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AB-810 Postsecondary education: hiring practices: academic, athletic, and administrative positions.
(2023-2024)

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Date Published: 09/30/2024 02:00 PM

Assembly Bill No. 810

CHAPTER 673

An act to amend Sections 87604.5, 89521, and 92612.1 of, and to add Sections 66281.9, 67459, and 92612.2 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 810, Friedman. Postsecondary education: hiring practices: academic, athletic, and administrative positions.

Existing law establishes the California Community Colleges, the California State University, the University of California, independent institutions of higher education, and private postsecondary educational institutions as the segments of postsecondary education in the state.

Existing law, known as the Student Athlete Bill of Rights, requires intercollegiate athletic programs at 4-year private universities or campuses of the University of California or the California State University that do not compete in Division III of the National Collegiate Athletic Association to comply with prescribed requirements relating to student athlete rights.

This bill would require a postsecondary educational institution, during the process to authorize a volunteer in the athletic department of the postsecondary educational institution, to contact the current or former employer of the individual applying for volunteer authorization to determine if the applicant violated any employment policies. To the extent these provisions would add additional duties on community college districts, the bill would impose a state-mandated local program.

Existing law requests the Regents of the University of California, and requires the Trustees of the California State University and the governing boards of community college districts, to require, as part of the hiring process for an appointment to an academic or administrative position, that the applicant disclose any final administrative decision, as defined, or final judicial decision, as defined, issued within the last 7 years, as provided, determining that the applicant committed sexual harassment, as defined. Existing law requests the University of California to not ask, and prohibits the California State University or a community college district from asking, an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described above until it has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

This bill would additionally request the governing boards or bodies of independent institutions of higher education that receive state financial assistance to adhere to the above-described provisions and would extend those provisions to athletic position appointments.

The bill would request the governing boards or bodies of independent institutions of higher education that receive state financial assistance, and would require the Trustees of the California State University and the governing boards of community college

districts, as part of the hiring process for an appointment to an academic, athletic, or administrative position, to have an applicant, as defined, sign a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers concerning any substantiated allegations of misconduct, and would require the signed release form to be used by the postsecondary educational institution to engage in a reasonable attempt to obtain that information. To the extent that these provisions would add additional duties on community college districts, the bill would impose a state-mandated local program.

The bill would request the Regents of the University of California to (1) as part of the above-described hiring process for an academic or administrative position, require that the applicant disclose specified information determining that the applicant committed misconduct, as defined, including sexual harassment, (2) extend those applicant provisions to an applicant applying for an athletic position, (3) require applicants for specified positions to sign, as part of the hiring process, a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers concerning any substantiated allegations of misconduct, and (4) require its campuses to use the signed release form to engage in a reasonable attempt to obtain that information.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) It is the intent of the Legislature that postsecondary educational institutions do both of the following:

(1) Move past legal compliance with federal Title IX and state laws that prohibit discrimination by providing a clear message to applicants regarding the expectations around behavior that contribute to an equitable and inclusive campus culture.

(2) Conduct background checks to be completed by the Department of Justice and the Federal Bureau of Investigation during the final stages of the application process for any employee or volunteer within the athletic department.

(b) It is the further intent of the Legislature to enact policies that will prevent a common issue across institutions of higher education known as "passing the harasser."

SEC. 2. Section 66281.9 is added to the Education Code, immediately following Section 66281.8, to read:

66281.9. (a) The governing board or body of an independent institution of higher education that receives state financial assistance is requested, as part of the hiring process for an appointment to an academic, athletic, or administrative position with that independent institution of higher education, to do all of the following:

(1) (A) Require an applicant to disclose any final administrative decision or final judicial decision issued within the last seven years from the date of submission of the application determining that the applicant committed sexual harassment.

(B) Permit applicants to disclose if they have filed an appeal with the previous employer or, if applicable, with the United States Department of Education.

(2) Require an applicant to sign a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers to the independent institution of higher education concerning any substantiated allegations of misconduct in order to permit the institution to evaluate the released information with respect to the criteria for a potential job placement.

(3) If an applicant reaches the final stages of the application process for the intended academic, athletic, or administrative position, require the independent institution of higher education to use the release form signed pursuant to paragraph (2) to engage in a reasonable attempt to obtain information from the previous employer concerning any substantiated allegations of misconduct.

