

**ASSEMBLY BILL**

**No. 1001**

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**Introduced by Assembly Members Skinner and Ma**

February 27, 2009

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An act to amend Sections 12920, 12921, 12926, 12940, 12945.2, and 12955.2 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as introduced, Skinner. Employment: familial status protection.

Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

This bill would include "familial status" as an additional basis upon which the right to seek, obtain, and hold employment cannot be denied.

Existing law, the California Family Rights Act, permits employees of specified employers with more than 12 months of service with the employer and who have at least 1,250 hours of service with the employer during the previous 12-month period of employment to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Existing law defines "family care and medical leave" to mean leave for the birth or adoption of a child, the serious health condition of a child, parent, or spouse, or the serious health condition of the employee.

This bill would expand the definition of "family care and medical leave" to mean leave for the birth or adoption of a child, to care for the

serious health condition of a parent, a grandparent, a parent-in-law, a spouse, a domestic partner, a sibling, or a child, or the serious health condition of the employee. The bill would also provide nonexclusive examples of activities that constitute care for the serious health condition of another.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12920 of the Government Code is  
2 amended to read:

3 12920. It is hereby declared as the public policy of this state  
4 that it is necessary to protect and safeguard the right and  
5 opportunity of all persons to seek, obtain, and hold employment  
6 without discrimination or abridgment on account of race, religious  
7 creed, color, national origin, ancestry, physical disability, mental  
8 disability, medical condition, marital status, *familial status*, sex,  
9 age, or sexual orientation.

10 It is recognized that the practice of denying employment  
11 opportunity and discriminating in the terms of employment for  
12 these reasons foments domestic strife and unrest, deprives the state  
13 of the fullest utilization of its capacities for development and  
14 advancement, and substantially and adversely affects the interest  
15 of employees, employers, and the public in general.

16 Further, the practice of discrimination because of race, color,  
17 religion, sex, marital status, national origin, ancestry, familial  
18 status, disability, or sexual orientation in housing accommodations  
19 is declared to be against public policy.

20 It is the purpose of this part to provide effective remedies that  
21 will eliminate these discriminatory practices.

22 This part shall be deemed an exercise of the police power of the  
23 state for the protection of the welfare, health, and peace of the  
24 people of this state.

25 SEC. 2. Section 12921 of the Government Code is amended  
26 to read:

27 12921. (a) The opportunity to seek, obtain and hold  
28 employment without discrimination because of race, religious  
29 creed, color, national origin, ancestry, physical disability, mental  
30 disability, medical condition, marital status, *familial status*, sex,

1 age, or sexual orientation is hereby recognized as and declared to  
2 be a civil right.

3 (b) The opportunity to seek, obtain, and hold housing without  
4 discrimination because of race, color, religion, sex, sexual  
5 orientation, marital status, national origin, ancestry, familial status,  
6 disability, or any other basis prohibited by Section 51 of the Civil  
7 Code is hereby recognized as and declared to be a civil right.

8 SEC. 3. Section 12926 of the Government Code is amended  
9 to read:

10 12926. As used in this part in connection with unlawful  
11 practices, unless a different meaning clearly appears from the  
12 context:

13 (a) “Affirmative relief” or “prospective relief” includes the  
14 authority to order reinstatement of an employee, ~~awards an award~~  
15 of backpay, reimbursement of out-of-pocket expenses, hiring,  
16 ~~transfers transfer, reassignments reassignment, grants a grant~~ of  
17 tenure, ~~promotions promotion, a~~ cease and desist ~~orders order,~~  
18 posting of ~~notices a notice,~~ training of personnel, testing, expunging  
19 of records, reporting of records, and any other similar relief that  
20 is intended to correct ~~an unlawful practices practice~~ under this  
21 part.

22 (b) “Age” refers to the chronological age of ~~any an~~ individual  
23 who has reached his or her 40th birthday.

24 (c) “Employee” does not include ~~any an~~ individual employed  
25 by his or her parents, spouse, or child, or ~~any an~~ individual  
26 employed under a special license in a nonprofit sheltered workshop  
27 or rehabilitation facility.

28 (d) “Employer” includes ~~any a~~ person regularly employing five  
29 or more persons, or ~~any a~~ person acting as an agent of an employer,  
30 directly or indirectly, the state or ~~any a~~ political or civil subdivision  
31 of the state, and cities, except as follows:

32 “Employer” does not include a religious association or  
33 corporation not organized for private profit.

34 (e) “Employment agency” includes ~~any a~~ person undertaking  
35 for compensation to procure employees or opportunities to work.

36 (f) “Essential functions” means the fundamental job duties of  
37 the employment position the individual with a disability holds or  
38 desires. “Essential functions” does not include the marginal  
39 functions of the position.

1 (1) A job function may be considered essential for any of several  
2 reasons, including, but not limited to, ~~any~~ one or more of the  
3 following:

4 (A) The function may be essential because the reason the  
5 position exists is to perform that function.

6 (B) The function may be essential because of the limited number  
7 of employees available among whom the performance of that job  
8 function can be distributed.

9 (C) The function may be highly specialized, so that the  
10 incumbent in the position is hired for his or her expertise or ability  
11 to perform the particular function.

12 (2) Evidence of whether a particular function is essential  
13 includes, but is not limited to, the following:

14 (A) The employer's judgment as to which functions are essential.

15 (B) A ~~Written job descriptions~~ *description* prepared before  
16 advertising or interviewing ~~applicants~~ *an applicant* for the job.

17 (C) The amount of time spent on the job performing the function.

18 (D) The consequences of not requiring the incumbent to perform  
19 the function.

20 (E) The terms of a collective bargaining agreement.

21 (F) The work ~~experiences~~ *experience* of a ~~past incumbents~~  
22 *incumbent* in the job.

23 (G) The current work experience of ~~incumbents~~ *an incumbent*  
24 *in a similar jobs job*.

