

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**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 amended, 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. *The bill would, for employment purposes, define "familial status" as having or providing care for a child, domestic partner, grandchild, grandparent, parent, parent-in-law, sibling, or spouse.*

~~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:

1 12921. (a) The opportunity to seek, obtain and hold  
2 employment without discrimination because of race, religious  
3 creed, color, national origin, ancestry, physical disability, mental  
4 disability, medical condition, marital status, familial status, sex,  
5 age, or sexual orientation is hereby recognized as and declared to  
6 be a civil right.

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

12 SEC. 3. Section 12926 of the Government Code is amended  
13 to read:

14 12926. As used in this part in connection with unlawful  
15 practices, unless a different meaning clearly appears from the  
16 context:

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

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

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

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

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

36 (e) “Employment agency” includes a person undertaking for  
37 compensation to procure employees or opportunities to work.

38 (f) “Essential functions” means the fundamental job duties of  
39 the employment position the individual with a disability holds or

1 desires. “Essential functions” does not include the marginal  
2 functions of the position.

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

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

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

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

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

15 (A) The employer’s judgment as to which functions are essential.

16 (B) A Written job description prepared before advertising or  
17 interviewing an applicant for the job.

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

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

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

22 (F) The work experience of a past incumbent in the job.

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

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

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

31 (1) A health impairment related to or associated with a diagnosis  
32 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) 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  
40 presently not associated with the symptoms of a disease or disorder.

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

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

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

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

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

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

22 (2) Any other mental or psychological disorder or condition not  
23 described in paragraph (1) that requires special education or a  
24 related service.

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

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

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

36 “Mental disability” does not include a sexual behavior disorder,  
37 compulsive gambling, kleptomania, pyromania, or a psychoactive  
38 substance use disorder resulting from the current unlawful use of  
39 a controlled substance or another drug.

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

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

8 (1) Having a physiological disease, disorder, condition, cosmetic  
9 disfigurement, or anatomical loss that does both of the following:

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

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

16 (i) “Limits” shall be determined without regard to mitigating  
17 measures such as medication, an assistive device, a prosthetic, or  
18 reasonable accommodation, unless the mitigating measure itself  
19 limits a major life activity.

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

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

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

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

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

34 (5) Being regarded or treated by the employer or other entity  
35 covered by this part as having, or having had, a disease, disorder,  
36 condition, cosmetic disfigurement, anatomical loss, or health  
37 impairment that has no present disabling effect but may become  
38 a physical disability as described in paragraph (1) or (2).

39 (6) “Physical disability” does not include a sexual behavior  
40 disorder, compulsive gambling, kleptomania, pyromania, or a

1 psychoactive substance use disorder resulting from the current  
2 unlawful use of a controlled substance or another drug.

3 (l) Notwithstanding subdivisions (i) and (k), if the definition of  
4 “disability” used in the Americans with Disabilities Act of 1990  
5 (42 U.S.C. Sec. 12101 et seq.) would result in broader protection  
6 of the civil rights of an individual with a mental disability or  
7 physical disability, as defined in subdivision (i) or (k), or would  
8 include a medical condition not included within those definitions,  
9 then that broader protection or coverage shall be deemed  
10 incorporated by reference into, and shall prevail over conflicting  
11 provisions of, the definitions in subdivisions (i) and (k).

12 (m) “Race, religious creed, color, national origin, ancestry,  
13 physical disability, mental disability, medical condition, marital  
14 status, familial status, sex, age, or sexual orientation” includes a  
15 perception that the person has any of those characteristics or that  
16 the person is associated with a person who has, or is perceived to  
17 have, any of those characteristics.

18 (n) “Reasonable accommodation” may include either of the  
19 following:

20 (1) Making existing facilities used by an employee readily  
21 accessible to, and usable by, an individual with a disability.