(b) Independent institutions of higher education that receive state financial assistance are requested to not ask an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in paragraph (1) of subdivision (a), including any inquiry about an applicable decision on any employment application, until the institution has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

(c) For purposes of this section, the following definitions shall apply:

- (1) "Applicant" means a person who submits an employment application for an academic, athletic, or administrative position, but does not include a person who is a current employee and is hired or rehired for a different position with the same employer.
- (2) "Final administrative decision" means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following the final investigative report and the subsequent hearing.
- (3) "Final judicial decision" means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.
- (4) "Misconduct" means any violation of the policies governing employee conduct at the applicant's previous place of employment, including, but not limited to, violations of policies prohibiting sexual harassment, sexual assault, or other forms of harassment or discrimination, as defined by the employer.
- (5) "Sexual harassment" has the same meaning as described in subdivision (a) of Section 66262.5 or, if applicable, as defined in Section 106.30 of Title 34 of the Code of Federal Regulations.
- (6) "Substantiated allegation" means an allegation that has been sustained based upon a burden of proof of at least a preponderance of the evidence.

SEC. 3. Section 67459 is added to the Education Code, to read:

67459. During the process to authorize a volunteer in an athletic department of a postsecondary educational institution, as defined in subdivision (g) of Section 67456, the postsecondary educational institution shall contact the current or former employer of the individual applying for volunteer authorization to determine if the applicant violated any employment policies.

SEC. 4. Section 87604.5 of the Education Code, as added by Section 1 of Chapter 415 of the Statutes of 2023, is amended to read:

87604.5. (a) The governing board of a community college district shall, as part of the hiring process for an appointment to an academic, athletic, or administrative position with that district, do all of the following:

(1) (A) Require an applicant to disclose any final administrative decision or final judicial decision issued within the last seven years from the date of submission of the application determining that the applicant committed sexual harassment.

(B) Permit applicants to disclose if they have filed an appeal with the previous employer or, if applicable, with the United States Department of Education.

(2) Require an applicant to sign a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers to the community college district concerning any substantiated allegations of misconduct in order to permit the community college district to evaluate the released information with respect to the criteria for a potential job placement.

(3) If an applicant reaches the final stages of the application process for the intended academic, athletic, or administrative position, require the community college district to use the release form signed pursuant to paragraph (2) to engage in a reasonable attempt to obtain information from the previous employer concerning any substantiated allegations of misconduct.

(b) A community college district shall not ask an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in paragraph (1) of subdivision (a), including any inquiry about an applicable decision on any employment application, until the community college district has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

(c) For purposes of this section, the following definitions shall apply:

- (1) "Applicant" means a person who submits an employment application for an academic, athletic, or administrative position, but does not include a person who is a current employee and is hired or rehired for a different position with the same employer.
- (2) "Final administrative decision" means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following the final investigative report and the subsequent hearing.
- (3) "Final judicial decision" means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

(4) "Misconduct" means any violation of the policies governing employee conduct at the applicant's previous place of employment, including, but not limited to, violations of policies prohibiting sexual harassment, sexual assault, or other forms of harassment or discrimination, as defined by the employer.

(5) "Sexual harassment" has the same meaning as described in subdivision (a) of Section 66262.5 or, if applicable, as defined in Section 106.30 of Title 34 of the Code of Federal Regulations.

(6) "Substantiated allegation" means an allegation that has been sustained based upon a burden of proof of at least a preponderance of the evidence.

SEC. 5. Section 89521 of the Education Code, as added by Section 2 of Chapter 415 of the Statutes of 2023, is amended to read:

89521. (a) The trustees shall, as part of the hiring process for an appointment to an academic, athletic, or administrative position with the California State University, do all of the following:

(1) (A) Require an applicant to disclose any final administrative decision or final judicial decision issued within the last seven years from the date of submission of the application determining that the applicant committed sexual harassment.

(B) Permit applicants to disclose if they have filed an appeal with the previous employer or, if applicable, with the United States Department of Education.

(2) Require an applicant to sign a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers to the campus of the California State University concerning any substantiated allegations of misconduct in order to permit the campus to evaluate the released information with respect to the criteria for a potential job placement.

(3) If an applicant reaches the final stages of the application process for the intended academic, athletic, or administrative position, require campuses of the California State University to use the release form signed pursuant to paragraph (2) to engage in a reasonable attempt to obtain information from the previous employer concerning any substantiated allegations of misconduct.

