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California State Senate Proposes "Intersectional" Approach to Overlapping Discrimination Claims

California Employment Law Update on **March 12, 2024**

On February 14, 2024, California State Senator Lola Smallwood-Cuevas introduced Senate Bill 1137 ("SB 1137"), a bill that would make California the first state to specifically recognize the concept of "intersectionality." Smallwood-Cuevas has stated that SB 1137 "makes it clear that discrimination not only happens based on one protected class, such as race, gender or age, but any combination thereof."

Specifically, SB 1137 would amend the Unruh Civil Rights Act and the Fair Employment and Housing Act to make clear that these laws protect not only certain characteristics but also the "intersection or any combination of those characteristics."

The concept of "intersectionality," first popularized in 1989 by legal scholar Kimberlé Crenshaw, refers to discrimination based on multiple protected characteristics when both protected characteristics are present in a single identity. For example, a plaintiff may argue that she experienced unique discrimination based on both her race *and* her sex.

The concept of intersectionality also has appeared recently at the U.S. Supreme Court. In his majority opinion in *Bostock v. Clayton County*, 590 U.S. 644, 661 (2020), Justice Neil Gorsuch did not use the term "intersectionality" but did discuss how an employer might violate Title VII if it fired a female employee who was a "Yankees fan" yet "would have tolerated the same allegiance in a male employee." Even if "two causal factors may be in play . . . [i]f an employer would not have discharged an employee but for that individual's sex, [Title VII's] causation standard is met, and liability may attach." *Id.*

SB 1137 has been referred to the California State Senate Judiciary Committee, where it will be analyzed in advance of a hearing date where committee members can ask questions about the new bill. Follow the California Employment Law Update to monitor the ever-changing labor and employment law landscape, including whether SB 1137 makes it to law.

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