

Meridian Client Update

Los Angeles County Court Strikes Down California Board Diversity Law

On April 1, 2022, the Los Angeles County superior court declared California’s board diversity mandate as unconstitutional.

In 2018 and 2020, California enacted laws mandating boards of companies headquartered in California meet gender diversity mandates (passed in 2018) and racial and sexual orientation diversity mandates (passed in 2020). Lawsuits have been filed against both board diversity laws seeking they be declared unconstitutional. A Los Angeles County superior court declared the latter diversity mandate to be unconstitutional under the California Constitution.

Background

On September 30, 2020, California Governor Gavin Newsom signed into law legislation that mandates boards of public companies headquartered in California to meet the following board diversity requirements:

- A subject corporation’s board of directors would be required to include at least one member from an underrepresented community by December 31, 2021.
- By December 31, 2022, a subject corporation’s board of directors would be required to include a minimum number of members from an underrepresented community based on the total number of board members, as shown in the following chart:

Total Number of Board Members	Minimum Number of Directors From an Underrepresented Community
9 or more	3 directors
More than 4 but fewer than 9	2 directors
4 or fewer	1 director

Directors from an “underrepresented community” cover individuals who self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identify as gay, lesbian, bisexual or transgender.

The State of California may impose fines on subject corporations that fail to meet the mandated diversity requirements.

Judicial Watch Files Suit to Prevent Enforcement of Board Diversity Mandate

In 2020, Judicial Watch filed a complaint in a Los Angeles County superior court seeking to prevent California from using taxpayer funds to implement and enforce the diversity mandate. Judicial Watch contended that the diversity mandate is illegal under the California Constitution. Judicial Watch sought injunctive relief permanently prohibiting the State of California from using taxpayer funds and taxpayer-financed resources to enforce the diversity mandate.

On December 9, 2021, Judicial Watch filed a summary judgment motion requesting the Los Angeles County superior court to rule in its favor (without trial), that the diversity mandate be declared unconstitutional under the California Constitution and that the State of California be permanently enjoined from expending taxpayer funds or using taxpayer-financed resources to enforce the mandate.

Los Angeles County Superior Court Ruling

On April 1, 2022, the Los Angeles County superior court ruled in favor of Judicial Watch, thereby ruling that the diversity mandate is unconstitutional under the California Constitution and that no taxpayer funds or resources may be used to enforce the mandate.

Meridian comment. At this time, the State of California has not indicated whether it will appeal the superior court's decision. It is certainly possible that the California appellate court or Supreme Court could reverse the lower court's decision. If the superior court's decision is not appealed (or is sustained upon appeal), this could call into question the constitutionality of the California board gender diversity mandate that became law in 2018.

The superior court decision creates no binding precedent in other states with regard to similar board diversity quotas. Nonetheless, the decision could provide a catalyst for similar suits in other states with mandated board diversity quotas. Further, the decision could cause states to pause legislative efforts in this area pending appeal, if any, of the California diversity mandate.

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The ***Client Update*** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com.

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