22 (2) Job restructuring, a part-time or modified work schedule,  
23 reassignment to a vacant position, acquisition or modification of  
24 equipment or a device, adjustment or modification of an  
25 examination, training material or policy, the provision of a qualified  
26 reader or interpreter, and other similar accommodation for an  
27 individual with a disability.

28 (o) “Religious creed,” “religion,” “religious observance,”  
29 “religious belief,” and “creed” include all aspects of religious  
30 belief, observance, and practice.

31 (p) “Sex” includes, but is not limited to, pregnancy, childbirth,  
32 or a medical condition related to pregnancy or childbirth. “Sex”  
33 also includes, but is not limited to, a person’s gender, as defined  
34 in Section 422.56 of the Penal Code.

35 (q) “Sexual orientation” means heterosexuality, homosexuality,  
36 and bisexuality.

37 (r) “Supervisor” means an individual having the authority, in  
38 the interest of the employer, to hire, transfer, suspend, lay off,  
39 recall, promote, discharge, assign, reward, or discipline other  
40 employees, or the responsibility to direct them, or to adjust their

1 grievances, or effectively to recommend that action, if, in  
2 connection with the foregoing, the exercise of that authority is not  
3 of a merely routine or clerical nature, but requires the use of  
4 independent judgment.

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

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

9 (2) The overall financial resources of the facility involved in  
10 the provision of the reasonable accommodation, the number of  
11 persons employed at the facility, and the effect on expenses and  
12 resources or the impact otherwise of this accommodation upon the  
13 operation of the facility.

14 (3) The overall financial resources of the covered entity, the  
15 overall size of the business of a covered entity with respect to the  
16 number of employees, and the number, type, and location of its  
17 facilities.

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

20 (5) The geographic separateness, administrative, or fiscal  
21 relationship of the facility.

22 (t) In connection with unlawful employment practices, “familial  
23 status” means ~~an individual under 18 years of age who resides~~  
24 ~~with a parent, a parent or person with care and legal custody of~~  
25 ~~that individual, a person who has been given care and custody of~~  
26 ~~that individual by a state or local governmental agency that is~~  
27 ~~responsible for the welfare of children, or the designee of a parent~~  
28 ~~or other person with legal custody of an individual under 18 years~~  
29 ~~of age by written consent of the parent or designated custodian.~~  
30 ~~The protections against unlawful employment practices on the~~  
31 ~~basis of familial status also apply to an individual who is in the~~  
32 ~~process of securing legal custody of an individual under 18 years~~  
33 ~~of age or who is in the process of being given care and custody of~~  
34 ~~an individual under 18 years of age by a state or local governmental~~  
35 ~~agency responsible for the welfare of children. *having or providing*~~  
36 ~~*care for any of the following:*~~

37 (1) *A child as defined in Section 3302 of the Unemployment*  
38 *Insurance Code.*

39 (2) *A domestic partner as defined in Section 297 of the Family*  
40 *Code.*

1 (3) A grandchild.

2 (4) A grandparent.

3 (5) A parent as defined in Section 3302 of the Unemployment  
4 Insurance Code.

5 (6) A parent-in-law, which means the parent of a spouse or  
6 domestic partner.

7 (7) A sibling as defined in subdivision (c) of Section 362.1 of  
8 the Welfare and Institutions Code.

9 (8) A spouse, which means the partner to a lawful marriage.

10 SEC. 4. Section 12940 of the Government Code is amended  
11 to read:

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

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

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

35 (2) This part does not prohibit an employer from refusing to  
36 hire or discharging an employee who, because of the employee's  
37 medical condition, is unable to perform his or her essential duties  
38 even with reasonable accommodation, or cannot perform those  
39 duties in a manner that would not endanger the employee's health  
40 or safety or the health or safety of another even with reasonable

1 accommodation. Nothing in this part shall subject an employer to  
2 legal liability resulting from the refusal to employ or the discharge  
3 of an employee who, because of the employee’s medical condition,  
4 is unable to perform his or her essential duties, or cannot perform  
5 those duties in a manner that would not endanger the employee’s  
6 health or safety or the health or safety of another even with  
7 reasonable accommodation.

