

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's podcast is on SB 1300 from the 2018 legislative session in which the bill attempts to create court guidance for FEHA litigation but also makes a number of substantive changes to the law.

Governor Jerry Brown signed Senate Bill 1300 by State Senator Hannah-Beth Jackson on September 30th. It's Chapter 955, and the bill addresses the severe or pervasive standard for litigating sexual harassment claims and prohibits employers from requiring employees to sign a release of claims under the Fair Employment and Housing Act, FEHA, in exchange for a raise or as a condition of employment. The bill's provisions are effective January 1, 2019, and it amends several provisions of the Government Code, as well as adds several new provisions of the Government Code.

Essentially, SB 1300 specifies that an employer may be responsible for the acts of non-employees with respect to other types of harassment, not just sexual harassment. With certain specified exceptions the bill prohibits an employer in exchange for a raise or a bonus or as a condition of employment or continued employment from requiring the execution of a release of a claim or right under FEHA, or from requiring an employee to sign a non-disparagement agreement or some other document that purports to deny an employee the right to disclose information about unlawful acts in the workplace including but not limited to sexual harassment.

Now, the bill does this when it adds Section 12964.5 to the Government Code. Also, the bill adds Government Code Section 12950.2 to read, "An employer may also provide bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behavior and to motivate bystanders to take action when they observe problematic behavior. The training and education may include exercises to provide bystanders with the skills and confidence to intervene as appropriate and to provide bystanders with resources that they can call upon to support that intervention."

Now, 1300 also provides that a prevailing defendant is prohibited from being awarded attorney's fees and costs unless the court finds that the action was frivolous, unreasonable, or groundless when brought, or that the plaintiff continued to litigate after it clearly became so.

Also, Senate Bill 1300 makes five specific findings and declarations regarding the application of FEHA in regard to harassment litigation. It does so by adding new Section 12923 to the Government Code, and it specifies that the Legislature hereby declares its intent with regard to the application of laws about harassment within FEHA. In addition, the author submitted a letter to the *Senate Daily Journal* related to Section 4 of the bill, which is negotiated severance agreements.

The important note on the sections of the bill which are contained in Section 1, those five statements of legislative intent, that they are only statements of intent, that they don't make any changes to statutes. Courts might not give these statements of legislative intent much credence. But take a look at those for yourself. The bill, again, is effective January 1, 2019, and we'll have to wait and see how courts interpret these statements of legislative intent. Thanks for joining this brief podcast on SB 1300 from the 2018 legislative session.