

New California Law Becomes First in Nation To Require Diversity on Boards of Public Companies

Skadden

10 / 02 / 20

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Jeffrey H. Cohen

Partner / Los Angeles
213.687.5288
jeffrey.cohen@skadden.com

Kristin S. Ellsworth

Associate / Los Angeles
213.687.5473
kristin.ellsworth@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

300 S. Grand Ave., Suite 3400
Los Angeles, CA 90071
213.687.5000

California has become the first state in the nation to require that publicly held corporations headquartered within its borders include one or more racially or otherwise diverse directors. Gov. Gavin Newsom signed Assembly Bill 979 into law on September 30, 2020; it applies to any corporation, whether incorporated within or outside California, with shares listed on a major U.S. stock exchange and with principal executive offices located in California, as disclosed on Form 10-K filed with the Securities and Exchange Commission.

Any corporation subject to the law must have at least one director from an underrepresented community on its board no later than December 31, 2021. By the end of 2022, representation will be required to increase according to a sliding scale based on the size of the board.

Corporations with:

- four or fewer directors must have a minimum of one director from an underrepresented community;
- more than four but fewer than nine directors must have a minimum of two diverse directors; and
- nine or more directors must have at least three diverse directors.

A corporation may increase the size of its board in order to comply with the new requirements. A director from an underrepresented community means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender. People identified as African American or Black, Hispanic or Latino, and Asian or Pacific Islander filled only 8.6%, 3.8%, and 3.7%, respectively, of *Fortune* 500 company board seats in 2018, according to data cited in the bill.

The California Secretary of State may adopt implementing regulations and impose fines on noncomplying corporations. Fines will range from \$100,000 for a failure to timely file board member information or for a first violation of the new law, to \$300,000 for each subsequent violation. In addition, no later than March 1, 2022, and annually thereafter, the Secretary of State is required to publish a report on its website documenting, for the preceding year, the number of corporations that were in compliance with the new law, the number of publicly held corporations that moved their U.S. headquarters to California from another state or out of California into another state, and the number of publicly held corporations that were subject to the new law but whose shares are no longer publicly traded.

The new law builds on Senate Bill 826, which was signed into law on September 30, 2018, by then-Gov. Jerry Brown and mandates that publicly held corporations with principal executive offices in California meet certain minimum requirements for female director representation on their boards. Senate Bill 826 is currently the subject of a number of lawsuits challenging it under both the California and U.S. constitutions. While Assembly Bill 979 may face similar legal challenges, its passage into law reflects growing support across the U.S. for enhancing corporate boardroom diversity as well as the broader social justice movement.¹

We will continue to monitor additional developments and will provide updates as necessary.

Read the [full text of AB-979](#).

¹ For more on the topic of board diversity, see our client alerts "[California To Require Inclusion of Female Directors at Public Corporations Based in the State](#)" (Oct. 1, 2018) and "[SEC Staff Issues Interpretive Guidance on Board Diversity Disclosures](#)" (Feb. 12, 2019).