

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 also 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 for mandatory arbitration agreements that would otherwise include waivers of the rights, forums, and procedures of Labor Code and FEHA claims. As a result, it is unclear whether AB 51 will be preempted by the Federal Arbitration Act. LCW anticipates legal challenges to AB 51 before the courts to clarify this issue.

While there are some legal arguments indicating that the Labor Code does not apply to public sector agencies unless expressly stated in the specific code section (which is not the case with AB 51), there are other cases that have found otherwise. As a result, any public agencies who currently use mandatory arbitration employment agreements as a condition of employment must prepare to comply with AB 51 on January 1, 2020. In order to comply with this law, employers will have a choice of either halting the practice of requiring employees and applicants to enter into arbitration agreements as a condition of employment altogether, or to modify these arbitration agreements to make clear that FEHA and Labor Code claims are not subject to mandatory arbitration. For employers who select the second option, LCW recommends working closely with legal counsel to have their arbitration agreements modified to comply with AB 51.

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

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

For any public agencies that require 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 to Proceed in Court

Pursuant to SB 707, in an employment arbitration in which the employer 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 employer is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration. As a result, if the employer materially breaches the arbitration agreement and is in default of the arbitration, the employee may either withdraw the claim from arbitration and proceed to bring the claim in court or compel arbitration.

In all cases in which the employee proceeds in court based on the employer's failure to timely pay arbitration fees and costs, the statute of limitations period with regard to all claims brought 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 Being Liable for Employee's Attorney's Fees and Costs and May Result in Evidentiary or Terminating Sanctions

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

If the employee proceeds with an action in a court of appropriate jurisdiction, SB 707 requires the court to impose a monetary sanction on the employer who materially breaches an arbitration agreement, and authorizes the court to impose other sanctions, including the following:

- (1) An evidence sanction by an order prohibiting the employer 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 employer.
 - (B) An order rendering a judgment by default against the employer.
- (3) A contempt sanction by an order treating the employer as in contempt of court.
- (4) Attorneys' fees and costs associated with the abandoned arbitration proceedings.

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

(SB 707 amends Sections 1280 and 1281.96 of and adds Sections 1281.97, 1281.98, and 1281.99 to the Code of Civil Procedure.)

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 public employers 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.)

AB 333 – Broadens Anti-Retaliation Protections To County Patients' Rights Advocates Who Are "Whistleblowers."

Current law prohibits employers from retaliating against employee whistleblowers but does not create such protections for independent contractors. AB 333 creates and expands whistleblower protections to county patients' rights advocates, including non-

employee county patients' right advocates who are independent contractors.

County patients' rights advocates' roles are to protect the wellbeing of the patients for whom they are hired to advocate. Local mental health directors are required to appoint or contract for services of county patients' rights advocates.

Under AB 333, employers or any person acting on behalf of the employer is prohibited from preventing a county patients' rights advocate from providing information to or testifying before any public body conducting an investigation, hearing, or inquiry if the county patients' rights advocate has reasonable cause to believe the information discloses a violation of law. Employers are also prohibited from retaliating against a county patients' rights advocate who provides such information or testimony.

According to the bill's author, county patients' rights advocates occasionally need to contact licensing or other state regulatory officials over patients' rights violations at county facilities. The purpose of AB 333 is to protect county patients' rights advocates from retaliation in the form of a contract not being renewed. A violation of AB 333 is enforceable by a private right of action.

Since many county patients' rights advocates are not county employees but are independent contractors or employees of a contracting company, the larger impact AB 333 has on employers is that it expands whistleblower retaliation protections beyond the typical employer-employee relationship. County employers should ensure they have not made, adopted, or enforced any rule, regulation, or policy preventing a county patients' rights advocate from disclosing information protected by AB 333.

(AB 333 adds Section 5525 to and amends Section 5550 of the Welfare and Institutions 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. Public agencies 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.)

EMERGENCY SERVICES

SB 438 – Restricts Public Agencies From Contracting Out Dispatch Services To Private Entities.

Current law requires every local public agency to administer a basic emergency telephone system for police, firefighting, and emergency medical and ambulance services. SB 438 now prohibits public agencies from delegating, assigning, or contracting out "911" call processing services for dispatch of emergency response resources ("dispatch services") unless the assignment or contract is with another public agency. In effect, SB 438 generally prohibits public agencies from contracting dispatch services to private entities.