25 (g) "Labor organization" includes ~~any~~ *an* organization that exists  
26 and is constituted for the purpose, in whole or in part, of collective  
27 bargaining or of dealing with ~~employers~~ *an employer* concerning  
28 ~~grievances~~ *a grievance*, the terms or conditions of employment,  
29 or of other mutual aid or protection.

30 (h) "Medical condition" means either of the following:

31 (1) ~~Any~~ *A* health impairment related to or associated with a  
32 diagnosis of cancer or a record or history of cancer.

33 (2) Genetic characteristics. For purposes of this section, "genetic  
34 characteristics" means either of the following:

35 (A) ~~Any~~ *A* scientifically or medically identifiable gene or  
36 chromosome, or combination or alteration thereof, that is known  
37 to be a cause of a disease or disorder in a person or his or her  
38 offspring, or that is determined to be associated with a statistically  
39 increased risk of development of a disease or disorder, and that is

1 presently not associated with ~~any~~ *the* symptoms of ~~any~~ *a* disease  
2 or disorder.

3 (B) Inherited characteristics that may derive from the individual  
4 or family member, that are known to be a cause of a disease or  
5 disorder in a person or his or her offspring, or that are determined  
6 to be associated with a statistically increased risk of development  
7 of a disease or disorder, and that are presently not associated with  
8 ~~any~~ *the* symptoms of ~~any~~ *a* disease or disorder.

9 (i) “Mental disability” includes, but is not limited to, all of the  
10 following:

11 (1) Having ~~any~~ *a* mental or psychological disorder or condition,  
12 such as mental retardation, organic brain syndrome, emotional or  
13 mental illness, or specific learning disabilities, that limits a major  
14 life activity. For purposes of this section:

15 (A) “Limits” shall be determined without regard to mitigating  
16 measures, such as ~~medications~~ *medication*, ~~an assistive devices~~  
17 *device*, or reasonable ~~accommodations~~ *accommodation*, unless the  
18 mitigating measure itself limits a major life activity.

19 (B) A mental or psychological disorder or condition limits a  
20 major life activity if it makes the achievement of the major life  
21 activity difficult.

22 (C) “Major life activities” shall be broadly construed and shall  
23 include physical, mental, and social activities and working.

24 (2) Any other mental or psychological disorder or condition not  
25 described in paragraph (1) that requires special education or *a*  
26 related ~~services~~ *service*.

27 (3) Having a record or history of a mental or psychological  
28 disorder or condition described in paragraph (1) or (2), which is  
29 known to the employer or other entity covered by this part.

30 (4) Being regarded or treated by the employer or other entity  
31 covered by this part as having, or having had, ~~any~~ *a* mental  
32 condition that makes achievement of a major life activity difficult.

33 (5) Being regarded or treated by the employer or other entity  
34 covered by this part as having, or having had, a mental or  
35 psychological disorder or condition that has no present disabling  
36 effect, but that may become a mental disability as described in  
37 paragraph (1) or (2).

38 “Mental disability” does not include *a* sexual behavior ~~disorders~~  
39 *disorder*, compulsive gambling, kleptomania, pyromania, or *a*  
40 psychoactive substance use ~~disorders~~ *disorder* resulting from the

1 current unlawful use of ~~a controlled substance~~ *substance* or ~~other~~  
 2 ~~drugs~~ *another drug*.

3 (j) “On the bases enumerated in this part” means or refers to  
 4 discrimination on the basis of one or more of the following: race,  
 5 religious creed, color, national origin, ancestry, physical disability,  
 6 mental disability, medical condition, marital status, *familial status*,  
 7 sex, age, or sexual orientation.

8 (k) “Physical disability” includes, but is not limited to, all of  
 9 the following:

10 (1) Having ~~any~~ *a* physiological disease, disorder, condition,  
 11 cosmetic disfigurement, or anatomical loss that does both of the  
 12 following:

13 (A) Affects one or more of the following body systems:  
 14 neurological, immunological, musculoskeletal, special sense  
 15 organs, respiratory, including speech organs, cardiovascular,  
 16 reproductive, digestive, genitourinary, hemic and lymphatic, skin,  
 17 and endocrine.

18 (B) Limits a major life activity. For purposes of this section:

19 (i) “Limits” shall be determined without regard to mitigating  
 20 measures such as ~~medications~~ *medication*, ~~an assistive devices~~  
 21 ~~device~~, ~~prosthetics~~ *a prosthetic*, or reasonable ~~accommodations~~  
 22 *accommodation*, unless the mitigating measure itself limits a major  
 23 life activity.

24 (ii) A physiological disease, disorder, condition, cosmetic  
 25 disfigurement, or anatomical loss limits a major life activity if it  
 26 makes the achievement of the major life activity difficult.

27 (iii) “Major life activities” shall be broadly construed and  
 28 includes physical, mental, and social activities and working.

29 (2) Any other health impairment not described in paragraph (1)  
 30 that requires special education or related services.

31 (3) Having a record or history of a disease, disorder, condition,  
 32 cosmetic disfigurement, anatomical loss, or health impairment  
 33 described in paragraph (1) or (2), which is known to the employer  
 34 or other entity covered by this part.

35 (4) Being regarded or treated by the employer or other entity  
 36 covered by this part as having, or having had, ~~any~~ *a* physical  
 37 condition that makes achievement of a major life activity difficult.

38 (5) Being regarded or treated by the employer or other entity  
 39 covered by this part as having, or having had, a disease, disorder,  
 40 condition, cosmetic disfigurement, anatomical loss, or health

1 impairment that has no present disabling effect but may become  
2 a physical disability as described in paragraph (1) or (2).

3 (6) “Physical disability” does not include *a* sexual behavior  
4 ~~disorders disorder~~, compulsive gambling, kleptomania, pyromania,  
5 or *a* psychoactive substance use ~~disorders disorder~~ resulting from  
6 the current unlawful use of *a* controlled ~~substances substance~~ or  
7 ~~other drugs another drug~~.