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

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

14 (B) Prohibit a bona fide health plan from providing additional  
15 or greater benefits to an employee with dependents than to an  
16 employee without or with 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 a  
20 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. A promotion within the existing staff,  
24 hiring or promotion on the basis of experience and training, rehiring  
25 on the basis of seniority and prior service with the employer, or  
26 hiring under an established recruiting program from a high school,  
27 college, university, or trade school do not, in and of themselves,  
28 constitute unlawful employment practices.

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

1 way against its members or against an employer or against a person  
2 employed by an employer.

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

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

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

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

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

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

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

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

21 (h) For an employer, labor organization, employment agency,  
22 or person to discharge, expel, or otherwise discriminate against a  
23 person because the person has opposed a practice forbidden under  
24 this part or because the person has filed a complaint, testified, or  
25 assisted in a proceeding under this part.

26 (i) For a person to aid, abet, incite, compel, or coerce the doing  
27 of an act forbidden under this part, or to attempt to do so.

28 (j) (1) For an employer, labor organization, employment agency,  
29 apprenticeship training program or a training program leading to  
30 employment, or any other person, because of 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, to harass an employee, an applicant, or  
34 a person providing services pursuant to a contract. Harassment of  
35 an employee, an applicant, or a person providing services pursuant  
36 to a contract by an employee, other than an agent or supervisor,  
37 shall be unlawful if the entity, or an agent or supervisor of the  
38 entity, knows or should have known of this conduct and fails to  
39 take immediate and appropriate corrective action. An employer  
40 may also be responsible for the acts of a nonemployee, with respect

1 to sexual harassment of an employee, applicant, or person  
2 providing services pursuant to a contract in the workplace, where  
3 the employer, or an agent or supervisor of the employer, knows  
4 or should have known of the conduct and fails to take immediate  
5 and appropriate corrective action. In reviewing a case involving  
6 the acts of a nonemployee, the extent of the employer's control  
7 and any other legal responsibility which the employer may have  
8 with respect to the conduct of the nonemployee shall be considered.  
9 An entity shall take all reasonable steps to prevent harassment  
10 from occurring. Loss of a tangible job benefit shall not be necessary  
11 in order to establish harassment.

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

15 (3) An employee of an entity subject to this subdivision is  
16 personally liable for harassment prohibited by this section that is  
17 perpetrated by the employee, regardless of whether the employer  
18 or covered entity knows or should have known of the conduct and  
19 fails to take immediate and appropriate corrective action.

20 (4) (A) For purposes of this subdivision only, "employer" means  
21 a person regularly employing one or more persons or regularly  
22 receiving the services of one or more persons providing services  
23 pursuant to a contract, or a person acting as an agent of an  
24 employer, directly or indirectly, the state, or a political or civil  
25 subdivision of the state, and cities. The definition of "employer"  
26 in subdivision (d) of Section 12926 applies to all provisions of this  
27 section other than this subdivision.

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

32 (C) For purposes of this subdivision, "harassment" because of  
33 sex includes sexual harassment, gender harassment, and harassment  
34 based on pregnancy, childbirth, or a related medical condition.

35 (5) For purposes of this subdivision, "a person providing services  
36 pursuant to a contract" means a person who meets all of the  
37 following criteria:

38 (A) The person has the right to control the performance of the  
39 contract for services and discretion as to the manner of  
40 performance.

1 (B) The person is customarily engaged in an independently  
2 established business.

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

7 (k) For an employer, labor organization, employment agency,  
8 apprenticeship training program, or a training program leading to  
9 employment, to fail to take all reasonable steps necessary to prevent  
10 discrimination and harassment from occurring.

