

## SB 131 UPDATE: POTENTIAL CHANGES TO THE STATUTE OF LIMITATIONS FOR SEXUAL ABUSE CASES

Friday, May 31<sup>st</sup> was the deadline for bills to pass their “house of origin” in the California legislature for 2013. Keenan has been closely watching SB 131, one of the bills that was passed by the Senate just prior to the deadline. As originally drafted, SB 131 would have greatly extended the existing statute of limitations in civil actions for the recovery of damages suffered as a result of childhood sexual abuse. However, the bill was amended on May 28<sup>th</sup> to leave intact the current limitations periods. As now written, the bill will have a limited effect on California public agencies if enacted.

In general, SB 131 would change two aspects of the limitation of time for actions for childhood sexual abuse. It would revive a limited number of time-barred claims and it will allow discovery prior to the dismissal of some actions.

### **LIMITED REVIVAL OF TIME-BARRED CLAIMS**

SB 131 would revive for one year causes of action against third parties that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff’s 26<sup>th</sup> birthday was before January 1, 2003, and only if the plaintiff discovered the cause of his or her injuries on or after January 1, 2004.

It is important to note that only the discovery provision of SB 131 will affect California public agencies. That is because, as currently written, the bill does not amend the California Tort Claims Act. While the Tort Claims Act does not apply to child sex abuse claims arising out of conduct occurring on or after January 1, 2009, it still applies to bar a claim for conduct occurring before 2009, unless a written claim was properly filed within a six-month time limit. Therefore, the revival of claims for plaintiffs whose 26<sup>th</sup> birthday was before January 1, 2003 has no effect on any claims against any public agencies.

### **ALLOWS DISCOVERY PRIOR TO MOTION TO DISMISS**

Under current law, a plaintiff has until his or her 26<sup>th</sup> birthday to bring a claim against a third party (typically an employer) for damages resulting from childhood sexual abuse. If, however, the plaintiff can show that the defendant knew or had reason to know, or was otherwise on notice of any unlawful sexual conduct by the employee, volunteer, representative or agent, and failed to take reasonable steps, and to implement reasonable safeguards to prevent further abuse, the limitations period is extended. In such cases, a plaintiff may bring an action within three years of the date that he or she discovers, or reasonably should have discovered, that psychological injury or illness occurring in adulthood was caused by the childhood sexual abuse.

SB 131 would also allow a plaintiff to conduct discovery before the court rules on a motion challenging the sufficiency of the plaintiff’s demonstration of circumstances warranting the extended limitation period. This discovery provision will not apply to those cases revived by the bill, or to cases against public entities that arise from conduct occurring before 2009.

From a practical standpoint, if this bill is enacted, defense costs could increase somewhat, as plaintiffs are allowed to conduct discovery prior to motions to dismiss.

Keenan is carefully monitoring this legislation and will continue to update you as the bill progresses through the legislature.

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