

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1964

Introduced by Assembly Member Yamada
(Coauthors: Assembly Members Allen, Cedillo, Dickinson, Fong, and Bonnie Lowenthal)

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1964, as amended, Yamada. Discrimination in employment: reasonable accommodations.

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, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation. Specifically, an employer or other covered entity is required to reasonably accommodate the religious belief or observance, ~~or disability or medical condition,~~ of an individual unless the accommodation would be an undue hardship on the conduct of the business of the employer or other entity.

This bill would ~~specify a factor to be considered in determining undue hardship for the purposes of these protections against discrimination,~~

~~and would provide that an accommodation is not reasonable if the accommodation requires segregation of an employee from customers or the general public. The bill would include the practice of wearing religious clothing or a religious hairstyle as a belief or observance covered by the protections against religious discrimination, and would specify that an accommodation of a person wearing religious clothing or a religious hairstyle that would require that person to be segregated from the public or other employees is not a reasonable accommodation. This bill would further provide that no accommodation is required if an accommodation would result in the violation of specified laws protecting civil rights.~~

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 12926 of the Government Code is
 2 amended to read:
 3 12926. As used in this part in connection with unlawful
 4 practices, unless a different meaning clearly appears from the
 5 context:
 6 (a) “Affirmative relief” or “prospective relief” includes the
 7 authority to order reinstatement of an employee, awards of backpay,
 8 reimbursement of out-of-pocket expenses, hiring, transfers,
 9 reassignments, grants of tenure, promotions, cease and desist
 10 orders, posting of notices, training of personnel, testing, expunging
 11 of records, reporting of records, and any other similar relief that
 12 is intended to correct unlawful practices under this part.
 13 (b) “Age” refers to the chronological age of any individual who
 14 has reached his or her 40th birthday.
 15 (c) “Employee” does not include any individual employed by
 16 his or her parents, spouse, or child, or any individual employed
 17 under a special license in a nonprofit sheltered workshop or
 18 rehabilitation facility.
 19 (d) “Employer” includes any person regularly employing five
 20 or more persons, or any person acting as an agent of an employer,
 21 directly or indirectly, the state or any political or civil subdivision
 22 of the state, and cities, except as follows:
 23 “Employer” does not include a religious association or
 24 corporation not organized for private profit.

1 (e) "Employment agency" includes any person undertaking for
2 compensation to procure employees or opportunities to work.

3 (f) "Essential functions" means the fundamental job duties of
4 the employment position the individual with a disability holds or
5 desires. "Essential functions" does not include the marginal
6 functions of the position.

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

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

12 (B) The function may be essential because of the limited number
13 of employees available among whom the performance of that job
14 function can be distributed.

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

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

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

21 (B) Written job descriptions prepared before advertising or
22 interviewing applicants for the job.

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

24 (D) The consequences of not requiring the incumbent to perform
25 the function.

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

27 (F) The work experiences of past incumbents in the job.

28 (G) The current work experience of incumbents in similar jobs.

29 (g) (1) "Genetic information" means, with respect to any
30 individual, information about any of the following:

31 (A) The individual's genetic tests.

32 (B) The genetic tests of family members of the individual.

33 (C) The manifestation of a disease or disorder in family members
34 of the individual.

35 (2) "Genetic information" includes any request for, or receipt
36 of, genetic services, or participation in clinical research that
37 includes genetic services, by an individual or any family member
38 of the individual.

39 (3) "Genetic information" does not include information about
40 the sex or age of any individual.

1 (h) “Labor organization” includes any organization that exists
2 and is constituted for the purpose, in whole or in part, of collective
3 bargaining or of dealing with employers concerning grievances,
4 terms or conditions of employment, or of other mutual aid or
5 protection.

6 (i) “Medical condition” means either of the following:

7 (1) Any health impairment related to or associated with a
8 diagnosis of cancer or a record or history of cancer.