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

31 (m) For an employer or other entity covered by this part to fail  
32 to make reasonable accommodation for the known physical or  
33 mental disability of an applicant or employee. Nothing in this  
34 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
35 construed to require an accommodation that is demonstrated by  
36 the employer or other covered entity to produce undue hardship  
37 to its operation.

38 (n) For an employer or other entity covered by this part to fail  
39 to engage in a timely, good faith, interactive process with the  
40 employee or applicant to determine effective reasonable

1 accommodation, if any, in response to a request for reasonable  
2 accommodation by an employee or applicant with a known physical  
3 or mental disability or known medical condition.

4 (o) For an employer or other entity covered by this part, to  
5 subject, directly or indirectly, an employee, applicant, or other  
6 person to a test for the presence of a genetic characteristic.

7 ~~SEC. 5.—Section 12945.2 of the Government Code is amended~~  
8 ~~to read:~~

9 ~~12945.2. (a) Except as provided in subdivision (b), it shall be~~  
10 ~~an unlawful employment practice for an employer, as defined in~~  
11 ~~paragraph (2) of subdivision (c), to refuse to grant a request by an~~  
12 ~~employee with more than 12 months of service with the employer,~~  
13 ~~and who has at least 1,250 hours of service with the employer~~  
14 ~~during the previous 12-month period, to take up to a total of 12~~  
15 ~~workweeks in any 12-month period for family care and medical~~  
16 ~~leave. Family care and medical leave requested pursuant to this~~  
17 ~~subdivision shall not be deemed to have been granted unless the~~  
18 ~~employer provides the employee, upon granting the leave request,~~  
19 ~~a guarantee of employment in the same or a comparable position~~  
20 ~~upon the termination of the leave. The commission shall adopt a~~  
21 ~~regulation specifying the elements of a reasonable request.~~

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

27 ~~(c) For purposes of this section:~~

28 ~~(1) “Child” means a biological, adopted, or foster child, a~~  
29 ~~stepchild, a legal ward, or a child of a person standing in loco~~  
30 ~~parentis who is either of the following:~~

31 ~~(A) Under 18 years of age.~~

32 ~~(B) An adult dependent child.~~

33 ~~(2) “Employer” means either of the following:~~

34 ~~(A) A person who directly employs 50 or more persons to~~  
35 ~~perform services for a wage or salary.~~

36 ~~(B) The state, and a political or civil subdivision of the state~~  
37 ~~and cities.~~

38 ~~(3) “Family care and medical leave” means any of the following:~~

1 (A) Leave for reason of the birth of a child of the employee or  
2 the placement of a child with an employee in connection with the  
3 adoption or foster care of the child by the employee.

4 (B) Leave to care for a parent, a grandparent, a parent-in-law,  
5 a spouse, a domestic partner, a sibling, or a child who has a serious  
6 health condition. Such care includes:

7 (i) Providing supervision, transportation, psychological comfort,  
8 or emotional comfort.

9 (ii) Addressing medical, educational, nutritional, hygienic, or  
10 safety needs.

11 (iii) Attending to an illness, injury, mental disability, or physical  
12 disability.

13 (C) Leave because of an employee's own serious health  
14 condition that makes the employee unable to perform the functions  
15 of the position of that employee, except for leave taken for  
16 disability on account of pregnancy, childbirth, or related medical  
17 conditions.

18 (4) "Employment in the same or a comparable position" means  
19 employment in a position that has the same or similar duties and  
20 pay that can be performed at the same or similar geographic  
21 location as the position held prior to the leave.

22 (5) "FMLA" means the federal Family and Medical Leave Act  
23 of 1993 (P.L. 103-3).