8 (l) Notwithstanding subdivisions (i) and (k), if the definition of  
9 “disability” used in the Americans with Disabilities Act of 1990  
10 (~~Public Law 101-336~~) (*42 U.S.C. Sec. 12101 et seq.*) would result  
11 in broader protection of the civil rights of ~~individuals an individual~~  
12 with a mental disability or physical disability, as defined in  
13 subdivision (i) or (k), or would include ~~any a~~ medical condition  
14 not included within those definitions, then that broader protection  
15 or coverage shall be deemed incorporated by reference into, and  
16 shall prevail over conflicting provisions of, the definitions in  
17 subdivisions (i) and (k).

18 (m) “Race, religious creed, color, national origin, ancestry,  
19 physical disability, mental disability, medical condition, marital  
20 status, *familial status*, sex, age, or sexual orientation” includes a  
21 perception that the person has any of those characteristics or that  
22 the person is associated with a person who has, or is perceived to  
23 have, any of those characteristics.

24 (n) “Reasonable accommodation” may include either of the  
25 following:

26 (1) Making existing facilities used by ~~employees an employee~~  
27 readily accessible to, and usable by, ~~individuals an individual~~ with  
28 ~~disabilities a disability~~.

29 (2) Job restructuring, *a* part-time or modified work ~~schedules~~  
30 *schedule*, reassignment to a vacant position, acquisition or  
31 modification of equipment or ~~devices a device~~, adjustment or  
32 ~~modifications modification~~ of ~~examinations an examination~~,  
33 training ~~materials material~~ or ~~policies policy~~, the provision of *a*  
34 qualified ~~readers reader~~ or ~~interpreters interpreter~~, and other  
35 similar ~~accommodations accommodation~~ for ~~individuals an~~  
36 *individual with disabilities a disability*.

37 (o) “Religious creed,” “religion,” “religious observance,”  
38 “religious belief,” and “creed” include all aspects of religious  
39 belief, observance, and practice.

1 (p) “Sex” includes, but is not limited to, pregnancy, childbirth,  
 2 or ~~a medical conditions~~ *condition* related to pregnancy or  
 3 childbirth. “Sex” also includes, but is not limited to, a person’s  
 4 gender, as defined in Section 422.56 of the Penal Code.

5 (q) “Sexual orientation” means heterosexuality, homosexuality,  
 6 and bisexuality.

7 (r) “Supervisor” means ~~any~~ *an* individual having the authority,  
 8 in the interest of the employer, to hire, transfer, suspend, lay off,  
 9 recall, promote, discharge, assign, reward, or discipline other  
 10 employees, or the responsibility to direct them, or to adjust their  
 11 grievances, or effectively to recommend that action, if, in  
 12 connection with the foregoing, the exercise of that authority is not  
 13 of a merely routine or clerical nature, but requires the use of  
 14 independent judgment.

15 (s) “Undue hardship” means an action requiring significant  
 16 difficulty or expense, when considered in light of the following  
 17 factors:

18 (1) The nature and cost of the accommodation needed.

19 (2) The overall financial resources of the ~~facilities~~ *facility*  
 20 involved in the provision of the reasonable ~~accommodations~~  
 21 *accommodation*, the number of persons employed at the facility,  
 22 and the effect on expenses and resources or the impact otherwise  
 23 of ~~these accommodations~~ *this accommodation* upon the operation  
 24 of the facility.

25 (3) The overall financial resources of the covered entity, the  
 26 overall size of the business of a covered entity with respect to the  
 27 number of employees, and the number, type, and location of its  
 28 facilities.

29 (4) The type of operations, including the composition, structure,  
 30 and functions of the workforce of the entity.

31 (5) The geographic separateness, administrative, or fiscal  
 32 relationship of the facility ~~or facilities~~.

33 (t) *In connection with unlawful employment practices, “familial*  
 34 *status” means an individual under 18 years of age who resides*  
 35 *with a parent, a parent or person with care and legal custody of*  
 36 *that individual, a person who has been given care and custody of*  
 37 *that individual by a state or local governmental agency that is*  
 38 *responsible for the welfare of children, or the designee of a parent*  
 39 *or other person with legal custody of an individual under 18 years*  
 40 *of age by written consent of the parent or designated custodian.*



1 *The protections against unlawful employment practices on the*  
2 *basis of familial status also apply to an individual who is in the*  
3 *process of securing legal custody of an individual under 18 years*  
4 *of age or who is in the process of being given care and custody of*  
5 *an individual under 18 years of age by a state or local*  
6 *governmental agency responsible for the welfare of children.*

7 SEC. 4. Section 12940 of the Government Code is amended  
8 to read:

9 12940. It shall be an unlawful employment practice, unless  
10 based upon a bona fide occupational qualification, or, except where  
11 based upon applicable security regulations established by the  
12 United States or the State of California:

13 (a) For an employer, because of the race, religious creed, color,  
14 national origin, ancestry, physical disability, mental disability,  
15 medical condition, marital status, *familial status*, sex, age, or sexual  
16 orientation of ~~any~~ a person, to refuse to hire or employ the person  
17 or to refuse to select the person for a training program leading to  
18 employment, or to bar or to discharge the person from employment  
19 or from a training program leading to employment, or to  
20 discriminate against the person in compensation or in terms,  
21 conditions, or privileges of employment.

22 (1) This part does not prohibit an employer from refusing to  
23 hire or discharging an employee with a physical or mental  
24 disability, or subject an employer to ~~any~~ legal liability resulting  
25 from the refusal to employ or the discharge of an employee with  
26 a physical or mental disability, where the employee, because of  
27 his or her physical or mental disability, is unable to perform his  
28 or her essential duties even with reasonable ~~accommodations~~  
29 *accommodation*, or cannot perform those duties in a manner that  
30 would not endanger his or her health or safety or the health or  
31 safety of ~~others~~ *another* even with reasonable ~~accommodations~~  
32 *accommodation*.