9 (2) Genetic characteristics. For purposes of this section, “genetic
10 characteristics” means either of the following:

11 (A) Any scientifically or medically identifiable gene or
12 chromosome, or combination or alteration thereof, that is known
13 to be a cause of a disease or disorder in a person or his or her
14 offspring, or that is determined to be associated with a statistically
15 increased risk of development of a disease or disorder, and that is
16 presently not associated with any symptoms of any disease or
17 disorder.

18 (B) Inherited characteristics that may derive from the individual
19 or family member, that are known to be a cause of a disease or
20 disorder in a person or his or her offspring, or that are determined
21 to be associated with a statistically increased risk of development
22 of a disease or disorder, and that are presently not associated with
23 any symptoms of any disease or disorder.

24 (j) “Mental disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any mental or psychological disorder or condition,
27 such as mental retardation, organic brain syndrome, emotional or
28 mental illness, or specific learning disabilities, that limits a major
29 life activity. For purposes of this section:

30 (A) “Limits” shall be determined without regard to mitigating
31 measures, such as medications, assistive devices, or reasonable
32 accommodations, unless the mitigating measure itself limits a
33 major life activity.

34 (B) A mental or psychological disorder or condition limits a
35 major life activity if it makes the achievement of the major life
36 activity difficult.

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

1 (2) Any other mental or psychological disorder or condition not
2 described in paragraph (1) that requires special education or related
3 services.

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

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

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

15 “Mental disability” does not include sexual behavior disorders,
16 compulsive gambling, kleptomania, pyromania, or psychoactive
17 substance use disorders resulting from the current unlawful use of
18 controlled substances or other drugs.

19 (k) “On the bases enumerated in this part” means or refers to
20 discrimination on the basis of one or more of the following: race,
21 religious creed, color, national origin, ancestry, physical disability,
22 mental disability, medical condition, genetic information, marital
23 status, sex, age, or sexual orientation.

24 (l) “Physical disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any physiological disease, disorder, condition,
27 cosmetic disfigurement, or anatomical loss that does both of the
28 following:

29 (A) Affects one or more of the following body systems:
30 neurological, immunological, musculoskeletal, special sense
31 organs, respiratory, including speech organs, cardiovascular,
32 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
33 and endocrine.

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

35 (i) “Limits” shall be determined without regard to mitigating
36 measures such as medications, assistive devices, prosthetics, or
37 reasonable accommodations, unless the mitigating measure itself
38 limits a major life activity.

- 1 (ii) A physiological disease, disorder, condition, cosmetic
2 disfigurement, or anatomical loss limits a major life activity if it
3 makes the achievement of the major life activity difficult.
- 4 (iii) “Major life activities” shall be broadly construed and
5 includes physical, mental, and social activities and working.
- 6 (2) Any other health impairment not described in paragraph (1)
7 that requires special education or related services.
- 8 (3) Having a record or history of a disease, disorder, condition,
9 cosmetic disfigurement, anatomical loss, or health impairment
10 described in paragraph (1) or (2), which is known to the employer
11 or other entity covered by this part.
- 12 (4) Being regarded or treated by the employer or other entity
13 covered by this part as having, or having had, any physical
14 condition that makes achievement of a major life activity difficult.
- 15 (5) Being regarded or treated by the employer or other entity
16 covered by this part as having, or having had, a disease, disorder,
17 condition, cosmetic disfigurement, anatomical loss, or health
18 impairment that has no present disabling effect but may become
19 a physical disability as described in paragraph (1) or (2).
- 20 (6) “Physical disability” does not include sexual behavior
21 disorders, compulsive gambling, kleptomania, pyromania, or
22 psychoactive substance use disorders resulting from the current
23 unlawful use of controlled substances or other drugs.
- 24 (m) Notwithstanding subdivisions (j) and (l), if the definition
25 of “disability” used in the federal Americans with Disabilities Act
26 of 1990 (P.L. 101-336) would result in broader protection of the
27 civil rights of individuals with a mental disability or physical
28 disability, as defined in subdivision (j) or (l), or would include any
29 medical condition not included within those definitions, then that
30 broader protection or coverage shall be deemed incorporated by
31 reference into, and shall prevail over conflicting provisions of, the
32 definitions in subdivisions (j) and (l).
- 33 (n) “Race, religious creed, color, national origin, ancestry,
34 physical disability, mental disability, medical condition, genetic
35 information, marital status, sex, age, or sexual orientation” includes
36 a perception that the person has any of those characteristics or that
37 the person is associated with a person who has, or is perceived to
38 have, any of those characteristics.
- 39 (o) ~~(4)~~ “Reasonable accommodation” may include either of the
40 following:

