



LEGAL DEFENSE TRUST

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LEARNING POINTS



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NEW LEGISLATION UPDATE

Workplace Discrimination and Harassment; Paid Time Off for Union Officers

By Robert Rabe, Esq.

Harassment and Retaliation Claims under FEHA

The California Legislature has passed a number of bills intended to further protect employees from workplace harassment and retaliation under the Fair Employment and Housing Act (FEHA). The new laws will go into effect on January 1, 2019.

It is not just supervisors and management employees who should be concerned about workplace discrimination and harassment. Under the new legislation, **any** discriminatory remark, even if made by a non-decision maker, or not made directly in the context of an employment decision, may be relevant evidence of discrimination in a FEHA claim. While FEHA already provides for individual liability for engaging in harassment in the workplace, the new legislation extends personal liability to an employee alleged to have engaged in unlawful retaliation. A single incident of harassing conduct can now be sufficient to prove the existence of a hostile work environment. These changes, and others, will make it much easier for employees to file, litigate and win harassment and discrimination claims in California. It can be expected that

employers, including law enforcement agencies, will be more likely to take corrective action when claims of harassment and/or discrimination arise.

Currently, only supervisory employees are required to be trained in the area of sexual harassment in the workplace. By 2020, employers must provide such training to non-supervisory employees as well. Such training is especially important, now that such claims are easier to prove and personal liability under FEHA has been expanded.

Senate Bill 1300 extends personal liability to an employee alleged to have engaged in unlawful retaliation in the workplace (the FEHA already provided for individual liability for harassment prohibited under FEHA.) SB 1300 also provides that an employer's failure to take all reasonable steps to prevent discrimination and harassment from occurring can establish liability for the employer under FEHA even if the underlying discrimination or harassment was not significant enough to be actionable under FEHA.

Paid Leave of Absence for Union Leadership

Senate Bill 1085, signed by the Governor, becomes effective on January 1, 2019. Under the legislation, public employers may be required to grant paid leaves of absence to employees so they can serve in leadership positions in their Unions. The Union may request that the employer grant a leave of absence (with pay and without losing benefits) for an employee (or employees), so that they can serve as officers of the Union or a related national organization. The law requires the public employer to grant a “reasonable” leave of absence for the identified employee.

To insure that employees are compensated during any leave of absence, the employer is required to continue paying the employees’ salary, and any contributions to the employees’ retirement fund (under the relevant agreement or MOU). The Union must then reimburse the employer within 30 days of receiving certification of the expenses.

The parties are required to negotiate the procedures for the Union to request the leave of absence, and the procedures for the employer to be reimbursed when the employer grants a leave of absence.

Stay Safe!

Robert Rabe is Stone Busailah, LLP’s writs and appeals specialist. His 40 years practicing law include 16 years as a Barrister, Supreme Court of England and Wales, practicing in London, England.