33 (2) This part does not prohibit an employer from refusing to  
34 hire or discharging an employee who, because of the employee's  
35 medical condition, is unable to perform his or her essential duties  
36 even with reasonable ~~accommodations~~ *accommodation*, or cannot  
37 perform those duties in a manner that would not endanger the  
38 employee's health or safety or the health or safety of ~~others~~ *another*  
39 even with reasonable ~~accommodations~~ *accommodation*. Nothing  
40 in this part shall subject an employer to ~~any~~ legal liability resulting

1 from the refusal to employ or the discharge of an employee who,  
2 because of the employee's medical condition, is unable to perform  
3 his or her essential duties, or cannot perform those duties in a  
4 manner that would not endanger the employee's health or safety  
5 or the health or safety of ~~others~~ *another* even with reasonable  
6 ~~accommodations~~ *accommodation*.

7 (3) Nothing in this part relating to discrimination on account of  
8 marital status *or familial status* shall do either of the following:

9 (A) Affect the right of an employer to reasonably regulate, for  
10 reasons of supervision, safety, security, or morale, the working of  
11 spouses in the same department, division, or facility, consistent  
12 with the rules and regulations adopted by the commission.

13 (B) Prohibit *a bona fide health plan* ~~plans~~ *plan* from providing  
14 additional or greater benefits to ~~employees~~ *an employee* with  
15 dependents than to ~~those employees~~ *an employee* without or with  
16 fewer dependents.

17 (4) Nothing in this part relating to discrimination on account of  
18 sex shall affect the right of an employer to use veteran status as a  
19 factor in employee selection or to give special consideration to  
20 ~~Vietnam-era veterans~~ *a Vietnam-era veteran*.

21 (5) Nothing in this part prohibits an employer from refusing to  
22 employ an individual because of his or her age if the law compels  
23 or provides for that refusal. ~~Promotions~~ *A promotion* within the  
24 existing staff, hiring or promotion on the basis of experience and  
25 training, rehiring on the basis of seniority and prior service with  
26 the employer, or hiring under an established recruiting program  
27 from ~~a high schools~~ *school*, ~~colleges~~ *college*, ~~universities~~  
28 *university*, or ~~trade schools~~ *school* do not, in and of themselves,  
29 constitute unlawful employment practices.

30 (b) For a labor organization, because of the race, religious creed,  
31 color, national origin, ancestry, physical disability, mental  
32 disability, medical condition, marital status, *familial status*, sex,  
33 age, or sexual orientation of ~~any~~ *a* person, to exclude, expel, or  
34 restrict from its membership the person, or to provide only  
35 second-class or segregated membership or to discriminate against  
36 ~~any~~ *a* person because of the race, religious creed, color, national  
37 origin, ancestry, physical disability, mental disability, medical  
38 condition, marital status, *familial status*, sex, age, or sexual  
39 orientation of the person in the election of officers of the labor  
40 organization or in the selection of the labor organization's staff or

1 to discriminate in any way against ~~any~~ of its members or against  
2 ~~any~~ an employer or against ~~any~~ a person employed by an employer.

3 (c) For ~~any~~ a person to discriminate against ~~any~~ a person in the  
4 selection or training of that person in ~~any~~ an apprenticeship training  
5 program or any other training program leading to employment  
6 because of the race, religious creed, color, national origin, ancestry,  
7 physical disability, mental disability, medical condition, marital  
8 status, *familial status*, sex, age, or sexual orientation of the person  
9 discriminated against.

10 (d) For ~~any~~ an employer or employment agency to print or  
11 circulate or cause to be printed or circulated ~~any~~ a publication, or  
12 to make ~~any~~ a non-job-related inquiry of an employee or applicant,  
13 either verbal or through use of an application form, that expresses,  
14 directly or indirectly, ~~any~~ a limitation, specification, or  
15 discrimination as to race, religious creed, color, national origin,  
16 ancestry, physical disability, mental disability, medical condition,  
17 marital status, *familial status*, sex, age, or sexual orientation, or  
18 ~~any~~ an intent to make ~~any~~ such a limitation, specification, or  
19 discrimination. Nothing in this part prohibits an employer or  
20 employment agency from inquiring into the age of an applicant,  
21 or from specifying age limitations, where the law compels or  
22 provides for that action.

23 (e) (1) Except as provided in paragraph (2) or (3), for ~~any~~ an  
24 employer or employment agency to require ~~any~~ the medical or  
25 psychological examination of an applicant, to make ~~any~~ a medical  
26 or psychological inquiry of an applicant, to make ~~any~~ an inquiry  
27 whether an applicant has a mental disability or physical disability  
28 or medical condition, or to make ~~any~~ an inquiry regarding the  
29 nature or severity of a physical disability, mental disability, or  
30 medical condition.

31 (2) Notwithstanding paragraph (1), an employer or employment  
32 agency may inquire into the ability of an applicant to perform  
33 job-related functions and may respond to an applicant's request  
34 for reasonable accommodation.

35 (3) Notwithstanding paragraph (1), an employer or employment  
36 agency may require a medical or psychological examination or  
37 make a medical or psychological inquiry of a job applicant after  
38 an employment offer has been made but prior to the  
39 commencement of employment duties, provided that the  
40 examination or inquiry is job-related and consistent with business

1 necessity and that all entering employees in the same job  
 2 classification are subject to the same examination or inquiry.

3 (f) (1) Except as provided in paragraph (2), for ~~any an~~ employer  
 4 or employment agency to require ~~any the~~ medical or psychological  
 5 examination of an employee, to make ~~any a~~ medical or  
 6 psychological inquiry of an employee, to make ~~any an~~ inquiry  
 7 whether an employee has a mental disability, physical disability,  
 8 or medical condition, or to make ~~any an~~ inquiry regarding the  
 9 nature or severity of a physical disability, mental disability, or  
 10 medical condition.

11 (2) Notwithstanding paragraph (1), an employer or employment  
 12 agency may require any examinations or inquiries that it can show  
 13 to be job-related and consistent with business necessity. An  
 14 employer or employment agency may conduct a voluntary medical  
 15 ~~examinations~~ examination, including a voluntary medical ~~histories~~  
 16 history, ~~which that~~ are part of an employee health program  
 17 available to ~~employees an~~ employee at that worksite.

