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LEAGUE OF CALIFORNIA CITIES 2022 CITY ATTORNEYS' SPRING CONFERENCE

Labor and Employment Litigation Update

5/5/2022

Presented by:

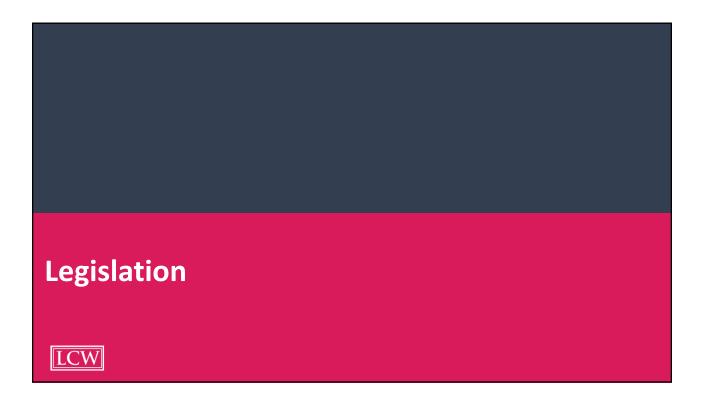
Geoffrey S. Sheldon













League of California Cities 2022 City Attorneys' Spring Conference | May 3, 2022 Presented By: Geoffrey S. Sheldon

Senate Bill 807

- Amends Fair Employment and Housing Act (FEHA)
- Various procedural changes to DFEH enforcement of California's civil rights law, and changes to statutes of limitation
- Requires employers to retain personnel records for at least 4 years; longer if a complaint is filed (currently, 2 year minimum)



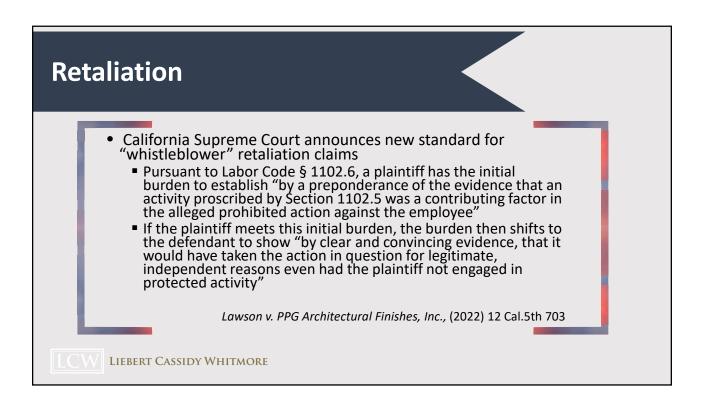
Senate Bill 331

Expands prior restrictions on non-disclosure provisions in employment agreements:

- 1. Settlement may not prevent <u>or restrict</u> disclosure of facts related to a civil or administrative claim regarding discrimination based on <u>any</u> protected classification
- 2. Employment-related non-disparagement/non-disclosure agreements unlawful if purpose or effect is to restrict employees right to disclose information about unlawful acts in workplace

LCW LIEBERT CASSIDY WHITMORE





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Discrimination – Statute of Limitations

California Supreme Court holds the time for filing a discrimination claim based on failure to promote begins when the employee knew or should have known of the decision to promote another.

- Other employee accepted promotion in March 2017, effective May 2017. Complaint filed <u>April</u> 2018.
- Plaintiff's opposition to summary judgment did not dispute timeline

Pollock v. Tri-Modal Distribution Servs., Inc., (2021) 11 Cal.5th 918



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Retaliation

- Court of Appeal reversed summary judgment that upheld discipline for Police Officer who made threatening social media post
 - Courts may consider content of government employee's speech to balance free speech interest against employer's interest in maintaining discipline
 - Factual disputes about meaning of comment and lack of evidence of actual workplace disruption precluded summary judgment

Moser v. Las Vegas Metropolitan Police Department (9th Cir. 2021) 984 F.3d 900



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