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New California Laws 2021



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AB 979: California requires more diversity on boards

By Dario Frommer

Echoes of this summer's protests calling out institutional racism and discrimination are now reverberating in C-suites across California thanks to a new law requiring more diversity on the boards of publicly held domestic and foreign corporations that are headquartered in the Golden State.

Assembly Bill 979 requires that, by the end of 2021, every publicly held domestic or foreign corporation with principal executive offices located in California must have a minimum of one director on its board from an "underrepresented" community, defined as: "Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or a gay, lesbian bisexual or transgender."

By the close of calendar year 2022, corporations with five to eight directors will be required

to have a minimum of two directors from underrepresented communities, while corporations with more than nine directors will be required to have a minimum of three directors from underrepresented communities. Corporations are not prohibited from increasing the size of boards to comply with the new law.

The new law also requires covered corporations to make periodic reports to the secretary of state on their compliance, or face hefty penalties (including a first time penalty of \$100,000 and a \$300,000 penalty for subsequent violations). The secretary of state is required to publish compliance reports on its website.

AB 979 author Assemblyman Chris Holden (D-Pasadena) stated that: "Corporations have money, power and influence," continuing to say, "[i]f we are going to address racial injustice and inequity in our society, it's imperative that corporate

boards reflect the diversity of our state." According to a 2019 Deloitte study of Fortune 500 company boards, only 8.6% of directors were Black or African-American, 3.8% were Latino and 3.7% were Asian. A survey by the Latino Corporate Directors Association of 662 publicly traded companies headquartered in California found that 90% of CEO's were white, that only 13% had at least one Hispanic or Latino board member; and only 16% had at least one Black board member.

AB 979 has already drawn a legal challenge from Judicial Watch, a conservative group that has recently trafficked in conspiracy theories about Hunter Biden. The taxpayer suit filed in state court alleges that the new law violates California Constitution art. 1 Sections 7 and 31. *Robin Crest, et al. v. Padilla*, 20ST-CV-37513 (L.A. Super. Ct., filed Aug. 6, 2019). A similar Judicial Watch sponsored action against a 2018 California law

mandating gender diversity on boards was dismissed. *Meland v. Padilla*, 19-cv-2288-JAM-AC (E.D. Cal., April 20, 2020).

It is unclear how California corporations will react to the new diversity requirements. Existing law requires corporations with principal executive offices in California to have a minimum number of female board members and many corporations have voluntarily complied with that requirement. However, business groups opposed AB 979 and recent surveys of corporate director attitudes found a marked decrease in support for ethnic and gender diversity initiatives and strong opposition to state mandates on board composition. Lawmakers are clearly betting that AB 979 and renewed awareness about discrimination and racism will change those attitudes.

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