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NAVIGATING US AND GLOBAL EMPLOYMENT LAW

California Becomes First State To Mandate Female Board Of Directors



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California just became the first state to require companies to put female directors on their boards.

“Given all the special privileges that corporations have enjoyed for so long, it’s high time corporate boards include the people who constitute more than half the ‘persons’ in America,” Governor Jerry Brown wrote in signing **Senate Bill 826** into law on September 30.

The legislation appears sparked by recent debates around sexual harassment, workplace culture and gender equality, and it comes less than one year after Brown signed the **state's salary history ban**.

The new law requires publicly traded corporations headquartered in California to include at least one woman on their boards of directors by the end of 2019 as part of an effort to close the workplace gender gap.

Some have suggested that the law could run into legal challenges, which even Gov. Brown seemed to acknowledge **in his letter accompanying his signing**.

However, should the law survive any possible constitutional challenges, here's what it does:

- All publicly traded companies (whether incorporated in California or not, whether domestic or foreign) whose principal executive offices (according to the corporation's SEC 10-K) are in California must have a minimum of one female on its board of directors by **December 31, 2019**;
- By **December 31, 2021**, the required minimum increases to 2 female directors if the corporation has 5 directors, or to 3 female directors if the corporation has 6 or more directors (if the board has 4 or fewer directors, the corporation shall have a minimum of one female director);
- The Secretary of State will publish reports on its web site documenting the compliance of covered corporations.

Penalties

- For failure to timely file board member information with the Secretary of State, the Secretary of State may impose a fine of \$100,000;
- For a first violation, a corporation may be fined \$100,000;
- For a second or subsequent violation, the penalty is \$300,000.

Each director seat required to be held by a female, which is not held by a female during at least a portion of a calendar year, counts as a violation. A female director having held a seat

for at least a portion of the year is not a violation.

Giving Women a Seat at the Table: The Europeans Are Already There

California's new law is in line with the broader, worldwide trend of governments, institutions and shareholders paying close attention to the gender gap in pay, participation and leadership. The international response to the gender pay gap takes different forms in different jurisdictions. **As we've written previously**, some countries (e.g. Germany and the UK) have focused efforts on transparency and the gender pay gap, requiring employers to report data about the difference in average pay between women and men. Others have been proactive in requiring companies to increase gender diversity on boards long before California set this new law in motion.

Though the US has no federal requirement for female representation on boards, and no other US state has legislation similar to California's, several European countries endorsed board quotas years ago. In 2007, Norway was the first country to pass a law requiring 40 percent of corporate board seats be held by women, and Germany set a 30 percent requirement in 2015. Spain, France and Italy have also set quotas for public firms.

We expect that California's new mandate will accelerate the diversification of boardrooms in this state and beyond. For assistance in developing your company's compliance strategy, please reach out to your Baker McKenzie employment lawyer.

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