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New Law Opens Door to Old Claims of Childhood Sexual Assault

Effective January 1, 2020, Assembly Bill (“AB”) 218 will make it easier for plaintiffs to file claims of childhood sexual assault by extending the time limits for bringing such claims and broadening the scope of exceptions to those time limits. The law will also permit plaintiffs to recover triple damages from defendants who covered up a sexual assault.

Existing law allows plaintiffs to file civil lawsuits alleging childhood sexual abuse against both the person who committed the sexual assault and any person or entity that intentionally or negligently caused the assault. Plaintiffs must file such lawsuits by age 26, or within three years of their discovery that the abuse caused psychological injuries, unless the plaintiff establishes that the defendant both (i) knew or had reason to know of an employee’s unlawful sexual conduct, and (ii) failed to implement reasonable safeguards.

AB 218 significantly extends these time limits. It was drafted in response to an influx of childhood assault allegations, including those in recent years against the Catholic Church and Boy Scouts of America. Former Governor Jerry Brown vetoed several iterations of AB 218, agreeing with those who argued the bill would lead to costly and inefficient lawsuits. Governor Gavin Newsom nevertheless signed the bill on October 13, 2019.

Under AB 218, plaintiffs will have until age 40, or five years from their discovery that the assault caused their injuries (whichever comes later), to file civil lawsuits alleging childhood sexual assault. The new law expands the scope of the existing exception to these time limits, such that plaintiffs may bring lawsuits regardless of their age if they establish that the defendant *either* (i) knew or had reason to know that an employee’s misconduct created a *risk* of childhood sexual assault, *or* (ii) failed to implement reasonable safeguards.

In addition, the law allows plaintiffs who establish that defendants made a concerted effort to hide evidence relating to childhood sexual assault to recover three times the actual damages amount. Finally, during a three-year window from January 1, 2020 through January 1, 2023, plaintiffs will be permitted to file claims of childhood sexual assault regardless of when the assault took place.

AB 218 will pose unique challenges for K-12 school districts. Districts should prepare for a rise in “old” childhood sexual assault claims, and they should consider consulting with their risk managers, insurance carriers, or joint powers agencies regarding steps to address the risks associated with these claims, including investigation of events from many years ago. AB 218 is also a reminder that all employees must be familiar with the proper protocol for responding to claims and reports of sexual assault and misconduct, including but not limited to mandated reporter requirements, and must understand how to identify the risk of childhood sexual assault.

If you have any questions about handling claims of childhood sexual assault, or would like more information about training to help identify the risk of childhood sexual assault, please contact one of our six offices.

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