



Sexual Harassment Takes Center Stage – California Legislature Responds With Flurry of Proposed Bills

Insights

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The California Legislature reconvened on January 3 to begin the second year of the 2017-18 legislative session. As anticipated, sexual harassment appears to be the “hot topic” for the Legislature this year, with nearly a half-dozen bills introduced to address this issue in the first two days of the legislative session alone.

Several of the bills deal with the Legislature itself and how it responds to sexual harassment claims, following widespread reports of misconduct from legislators, staffers and lobbyists who state they have been victims of harassment or assault - and the high-profile resignation of several legislators, and allegations made against several others.

But other bills apply to employers statewide. Employers will want to pay close attention to these issues and these bills as the year progresses.

Thus, far, bills that have been introduced or discussed include:

Ban on Nondisclosure Agreements (NDAs)

Senator Connie Leyva (D-Chino) introduced Senate Bill 820, entitled the STAND (Stand Together Against Non-Disclosure) Act to prohibit confidentiality provisions in settlement agreements in cases involving sexual assault, sexual harassment, and sex discrimination. The bill is sponsored by the Consumer Attorneys of California and the California Women’s Law Center. In announcing the bill, Senator Leyva stated:

“As we have clearly seen over the last few months, secret settlements serve one primary purpose: to keep sexual predators away from the public eye and continuing to torment and hurt innocent victims...SB 820 will not prevent people from mutually agreeing to settle, but it will simply prevent the perpetrator from requiring the victim to remain silent about the harassment as a condition of settlement. Everyone deserves to live and work free from sexual harassment, assault and discrimination. The STAND Act helps to end the curtain of secrecy that has existed for far too long.”

Ban on Arbitration of Sexual Harassment Claims

Although the bill has not been introduced yet, Assemblywoman Lorena Gonzalez Fletcher (D-San Diego) has announced plans to introduce legislation that would prohibit arbitration agreements that require employees to pursue sexual harassment claims through arbitration. In announcing the bill,

she stated, “Signing away your rights to sue for sexual harassment as a condition of getting a job is simply immoral and has chilled reform in the workplace...No one should be forced into arbitration to obtain a job.”

This is not the California Legislature’s first foray into banning arbitration agreements, which is a favorite target for plaintiffs’ attorneys. While there are very strong arguments that such state proposals are preempted by federal law, in the current political environment it is unlikely that such legal arguments will be able to interfere with this bill making it to the Governor’s desk.

In addition, Assemblywoman Gonzalez Fletcher announced that she would introduce legislation designed to protect all workers from retaliation by making reporting easier, penalizing employers that don’t take action against harassers, strengthen anti-retaliation provisions, and create a hotline so workers can report harassment to state enforcement agencies.

Hotels Required to Provide “Panic Buttons” and “Blacklist” Alleged Harassers

It is anticipated that there will be a number of industry-specific bills introduced this year.

First up is the hotel industry. Assembly Bill 1761 by Assemblymember Al Muratsuchi (D-Torrance) would impose a number of specific requirements on the hotel industry. These include requirements to (1) provide hotel employees with a “panic button” free of charge, (2) compile and maintain a list of all guests accused of violence or sexual harassment, (3) decline service (“blacklist”) for three years to any guest on the list when the accusation is supported by a statement made under penalty of perjury, and (4) post a specified notice on the back of each guestroom door stating that the law protects hotel housekeepers and other employees from violent assault and sexual harassment.

This proposal is similar to an ordinance recently enacted in the City of Seattle, as well as a proposal that was unsuccessful before the Long Beach City Council last year.

Legislature-Specific Bills

As mentioned above, the Legislature itself has not been immune from allegations of widespread sexual harassment. Therefore, a number of bills have been introduced that would primarily impact the Legislature itself as an employer. These include:

- **Assembly Bill 1750** by Assemblyman Kevin McCarty (D-Sacramento) – This bill expresses the intent of the Legislature to enact legislation that would require an elected official to reimburse a public entity that pays any settlement of a sexual harassment claim against the official.
- **Senate Bill 224** by Senator Hannah-Beth Jackson (D-Santa Barbara) – This bill would extend liability for sexual harassment where a professional relationship exists between a plaintiff and an investor, elected official, lobbyist, director or producer.
- **Assembly Bill 403** by Assemblymember Melissa Melendez (R-Lake Elsinore) – This bill would enact a “Legislative Employee Whistleblower Protection Act” to establish a procedure for

legislative employees to report violations to the Legislature. This bill has been introduced for several years in a row, but has never made it through the legislative process. This year, however, there appears to be bipartisan pressure to enact this law.

- **Unionization of Legislative Employees** – Although not introduced yet, Assemblywoman Lorena Gonzalez Fletcher (D-San Diego) has announced plans to introduce a bill to allow legislative employees to unionize.

Conclusion

Sexual harassment will not be the only labor and employment issue to come before the California Legislature in 2018. However, if the first week of the session is any indication, this topic is likely to be the subject of much discussion this year, with numerous proposals to establish new requirements and obligations for California employers. Be sure to check back here often for updates on these and other legislative proposals as the year progresses.

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Benjamin M. Ebbink
Partner
916.210.0400
[Email](#)