The bill provides two exceptions allowing public agencies to contract dispatch services to private entities.

- First, SB 438 allows joint powers authorities ("JPAs") that have delegated, assigned, or contracted for dispatch services with a private entity on or before January 1, 2019 to continue to contract for those services. Upon the expiration of the contract, a JPA may renegotiate or adopt new contracts with the private entity if the membership of the JPA includes all public safety agencies (i.e., agencies that provide police, fire, medical, and other emergency services – collectively as "PSA") that provide prehospital emergency medical services and the JPA consents to the continued contract.
- Second, public agencies that have delegated, assigned, or contracted dispatch services to private entities on or before January 1, 2019 may continue to do so with the concurrence of any PSA's that provide prehospital emergency medical services for that public agency. If one of those PSA's that provide prehospital emergency medical services does not concur with continuing to contract with a private entity, the public agency may continue to contract with the private entity for dispatch services for the remaining concurring PSA's while the PSA that does not agree shall discharge its own dispatch services within its jurisdictional boundaries. If continuing the contract with the private entity is not feasible after a PSA does not concur with the contract, then the withdrawing PSA shall assume the dispatch services for the service area originally subject to the delegation, assignment, or contract.

Nothing in SB 438 prohibits a public agency or a PSA from entering into a contract for “backup” dispatch services with either a private entity or public agency.

SB 438 also establishes requirements for a PSA to communicate emergency response information to an emergency medical services (“EMS”) provider. The bill requires a PSA that provides dispatch services to make a connection available from the PSA’s dispatch center to an EMS provider’s dispatch center for timely transmission of emergency response information. The connection may be established by a direct computer aided dispatch or an indirect connection, such as an intercom, radio, or other electronic means. The PSA is entitled to recover the actual costs incurred from maintaining the connection from the EMS provider. PSA’s that implement emergency medical dispatch programs are subject to the review and approval of the local EMS agency and are required to perform dispatch services in accordance with applicable state guidelines and regulations.

(SB 438 adds Section 53100.5 to and amends Section 53100 of the Government Code, and adds Sections 1797.223 and 1798.8 to the Health and Safety 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 him 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. Public agencies 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. Public agencies 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.)

EMPLOYEE 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 furthers 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.)

GENDER IDENTITY

AB 931 – Prohibits Cities With 50,000 Or More Population From Having Appointed Board And Commission Members With More Than 60 Percent Of The Same Gender Identity Beginning In 2030.

Cities across the state have boards and commissions that are independent, advisory or regulatory bodies whose members are appointed by public officials. These boards and commissions include planning commissions, personnel boards, parks and recreation commissions, arts commissions, and many other types of boards and commissions.

Beginning January 1, 2030, AB 931 prohibit cities, with populations of 50,000 or more, from having nonelected board and commission members comprised of more than 60 percent of the same gender identity if the board or commission has five or more members. Under the bill, a covered city cannot appoint a member to a board or commission if that individual has the same gender identity as more than 60 percent of the board or commission’s then-existing membership.

For smaller boards and commissions with four or fewer nonsalaried, nonelected members, AB 931 prohibits them from being comprised of exclusively of members of the same gender identity.

For purposes of AB 931, “gender identity” is defined as the gender or absence of gender with which the board or commission member self-identifies, without regard to the individual’s sex assigned at birth. The bill provides an exception to the gender division requirement for a board or commission that has a primary purpose of addressing issues relevant to a particular gender identity.

In passing AB 931, the Legislature declared that it is necessary for California to take affirmative steps to remedy the injustices resulting from the underrepresentation of women in leadership positions in order to improve the lives and opportunities of all Californians.

While the gender identity division requirements do not go into effect for a little over a decade, cities should prepare to comply with this requirement by managing the members appointed to boards and commissions. Since some members are appointed for multi-year terms, cities must prospectively plan out appointments so that as of January 1, 2030, boards and commissions with five or more nonsalaried, nonelected members are not comprised of more than 60 percent of the same gender identity, or exclusively of the same gender identity for smaller boards and commissions.