24 (6) "Health care provider" means any of the following:

25 (A) An individual holding either a physician's and surgeon's  
26 certificate issued pursuant to Article 4 (commencing with Section  
27 2080) of Chapter 5 of Division 2 of the Business and Professions  
28 Code, an osteopathic physician's and surgeon's certificate issued  
29 pursuant to Article 4.5 (commencing with Section 2099.5) of  
30 Chapter 5 of Division 2 of the Business and Professions Code, or  
31 an individual duly licensed as a physician, surgeon, or osteopathic  
32 physician or surgeon in another state or jurisdiction, who directly  
33 treats or supervises the treatment of the serious health condition.

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

37 (7) "Parent" means a biological, foster, or adoptive parent, a  
38 stepparent, a legal guardian, or other person who stood in loco  
39 parentis to the employee when the employee was a child.

1     ~~(8) “Serious health condition” means an illness, injury,~~  
2 ~~impairment, or physical or mental condition that involves either~~  
3 ~~of the following:~~  
4     ~~(A) Inpatient care in a hospital, hospice, or residential health~~  
5 ~~care facility.~~  
6     ~~(B) Continuing treatment or continuing supervision by a health~~  
7 ~~care provider.~~  
8     ~~(d) An employer shall not be required to pay an employee for~~  
9 ~~leave taken pursuant to subdivision (a), except as required by~~  
10 ~~subdivision (e).~~  
11     ~~(e) An employee taking leave permitted by subdivision (a) may~~  
12 ~~elect, or an employer may require the employee, to substitute, for~~  
13 ~~leave allowed under subdivision (a), any of the employee’s accrued~~  
14 ~~vacation leave or other accrued time off during this period or any~~  
15 ~~other paid or unpaid time off negotiated with the employer. If an~~  
16 ~~employee takes a leave because of the employee’s own serious~~  
17 ~~health condition, the employee may also elect, or the employer~~  
18 ~~may also require the employee, to substitute accrued sick leave~~  
19 ~~during the period of the leave. However, an employee shall not~~  
20 ~~use sick leave during a period of leave in connection with the birth,~~  
21 ~~adoption, or foster care of a child, or to care for a child, parent, or~~  
22 ~~spouse with a serious health condition, unless mutually agreed to~~  
23 ~~by the employer and the employee.~~  
24     ~~(f) (1) During a period that an eligible employee takes leave~~  
25 ~~pursuant to subdivision (a) or takes leave that qualifies as leave~~  
26 ~~taken under the FMLA, the employer shall maintain and pay for~~  
27 ~~coverage under a “group health plan,” as defined in paragraph (1)~~  
28 ~~of subdivision (b) of Section 5000 of Title 26 of the Internal~~  
29 ~~Revenue Code, for the duration of the leave, not to exceed 12~~  
30 ~~workweeks in a 12-month period, commencing on the date leave~~  
31 ~~taken under the FMLA commences, at the level and under the~~  
32 ~~conditions coverage would have been provided if the employee~~  
33 ~~had continued in employment continuously for the duration of the~~  
34 ~~leave. Nothing in the preceding sentence shall preclude an~~  
35 ~~employer from maintaining and paying for coverage under a “group~~  
36 ~~health plan” beyond 12 workweeks. An employer may recover the~~  
37 ~~premium that the employer paid as required by this subdivision~~  
38 ~~for maintaining coverage for the employee under the group health~~  
39 ~~plan if both of the following conditions occur:~~

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

3     (B) The employee's failure to return from leave is for a reason  
4 other than the continuation, recurrence, or onset of a serious health  
5 condition that entitles the employee to leave under subdivision (a)  
6 or other circumstances beyond the control of the employee.

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

28     For purposes of pension and retirement plans, an employer shall  
29 not be required to make plan payments for an employee during  
30 the leave period, and the leave period shall not be required to be  
31 counted for purposes of time accrued under the plan. However, an  
32 employee covered by a pension plan may continue to make  
33 contributions in accordance with the terms of the plan during the  
34 period of the leave.

