

Hi. This is Chris Micheli, a principal with the Sacramento Government Relations firm of Aprea and Micheli and an Adjunct Professor at McGeorge School of Law. Today's podcast is looking at some of Governor Jerry Brown's vetoes of labor bills in 2018.

Now, while we normally only address signed bills that have become law in California, I wanted to cover the vetoed measures because there were quite a number of significant vetoes of labor and employment law bills by governor Jerry Brown in his last look at legislation at the end of the 2018 legislative session.

The first is AB 1867 by Reyes that dealt with employment discrimination and sexual harassment records. Basically, the bill would have required an employer with 50 or more employees to maintain records for a minimum of five years and would have authorized DFEH to seek an order to enforce that provision. The Governor vetoed the measure, essentially saying the bill could lead to the retention of records for decades.

He also said that current law already requires personnel records including records of complaints to be maintained for suitable periods of time and so he viewed that the time expansion contained in this bill was unwarranted.

The next bill is AB 1870 also by Eloise Reyes dealing with employment discrimination and a limitation on actions. This bill would have extended the statute of limitations period from one year to three years for complaints alleging employment discrimination. The Governor's veto message after explaining what the bill would be, said that, he believes that the current filing deadline, which has been in place since 1963 not only encourages prompt resolution as he said, while memories and evidence are fresh, but also that the current limitation ensures that unwelcome behavior is promptly reported and halted.

The next vetoed bill was AB 2079 by Lorena Gonzalez-Fletcher dealing with janitorial workers and sexual violence and harassment prevention training that would have required a number of things to ensure proper training and prevention of was taking place. Governor Brown vetoed this measure because he thinks that the bill's just ahead of its time, that the labor commissioner has just recently finished implementing registration requirements and is promulgating regulations to create sexual harassment and violence prevention training. Because the labor commissioner's still in those early stages, she should be allowed to have full implementation of the program before proposing significant changes as were envisioned by AB 2079.

The next bill is AB 2732 also by Gonzalez-Fletcher dealing with unfair immigration-related practices also involving janitorial workers among other provisions. It would have imposed civil and criminal penalties for those employers who knowingly destroy or conceal or possess passports, rather immigration documents, et cetera.

It also would have required employers to provide copies of a worker Bill of Rights and other new requirements on employers. The Governor said in vetoing the measure that yes, labor trafficking is a problem in the state and thinks that the provision prohibiting employers from withholding immigration documents from the workers is very appropriate.

However, he felt that the additional language, for example, on every single employer providing every single employee with new and detailed list of rights goes too far

because the vast majority he said of California employers have nothing to do with labor trafficking. He found this mandate to be too burdensome and unwarranted.

The next vetoed bill was AB 3080, which would have prohibited the use of arbitration in employment discrimination both in the Government Code under the Fair Employment and Housing Act as well as in the labor code and any retaliation efforts.

The Governor like he vetoed a bill AB 465 and 2015. He vetoed this measure as well. He said from the time of his earlier veto in 2015, the US Supreme Court has been very clear that states must follow the Federal Arbitration Act and the Supreme Court's view of the FAA. He quoted recent US Supreme Court decision from 2017, basically saying that this type of a bill would be struck down by the federal courts as violating FAA preemption.

The next bill was AB 3081 also by Gonzalez-Fletcher dealing with sexual harassment claims in the employment context, basically requiring joint civil responsibility and liability by labor contractors for all employers. The Governor said in vetoing it that he thought that the bill created a new and ill-defined standard of joint liability. Most of the provisions are already contained in current law and so he thought this bill was unnecessary, but even the new provisions were quite confusing.

The last vetoed bill of 2018 of note in the labor and employment area was SB 937 by state Senator Scott Wiener dealing with lactation accommodation, which would have been very similar to a San Francisco ordinance on lactation accommodation requirements imposed upon employers. The Governor's message was relatively short and sweet. He said, "I've already signed Assembly Bill 1976", which he described as supporting working mothers and their families. Therefore, he found that SB 937 and its new requirements on employers and providing space for women expressing milk in private was not necessary.

Thanks for joining.