New Penalties for Failure to Provide Unions with Employee Contact Information

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On September 27, 2021, Governor Newsom signed Senate Bill (SB) 270, which becomes effective July 1, 2022, and amends the Public Employee Communications Chapter (PECC), codified in Government Code section 3555, et seq. Specifically, SB 270 authorizes public employee unions to file unfair practice charges with the Public Employment Relations Board (PERB) against public employers that fail to comply with existing law requiring disclosure of employee information to the unions.

The PECC requires public employers to provide a union with the "name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address" of any new bargaining unit employee within 30 days of hire or by the first pay period of the month following hire, and of all bargaining unit employees every 120 days. While SB 270 does not change existing requirements for providing the union this information, it sets forth enforcement parameters for filing unfair practice charges and monetary penalties for failure to provide complete or accurate lists as required by Government Code section 3558 (Section 3558).

New Notice of Violation Process

Prior to filing an unfair practice charge for a violation of Section 3558, the union must provide the employer with a written notice of the specific violation. If the written notice concerns an inaccurate or incomplete list of employees' contact information, the employer then has 20 days to cure the alleged violation by providing the union with an accurate and complete list. If the employer does not cure the violation within 20 days, the union may file an unfair practice charge with PERB for that violation.

Note that the opportunity to cure an alleged violation is limited to failures to provide an accurate or complete list of employees. Failures to provide the contact information of a newly hired person, or failures to provide a list of employees generally, are not curable – i.e., corrective action will not be a defense to PERB charges. In addition, the ability to "cure" a noticed violation to avoid a penalty can be utilized by an employer only three times in any 12-month period.

Monetary Penalties

An employer who fails to cure a noticed violation within 20 days will be subject to civil penalties up to $10,000. The exact amount of the penalty imposed will be determined by PERB and will take into consideration the employer's annual budget, severity of the violation, and prior history of violations. The civil penalties are paid to the State General Fund. In addition to civil penalties, PERB will also award a prevailing party attorneys' fees and costs that accrue from the inception of proceedings before the Board's Division of Administrative Law until final disposition of the unfair practice charge. As such, the monetary penalties set forth by SB 270 are substantial.

Takeaways

To avoid penalties pursuant to SB 270, it is imperative that public employers ensure they are providing accurate and complete employee contact information lists to the unions. It is also critical that public employers cure any violations within 20 days of receiving notice of an alleged violation to avoid monetary penalties.

If you have any questions regarding the impact of SB 270 on public employers, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcasts, follow us on Facebook, Twitter and LinkedIn or download our mobile app.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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