(b) The California State University shall not ask an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in subdivision (a), including any inquiry about an applicable decision on any employment application, until the California State University has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

(c) For purposes of this section, the following definitions shall apply:

(1) "Applicant" means a person who submits an employment application for an academic, athletic, or administrative position, but does not include a person who is a current employee and is hired or rehired for a different position with the same campus.

(2) "Final administrative decision" means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following the final investigative report and the subsequent hearing.

(3) "Final judicial decision" means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

(4) "Misconduct" means any violation of the policies governing employee conduct at the applicant's previous place of employment, including, but not limited to, violations of policies prohibiting sexual harassment, sexual assault, or other forms of harassment or discrimination, as defined by the employer.

(5) "Sexual harassment" has the same meaning as described in subdivision (a) of Section 66262.5 or, if applicable, as defined in Section 106.30 of Title 34 of the Code of Federal Regulations.

(6) "Substantiated allegation" means an allegation that has been sustained based upon a burden of proof of at least a preponderance of the evidence.

SEC. 6. Section 92612.1 of the Education Code, as added by Section 3 of Chapter 415 of the Statutes of 2023, is amended to read:

92612.1. (a) The regents are requested, as part of the hiring process for an applicant applying for an academic, athletic, or administrative position with the University of California, to do both of the following:

(1) Require an applicant to disclose any final administrative decision or final judicial decision issued within the last seven years from the date of submission of the application determining that the applicant committed misconduct, including sexual harassment.

(2) Permit applicants to disclose if they have filed an appeal with the previous employer, administrative agency, or court, if applicable.

(b) The University of California is requested to not ask an applicant to disclose, orally or in writing, information concerning any final administrative decision or final judicial decision described in paragraph (1) of subdivision (a), including any inquiry about an applicable decision on any employment application, until the University of California has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

(c) For purposes of this section, the following definitions shall apply:

(1) "Final administrative decision" means the written determination of whether or not sexual harassment occurred as determined by the decisionmaker following the final investigative report and a hearing, if a hearing is either required pursuant to Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) or federal regulations implementing those provisions, or is required by the public postsecondary educational institution's written policy on sex discrimination, including sexual harassment, and related grievance processes. If a party has filed a timely grievance or appeal, "final administrative decision" means after the grievance or appeal decision has been issued.

(2) "Final judicial decision" means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

(3) "Misconduct" means any violation of the policies governing employee conduct at the applicant's previous place of employment, including, but not limited to, violations of policies prohibiting sexual harassment, sexual assault, or other forms of harassment or discrimination, as defined by the employer.

(4) "Sexual harassment" has the same meaning as described in subdivision (a) of Section 66262.5 or, if applicable, as defined by the federal regulations implementing Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.).

SEC. 7. Section 92612.2 is added to the Education Code, immediately following Section 92612.1, to read:

92612.2. (a) The regents are requested, as part of the hiring process for an applicant applying for a position with the University of California, to do both of the following:

(1) Require an applicant to sign a release form that authorizes, in the event the applicant reaches the final stages of the application process, the release of information by the applicant's previous employers to the campus of the University of California concerning any substantiated allegations of misconduct in order to permit the campus to evaluate the released information with respect to the criteria for a potential job placement.

(2) If an applicant reaches the final stages of the application process for the intended position, require campuses of the University of California to use the release form signed pursuant to paragraph (1) to engage in a reasonable attempt to obtain information from the previous employer concerning any substantiated allegations of misconduct.

(b) It is the intent of the Legislature that the regents apply all provisions of this section to all persons who apply for an academic or athletic position with the University of California.

(c) For purposes of this section, the following definitions shall apply:

(1) "Applicant" means a person who submits an employment application for an intended tenure-track faculty position, tenured faculty position, athletic head coach position, athletic assistant coach position, athletic trainer position, or supervising athletic trainer position, but does not include a person who is a current employee and is hired or rehired for a different position with the same campus.

(2) "Misconduct" means any violation of the policies governing employee conduct at the applicant's previous place of employment, including, but not limited to, violations of policies prohibiting sexual harassment, sexual assault, or other forms of harassment or discrimination, as defined by the employer.

(3) "Substantiated allegation" means an allegation that has been sustained based upon a burden of proof of at least a preponderance of the evidence.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