(AB 931 adds Chapter 11.5, commencing with Section 54977, to Part 1 of Division 2 of Title 5 of the Government Code.)

HEALTH FACILITIES

SB 322 – Health Facility Employees Have The Right To Discuss Regulatory Violations With A Department Of Public Health Investigator Privately.

When the Department of Public Health conducts initial or periodic licensing surveys or investigates complaints, the Department speaks to health facility employees and does not turn away any employee who wants to speak with the Department. SB 322 adds a right for a health facility employee or the

employee’s representative to privately discuss possible regulatory violations or patient safety concerns with the Department of Public Health’s investigator during the course of an investigation or inspection.

By allowing these conversations to be private, an employee or representative may hold these discussions outside of the presence of health facility management. According to the bill’s author, the purpose of SB 322 is to encourage health facility employees to speak freely and report potentially dangerous hazards without fear of retaliation. Under current law, a health facility employer cannot discriminate or retaliate against an employee, member of medical staff, health care worker, or patient for presenting a grievance, complaint, or report to the facility or for participating in an investigation related to quality of care, services, or facility conditions.

Any health facility undergoing a survey, inspection, or investigation by the Department of Public Health should be aware of an employee and employee representative’s right to speak with the Department investigator privately. The health facility should not insist on having a member of management or other facility employee present in the event an employee requests a private discussion with the investigator.

(SB 322 amends Section 1278.5 of the Health and Safety Code.)

INDEPENDENT CONTRACTORS

AB 5 – 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.

In *Dynamex*, delivery drivers alleged that the Dynamex company misclassified them as independent contractors. 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 creates Labor Code section 2750.3, which codifies the ABC test adopted in *Dynamex* and expands its application beyond Industrial Welfare Commission ("IWC") wage orders to the general Labor Code and Unemployment Insurance Code. Importantly, there is no express exemption in AB 5 for public agencies.

Labor Code section 2750.3 also 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 and photojournalists, and cosmetologists; licensed real estate agents; "business service providers"; construction contractors; construction trucking services; referral service providers; and motor club third party agents.

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.**

Finally, AB 5 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.

Because IWC wage orders have limited application on public agencies, the *Dynamex* decision similarly has limited application on public agencies. However, 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 of the agency under the ABC test, then corresponding Labor Code provisions applicable to public agency employees would now apply to the individual, including workers' compensation coverage and paid sick leave benefits. Additionally, if an individual is an employee of a public agency under the ABC test, he or she is also now entitled to unemployment benefits under the Unemployment Insurance Code.

Importantly, 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, public agencies 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.

(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.)

LABOR RELATIONS

AB 355 – Applies PERB’s Authority To Resolve Labor Disputes For Orange County Transportation Authority.

AB 355 brings the Orange County Transportation Authority (“OCTA”) within the Public Employment Relations Board’s authority to adjudicate complaints of labor violations filed by employers and employees of OCTA.

The Public Employment Relations Board (“PERB”) is the state government agency that resolves labor relations disputes and enforces the statutory rights of public employers and employees under collective bargaining laws, including the Meyers-Milias-Brown Act (“MMBA”). While some transit agencies are subject to the MMBA, other transit agencies are subject to other labor relations provisions in each district’s specific Public Utilities Code or in other agreements or articles of incorporation or bylaws. In the past, OCTA was not subject to PERB’s authority for resolving labor disputes or unfair labor practice charges. AB 355 now applies PERB’s authority and coverage to OCTA.

(AB 355 adds Sections 40122.1 and 40122.2 to the Public Utilities 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, public agencies 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, agencies 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.)

PUBLIC SAFETY

AB 392 – Modifies Standards For Use Of Deadly Force By Peace Officer.

AB 392 is a police use-of-force bill that redefines the circumstances under which the use of lethal force by a peace officer is considered justifiable. The law is intended to encourage law enforcement to

increasingly rely on alternative methods such as less-lethal force or de-escalation techniques.