35     (g) During a family care and medical leave period, the employee  
36 shall retain employee status with the employer, and the leave shall  
37 not constitute a break in service, for purposes of longevity, seniority  
38 under a collective bargaining agreement, or an employee benefit  
39 plan. An employee returning from leave shall return with no less  
40 seniority than the employee had when the leave commenced, for

1 purposes of layoff, recall, promotion, job assignment, and  
2 seniority-related benefits such as vacation.

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

6 (i) If the employee's need for leave pursuant to this section is  
7 foreseeable due to a planned medical treatment or supervision, the  
8 employee shall make a reasonable effort to schedule the treatment  
9 or supervision to avoid disruption to the operations of the employer,  
10 subject to the approval of the health care provider of the individual  
11 requiring the treatment or supervision.

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

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

19 (B) The probable duration of the condition.

20 (C) An estimate of the amount of time that the health care  
21 provider believes the employee needs to care for the individual  
22 requiring the care.

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

26 (2) Upon expiration of the time estimated by the health care  
27 provider in subparagraph (C) of paragraph (1), the employer may  
28 require the employee to obtain recertification, in accordance with  
29 the procedure provided in paragraph (1), if additional leave is  
30 required.

31 (k) (1) An employer may require that an employee's request  
32 for leave because of the employee's own serious health condition  
33 be supported by a certification issued by his or her health care  
34 provider. That certification shall be sufficient if it includes all of  
35 the following:

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

37 (B) The probable duration of the condition.

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

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

5     ~~(3) (A) In a case in which the employer has reason to doubt the~~  
6     ~~validity of the certification provided pursuant to this section, the~~  
7     ~~employer may require, at the employer's expense, that the~~  
8     ~~employee obtain the opinion of a second health care provider,~~  
9     ~~designated or approved by the employer, concerning any~~  
10    ~~information certified under paragraph (1).~~

11    ~~(B) The health care provider designated or approved under~~  
12    ~~subparagraph (A) shall not be employed on a regular basis by the~~  
13    ~~employer.~~

14    ~~(C) In a case in which the second opinion described in~~  
15    ~~subparagraph (A) differs from the opinion in the original~~  
16    ~~certification, the employer may require, at the employer's expense,~~  
17    ~~that the employee obtain the opinion of a third health care provider,~~  
18    ~~designated or approved jointly by the employer and the employee,~~  
19    ~~concerning the information certified under paragraph (1).~~

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

23    ~~(4) As a condition of an employee's return from leave taken~~  
24    ~~because of the employee's own serious health condition, the~~  
25    ~~employer may have a uniformly applied practice or policy that~~  
26    ~~requires the employee to obtain certification from his or her health~~  
27    ~~care provider that the employee is able to resume work. Nothing~~  
28    ~~in this paragraph shall supersede a valid collective bargaining~~  
29    ~~agreement that governs the return to work of that employee.~~

30    ~~(f) It shall be an unlawful employment practice for an employer~~  
31    ~~to refuse to hire, or to discharge, fine, suspend, expel, or~~  
32    ~~discriminate against, an individual because of any of the following:~~

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

35    ~~(2) An individual's giving information or testimony as to his or~~  
36    ~~her own family care and medical leave, or another person's family~~  
37    ~~care and medical leave, in an inquiry or proceeding related to rights~~  
38    ~~guaranteed under this section.~~