1 (A)

2 (1) Making existing facilities used by employees readily
3 accessible to, and usable by, individuals with disabilities.

4 (B)

5 (2) Job restructuring, part-time or modified work schedules,
6 reassignment to a vacant position, acquisition or modification of
7 equipment or devices, adjustment or modifications of examinations,
8 training materials or policies, the provision of qualified readers or
9 interpreters, and other similar accommodations for individuals
10 with disabilities.

11 ~~(2) An accommodation is not reasonable if the accommodation~~
12 ~~requires segregation of an employee from customers or the general~~
13 ~~public.~~

14 (p) “Religious creed,” “religion,” “religious observance,”
15 “religious belief,” and “creed” include all aspects of religious
16 belief, observance, and practice, *including wearing religious*
17 *clothing or a religious hairstyle.*

18 (q) “Sex” includes, but is not limited to, pregnancy, childbirth,
19 or medical conditions related to pregnancy or childbirth. “Sex”
20 also includes, but is not limited to, a person’s gender. “Gender”
21 means sex, and includes a person’s gender identity and gender
22 expression. “Gender expression” means a person’s gender-related
23 appearance and behavior whether or not stereotypically associated
24 with the person’s assigned sex at birth.

25 (r) “Sexual orientation” means heterosexuality, homosexuality,
26 and bisexuality.

27 (s) “Supervisor” means any individual having the authority, in
28 the interest of the employer, to hire, transfer, suspend, layoff, recall,
29 promote, discharge, assign, reward, or discipline other employees,
30 or the responsibility to direct them, or to adjust their grievances,
31 or effectively to recommend that action, if, in connection with the
32 foregoing, the exercise of that authority is not of a merely routine
33 or clerical nature, but requires the use of independent judgment.

34 (t) “Undue hardship” means an action requiring significant
35 difficulty or expense, when considered in light of the following
36 factors:

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

38 (2) The overall financial resources of the facilities involved in
39 the provision of the reasonable accommodations, the number of
40 persons employed at the facility, and the effect on expenses and

1 resources or the impact otherwise of these accommodations upon
2 the operation of the facility.

3 (3) The overall financial resources of the covered entity, the
4 overall size of the business of a covered entity with respect to the
5 number of employees, and the number, type, and location of its
6 facilities.

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

9 (5) The geographic separateness, administrative, or fiscal
10 relationship of the facility or facilities.

11 ~~(6) The safety and health requirements in a facility, including~~
12 ~~requirements for the safety of other employees and any other person~~
13 ~~whose safety may be adversely impacted by the accommodation.~~

14 (u) “Wearing religious clothing or a religious hairstyle” shall
15 be broadly construed and includes all of the following:

16 (1) Wearing religious apparel that is part of the observance of
17 the religious ~~faith~~ *creed* practiced by the individual.

18 (2) Wearing jewelry or an ornament that is part of the
19 observance of the religious ~~faith~~ *creed* practiced by the individual.

20 (3) Carrying an object that is part of the observance of the
21 religious ~~faith~~ *creed* practiced by the individual.

22 (4) Adopting the presence, absence, or style of a person’s hair
23 or beard that is part of the observance of the religious ~~faith~~ *creed*
24 practiced by the individual.