Under the new law, lethal force by a peace officer is only justifiable "*when necessary in defense of human life.*" Specifically, AB 392 provides that a peace officer is justified in using deadly force only when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary for one of two reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or another person, or
- To apprehend a fleeing felon if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

The Legislature did not designate AB 392 as emergency legislation, so the change in the law will take effect on January 1, 2020. Before that date, law enforcement agencies should review their existing use-of-force policies to verify whether department policy is consistent with the law, and to identify areas that may need revision. A separate bill – SB 230 (noted below) – requires law enforcement agencies to revise their use of force policies to meet certain standards by January 1, 2021, and therefore compliments AB 392.

The Court of Appeal recently reaffirmed, in *San Francisco Police Officers' Association v. San Francisco Police Commission* (2018) 27 Cal.App.5th 676, that use-of-force policies are primarily a matter of public safety and fall outside the scope of representation defined under the Meyers-Milias-Brown Act. Therefore, in the event that an agency's current policies need to be updated to ensure compliance with changes in the law, the agency is not required to "meet and confer" with the peace officers' recognized employee organization before making the necessary policy revisions. Even so, agencies considering a change in policy should give advance notice to the employee organization and be prepared to meet and confer over any *negotiable impacts or effects* of the policy change identified by the employee organization.

Going forward, agencies should also ensure that future criminal and administrative investigations of use of force incidents follow the revised standards set out by the new law and any change in department policy. Agencies should consult with their trusted

legal counsel regarding how to bring their policies and practices into line with the new laws, as well as to assist with navigating the requirements of California labor law.

(AB 392 amends Sections 196 and 835a of the Penal Code.)

SB 230 – Requires Law Enforcement Agencies To Maintain Use Of Force Policies.

SB 230 requires law enforcement agencies to maintain use of force policies **no later than January 1, 2021**. The bill specifically describes 20 criteria each law enforcement policy must include. These requirements include, but are not limited to, guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, an obligation to report potential excessive force, an obligation for an officer to intercede when observing another officer using force that is clearly beyond that which is necessary, training standards, factors for evaluating and reviewing all use of force incidents, and several other criteria. SB 230 also requires that each law enforcement agency make its policy accessible to the public.

However, the bill notes that the implementation of this new section of the Government Code does not supersede any collective bargaining obligations under the Meyers-Milias-Brown Act (“MMBA”) among other public agency collective bargaining laws. Therefore, agencies may need to look at any meet and confer obligations related to the implementation of SB 230. As referenced above in our analysis regarding AB 392, we believe any such meet and confer obligations related to changes to a use of force policy would be related to any negotiable impacts or effects. As a result, agencies should give advance notice of any changes to a use of force policy to the employee organization and be prepared to meet and confer over any *negotiable impacts or effects* of the policy change identified by the employee organization.

As part of SB 230, the Legislature provided that the intent of the bill is to establish the minimum standard for policies and reporting procedures for law enforcement agencies’ use of force. The Legislature also declared that an agency’s use of force policy and training may be introduced as evidence in proceedings involving an officer’s use of force. The policies and training may be considered to determine whether the officer acted reasonably but will not

impose a legal duty on the officer to act in accordance with such policies and training.

SB 230 also requires the Commission on Peace Officer Standards and Training (“POST”) to implement a course on the use of force and develop uniform, minimum guidelines for use of force for law enforcement agencies to adopt.

In preparing to adopt a use of force policy that complies with SB 230 by January 1, 2021, law enforcement agencies should review the 20 requirements set forth in Government Code section 7286 and determine whether they need to adopt new policies or amend current policies on the use of force.

(SB 230 add Chapter 17.4, commencing with Section 7286, to Division 7 of Title 1 of the Government Code and adds Section 13519.10 of the Penal Code.)

AB 1600 – Shortens Timeframe For Requesting Peace Officer Personnel Records In Criminal Actions And Makes Supervisorial Officer Records Discloseable In Limited Situations.

When a party seeks discovery or disclosure of peace or custodial officer personnel records, the party is required to file a motion and provide written notice to the government agency that has custody and control of the records (“*Pitchess* Motion”). AB 1600 shortens the timeframe for providing written notice for the records in criminal actions from 16 court days to 10 court days before the hearing for discovery. However, AB 1600 does not change the current timeframe for a party to issue written notice in civil actions, which remains 16 courts days in accordance with Code of Civil Procedure section 1005.

In addition, AB 1600, requires a public agency who receives a *Pitchess* motion to immediately notify the individual whose records are sought.

