

 NewsFlash®

Summary of New CA Legislation from the 2020 Legislation Session

October 2020



The 2019/2020 California Legislative Session is now complete. Along with SB 820, the education finance budget trailer bill summarized in our September 2020 NewsFlash, several other bills affecting the education sector were signed by the Governor, some of which will have immediate effect on local educational agency operations, from Board governance to employees to students. Together with those summaries, we offer our thoughts and suggestions with regard to the implications of these statutory changes and what to consider as they become operative in the coming months.

Governance

AB 992

In our current, socially-distant world where a significant amount of communication occurs online, AB 992 temporarily amends the Ralph M. Brown Act with regard to the use of social media by members of a legislative body. Importantly, it provides clarification regarding when and how public officials may communicate via social media regarding issues within the jurisdiction of the legislative body. It permits public officials to use social media to answer questions, provide information to the public, and solicit information from the public, but unequivocally prohibits the use of any internet-based social media platform by board members to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of their legislative body. In order to provide as much clarity as possible in the rapidly changing digital landscape, the bill specifically includes within the definition of “discuss” the use of comments, sharing of posts, and the use of “digital icons” (e.g. “likes,” emojis, GIFs). Significantly, the bill prohibits one public official from responding “directly to any communication on an internet-based social

media platform” regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. The bill is effective January 1, 2021 through December 31, 2025.

- With the November elections just ahead and the onboarding of newly elected members slated for early December, this is an opportune time to calendar board member Brown Act trainings as this bill, and the various other enactments which continue to temporarily modify certain other provisions of the Brown Act, particularly concerning teleconferencing and public participation, directly impact how board members can perform their statutory duties and communicate with their constituencies.

Employees / Human Resources

SB 1159

Effective immediately, illness or death resulting from COVID-19 that occurred on or after July 6, 2020, is a compensable injury under the state’s workers compensation system under specific circumstances through December 31, 2022. In order to take advantage of and receive available workers compensation benefits, however, employees are required to first exhaust all sick leave specifically available in response to COVID-19 (e.g. FFCRA Emergency Paid Sick Leave) and meet other conditions.

- Implementation of this legislation should be carefully coordinated with your agency’s workers compensation administrator and/or insurance carrier as the presumption of industrial illness remains rebuttable and compensability as an industrial illness is conditioned upon the existence of an “outbreak” as defined in the statute. In addition, the bill creates mandatory employer notification deadlines that must be satisfied.
- If absence is due to an industrial illness, local educational agencies should note that the 60 working days of industrial illness/injury leave as set forth in Education Code sections 44984, 45192, 87787 will be available to eligible employees and applied to all absences before such employees are required to draw on any other available regular or extended sick or other paid leave entitlements.
- Care should be taken to review any and all applicable collective bargaining agreements and memoranda of understanding to ensure that your agency has not provided even greater protections, assumptions of industrial transmission, paid leave entitlements, and/or required order of paid and unpaid leave entitlements to qualifying absences.

AB 685

Effective January 1, 2021 through December 31, 2022, AB 685 addresses the impact of COVID-19 on places of employment in California. It adds and amends Sections 6325, 6432, and 6409.6 to the Labor Code, creating further protections for employees by requiring better tracking of workplace exposure to COVID-19 and reporting of the same to relevant local and state agencies.

- Most notably, upon a local agency's receipt of notice of potential exposure to COVID-19, the agency must provide:
 - Written notice to all employees, and the employers of any subcontracted employees, who were on the premises at the same worksite as the individual within the infectious period that they may have been exposed to COVID-19, within one business day of receipt of such notice
 - Written notice to the exclusive representative, of all such employees
 - Information regarding any COVID-19-related benefits the employee(s) may have and options for exposed employees, including available leave, and anti-retaliation and antidiscrimination protections.
 - Notice of the disinfection and safety plan to be implemented
- This bill requires employers to maintain records of all required written notifications for a period of at least three (3) years.
- Again, care should be taken to ensure that the provisions of any labor agreements or memoranda of understanding are reviewed to ensure that your agency, in following such agreements, does not inadvertently fail to comply with these new/revised legislative enactments.

