

**SB 1300 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICES:
DISCRIMINATION AND HARASSMENT**

OPPOSE





UPDATED FLOOR ALERT

August 24, 2018

TO: Members, California State Assembly

FROM: California Chamber of Commerce
 Agricultural Council of California
 American Insurance Association
 Associated Builders and Contractors, Inc. – Northern California Chapter
 Associated General Contractors
 Association of California School Administrators
 Beverly Hills Chamber of Commerce
 Brea Chamber of Commerce
 California Ambulance Association
 California Apartment Association
 California Association for Health Services at Home
 California Association of Joint Powers Authorities
 California Association of Winegrape Growers
 California Attractions and Parks Association
 California Automotive Repair Coalition
 California Bankers Association
 California Business Properties Association
 California Employment Law Council
 California Farm Bureau Federation
 California Hotel and Lodging Association
 California Landscape Contractors Association
 California League of Food Processors
 California Manufacturers and Technology Association
 California New Car Dealers Association
 California Restaurant Association
 California Retailers Association
 California Special Districts Association
 California State Association of Counties
 California Trucking Association
 Cerritos Regional Chambers of Commerce
 Citizens Against Lawsuit Abuse
 Civil Justice Association of California
 Culver City Chamber of Commerce
 Family Business Association of California
 Fresno Chamber of Commerce
 Gateway Chamber Alliance
 Greater Bakersfield Chamber of Commerce
 Greater Coachella Valley Chamber of Commerce

Greater Conejo Valley Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Riverside Chambers of Commerce
League of California Cities
Long Beach Area Chamber of Commerce
Murrieta Chamber of Commerce
National Association of Mutual Insurance Companies
National Federation of Independent Business
Official Police Garages of Los Angeles
Orange County Business Council
Palm Desert Area Chamber of Commerce
Personal Insurance Federation of California
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Western Growers Association
Wildomar Chamber of Commerce
Wine Institute

**SUBJECT: SB 1300 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICES: DISCRIMINATION
AND HARASSMENT
OPPOSE– AS AMENDED AUGUST 20, 2018**

The California Chamber of Commerce and the organizations listed above respectfully **OPPOSE SB 1300 (Jackson)**. The California Chamber of Commerce is removing the Job Killer tag from **SB 1300** based on the August 20 amendments. The amendments removed the provisions from the bill that created a new, stand-alone private right of action for failure to prevent harassment or discrimination.

However, we remain opposed because the bill limits the use of nondisparagement agreements and general releases, restricts the ability to summarily adjudicate harassment claims and lowers the legal standard for actionable harassment claims. These provisions will significantly increase litigation against California employers and limit their ability to invest in their workforce.

SB 1300 Lowers the Legal Standard for Actionable Harassment Claims.

While intent language is rarely opposed in a bill, the intent language of **SB 1300** is very concerning. Through this language, **SB 1300** substantially lowers the standard for what constitutes severe or pervasive behavior with regard to actionable harassment claims. Under current law, in order for harassment or discrimination to be actionable, it must be sufficiently severe or pervasive “to alter the conditions of [the victim’s] employment and create an abusive working environment. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond [FEHA’s] purview.” *Aguilar v. Avis Rent a Car System, Inc.*, 21 Cal.4th 121, 129-130 (1999).

However, **SB 1300** lowers this legal standard to behavior that simply “makes it more difficult to do the job.”¹ Almost any behavior could potentially make it more difficult for someone to do their job. This radical lowering of the standard would result in a substantial increase in litigation over possibly trivial workplace matters that do not rise to the level that should involve our overburdened court system.

¹ The author of SB 1300 has chosen to highlight one of the concurring opinions from the U.S. Supreme Court’s 7-2 decision in *Harris v. Forklift Systems*, 510 U.S. 17 (1993). The majority opinion thoroughly discusses the severe or pervasive standard without lowering it to the degree of simply “mak[ing] it more difficult to do the job.” If this case is going to be utilized to provide guidance to California courts as intended by this bill, the majority opinion should be used because it will not create the same detrimental increase in potentially frivolous litigation.

SB 1300 Limits the Ability to Summarily Adjudicate Harassment Claims.

The intent language also states that “Harassment cases are rarely appropriate for disposition on summary judgment,” and cites an appellate court decision for this statement. However, whether or not a case should be summarily adjudicated should be left for a judge to decide who knows the specific facts of the case. Summary judgment is already a very high threshold and trying to sway the courts from utilizing summary judgment where appropriate will only clog the courts with cases that have no legal merit.

Prohibiting General Release Provisions Will Deter Employers from Conducting Self-Audits and Providing Severance Agreements.

SB 1300 prohibits the use of a general release in exchange for a raise or bonus **or** as a condition of employment or continued employment. This is a concern because without the ability to use general releases, employers will not provide severance agreements. Even where there is no indication of an underlying claim, an employee is often provided additional compensation in exchange for a general release when an employment relationship ends. This is beneficial to most employees, especially to someone who needs additional funds and time to find new employment.

SB 1300 also provides a disincentive to employers to take remedial action, such as wage and hour self-audits. Self-audits are extremely burdensome, time consuming and expensive. This is not a task that employers take lightly and, if an employer is not permitted to utilize a general release of claims in exchange for a “bonus” or “raise,” it may discourage employers from conducting self-audits.

For these reasons, we must **OPPOSE SB 1300**.

cc: Camille Wagner, Office of the Governor
The Honorable Hannah-Beth Jackson
Jenifer Richards, Assembly Committee on Labor and Employment
Joshua White, Assembly Republican Caucus
District Offices, Members, California State Assembly