

California Employers Can Expect More Employment Litigation In 2019

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In light of the #metoo movement, a new law in California will strengthen laws prohibiting all forms of harassment in the workplace.

On Sept. 30, California Governor Jerry Brown signed SB 1300 which, among other things, expands the ability of California employees to file harassment lawsuits against their employers in ways they were not able to in the past. The law takes effect on January 1, 2019.

Most notably, the law expressly rejects the Ninth Circuit's opinion in *Brooks v. City of San Mateo*, which required employees alleging hostile work environment to show that the harassing conduct was "sufficiently severe or pervasive to constitute a violation of the California Fair Employment and Housing Act." Instead, the new law allows a single incident of harassing conduct to be sufficient to bring a hostile work environment claim.

Similarly, the law expressly rejects the "stray remarks doctrine" and replaces that with "the totality of the circumstances and a discriminatory remark" language. The law states that even when a discriminator remark is not made directly in the context of an employment decision or uttered by a non-decisionmaker, it still can be relevant, circumstantial evidence of discrimination.

Small businesses in particular should pay careful attention to this new law. While it does not expressly provide any new protections for employees – or impose any specific new requirements on employers, it does make it far easier for employees to sue their employers.