25 SEC. 2. Section 12940 of the Government Code is amended
26 to read:

27 12940. It is an unlawful employment practice, unless based
28 upon a bona fide occupational qualification, or, except where based
29 upon applicable security regulations established by the United
30 States or the State of California:

31 (a) For an employer, because of the race, religious creed, color,
32 national origin, ancestry, physical disability, mental disability,
33 medical condition, genetic information, marital status, sex, gender,
34 gender identity, gender expression, age, or sexual orientation of
35 any person, to refuse to hire or employ the person or to refuse to
36 select the person for a training program leading to employment,
37 or to bar or to discharge the person from employment or from a
38 training program leading to employment, or to discriminate against
39 the person in compensation or in terms, conditions, or privileges
40 of employment.

1 (1) This part does not prohibit an employer from refusing to
2 hire or discharging an employee with a physical or mental
3 disability, or subject an employer to any legal liability resulting
4 from the refusal to employ or the discharge of an employee with
5 a physical or mental disability, where the employee, because of
6 his or her physical or mental disability, is unable to perform his
7 or her essential duties even with reasonable accommodations, or
8 cannot perform those duties in a manner that would not endanger
9 his or her health or safety or the health or safety of others even
10 with reasonable accommodations.

11 (2) This part does not prohibit an employer from refusing to
12 hire or discharging an employee who, because of the employee's
13 medical condition, is unable to perform his or her essential duties
14 even with reasonable accommodations, or cannot perform those
15 duties in a manner that would not endanger the employee's health
16 or safety or the health or safety of others even with reasonable
17 accommodations. Nothing in this part shall subject an employer
18 to any legal liability resulting from the refusal to employ or the
19 discharge of an employee who, because of the employee's medical
20 condition, is unable to perform his or her essential duties, or cannot
21 perform those duties in a manner that would not endanger the
22 employee's health or safety or the health or safety of others even
23 with reasonable accommodations.

24 (3) Nothing in this part relating to discrimination on account of
25 marital status shall do either of the following:

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

30 (B) Prohibit bona fide health plans from providing additional
31 or greater benefits to employees with dependents than to those
32 employees without or with fewer dependents.

33 (4) Nothing in this part relating to discrimination on account of
34 sex shall affect the right of an employer to use veteran status as a
35 factor in employee selection or to give special consideration to
36 Vietnam-era veterans.

37 (5) (A) This part does not prohibit an employer from refusing
38 to employ an individual because of his or her age if the law
39 compels or provides for that refusal. Promotions within the existing
40 staff, hiring or promotion on the basis of experience and training,

1 rehiring on the basis of seniority and prior service with the
2 employer, or hiring under an established recruiting program from
3 high schools, colleges, universities, or trade schools do not, in and
4 of themselves, constitute unlawful employment practices.

5 (B) The provisions of this part relating to discrimination on the
6 basis of age do not prohibit an employer from providing health
7 benefits or health care reimbursement plans to retired persons that
8 are altered, reduced, or eliminated when the person becomes
9 eligible for Medicare health benefits. This subparagraph applies
10 to all retiree health benefit plans and contractual provisions or
11 practices concerning retiree health benefits and health care
12 reimbursement plans in effect on or after January 1, 2011.

13 (b) For a labor organization, because of the race, religious creed,
14 color, national origin, ancestry, physical disability, mental
15 disability, medical condition, genetic information, marital status,
16 sex, gender, gender identity, gender expression, age, or sexual
17 orientation of any person, to exclude, expel, or restrict from its
18 membership the person, or to provide only second-class or
19 segregated membership or to discriminate against any person
20 because of the race, religious creed, color, national origin, ancestry,
21 physical disability, mental disability, medical condition, genetic
22 information, marital status, sex, gender, gender identity, gender
23 expression, age, or sexual orientation of the person in the election
24 of officers of the labor organization or in the selection of the labor
25 organization's staff or to discriminate in any way against any of
26 its members or against any employer or against any person
27 employed by an employer.

