

CLIENT NEWS BRIEF

New Laws Allow for New Work Schedules for School Police Departments and Change the Definition of Sexual Harassment under FEHA

On August 12, 2013, Governor Brown signed into law Assembly Bill (AB) 226 and Senate Bill (SB) 292. AB 226 authorizes changes to the work schedule for school police departments and SB 292 changes the definition of "sexual harassment" to include conduct not motivated by sexual desire.

Assembly Bill 226

AB 226 authorizes the governing board of a school district or a county superintendent of schools to have a 12-hour-per-day, 80-hour-per-2-week work schedule, also known as a 3/12 workweek schedule, for school police departments. The work schedule must be consented to in a collective bargaining agreement, which must provide an hourly wage of not less than 30% of the state minimum wage.

Under existing law, a classified school employee's workweek was prescribed to be 40 hours and a workday to be 8 hours. The governing board of a school district could also establish a 9-hour-per-day, 80-hour-per-2-week work schedule. The bill is intended to remedy a complicated and burdensome process to obtain a waiver to utilize a desired "3/12" schedule. AB 226 allows for flexibility in establishing work schedules for school police departments. Proponents, including the San Diego Police Officers Association, claim the alternative schedule results in greater productivity and greater savings.

Senate Bill 292

SB 292 amends California's Fair Employment and Housing Act (FEHA). SB 292 adds to the definition of "sexual harassment," specifying that "sexual harassing conduct need not be motivated by sexual desire." (Gov. Code, § 12940(j)(4)(C).)

SB 292 was introduced to "expand the definition of harassment because of sex under these provisions to include threats of sexual violence and specify that an act is sexual harassment regardless of the sexual orientation, sexual desire, or intent of the harasser." (Sen. Bill No. 292 (2012-2013) as introduced February 14, 2013.) The bill responds to the court of appeal's ruling in *Kelly v. Conco Companies* (2011) 196 Cal.App.4th 191.

In *Kelly*, the plaintiff's male supervisor subjected him to a barrage of extremely graphic, profane, and sexually demeaning comments. The court noted that the plaintiff's supervisor was heterosexual and did not have a sexual desire for the plaintiff. Based on this fact, the court decided that the plaintiff was not harassed because of his sex and, therefore, could not establish a claim of sexual harassment under FEHA.

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The language of SB 292 seeks to avoid the result in *Kelly* by expressly stating that sexually harassing conduct need not be motivated by sexual desire.

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