SB 1383

Although already applicable to all public agencies, SB 1383 expands the California Family Rights Act (CFRA) in a number of ways. Specifically, the bill adds familial relations to the scope of coverage, aligns the definition of “domestic partner” to that contained in Family Code section 297, revises various definitions, including “employer,” and expands leave entitlements to serious health conditions affecting additional familial relations and for qualified exigencies related to the active duty of an employee's spouse, domestic partner, child or parent in the armed forces. The bill also amends CFRA to require employers, who employ both parents of a child, to provide each parent with up to 12 weeks of bonding leave, as opposed to a combined 12 weeks to be shared between them and eliminates prior authorization for employers to refuse to reinstate certain employees under specified circumstances.

- These changes to Government Code section 12945.2 are effective January 1, 2021.
- Given that many collective bargaining agreements and related leave forms track statutory language concerning leave rights under the CFRA, employers should take this opportunity to review such provisions in their labor contracts and forms and appropriately address any necessary revisions/amendments through collective bargaining to ensure consistency and compliance in application by local agency staff.
- In addition, Board policies and administrative regulations should be reviewed and presented for Board approval to ensure that local agency policies and practices are up-to-date and legally compliant as they apply to all unrepresented employees and are often specifically referenced and/or referred to within local union contracts.



AB 2234

Applicable to merit system districts only, this bill allows a single member of the personnel commission to declare a conflict between the interests of the commission and the interests of the district or the district's governing board, if the commission approves the declaration of a conflict by a majority vote. A finding of a conflict allows the personnel commission to hire its own attorney, as opposed to using the district's legal counsel as otherwise required by law.

Students

AB 1350

The pandemic interrupted progress towards graduation for some students. Under this bill, school districts, county offices of education, and charter schools have the option to retroactively grant a high school diploma to those students who were in their senior year in 19-20, were on track to graduate prior to March 1, 2020, but were unable to complete state graduation requirements as a result of COVID-19.

- Although not mandatory, the legislature declared its intent to provide eligible students with the opportunity to graduate when COVID-19 effectively prevented them from satisfying remaining requirements.
- Application of this legislation at the local level is purely discretionary. However, student services administrators, working in collaboration with school site staff members, should carefully review and consider whether adoption of such a policy and conferral of diplomas is advisable and how such a process might be implemented, including submission of formal/written requests. Care should also be taken to review issues of equity and access for identified student populations, including socioeconomically disadvantaged students and students with disabilities, as well as the impact of conferring a diploma versus extension of available educational services and/or opportunities.

AB 908

As noted above, virtual learning, school and home life issues created and/or exacerbated by the pandemic impacted some students' ability to demonstrate satisfactory academic progress in the Spring of the 2019-2020 school year. In recognition of this, the legislature has permitted local educational agencies maintaining one or more schools containing grades 7 to 12, to revise their eligibility policies for extracurricular and cocurricular activities to extend any existing probationary participation periods beyond the current one semester maximum, up to the remainder of the 2020-2021 school year, due to the impact of COVID-19. In addition, the bill facilitates submission of required documentation for the purposes of obtaining student work permits during emergency-related extended school closures. If school has been closed for an extended period of time, districts cannot deny work permits due to grades, GPA, or attendance.

- The pandemic has had immeasurable impacts on student health and well-being. For many, extracurricular activities are the glue that connects them to and engages them in school. So that issues created or



exacerbated by school closures and the abrupt shift to virtual teaching and learning this past Spring do not further distance students from school, along with the delayed interscholastic sports schedule adopted by the California Interscholastic Federation, this bill would allow boards to give students the ability to still participate in sports and other extracurriculars on a probationary basis through the end of the 2020-2021 school year even if they do not meet current eligibility requirements.

- As urgency legislation, AB 908 is effective immediately. Local educational agencies should thus review and consider whether temporary revisions to policies governing probationary participation in extracurricular activities are desired and take action accordingly.

SB 115

An additional budget trailer bill, SB 115 provides K-12 and early education with adjusted and additional appropriations for specified purposes and programs, including Preschool Development Block Grant activities and an extension of family child care fee waivers through August 31, 2020.

AB 3308

For those districts offering affordable housing on school district land under the Teacher Housing Act of 2016, this bill ensures that districts can continue to restrict occupancy to teachers and other employees of the district, regardless of any laws to the contrary. However, the bill also amends the Act to allow school districts to permit other local public employees or members of the public to occupy such housing.

Notable Vetoed Legislation

AB 331, which would have added completion of a semester-long ethnic studies course to existing high school graduation requirements, was vetoed by the Governor.

AB 1835, which would have required local educational agencies to track estimated and actual supplemental and concentration grant funds was also vetoed by the Governor.

If you have any questions regarding this legislation and how it affects your agency, please call one of our six offices.

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