28 (c) For any person to discriminate against any person in the
29 selection or training of that person in any apprenticeship training
30 program or any other training program leading to employment
31 because of the race, religious creed, color, national origin, ancestry,
32 physical disability, mental disability, medical condition, genetic
33 information, marital status, sex, gender, gender identity, gender
34 expression, age, or sexual orientation of the person discriminated
35 against.

36 (d) For any employer or employment agency to print or circulate
37 or cause to be printed or circulated any publication, or to make
38 any nonjob-related inquiry of an employee or applicant, either
39 verbal or through use of an application form, that expresses,
40 directly or indirectly, any limitation, specification, or discrimination

1 as to race, religious creed, color, national origin, ancestry, physical
2 disability, mental disability, medical condition, genetic information,
3 marital status, sex, gender, gender identity, gender expression,
4 age, or sexual orientation, or any intent to make any such limitation,
5 specification, or discrimination. This part does not prohibit an
6 employer or employment agency from inquiring into the age of
7 an applicant, or from specifying age limitations, where the law
8 compels or provides for that action.

9 (e) (1) Except as provided in paragraph (2) or (3), for any
10 employer or employment agency to require any medical or
11 psychological examination of an applicant, to make any medical
12 or psychological inquiry of an applicant, to make any inquiry
13 whether an applicant has a mental disability or physical disability
14 or medical condition, or to make any inquiry regarding the nature
15 or severity of a physical disability, mental disability, or medical
16 condition.

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

21 (3) Notwithstanding paragraph (1), an employer or employment
22 agency may require a medical or psychological examination or
23 make a medical or psychological inquiry of a job applicant after
24 an employment offer has been made but prior to the
25 commencement of employment duties, provided that the
26 examination or inquiry is job related and consistent with business
27 necessity and that all entering employees in the same job
28 classification are subject to the same examination or inquiry.

29 (f) (1) Except as provided in paragraph (2), for any employer
30 or employment agency to require any medical or psychological
31 examination of an employee, to make any medical or psychological
32 inquiry of an employee, to make any inquiry whether an employee
33 has a mental disability, physical disability, or medical condition,
34 or to make any inquiry regarding the nature or severity of a physical
35 disability, mental disability, or medical condition.

36 (2) Notwithstanding paragraph (1), an employer or employment
37 agency may require any examinations or inquiries that it can show
38 to be job related and consistent with business necessity. An
39 employer or employment agency may conduct voluntary medical
40 examinations, including voluntary medical histories, which are

1 part of an employee health program available to employees at that
2 worksite.

3 (g) For any employer, labor organization, or employment agency
4 to harass, discharge, expel, or otherwise discriminate against any
5 person because the person has made a report pursuant to Section
6 11161.8 of the Penal Code that prohibits retaliation against hospital
7 employees who report suspected patient abuse by health facilities
8 or community care facilities.

9 (h) For any employer, labor organization, employment agency,
10 or person to discharge, expel, or otherwise discriminate against
11 any person because the person has opposed any practices forbidden
12 under this part or because the person has filed a complaint, testified,
13 or assisted in any proceeding under this part.

14 (i) For any person to aid, abet, incite, compel, or coerce the
15 doing of any of the acts forbidden under this part, or to attempt to
16 do so.

17 (j) (1) For an employer, labor organization, employment agency,
18 apprenticeship training program or any training program leading
19 to employment, or any other person, because of race, religious
20 creed, color, national origin, ancestry, physical disability, mental
21 disability, medical condition, genetic information, marital status,
22 sex, gender, gender identity, gender expression, age, or sexual
23 orientation, to harass an employee, an applicant, or a person
24 providing services pursuant to a contract. Harassment of an
25 employee, an applicant, or a person providing services pursuant
26 to a contract by an employee, other than an agent or supervisor,
27 shall be unlawful if the entity, or its agents or supervisors, knows
28 or should have known of this conduct and fails to take immediate
29 and appropriate corrective action. An employer may also be
30 responsible for the acts of nonemployees, with respect to sexual
31 harassment of employees, applicants, or persons providing services
32 pursuant to a contract in the workplace, where the employer, or
33 its agents or supervisors, knows or should have known of the
34 conduct and fails to take immediate and appropriate corrective
35 action. In reviewing cases involving the acts of nonemployees, the
36 extent of the employer's control and any other legal responsibility
37 that the employer may have with respect to the conduct of those
38 nonemployees shall be considered. An entity shall take all
39 reasonable steps to prevent harassment from occurring. Loss of

1 tangible job benefits shall not be necessary in order to establish
2 harassment.