After a party files a motion seeking peace or custodial office personnel records in a criminal action and provides written notice to the governmental agency, AB 1600 requires all opposition motions to be filed at least five court days before the hearing and all reply papers be filed at least two court days before the hearing.

AB 1600 also makes a supervisorial officer’s personnel records disclosable in limited circumstances. Under existing law, personnel records of supervisorial

officers are not disclosable if the supervisory officer was not present during an arrest or had no contact with the party seeking disclosure of the records, or was not present at the time the conduct was alleged to have occurred within a jail facility. AB 1600 creates an exception that permits the disclosure of a supervisory officer's personnel records if the supervisory officer had direct oversight of a peace or custodial officer and issued command directives or had command influence over the circumstances at issue and the officer under supervision was present during the arrest, had contact with the party seeking disclosure, or was present when the conduct at issue was alleged to have occurred at a jail facility.

The purpose of AB 1600 is to align the timeline for bringing *Pitchess* motions seeking confidential peace officer personnel records with the timelines for other types of discovery in criminal proceedings. As a result, public agencies will have an expedited timeframe to respond to criminal motions for peace or custodial personnel records. Within as little as 11 court days before a discovery hearing, public agencies will have to notify the officer whose records are sought, diligently search for the records sought, and raise any written objections to the motion.

(AB 1660 amends Section 1005 of the Code of Civil Procedure and amends Sections 1043 and 1047 of the Evidence Code.)

SB 781 – Clarifies The Release Of Employment Information For Background Checks For Applicants Of Non-Sworn Positions At Law Enforcement Agencies.

Government Code section 1031.1 requires an employer to disclose employment information about a current or former employee to a law enforcement agency that has requested such information for the employee's background investigation for application of employment. Section 1031.1 applies to applicants who are not current police officers and applicants applying for a position other than a sworn police officer within a law enforcement agency.

SB 781 makes clarifying changes to Section 1031.1 about the disclosure of employment information for applicants who are applying for non-sworn positions at law enforcement agencies. Some provisions in the existing law only reference police officer applicants, omitting any information about applicants for non-sworn law enforcement positions.

The bill clarifies that "employment information" is information relevant to the performance of either a police officer applicant or other law enforcement agency applicant, which includes applicants for non-sworn positions. SB 781 also clarifies that an initial requesting law enforcement agency may disclose employment information to another authorized law enforcement agency that is also conducting a background investigation into either a police officer applicant or other law enforcement agency applicant.

As an omnibus bill that covers a variety of technical or minors changes to the law, SB 781 makes other changes to the law that are not directly related to public agency employment.

(SB 781 amends Section 4830.5 of the Business and Professions Code, amends Section 1208.5 of the Code of Civil Procedure, amends Section 30652 of the Food and Agricultural Code, amends Section 1031.1 of the Government Code, amends Section 25988 of the Health and Safety Code, amends Sections 136.2, 286.5, 993, 1000.7, 1170.05, 2604, and 29805 of the Penal Code, repeals Section 597f of the Penal Code, and amends Section 827 of the Welfare and Institutions Code.)

RETIREMENT

AB 672 – CalPERS Disability Retiree Restrictions On Performing Work As A Retired Annuitant Without Reinstatement.

The Public Employees' Retirement Law and California Public Employees' Pension Reform Act of 2013 establish limitations on when a person who has retired due to a disability may perform work for a CalPERS agency as a retired annuitant but without reinstatement into the CalPERS retirement system. AB 672's purpose is to eliminate confusion about the type of work a disability retiree can perform without being reinstated into the CalPERS system and to prohibit disability retirees from performing duties similar to the duties they were restricted from performing as part of their disability retirement.

The bill clarifies that a public agency in the CalPERS system shall not employ a disability retiree as a retired annuitant into: (1) the position from which the person retired; or (2) a position that includes duties or activities that the person was previously restricted from performing at the time of his or her retirement.

A public agency cannot employ the disability retiree into either of these types of positions as a retired annuitant without reinstatement from retirement.

AB 672 also adds a requirement that if a public agency employs a disability retiree as a retired annuitant without reinstatement, the public agency must provide the CalPERS Board with information about the nature of the employment and the duties and activities of the position.

