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WORKPLACE HARASSMENT IN A HOA ENVIRONMENT

THE IMPACT OF SB 1300 ON THE EMPLOYER LIABILITY OF HOAS AND HOA MANAGEMENT COMPANIES

INTRODUCTION

Workplace harassment and hostile work environments are nothing new for management professionals. Emotionally charged conversations can become uncomfortable and antagonistic for many managers. Unfortunately, such dialogue frequently crosses the line from demanding direction to demeaning personal attacks.

Previously, employer liability for employee claims based on nonemployee conduct was generally limited to sexual harassment. **Effective January 1, 2019**, newly adopted California law (Senate Bill 1300) lowers the burden by which California employees can bring successful harassment claims against California employers and expands the scope by which those employers may now be responsible to their employees for third party, nonemployee conduct, among other things.

The purpose of this article is to generally summarize SB 1300 and to discuss its application to common interest development ("CID") practice.

STATUTORY RIGHT TO WORK IN A HARASSMENT-FREE ENVIRONMENT

SB 1300 adds *Government Code* Section 12923 to California law. In general, its purpose is to emphasize that California employees possess a statutory right to work in a harassment-free environment. Subsection (a) of that Section 12923 recognizes the standard that "in a workplace harassment suit 'the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment. It suffices to prove that a reasonable person subjected to the discriminatory conduct would find ..that the harassment so altered working conditions as to make it more difficult to do the job'."

> *"…the plaintiff need not prove that…tangible productivity has declined…[only] that the harassment… made it more difficult to do the job"*

SB 1300, which amends *Government Code* Section 12940, states that employers may be liable to their employees if they are subject to *any* legally-recognized form of harassment by nonemployees under California's Fair Employment and Housing Act. Examples of such harassment includes unlawful discrimination based upon sex, race, age, and religion, among other characteristics.

LEGAL RELATIONSHIP BETWEEN ASSOCIATION AND MANAGEMENT

An application of SB 1300 to CIDs warrants a brief discussion of the legal relationship between community associations and the management professional. Unless the association directly hires the manager as an employee, the contractual arrangement between those entities is an agency-principal relationship whereby the manager (the agent) acts on behalf of the principal (the association).

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Under that circumstance, it is critical to understand the following employer-employee relationships for purposes of SB 1300:

- The manager and management's staff are employees of the management company.
- The manager is not an employee of the association or its board of directors.
- Board directors and homeowners are not employees of the management company.

Under SB 1300, management employers could potentially face hostile workplace claims if they neglect to take corrective action upon learning that their managers could be exposed to harassing conduct by board members, homeowners, or any other nonemployee.

WHAT CAN BE DONE TO REDUCE THE POSSIBILITY OF MANAGER HARASSMENT BY NONEMPLOYEES?

The answer is not easy, particularly when the manager, who is often the only individual aware of the harassment, may be reluctant to step forward for fear of retribution. At a minimum, management should develop written procedures whereby managers are encouraged to share uncomfortable situations with their management team so that they can later be investigated and resolved. Including nonemployee board members in the process, if possible, can be mutually beneficial.

SB 1300 seems to contemplate the idea that bystanders (e.g. board members) can help identify troubling behaviors before they become harassment claims. Specifically, newly-added *Government Code* Section 12950.2 states that an employer may also "provide intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behavior". One avenue to consider for the management employer in that regard is to educate by-standing board members about the hallmarks of manager harassment during board orientation training sessions.

All workplace harassment claims involving nonemployees should be taken seriously by management and associations, particularly after passage of SB 1300. They do not need to become costly and divisive if proactively handled through prudent risk management practices. Management succeeds when it can identify and respond to hostile situations involving their employees. Associations prosper when their valuable management professionals can work in a hassle-free environment without fear or intimidation.

For over 30 years, Tinnelly Law Group has been devoted exclusively to providing expert legal representation to California community associations. Our firm's success is evidenced by our continual growth, our reputation for quality and responsive service, and our recognition by the community association industry as a premiere California HOA law firm.

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