Legal Update: NEW LAWS

What Every California Public Entity Needs to Know About New Laws

SB 188 – The CROWN Act

On July 3, 2019, Governor Gavin Newsom signed Senate Bill 188 to make California the first state in the nation to ban racial discrimination based on natural hair. The new law amends the Fair Employment and Housing Act and the Education Code to prohibit employers and schools from enforcing purportedly "race neutral" grooming policies that disproportionately impact persons of color. Under this bill, employers would still be able to make and enforce certain policies, so long as they are valid and non-discriminatory, and have no disparate impact. For example, employers can still require employees to secure their hair for safety or hygienic reasons.

The bill states in part, "Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory employment practices, including hiring, promotion, and termination based on certain protected characteristics, including race, unless based on a bona fide occupational qualification or applicable security regulations." The act also prohibits housing discrimination based on specified personal characteristics, including race. The act also prohibits discrimination because of a perception that a person has one of those protected characteristics or is associated with a person who has, or is perceived to have, any of those characteristics. Existing law defines terms such as race, religious beliefs, and sex, among others, for purposes of the act.

For additional information, please contact SDRMA Chief Risk Officer Dennis Timoney at dtimoney@sdrma.org.

This bill would provide that the definition of race for these purposes also include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, and would define protective hairstyles for purposes of these provisions."

SB 41 – Civil Actions: Damages

Existing law authorizes a person who suffers a loss or harm to that person or that person's property, from an unlawful act or omission of another to recover monetary compensation, known as damages, from the person in fault. Existing law specifies the measure of damages as the amount which will compensate for the loss or harm, whether anticipated or not, and requires the damages awarded to be reasonable.

This bill would prohibit the estimation, measure, or calculation of past, present, or future damages for lost earnings or impaired earning capacity resulting from personal injury or wrongful death from being reduced based on race, ethnicity, or gender.

AB 453 – Emergency Medical Services: Training

Under existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, the Emergency Medical Services Authority is responsible for establishing minimum standards and promulgating regulations for the training and scope of practice for an emergency medical technician-I (EMT-I), emergency medical technician-II (EMT-II), and emergency medical technician-paramedic (EMT-P).

This bill would require EMT-I, EMT-II, and EMT-P standards established pursuant to the above provision to include a training component on how to interact effectively with persons with dementia and their caregivers. The bill would specify that the authority is authorized to consult with community organizations advocating on behalf of Californians with dementia or alzheimer's disease in developing the component.

AB 672 – Public Employees' Retirement: Disability Retirement: Reinstatement

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System, which provides pension and other benefits to members of the system and prescribes conditions for service after retirement. PERL and the California Public Employees' Pension Reform Act of 2013 establish various limits on retirement benefits generally applicable to a public employee retirement system, and prescribes, among other things, limits on service after retirement without reinstatement into the applicable retirement system.

PERL authorizes a person retired for disability to be employed by any employer without reinstatement in the system if specified conditions are met, including, among others, that the person is below the mandatory age for retirement for persons in the job in which the person will be employed, the person is found by the board to not be disabled for that employment, and the position is not the

continued on page 44

position from which the person retired or a position in the same member classification from which the person retired.

This bill would prohibit a person who has retired for disability from being employed by any employer without reinstatement from retirement if the position is the position from which the person retired or if the position includes duties or activities that the person was previously restricted from performing at the time of retirement, unless an exception applies. The bill would require, if a person retired for disability is employed by an employer without reinstatement, an employer to provide to the board the nature of the employment and the duties and activities the person will perform.

Fair Employment and Housing Act (FEHA)

SB 1300 creates a new government code section 12923 under FEHA, which mandates the following:

The "severe or pervasive" legal standard is rejected so that a single incident of harassing conduct is now sufficient to create a triable issue of fact regarding the existence of a hostile work environment. The bill also expands this liability to cover all forms of harassment, rather than being limited, as it is under current law, to only sexual harassment. The bill strikes the word "sexual" preceding the word "harassment" in *Government Code Section 12940*(j)(1) to effect this change in the law.

A plaintiff no longer needs to prove his or her "tangible productivity" declined as a result of harassment in a workplace harassment suit, and may instead show a "reasonable person" subject to the alleged discriminatory conduct would find the harassment altered working conditions so as to make it more difficult to work.

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; and the legal standard for sexual harassment will not vary by type of workplace, and courts will therefore only consider the nature of the workplace in a harassment claim when "engaging in or witnessing prurient conduct or commentary" is integral to the performance of an employee's job duties.

Establishes the legislature's intent that "harassment cases [under FEHA] are rarely appropriate for disposition on summary judgment." This means that FEHA harassment claims will be more difficult to get dismissed in court before trial, regardless of the merit of the allegations.

In addition, SB 1300 prohibits, in exchange for a raise or bonus, or as a condition of employment or continued employment, an employer from requiring the execution of a release of a FEHA claim or the signing of a non-disparagement or nondisclosure agreement related to unlawful acts in the workplace, including sexual harassment.

The statute also provides that an employer may be liable for nonemployees' sexual harassment or other unlawful harassment of the employer's employees, applicants, unpaid interns, volunteers, or contractors, if the employer or its agents or supervisors knew or should have known of the conduct and failed to take immediate and appropriate corrective action.