(AB 672 adds Section 21233 to the Government 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.

Public agencies sometimes settle claims filed by employees against the agency and include “no rehire” provisions requiring the former employee not to seek future employment from the agency. As a result of AB 749, public agencies should stop including any such provisions in their settlement agreements to resolve claims filed by employees. Public agencies 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.)

WORKERS’ COMPENSATION

SB 542 – Presumes PTSD Injury Qualifies For Workers’ Compensation For Police Officers And Firefighters.

Workers injured in the course of employment are generally entitled to receive workers’ compensation benefits. The law currently establishes a series of occupational injuries for police and safety officers that are presumed to qualify them for workers’ compensation, including heart disease, hernias, pneumonia, cancer, meningitis, tuberculosis, and biochemical illness.

In recognizing the stressful nature of firefighting and law enforcement, the Legislature passed SB 542 to expand the definition of “injury” for workers’ compensation purposes to include post-traumatic stress disorder (“PTSD”). Under the bill, a PTSD injury will be presumed to arise out of and in the course of employment if it develops or manifests itself during the worker’s service to a fire or law enforcement department. The Workers’ Compensation Appeals Board (“WCAB”) is bound by the presumption unless presented with controverted evidence to dispute the presumption. Workers’ compensation awarded for such injuries will include

full hospital, surgical, medical treatment, disability indemnity, and death benefits.

SB 542 will make it easier for police officers and firefighters to receive workers' compensation benefits for PTSD. SB 542's rebuttable presumption is an easier standard to meet than the current standard for receiving workers' compensation benefits for other types of mental disorders, which requires the worker to demonstrate that actual events of employment were the predominant cause of the psychiatric injury by a preponderance of the evidence.

SB 542 applies to police officers and firefighters who have performed at least six months of service for their department or unit, although the six months does not need to be continuous. SB 542's rebuttable presumption will be extended to former police officers and firefighters after the last day of work for a period of three months for each full year of requisite service, up to a 60-month period.

The effective timeframe for injuries under SB 542 is limited. The bill applies prospectively only to injuries occurring on or after January 1, 2020. In addition, this law will remain in effect only until January 1, 2025, after which the law will sunset and be repealed unless extended further by the Legislature.

(SB 542 adds Section 3212.15 to the Labor Code.)

BUSINESS AND FACILITIES

AB 456 – Extends Claim Resolution Process For Claims Arising During Public Works Projects.

This bill extends the sunset date from 2020 to 2027 on an existing claim resolution process designed to address contractor claims that arise during a public works projects. The current claims process applies to "public entities" such a cities, counties, districts, and special districts. Under this claims resolution process, contractors for public works projects can submit a claim to an agency relating to disputes that arise during the project. Within 45 days, the entity must provide a written response, identifying the disputed and undisputed amounts of the claim. The undisputed amounts must be paid, and the contractors may demand a meet and confer conference on the remaining disputed amounts. If the

claim is not resolved through the conference process, it is must be submitted to nonbinding mediation. This bill extends this claims resolution process for another seven years.

(AB 456 amends Section 9204 of the Public Contracts Code.)

AB 1486 – Expand The Surplus Land Act To Cover More Local Agencies.

The Surplus Land Act sets out rules on how public agencies may dispose of surplus land, which prioritize affordable housing, as well as parks and open space, when disposing of surplus land. Under the Act, local agencies looking to dispose of surplus land, must first offer to sell the surplus land to another local agency or nonprofit affordable housing organization, before offering to offering the land to a private entity or individual.

This bill expands the definition of "local agency" in the Surplus Land Act, which previously just covered cities and counties, including charter cities and counties, as well as districts of any kind. Now the law also covers "sewer, water, utility, local and regional park" districts, as well as any "joint powers authority, successor agency to a former redevelopment agency, housing authority, or other political subdivision of" the state.

This bill also changes the rules for compliance. For example, rather than sending an initial offer to other agencies or nonprofit affordable housing organizations, a covered local agency must send a notice of availability, allowing interested organizations to start the negotiations process. The bill also increases a local agency's reporting requirements to the state and the state's ability to enforce the Act. Public agencies are encouraged to seek guidance on these changes, particularly a newly covered agency.