18 (g) For ~~any an~~ employer, labor organization, or employment  
 19 agency to harass, discharge, expel, or otherwise discriminate  
 20 against ~~any a~~ person because the person has made a report pursuant  
 21 to Section 11161.8 of the Penal Code that prohibits retaliation  
 22 against a hospital ~~employees~~ employee who ~~report~~ reports  
 23 suspected patient abuse by a health ~~facilities~~ facility or a  
 24 community care ~~facilities~~ facility.

25 (h) For ~~any an~~ employer, labor organization, employment  
 26 agency, or person to discharge, expel, or otherwise discriminate  
 27 against ~~any a~~ person because the person has opposed ~~any~~ practices  
 28 a practice forbidden under this part or because the person has filed  
 29 a complaint, testified, or assisted in ~~any a~~ proceeding under this  
 30 part.

31 (i) For ~~any a~~ person to aid, abet, incite, compel, or coerce the  
 32 doing of ~~any of the~~ acts an act forbidden under this part, or to  
 33 attempt to do so.

34 (j) (1) For an employer, labor organization, employment agency,  
 35 apprenticeship training program or ~~any a~~ training program leading  
 36 to employment, or any other person, because of race, religious  
 37 creed, color, national origin, ancestry, physical disability, mental  
 38 disability, medical condition, marital status, *familial status*, sex,  
 39 age, or sexual orientation, to harass an employee, an applicant, or  
 40 a person providing services pursuant to a contract. Harassment of

1 an employee, an applicant, or a person providing services pursuant  
2 to a contract by an employee, other than an agent or supervisor,  
3 shall be unlawful if the entity, or ~~its agents or supervisors~~ *an agent*  
4 *or supervisor of the entity*, knows or should have known of this  
5 conduct and fails to take immediate and appropriate corrective  
6 action. An employer may also be responsible for the acts of  
7 ~~nonemployees~~ *a nonemployee*, with respect to sexual harassment  
8 of ~~employees~~ *an employee*, ~~applicants~~ *applicant*, or ~~persons~~ *person*  
9 providing services pursuant to a contract in the workplace, where  
10 the employer, or ~~its agents or supervisors~~ *an agent or supervisor*  
11 *of the employer*, knows or should have known of the conduct and  
12 fails to take immediate and appropriate corrective action. In  
13 reviewing ~~cases~~ *a case* involving the acts of ~~nonemployees~~ *a*  
14 *nonemployee*, the extent of the employer's control and any other  
15 legal responsibility which the employer may have with respect to  
16 the conduct of ~~those nonemployees~~ *the nonemployee* shall be  
17 considered. An entity shall take all reasonable steps to prevent  
18 harassment from occurring. Loss of ~~a tangible job benefits~~ *benefit*  
19 shall not be necessary in order to establish harassment.

20 (2) The provisions of this subdivision are declaratory of existing  
21 law, except for the new duties imposed on employers with regard  
22 to harassment.

23 (3) An employee of an entity subject to this subdivision is  
24 personally liable for ~~any~~ harassment prohibited by this section that  
25 is perpetrated by the employee, regardless of whether the employer  
26 or covered entity knows or should have known of the conduct and  
27 fails to take immediate and appropriate corrective action.

28 (4) (A) For purposes of this subdivision only, "employer" means  
29 ~~any~~ *a* person regularly employing one or more persons or regularly  
30 receiving the services of one or more persons providing services  
31 pursuant to a contract, or ~~any~~ *a* person acting as an agent of an  
32 employer, directly or indirectly, the state, or ~~any~~ *a* political or civil  
33 subdivision of the state, and cities. The definition of "employer"  
34 in subdivision (d) of Section 12926 applies to all provisions of this  
35 section other than this subdivision.

36 (B) Notwithstanding subparagraph (A), for purposes of this  
37 subdivision, "employer" does not include a religious association  
38 or corporation not organized for private profit, except as provided  
39 in Section 12926.2.

1 (C) For purposes of this subdivision, “harassment” because of  
2 sex includes sexual harassment, gender harassment, and harassment  
3 based on pregnancy, childbirth, or *a* related medical ~~conditions~~  
4 *condition*.

5 (5) For purposes of this subdivision, “a person providing services  
6 pursuant to a contract” means a person who meets all of the  
7 following criteria:

8 (A) The person has the right to control the performance of the  
9 contract for services and discretion as to the manner of  
10 performance.

11 (B) The person is customarily engaged in an independently  
12 established business.

13 (C) The person has control over the time and place the work is  
14 performed, supplies the tools and instruments used in the work,  
15 and performs work that requires a particular skill not ordinarily  
16 used in the course of the employer’s work.

17 (k) For an employer, labor organization, employment agency,  
18 apprenticeship training program, or ~~any~~ *a* training program leading  
19 to employment, to fail to take all reasonable steps necessary to  
20 prevent discrimination and harassment from occurring.

21 (l) For an employer or other entity covered by this part to refuse  
22 to hire or employ a person or to refuse to select a person for a  
23 training program leading to employment or to bar or to discharge  
24 a person from employment or from a training program leading to  
25 employment, or to discriminate against a person in compensation  
26 or in terms, conditions, or privileges of employment because of a  
27 conflict between the person’s religious belief or observance and  
28 ~~any~~ *an* employment requirement, unless the employer or other  
29 entity covered by this part demonstrates that it has explored any  
30 available reasonable alternative means of accommodating the  
31 religious belief or observance, including the possibilities of  
32 excusing the person from those duties that conflict with his or her  
33 religious belief or observance or permitting those duties to be  
34 performed at another time or by another person, but is unable to  
35 reasonably accommodate the religious belief or observance without  
36 undue hardship on the conduct of the business of the employer or  
37 other entity covered by this part. Religious belief or observance,  
38 as used in this section, includes, but is not limited to, observance  
39 of a Sabbath or other religious holy day or days, and reasonable

1 time necessary for travel prior and subsequent to a religious  
2 observance.