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

6 (3) An employee of an entity subject to this subdivision is
7 personally liable for any harassment prohibited by this section that
8 is perpetrated by the employee, regardless of whether the employer
9 or covered entity knows or should have known of the conduct and
10 fails to take immediate and appropriate corrective action.

11 (4) (A) For purposes of this subdivision only, “employer” means
12 any person regularly employing one or more persons or regularly
13 receiving the services of one or more persons providing services
14 pursuant to a contract, or any person acting as an agent of an
15 employer, directly or indirectly, the state, or any political or civil
16 subdivision of the state, and cities. The definition of “employer”
17 in subdivision (d) of Section 12926 applies to all provisions of this
18 section other than this subdivision.

19 (B) Notwithstanding subparagraph (A), for purposes of this
20 subdivision, “employer” does not include a religious association
21 or corporation not organized for private profit, except as provided
22 in Section 12926.2.

23 (C) For purposes of this subdivision, “harassment” because of
24 sex includes sexual harassment, gender harassment, and harassment
25 based on pregnancy, childbirth, or related medical conditions.

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

29 (A) The person has the right to control the performance of the
30 contract for services and discretion as to the manner of
31 performance.

32 (B) The person is customarily engaged in an independently
33 established business.

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

38 (k) For an employer, labor organization, employment agency,
39 apprenticeship training program, or any training program leading

1 to employment, to fail to take all reasonable steps necessary to
2 prevent discrimination and harassment from occurring.

3 (l) (1) For an employer or other entity covered by this part to
4 refuse to hire or employ a person or to refuse to select a person
5 for a training program leading to employment or to bar or to
6 discharge a person from employment or from a training program
7 leading to employment, or to discriminate against a person in
8 compensation or in terms, conditions, or privileges of employment
9 because of a conflict between the person's religious belief or
10 observance and any employment requirement, unless the employer
11 or other entity covered by this part demonstrates that it has explored
12 any available reasonable alternative means of accommodating the
13 religious belief or observance, including the possibilities of
14 excusing the person from those duties that conflict with his or her
15 religious belief or observance or permitting those duties to be
16 performed at another time or by another person, but is unable to
17 reasonably accommodate the religious belief or observance without
18 undue hardship, as defined in subdivision (t) of Section 12926, on
19 the conduct of the business of the employer or other entity covered
20 by this part. Religious belief or observance, as used in this section,
21 includes, but is not limited to, observance of a Sabbath or other
22 religious holy day or days, reasonable time necessary for travel
23 prior and subsequent to a religious observance, and the practice
24 of wearing religious clothing or a religious hairstyle, *as defined*
25 *in subdivision (u) of Section 12926.*

26 (2) *An accommodation of an individual's wearing of religious*
27 *clothing or a religious hairstyle is not reasonable if the*
28 *accommodation requires segregation of the individual from other*
29 *employees or the public.*

30 (3) *An accommodation is not required under this subdivision if*
31 *it would result in a violation of this part or any other law*
32 *prohibiting discrimination or protecting civil rights, including*
33 *subdivision (b) of Section 51 of the Civil Code and Section 11135*
34 *of this code.*

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

1 the employer or other covered entity to produce undue hardship,
2 as defined in subdivision (t) of Section 12926, to its operation.

3 (n) For an employer or other entity covered by this part to fail
4 to engage in a timely, good faith, interactive process with the
5 employee or applicant to determine effective reasonable
6 accommodations, if any, in response to a request for reasonable
7 accommodation by an employee or applicant with a known physical
8 or mental disability or known medical condition.

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

O