR CALIFORNIA CORPORATIONS

- If your company is a domestic or foreign corporation that is publicly held and has principal executive offices in California ensure you have at least one female on the board of directors by the close of the 2019 calendar year.
- “Female” includes any individual who self-identifies as a woman, and “publicly held” means a corporation with “outstanding shares listed on a major U.S. stock exchange.
- By close of 2021 calendar year, companies subject to this law must have a minimum of 2 female directors if the corporation has 5 directors, or 3 female directors if the corporation has 6 or more directors.

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SB 1412 - BAN THE BOX CLARIFICATIONS

- Audit existing policies on use of criminal background checks and update as needed.
- If your organization is required by state or federal law to run background checks for certain positions, only consider those convictions that would specifically bar the applicant from holding the desired position.
- Target background searches to disqualifying convictions as opposed to running a more general conviction history check.

SB 970 - HUMAN TRAFFICKING AWARENESS TRAINING - HOTEL EMPLOYEES

- By January 1, 2020, hotel and motel employers must provide at least 20 minutes of classroom or “other interactive training and education” on human trafficking awareness to all employees likely to interact or come into contact with victims of human trafficking who have are employed as of July 1, 2019.
- Each employee hired on or after July 1, 2019 must receive human trafficking awareness training within six months of the date of hire.
- After January 1, 2020, hotel and motel employers must provide human trafficking awareness training to specified employees every 2 years.
- Employees deemed “likely to interact or come into contact with human trafficking” must include those with recurring interactions with the public, including those working in reception, housekeepers, bellhops and drivers.

MINIMUM WAGE/COMPUTER PROFESSIONAL INCREASES

Ensure compliance with all local minimum wage ordinances that are higher than the state minimum wage of \$12.00/hour (\$11.00/hour for employers with 1-25 employees).

Ensure all exempt employees are making at least \$49,970 as of January 1, 2019 (\$45,760 for employers with 25 or fewer employees).

Ensure exempt computer professionals are paid at least \$94,603.25.

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POLICY/PRACTICE UPDATES

- Audit workplace to determine if hourly employees are working small amounts of time without compensation. Examples: time spent changing into work uniform, time spent waiting for computer to boot up before employee can clock in, work performed after punching out such as setting alarm and escorting employees from the building.
- Consider ways to compensate hourly employees for small amounts of work time that are not currently captured.
- Ensure timekeeping policy requires employees to record all time spent working, even if offsite or outside of scheduled work hours, and forbids “off the clock” work.
- Ensure policy clearly provides a process for hourly employees to report work performed outside of work hours. Make supervisors aware that such time is compensable and they should not discourage employees from requesting pay for such work (although they may wish to discourage employees from performing work while off-duty).
- Encourage supervisors to avoid communicating with hourly employees outside of scheduled work hours.
- Determine whether hourly employees need remote access to work e-mail or the organization computer system. Terminate remote access for those who do not need to perform work outside of the workplace and ensure such employees do not receive work e-mail on any of their mobile devices.
- Evaluate all relationships with independent contractors to ensure these workers may be properly classified as independent contractor following the California Supreme Court decision in *Dynamex Operations W. v. Superior Court*.
- If your organization does not have an arbitration policy, consider implementing one. If your current arbitration policy does not ban class actions, consider amending to include such a provision to limit organization exposure to class actions.
- Check bonus policies to determine if you need to pay additional overtime rates on bonus payments; if so, ensure such payments are made when bonuses are issued.

CALL WILSON TURNER KOSMO WITH ANY OTHER EMPLOYMENT-RELATED QUESTIONS.