3 (m) For an employer or other entity covered by this part to fail  
4 to make reasonable accommodation for the known physical or  
5 mental disability of an applicant or employee. Nothing in this  
6 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
7 construed to require an accommodation that is demonstrated by  
8 the employer or other covered entity to produce undue hardship  
9 to its operation.

10 (n) For an employer or other entity covered by this part to fail  
11 to engage in a timely, good faith, interactive process with the  
12 employee or applicant to determine effective reasonable  
13 ~~accommodations~~ *accommodation*, if any, in response to a request  
14 for reasonable accommodation by an employee or applicant with  
15 a known physical or mental disability or known medical condition.

16 (o) For an employer or other entity covered by this part, to  
17 subject, directly or indirectly, ~~any~~ *an* employee, applicant, or other  
18 person to a test for the presence of a genetic characteristic.

19 SEC. 5. Section 12945.2 of the Government Code is amended  
20 to read:

21 12945.2. (a) Except as provided in subdivision (b), it shall be  
22 an unlawful employment practice for ~~any~~ *an* employer, as defined  
23 in paragraph (2) of subdivision (c), to refuse to grant a request by  
24 ~~any~~ *an* employee with more than 12 months of service with the  
25 employer, and who has at least 1,250 hours of service with the  
26 employer during the previous 12-month period, to take up to a  
27 total of 12 workweeks in any 12-month period for family care and  
28 medical leave. Family care and medical leave requested pursuant  
29 to this subdivision shall not be deemed to have been granted unless  
30 the employer provides the employee, upon granting the leave  
31 request, a guarantee of employment in the same or a comparable  
32 position upon the termination of the leave. The commission shall  
33 adopt a regulation specifying the elements of a reasonable request.

34 (b) Notwithstanding subdivision (a), it shall not be an unlawful  
35 employment practice for an employer to refuse to grant a request  
36 for family care and medical leave by an employee if the employer  
37 employs less than 50 employees within 75 miles of the worksite  
38 where that employee is employed.

39 (c) For purposes of this section:

- 1 (1) “Child” means a biological, adopted, or foster child, a  
 2 stepchild, a legal ward, or a child of a person standing in loco  
 3 parentis who is either of the following:
- 4 (A) Under 18 years of age.
  - 5 (B) An adult dependent child.
- 6 (2) “Employer” means either of the following:
- 7 (A) ~~Any~~A person who directly employs 50 or more persons to  
 8 perform services for a wage or salary.
  - 9 (B) The state, and ~~any~~ a political or civil subdivision of the state  
 10 and cities.
- 11 (3) “Family care and medical leave” means any of the following:
- 12 (A) Leave for reason of the birth of a child of the employee, *or*  
 13 the placement of a child with an employee in connection with the  
 14 adoption or foster care of the child by the employee, ~~or the serious~~  
 15 ~~health condition of a child of the employee.~~
  - 16 (B) Leave to care for a parent ~~or, a grandparent, a parent-in-law,~~  
 17 a spouse, *a domestic partner, a sibling, or a child* who has a serious  
 18 health condition. *Such care includes:*
    - 19 (i) *Providing supervision, transportation, psychological comfort,*  
 20 *or emotional comfort.*
    - 21 (ii) *Addressing medical, educational, nutritional, hygienic, or*  
 22 *safety needs.*
    - 23 (iii) *Attending to an illness, injury, mental disability, or physical*  
 24 *disability.*
  - 25 (C) Leave because of an employee’s own serious health  
 26 condition that makes the employee unable to perform the functions  
 27 of the position of that employee, except for leave taken for  
 28 disability on account of pregnancy, childbirth, or related medical  
 29 conditions.
- 30 (4) “Employment in the same or a comparable position” means  
 31 employment in a position that has the same or similar duties and  
 32 pay that can be performed at the same or similar geographic  
 33 location as the position held prior to the leave.
- 34 (5) “FMLA” means the federal Family and Medical Leave Act  
 35 of 1993 (P.L. 103-3).
- 36 (6) “Health care provider” means any of the following:
- 37 (A) An individual holding either a physician’s and surgeon’s  
 38 certificate issued pursuant to Article 4 (commencing with Section  
 39 2080) of Chapter 5 of Division 2 of the Business and Professions  
 40 Code, an osteopathic physician’s and surgeon’s certificate issued



1 pursuant to Article 4.5 (commencing with Section 2099.5) of  
2 Chapter 5 of Division 2 of the Business and Professions Code, or  
3 an individual duly licensed as a physician, surgeon, or osteopathic  
4 physician or surgeon in another state or jurisdiction, who directly  
5 treats or supervises the treatment of the serious health condition.

6 (B) Any other person determined by the United States Secretary  
7 of Labor to be capable of providing health care services under the  
8 FMLA.

9 (7) “Parent” means a biological, foster, or adoptive parent, a  
10 stepparent, a legal guardian, or other person who stood in loco  
11 parentis to the employee when the employee was a child.

12 (8) “Serious health condition” means an illness, injury,  
13 impairment, or physical or mental condition that involves either  
14 of the following:

15 (A) Inpatient care in a hospital, hospice, or residential health  
16 care facility.

17 (B) Continuing treatment or continuing supervision by a health  
18 care provider.

19 (d) An employer shall not be required to pay an employee for  
20 any leave taken pursuant to subdivision (a), except as required by  
21 subdivision (e).

22 (e) An employee taking a leave permitted by subdivision (a)  
23 may elect, or an employer may require the employee, to substitute,  
24 for leave allowed under subdivision (a), any of the employee’s  
25 accrued vacation leave or other accrued time off during this period  
26 or any other paid or unpaid time off negotiated with the employer.  
27 If an employee takes a leave because of the employee’s own serious  
28 health condition, the employee may also elect, or the employer  
29 may also require the employee, to substitute accrued sick leave  
30 during the period of the leave. However, an employee shall not  
31 use sick leave during a period of leave in connection with the birth,  
32 adoption, or foster care of a child, or to care for a child, parent, or  
33 spouse with a serious health condition, unless mutually agreed to  
34 by the employer and the employee.

