



## California Governor Signs Bill Increasing Board Representation from Underrepresented Communities

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On August 30, 2020, the California State Legislature took another unprecedented step in spearheading the promotion of greater diversity on public company boards by passing a new bill ([Assembly Bill \(AB\) 979](#)) requiring each publicly held corporation whose principal executive offices are located in California—regardless of state of incorporation—to have a minimum number of directors from “underrepresented communities” on its board of directors. On September 30, 2020, California Governor Newsom signed AB 979 into law. AB 979 will operate alongside with, and establish nearly identical requirements as, California’s current legislation requiring public companies headquartered in the state to maintain a minimum female representation on their corporate boards ([Senate Bill \(SB\) 826](#)). As signed into law, AB 979 will follow SB 826 as a new Section 301.4 of the California *Corporations Code*.

“Director from an underrepresented community” is defined within AB 979 to include any 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. AB 979 requires every “publicly held” corporation (corporations with shares listed on a “major U.S. stock exchange”) that has its principal executive offices (according to its Form 10-K) located in California to have a minimum of one director from an underrepresented community on its board no later than December 31, 2021. By December 31, 2022, this required minimum would increase to (a) two directors from underrepresented communities for corporations with more than four but fewer than nine directors and (b) three directors from underrepresented communities for corporations with nine or more directors.

As rationale, the California State Legislature cites a great disparity between the representation of Black and other minority communities in the high-tech sector, an industry heavily concentrated within the California state lines, when compared to the representation of White and Asian communities in that same sector. Below are a few of the notable statistics, which are intended to provide rationale for AB 979:

- Only 31% of African Americans and 22% of Latinos worked in management, professional, and related occupations, while 54% of Asians and 41% of Whites worked in the same occupations;
- In 2019, 90% of CEOs were White, according to the Bureau of Labor Statistics;

- “[H]ighly ranked universities graduate African American and Latino computer science and computer engineering majors at twice the rate that leading technology companies hire them”; and
- Relative to private industry overall, the high-tech sector employs more White and Asian American employees and fewer African American and Latino employees, particularly in the executive category, with less than 1% of Silicon Valley executives and managers being African American.

Additionally, starting no later than March 1, 2022, AB 979 will require, among other things, that the California Secretary of State publish various reports on its website documenting the number of corporations in compliance with the new mandate. The law also authorizes the Secretary of State to impose a fine of \$100,000 for failure to timely file board member information, as well as a fine for noncompliance in an amount of \$100,000 for a first violation and \$300,000 for a second or subsequent violation.

The text of AB 979 does not explicitly restrict covered boards from satisfying both AB 979 and SB 926 requirements by adding a female or individual from an underrepresented community with the same director, and permits boards subjected to the mandate to increase the number of directors on their boards to comply with the requirements.

The potential legal challenges to AB 979 are expected to mimic those currently being faced by the California bill requiring female board representation. Even so, corporations falling within the scope of this new mandate should begin planning for the December 31, 2021 compliance deadline.

For additional information regarding any of the above items, or with respect to any questions relating to a specific company or situation, please contact your Winston & Strawn relationship attorney.

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