California Continues the March Towards Blockchain with Sweeping Executive Order

Insights

5.11.22

California just took a huge leap forward in its innovation efforts when Governor Gavin Newsom issued an Executive Order establishing it as the first state in the nation to begin creating a "comprehensive and harmonized" framework for blockchain technology (including cryptocurrency) to thrive. This May 4 Order follows recent legislative proposals seeking to further adopt the use of blockchain technology in state government and is yet another example of how California is on the cutting edge when it comes to this nascent technology. But what does this Order mean for employers today – and tomorrow?

Executive Order N-9-22

According to the Executive Order, the goal is to "create a transparent and consistent business environment for companies operating in blockchain, including crypto assets and related financial technologies, that harmonizes federal and California laws, balances the benefits and risks to consumers, and incorporates California values, such as equity, inclusivity and environmental protection."

Those are pretty lofty goals. But what exactly does the Executive Order do?

It largely parallels the recent Executive Order signed by President Biden on March 9 focused on "Ensuring Responsible Development of Digital Assets."

In addition, it calls on a number of state agencies – including the Governor's Office of Business and Economic Development ("GO-Biz"), the Business, Consumer Service and Housing Agency, and the Department of Financial Protection and Innovation – to collect input and stakeholders, begin the process of creating a regulatory approach to crypto assets, and explore incorporating blockchain technologies into state operations.

In a press release accompanying the Executive Order, Governor Newsom articulated seven broad priorities:

1. **Create a transparent and consistent business environment for companies operating in blockchain**, including crypto assets and related financial technologies, that harmonizes federal

and California laws, balances the benefits and risks to consumers, and incorporates California values such as equity, inclusivity, and environmental protection.

2. **Collect feedback from a broad range of stakeholders, create a regulatory approach** to crypto assets harmonized between federal and state authorities, explore and establish public-serving use cases (such as incorporating blockchain technologies into state operations), and build research and workforce pipelines.

3. **Collect feedback from a broad range of stakeholders for potential blockchain applications and ventures**, with particular attention to crypto assets and related financial technologies. Engagement should include technical experts, stakeholders interested in addressing inequities and environmental impact, companies both based in and outside California, and more.

4. **Engage in a public process and exercise statutory authority to develop a comprehensive regulatory approach** to crypto assets harmonized with the direction of federal regulations and guidance, creating consumer protections and solidifying California's status as the premiere global location for responsible crypto asset companies to start and grow.

5. **Engage in and encourage regulatory clarity** via progress on the processes outlined in the federal executive order, with state agencies coordinating closely with the Washington, D.C. Office of the California Governor.

6. **Explore opportunities to deploy blockchain technologies to address public-serving and emerging needs**, working with the private sector, academia, and community to present pilots for innovative policies, programs, and solutions that demonstrate and showcase the potential of adopting blockchain technologies to respond to specific challenges identified by state agencies.

7. **Identify opportunities to create a research and workforce environment** to power innovation in blockchain technology, including crypto assets. The goals will be to expose students to emerging opportunities, power emerging industries, and help ensure economic benefits are experienced equitably.

What This Means for Employers

This sweeping Executive Order further illustrates the ongoing mainstreaming of blockchain technology. Overall, this could be a real benefit to businesses and employers in California if the state can harmonize state and federal regulation of this growing area – especially with respect to cryptocurrency or crypto assets). Having one comprehensive set of federal and state rules by which to operate could make businesses feel more comfortable with incorporating blockchain technology into their operations.

In addition, California state agencies adopting the use of blockchain technology and "leading by example" could be a powerful incentive for businesses and employers with operations in California to get on board with this emerging trend.

On the other hand, it remains to be seen what a "comprehensive regulatory approach" will entail. There is a delicate balance between obtaining regulatory certainty and clarity on the one hand and stifling innovation on the other. The involvement of consumer protection agencies in this effort signals that California will be looking to expand the use of blockchain technology while also protecting consumers (including employees). That's not necessarily a bad thing. However, the question will be whether such consumer protections are proportionate or stifle innovation and growth.

Conclusion

We'll continue to monitor developments in this area, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have any questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Cryptocurrency and Blockchain Practice Group.

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