(AB 1486 amends Sections 54220, 54221, 54222, 54222.3, 54223, 54225, 54226, 54227, 54230.5, 54233, 54233.5, 54234, and 65583.2 of the Government Code and adds Sections 54230.6, 54233.5, 54234, 65400.1, and 65585.1 to the Government Code.)

AB 1768 – Expands The Definition Of “Public Works” To Include Preconstruction Site Assessment Or Feasibility Studies.

Existing laws requires prevailing wages be paid to all workers on most public works projects. In general, public works projects include construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds. This bill is intended to address confusion among awarding agencies, contractors, and labor groups regarding when prevailing wage requirements apply on preconstruction activities. This bill addresses that confusion by expanding the definition of “public works” to include work performed during construction site assessments and feasibility studies, and specifies that preconstruction work is part of a public works project, even if no construction work occurs. Public agencies need to be aware of this expanded definition when requesting bids or considering public work projects.

(AB 1768 amends Section 1720 of the Labor Code.)



LCW UPCOMING WEBINARS

LEGAL AND LEGISLATIVE UPDATE FOR PUBLIC SAFETY



Wednesday, November 6, 2019 | 10:00 AM - 11:00 AM

Every year the Courts and the Legislature create new laws, or new twists on pre-existing laws, that impact public safety employers in significant ways. This one hour webinar will cover new court decisions and legislation that has or will soon take effect that will most significantly impact personnel management in public safety departments in a variety of areas. New laws that will be covered include laws impacting investigation and discipline of personnel, personnel records, disability and retirement and harassment and other civil rights liability issues. Attend this webinar to help you understand and navigate changes to personnel laws that will most impact supervision in management in public safety departments.

Who Should Attend?

Public Safety supervisors, managers and executives, HR Professionals and Risk Managers.

**PRESENTED BY:
JESSE MADDUX**



**REGISTER TODAY:
WWW.LCWLEGAL.COM/
EVENTS-AND-TRAINING**

2020 LEGISLATIVE UPDATE FOR PUBLIC AGENCIES



Thursday, December 12, 2019 | 10:00 AM - 11:00 AM

California Governor Gavin Newsom signed into law a number of new bills passed in this year’s Legislative Session that will impact California employers. Many of these new laws will go into effect on January 1, 2020. This webinar will provide an overview of key new legislation involving labor and employment laws that will impact California’s public agencies.

Who Should Attend?

Management and Supervisory Personnel, Human Resources Staff and Agency Counsel.

**PRESENTED BY:
GAGE C. DUNGY**



**REGISTER TODAY:
WWW.LCWLEGAL.COM/
EVENTS-AND-TRAINING**

Announcing LCW's On-Demand Harassment Prevention Training Tool



In 2018, California legislature passed **SB 1343** and **SB 778** expanding the requirement for who has to be trained on sexual harassment issues, largely in response to the #MeToo movement. The law requires employers 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.

Online On-Demand Training

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.

Our online training allows you to train your entire workforce and provides robust tracking analytics and dedicated account support for you.

This training is compatible with most **Learning Management Systems**.

To learn more about our special organization-wide pricing and benefits, please contact Katie Huber at khuber@lcwlegal.com or 310.981.2057.

Online options are available for both the **Two-Hour Supervisory Training Course** and the **One-Hour Non-Supervisory Training Course**.



The use of this seal confirms that this activity has met HR Certification Institute's® (HRCI®) criteria for recertification credit pre-approval.

Learn more: <https://www.lcwlegal.com/harassment-prevention-training-services>

LCW LIEBERT CASSIDY WHITMORE

6033 West Century Blvd., 5th Floor | Los Angeles, CA 90045

 CalPublicAgencyLaborEmploymentBlog.com |  @lcwlegal

Copyright © 2019 **LCW** LIEBERT CASSIDY WHITMORE

Requests for permission to reproduce all or part of this publication should be addressed to Cynthia Weldon, Director of Marketing and Training at 310.981.2000.

Legislative Roundup is published annually for the benefit of the clients of Liebert Cassidy Whitmore. The information in *Legislative Roundup* should not be acted on without professional advice. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, 916.584.7000 or 619.481.5900 or e-mail info@lcwlegal.com.