



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

Stopping sexual predators: Records retention

AB 1867
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SUMMARY OF THE BILL

Assembly Bill 1867 would require California businesses with 50 or more employees to keep records of employee complaints of sexual harassment for 10 years from the date of filing. This will make it harder for employers to conceal a history of harassment by an employee and provide evidence that an employer was aware of previous issues with an employee's behavior.



PROBLEM

The on-going sexual harassment and assault scandals sweeping the nation – from Hollywood to the halls of our nation's capitol – have put a spotlight on persistent issues fueling the crisis of repeat predation. Among them is how some predators have managed to become repeat offenders because records of their misdeeds are not properly retained or are destroyed by prior employers.

Under current California law, no cohesive, uniform statute exists that applies to all employers with respect to the maintenance and preservation of records relating to complaints and investigations of complaints of sexual harassment, sexual assault, discrimination, or retaliation.

For instance, under the Equal Pay Act (Labor Code Section 1197.5(d)), employers are required to "...maintain records of the wages and wage rates, job classifications and other terms and conditions of employment of the persons employed by the employer" for three years. But the Act does not

specify when the three year period starts or ends. Meanwhile, under the Fair Employment and Housing Act (Gov't Code § 12946) employers of five or more workers are required to keep documents for

two years. Meanwhile, the State Personnel Board is exempt from the two-year record retention requirement. If a verified complaint is filed for a worker or labor organization that is covered by the Fair Employment and Housing Act, records must be retained only until "the complaint is fully and finally disposed of and all appeals or related proceedings terminated," but FEHA does not identify what documents are required to be preserved with respect to a complaint.

SOLUTION

AB 1867 will require all businesses in California employing 50 or more to retain records of sexual harassment complaints for 10 years. In addition, if an employer violates that records retention requirement, the state Department of Fair Employment and Housing may seek an order requiring the employer to comply.

SUPPORTERS

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