35 (f) (1) During any a period that an eligible employee takes  
36 leave pursuant to subdivision (a) or takes leave that qualifies as  
37 leave taken under the FMLA, the employer shall maintain and pay  
38 for coverage under a “group health plan,” as defined in ~~Section~~  
39 ~~5000(b)(1) of the Internal Revenue Code of 1986~~ *paragraph (1)*  
40 *of subdivision (b) of Section 5000 of Title 26 of the Internal*

1 *Revenue Code*, for the duration of the leave, not to exceed 12  
2 workweeks in a 12-month period, commencing on the date leave  
3 taken under the FMLA commences, at the level and under the  
4 conditions coverage would have been provided if the employee  
5 had continued in employment continuously for the duration of the  
6 leave. Nothing in the preceding sentence shall preclude an  
7 employer from maintaining and paying for coverage under a “group  
8 health plan” beyond 12 workweeks. An employer may recover the  
9 premium that the employer paid as required by this subdivision  
10 for maintaining coverage for the employee under the group health  
11 plan if both of the following conditions occur:

12 (A) The employee fails to return from leave after the period of  
13 leave to which the employee is entitled has expired.

14 (B) The employee’s failure to return from leave is for a reason  
15 other than the continuation, recurrence, or onset of a serious health  
16 condition that entitles the employee to leave under subdivision (a)  
17 or other circumstances beyond the control of the employee.

18 (2) ~~Any~~ An employee taking leave pursuant to subdivision (a)  
19 shall continue to be entitled to participate in employee health plans  
20 for ~~any~~ a period during which coverage is not provided by the  
21 employer under paragraph (1), employee benefit plans, including  
22 life, short-term, or long-term disability or accident insurance,  
23 pension and retirement plans, and supplemental unemployment  
24 benefit plans to the same extent and under the same conditions as  
25 apply to an unpaid leave taken for any purpose other than those  
26 described in subdivision (a). In the absence of these conditions an  
27 employee shall continue to be entitled to participate in these plans  
28 and, in the case of health and welfare employee benefit plans,  
29 including life, short-term, or long-term disability or accident  
30 insurance, or other similar plans, the employer may, at his or her  
31 discretion, require the employee to pay premiums, at the group  
32 rate, during the period of leave not covered by any accrued vacation  
33 leave, or other accrued time off, or any other paid or unpaid time  
34 off negotiated with the employer, as a condition of continued  
35 coverage during the leave period. However, the nonpayment of  
36 premiums by an employee shall not constitute a break in service,  
37 for purposes of longevity, seniority under any collective bargaining  
38 agreement, or any employee benefit plan.

39 For purposes of pension and retirement plans, an employer shall  
40 not be required to make plan payments for an employee during

1 the leave period, and the leave period shall not be required to be  
2 counted for purposes of time accrued under the plan. However, an  
3 employee covered by a pension plan may continue to make  
4 contributions in accordance with the terms of the plan during the  
5 period of the leave.

6 (g) During a family care and medical leave period, the employee  
7 shall retain employee status with the employer, and the leave shall  
8 not constitute a break in service, for purposes of longevity, seniority  
9 under ~~any~~ a collective bargaining agreement, or ~~any~~ an employee  
10 benefit plan. An employee returning from leave shall return with  
11 no less seniority than the employee had when the leave  
12 commenced, for purposes of layoff, recall, promotion, job  
13 assignment, and seniority-related benefits such as vacation.

14 (h) If the employee's need for a leave pursuant to this section  
15 is foreseeable, the employee shall provide the employer with  
16 reasonable advance notice of the need for the leave.

17 (i) If the employee's need for leave pursuant to this section is  
18 foreseeable due to a planned medical treatment or supervision, the  
19 employee shall make a reasonable effort to schedule the treatment  
20 or supervision to avoid disruption to the operations of the employer,  
21 subject to the approval of the health care provider of the individual  
22 requiring the treatment or supervision.

23 (j) (1) An employer may require that an employee's request  
24 for leave to care for a child, *grandchild*, a spouse, ~~or~~ a *domestic*  
25 *partner*, a *sibling*, a parent, a *grandparent*, or a *parent-in-law* who  
26 has a serious health condition be supported by a certification issued  
27 by the health care provider of the individual requiring care. That  
28 certification shall be sufficient if it includes all of the following:

29 (A) The date on which the serious health condition commenced.

30 (B) The probable duration of the condition.

31 (C) An estimate of the amount of time that the health care  
32 provider believes the employee needs to care for the individual  
33 requiring the care.

34 (D) A statement that the serious health condition warrants the  
35 participation of a family member to provide care during a period  
36 of the treatment or supervision of the individual requiring care.

37 (2) Upon expiration of the time estimated by the health care  
38 provider in subparagraph (C) of paragraph (1), the employer may  
39 require the employee to obtain recertification, in accordance with

1 the procedure provided in paragraph (1), if additional leave is  
 2 required.

3 (k) (1) An employer may require that an employee’s request  
 4 for leave because of the employee’s own serious health condition  
 5 be supported by a certification issued by his or her health care  
 6 provider. That certification shall be sufficient if it includes all of  
 7 the following:

8 (A) The date on which the serious health condition commenced.

9 (B) The probable duration of the condition.

10 (C) A statement that, due to the serious health condition, the  
 11 employee is unable to perform the function of his or her position.

12 (2) The employer may require that the employee obtain  
 13 subsequent recertification regarding the employee’s serious health  
 14 condition on a reasonable basis, in accordance with the procedure  
 15 provided in paragraph (1), if additional leave is required.

