#MeToo Movement: CA Continues to Chip Away at Sexual Harassment in Employment

By Karina B. Sterman, Esq.
Greenberg Glusker LLP
BIO: Greenbergglusker.com

Among the many legislative bills signed into law by Governor Jerry Brown on his way out of office, no less than five of them take aim at preventing sexual harassment and depriving bad actions from being covered up. The summary below provides an overview of the important new laws likely to affect CA employers.

Effective January 1, 2019

1. Restrictions on the Confidentiality of Settlement and Nondisclosure Agreements Relating to Sexual Harassment – SB 820

SB 820 places new limitations on the use of confidentiality provisions in settlements and nondisclosure agreements. Specifically, it prohibits, and renders void any provision that prevents the disclosure of factual information relating to civil or administrative complaints of sexual assault, sexual harassment, or harassment or discrimination based on sex. In addition, while an employer may prevent disclosure of *the amount of money paid* in connection with the settlement of sexual harassment claims, the employer loses a federal tax deduction if it includes such a provision in a settlement.

Notably, because SB 820 applies to settlement agreements reached in connection with filed civil or administrative complaint, employers should expect to see an increase in pre-filing sexual harassment demand letters leveraging the potential loss of a confidential settlement agreement.

2. Expansion of Employer Liability for Harassment by Nonemployees, and New Limitations on Release and Non-Disparagement Agreements – SB 1300

SB 1300 amends the Government Code (where anti-discrimination laws are codified) to lessen the burden on complainants with sexual harassment claims and increase the burden on defendants resolving harassment lawsuits on motions for summary judgment before trial.

The new law also expands the employer's potential liability for nonemployees' actions which constitute any form of harassment prohibited by the California Fair Employment and Housing Act and prohibits an employer from requiring an employee to sign a release agreement or a non-disparagement agreement that prevents an employee from disclosing information about unlawful acts in the workplace in exchange for a raise or bonus, or as a condition of employment or continued employment. Notably, the new law indicates that if any provision of an agreement violates these new requirements, the entire agreement will be deemed unenforceable.

3. Defamation Protection for Employers and Alleged Victims of Sexual Harassment – AB 2770

AB 2770 provides protection from liability for defamation or slander to employees who make credible, good faith reports of harassment. The new law also protects current or former employers who communicate with interested parties (such as victims and witnesses). This law is meant to prevent an alleged harasser from suing the alleged victim for reporting the conduct and/or the employer for investigating it.

The law further provides that when an employer is contacted for a job reference about a current or former employee, the employer can now reveal whether the individual is not eligible for rehire because the employer determined that he/she engaged in sexual harassment. However, despite this express new allowance, best practices are to avoid discussing such specifics and seeking legal counsel before deciding to do so.

4. Extension of the Statute of Limitations to Seek Civil Damages Due to Sexual Assault – AB 1619

AB 1619 expanded the time within which a plaintiff may file suit for civil damages due to sexual assault. Under the new statute of limitations, a victim has until the later of either:

a) 10 years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault by the defendant against the plaintiff to bring an action for civil damages as a result of such an assault; or

b) 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault.

Acts constituting "sexual assault" pursuant to AB 1619 encompass a broad swath of crimes ranging from unwanted touching to rape.

Deadline of January 1, 2020

Expansion of Required Sexual Harassment Training – SB 1343

Previously required only of larger employers, the law now requires employers with five or more employees to provide at least two hours of various sexual harassment training and education to all employees in a supervisory position, and at least one hour of such training to all nonsupervisory employees, within six months of beginning work for the employer, and every two years thereafter. Additionally, most employers will now be required to provide training to seasonal and temporary employees, or any employee hired to work for less than six months, within 30 calendar days after the hire date, or within 100 hours worked, whichever occurs first.

Employers are required to comply with the new training requirements by January 1, 2020, which means they should do so during 2019, even if they had already done so in 2018. Notably,

if an employer provides this newly required training and education to an employee after January 1, 2019, but before January 1, 2020, the employer need only provide further training to that employee once every two years thereafter.

For additional clarification on the specifics of the training requirements, please contact the author at ksterman@ggfirm.com.

Karina Sterman is a partner in the Litigation and Employment Law Departments of Greenberg Glusker. A creative and ardent advocate for her clients, Ms. Sterman defends businesses in class action lawsuits as well as in discrimination, harassment, wrongful termination and other lawsuits. She also defends companies in administrative proceedings in front of the EEOC, Department of Labor, California Labor Commissioner and other jurisdictions.