- 1 ~~(m) This section shall not be construed to require a change in~~  
2 ~~an existing collective bargaining agreement during the life of the~~  
3 ~~contract, or until January 1, 1993, whichever occurs first.~~
- 4 ~~(n) The amendments made to this section by the act adding this~~  
5 ~~subdivision shall not be construed to require a change in an existing~~  
6 ~~collective bargaining agreement during the life of the contract, or~~  
7 ~~until February 5, 1994, whichever occurs first.~~
- 8 ~~(o) The provisions of this section shall be construed as separate~~  
9 ~~and distinct from those of Section 12945.~~
- 10 ~~(p) Leave provided for pursuant to this section may be taken in~~  
11 ~~one or more periods. The 12-month period during which 12~~  
12 ~~workweeks of leave may be taken under this section shall run~~  
13 ~~concurrently with the 12-month period under the FMLA, and shall~~  
14 ~~commence the date leave taken under the FMLA commences.~~
- 15 ~~(q) In a case in which both parents entitled to leave under~~  
16 ~~subdivision (a) are employed by the same employer, the employer~~  
17 ~~shall not be required to grant leave in connection with the birth,~~  
18 ~~adoption, or foster care of a child that would allow the parents~~  
19 ~~family care and medical leave totaling more than the amount~~  
20 ~~specified in subdivision (a).~~
- 21 ~~(r) (1) Notwithstanding subdivision (a), an employer may refuse~~  
22 ~~to reinstate an employee returning from leave to the same or a~~  
23 ~~comparable position if all of the following apply:~~
- 24 ~~(A) The employee is a salaried employee who is among the~~  
25 ~~highest paid 10 percent of the employer's employees who are~~  
26 ~~employed within 75 miles of the worksite at which that employee~~  
27 ~~is employed.~~
- 28 ~~(B) The refusal is necessary to prevent substantial and grievous~~  
29 ~~economic injury to the operations of the employer.~~
- 30 ~~(C) The employer notifies the employee of the intent to refuse~~  
31 ~~reinstatement at the time the employer determines the refusal is~~  
32 ~~necessary under subparagraph (B).~~
- 33 ~~(2) In a case in which the leave has already commenced, the~~  
34 ~~employer shall give the employee a reasonable opportunity to~~  
35 ~~return to work following the notice prescribed by subparagraph~~  
36 ~~(C).~~
- 37 ~~(s) Leave taken by an employee pursuant to this section shall~~  
38 ~~run concurrently with leave taken pursuant to the FMLA, except~~  
39 ~~for leave taken under the FMLA for disability on account of~~  
40 ~~pregnancy, childbirth, or related medical conditions. The aggregate~~

1 amount of leave taken under this section or the FMLA, or both,  
 2 except for leave taken for disability on account of pregnancy,  
 3 childbirth, or related medical conditions, shall not exceed 12  
 4 workweeks in a 12-month period. An employee is entitled to take,  
 5 in addition to the leave provided for under this section and the  
 6 FMLA, the leave provided for in Section 12945, if the employee  
 7 is otherwise qualified for that leave.

8 ~~SEC. 6.~~

9 *SEC. 5.* Section 12955.2 of the Government Code is amended  
 10 to read:

11 12955.2. For purposes of this part in connection with unlawful  
 12 housing practices, “familial status” means an individual under 18  
 13 years of age who resides with a parent, another person with care  
 14 and legal custody of that individual, a person who has been given  
 15 care and custody of that individual by a state or local governmental  
 16 agency that is responsible for the welfare of children, or the  
 17 designee of that parent or other person with legal custody of any  
 18 individual under 18 years of age by written consent of the parent  
 19 or designated custodian. The protections afforded by this part  
 20 against discrimination on the basis of familial status also apply to  
 21 an individual who is pregnant , who is in the process of securing  
 22 legal custody of an individual under 18 years of age, or who is in  
 23 the process of being given care and custody of an individual under  
 24 18 years of age by a state or local governmental agency responsible  
 25 for the welfare of children.

26 ~~SEC. 7.~~

27 *SEC. 6.* The Legislature intends that nothing in these  
 28 amendments of Sections 12920, 12921, 12940, ~~12945.2,~~ and  
 29 12955.2 of the Government Code supersedes, limits, or preempts  
 30 any provision of federal, state, or local law that provides greater  
 31 protections from employment discrimination than those provided  
 32 in these sections. The Legislature further intends that these  
 33 amendments not limit or preclude any claim or cause of action on  
 34 the basis of familial status or family responsibilities under federal,  
 35 state, or local law.