16 (3) (A) In ~~any~~ a case in which the employer has reason to doubt  
 17 the validity of the certification provided pursuant to this section,  
 18 the employer may require, at the employer’s expense, that the  
 19 employee obtain the opinion of a second health care provider,  
 20 designated or approved by the employer, concerning any  
 21 information certified under paragraph (1).

22 (B) The health care provider designated or approved under  
 23 subparagraph (A) shall not be employed on a regular basis by the  
 24 employer.

25 (C) In ~~any~~ a case in which the second opinion described in  
 26 subparagraph (A) differs from the opinion in the original  
 27 certification, the employer may require, at the employer’s expense,  
 28 that the employee obtain the opinion of a third health care provider,  
 29 designated or approved jointly by the employer and the employee,  
 30 concerning the information certified under paragraph (1).

31 (D) The opinion of the third health care provider concerning  
 32 the information certified under paragraph (1) shall be considered  
 33 to be final and shall be binding on the employer and the employee.

34 (4) As a condition of an employee’s return from leave taken  
 35 because of the employee’s own serious health condition, the  
 36 employer may have a uniformly applied practice or policy that  
 37 requires the employee to obtain certification from his or her health  
 38 care provider that the employee is able to resume work. Nothing  
 39 in this paragraph shall supersede a valid collective bargaining  
 40 agreement that governs the return to work of that employee.

1 (l) It shall be an unlawful employment practice for an employer  
2 to refuse to hire, or to discharge, fine, suspend, expel, or  
3 discriminate against, ~~any~~ *an* individual because of any of the  
4 following:

5 (1) An individual's exercise of the right to family care and  
6 medical leave provided by subdivision (a).

7 (2) An individual's giving information or testimony as to his or  
8 her own family care and medical leave, or another person's family  
9 care and medical leave, in ~~any~~ *an* inquiry or proceeding related to  
10 rights guaranteed under this section.

11 (m) This section shall not be construed to require ~~any changes~~  
12 *a change in an* existing collective bargaining ~~agreements~~ *agreement*  
13 during the life of the contract, or until January 1, 1993, whichever  
14 occurs first.

15 (n) The amendments made to this section by the act adding this  
16 subdivision shall not be construed to require ~~any changes~~ *a change*  
17 in *an* existing collective bargaining ~~agreements~~ *agreement* during  
18 the life of the contract, or until February 5, 1994, whichever occurs  
19 first.

20 (o) The provisions of this section shall be construed as separate  
21 and distinct from those of Section 12945.

22 (p) Leave provided for pursuant to this section may be taken in  
23 one or more periods. The 12-month period during which 12  
24 workweeks of leave may be taken under this section shall run  
25 concurrently with the 12-month period under the FMLA, and shall  
26 commence the date leave taken under the FMLA commences.

27 (q) In ~~any~~ *a* case in which both parents entitled to leave under  
28 subdivision (a) are employed by the same employer, the employer  
29 shall not be required to grant leave in connection with the birth,  
30 adoption, or foster care of a child that would allow the parents  
31 family care and medical leave totaling more than the amount  
32 specified in subdivision (a).

33 (r) (1) Notwithstanding subdivision (a), an employer may refuse  
34 to reinstate an employee returning from leave to the same or a  
35 comparable position if all of the following apply:

36 (A) The employee is a salaried employee who is among the  
37 highest paid 10 percent of the employer's employees who are  
38 employed within 75 miles of the worksite at which that employee  
39 is employed.

1 (B) The refusal is necessary to prevent substantial and grievous  
 2 economic injury to the operations of the employer.

3 (C) The employer notifies the employee of the intent to refuse  
 4 reinstatement at the time the employer determines the refusal is  
 5 necessary under subparagraph (B).

6 (2) In ~~any~~ a case in which the leave has already commenced,  
 7 the employer shall give the employee a reasonable opportunity to  
 8 return to work following the notice prescribed by subparagraph  
 9 (C).

10 (s) Leave taken by an employee pursuant to this section shall  
 11 run concurrently with leave taken pursuant to the FMLA, except  
 12 for ~~any~~ leave taken under the FMLA for disability on account of  
 13 pregnancy, childbirth, or related medical conditions. The aggregate  
 14 amount of leave taken under this section or the FMLA, or both,  
 15 except for leave taken for disability on account of pregnancy,  
 16 childbirth, or related medical conditions, shall not exceed 12  
 17 workweeks in a 12-month period. An employee is entitled to take,  
 18 in addition to the leave provided for under this section and the  
 19 FMLA, the leave provided for in Section 12945, if the employee  
 20 is otherwise qualified for that leave.

21 SEC. 6. Section 12955.2 of the Government Code is amended  
 22 to read:

23 12955.2. For purposes of this part *in connection with unlawful*  
 24 *housing practices*, “familial status” means ~~one or more individuals~~  
 25 *an individual* under 18 years of age who ~~reside~~ *resides* with a  
 26 parent, another person with care and legal custody of that  
 27 individual, a person who has been given care and custody of that  
 28 individual by a state or local governmental agency that is  
 29 responsible for the welfare of children, or the designee of that  
 30 parent or other person with legal custody of any individual under  
 31 18 years of age by written consent of the parent or designated  
 32 custodian. The protections afforded by this part against  
 33 discrimination on the basis of familial status also apply to ~~any~~ *an*  
 34 individual who is pregnant, who is in the process of securing legal  
 35 custody of ~~any~~ *an* individual under 18 years of age, or who is in  
 36 the process of being given care and custody of ~~any~~ *an* individual  
 37 under 18 years of age by a state or local governmental agency  
 38 responsible for the welfare of children.

39 SEC. 7. The Legislature intends that nothing in these  
 40 amendments of Sections 12920, 12921, 12940, 12945.2, and

1 12955.2 of the Government Code supersedes, limits, or preempts  
2 any provision of federal, state, or local law that provides greater  
3 protections from employment discrimination than those provided  
4 in these sections. The Legislature further intends that these  
5 amendments not limit or preclude any claim or cause of action on  
6 the basis of familial status or family responsibilities under federal,  
7 state, or local law.

O