

**ASSEMBLY BILL**

**No. 556**

---

**Introduced by Assembly Member Salas**

February 20, 2013

---

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

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as introduced, Salas. Fair Employment and Housing Act: military veterans.

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.

This bill would add “military and veteran status,” as defined, to the list of categories protected from discrimination under the act. This bill would also provide an exemption for an inquiry by an employer regarding military or veteran status for the purpose of awarding a veteran’s preference as permitted by law.

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:

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

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) The terms of a collective bargaining agreement.

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

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

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

(A) The individual's genetic tests.

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

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

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

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

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

(i) "Medical condition" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     (k) *“Military and veteran status” means a member or veteran*  
2 *of the United States Armed Forces, United States Armed Forces*  
3 *Reserve, the United States National Guard, and the California*  
4 *National Guard.*

5     ~~(k)~~

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

11     ~~(l)~~

12     (m) *“Physical disability” includes, but is not limited to, all of*  
13 *the following:*

14     (1) *Having any physiological disease, disorder, condition,*  
15 *cosmetic disfigurement, or anatomical loss that does both of the*  
16 *following:*

17     (A) *Affects one or more of the following body systems:*  
18 *neurological, immunological, musculoskeletal, special sense*  
19 *organs, respiratory, including speech organs, cardiovascular,*  
20 *reproductive, digestive, genitourinary, hemic and lymphatic, skin,*  
21 *and endocrine.*

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

23     (i) *“Limits” shall be determined without regard to mitigating*  
24 *measures such as medications, assistive devices, prosthetics, or*  
25 *reasonable accommodations, unless the mitigating measure itself*  
26 *limits a major life activity.*

27     (ii) *A physiological disease, disorder, condition, cosmetic*  
28 *disfigurement, or anatomical loss limits a major life activity if it*  
29 *makes the achievement of the major life activity difficult.*

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

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

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

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

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

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

~~(m)~~

(n) Notwithstanding subdivisions (j) and ~~(h)~~ (m), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (P.L. 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or ~~(h)~~ (m), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and ~~(h)~~ (m).

~~(n)~~

(o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

~~(o)~~

(p) “Reasonable accommodation” may include either of the following:

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

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

~~(p)~~

(q) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious

1 belief, observance, and practice, including religious dress and  
2 grooming practices. “Religious dress practice” shall be construed  
3 broadly to include the wearing or carrying of religious clothing,  
4 head or face coverings, jewelry, artifacts, and any other item that  
5 is part of the observance by an individual of his or her religious  
6 creed. “Religious grooming practice” shall be construed broadly  
7 to include all forms of head, facial, and body hair that are part of  
8 the observance by an individual of his or her religious creed.

9 ~~(q)~~

10 (r) (1) “Sex” includes, but is not limited to, the following:

11 (A) Pregnancy or medical conditions related to pregnancy.

12 (B) Childbirth or medical conditions related to childbirth.

13 (C) Breastfeeding or medical conditions related to breastfeeding.

14 (2) “Sex” also includes, but is not limited to, a person’s gender.

15 “Gender” means sex, and includes a person’s gender identity and

16 gender expression. “Gender expression” means a person’s

17 gender-related appearance and behavior whether or not

18 stereotypically associated with the person’s assigned sex at birth.

19 ~~(r)~~

20 (s) “Sexual orientation” means heterosexuality, homosexuality,  
21 and bisexuality.

22 ~~(s)~~

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

30 ~~(t)~~

31 (u) “Undue hardship” means an action requiring significant  
32 difficulty or expense, when considered in light of the following  
33 factors:

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

35 (2) The overall financial resources of the facilities involved in  
36 the provision of the reasonable accommodations, the number of  
37 persons employed at the facility, and the effect on expenses and  
38 resources or the impact otherwise of these accommodations upon  
39 the operation of the facility.

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

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

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

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

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

(a) For an employer, because of the 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, *or military and veteran status*, of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

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

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



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

8 (3) Nothing in this part relating to discrimination on account of  
9 marital 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 bona fide health plans from providing additional  
15 or greater benefits to employees with dependents than to those  
16 employees 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  
20 Vietnam-era veterans.

21 (5) (A) This part does not prohibit an employer from refusing  
22 to employ an individual because of his or her age if the law  
23 compels or provides for that refusal. Promotions within the existing  
24 staff, hiring or promotion on the basis of experience and training,  
25 rehiring on the basis of seniority and prior service with the  
26 employer, or hiring under an established recruiting program from  
27 high schools, colleges, universities, or trade schools do not, in and  
28 of themselves, constitute unlawful employment practices.

29 (B) The provisions of this part relating to discrimination on the  
30 basis of age do not prohibit an employer from providing health  
31 benefits or health care reimbursement plans to retired persons that  
32 are altered, reduced, or eliminated when the person becomes  
33 eligible for Medicare health benefits. This subparagraph applies  
34 to all retiree health benefit plans and contractual provisions or  
35 practices concerning retiree health benefits and health care  
36 reimbursement plans in effect on or after January 1, 2011.

37 (b) For a labor organization, because of the race, religious creed,  
38 color, national origin, ancestry, physical disability, mental  
39 disability, medical condition, genetic information, marital status,  
40 sex, gender, gender identity, gender expression, age, or sexual

1 orientation of any person, to exclude, expel, or restrict from its  
2 membership the person, or to provide only second-class or  
3 segregated membership or to discriminate against any person  
4 because of the race, religious creed, color, national origin, ancestry,  
5 physical disability, mental disability, medical condition, genetic  
6 information, marital status, sex, gender, gender identity, gender  
7 expression, age, or sexual orientation of the person in the election  
8 of officers of the labor organization or in the selection of the labor  
9 organization's staff or to discriminate in any way against any of  
10 its members or against any employer or against any person  
11 employed by an employer.

12 (c) For any person to discriminate against any person in the  
13 selection or training of that person in any apprenticeship training  
14 program or any other training program leading to employment  
15 because of the race, religious creed, color, national origin, ancestry,  
16 physical disability, mental disability, medical condition, genetic  
17 information, marital status, sex, gender, gender identity, gender  
18 expression, age, or sexual orientation of the person discriminated  
19 against.

20 (d) For any employer or employment agency to print or circulate  
21 or cause to be printed or circulated any publication, or to make  
22 any nonjob-related inquiry of an employee or applicant, either  
23 verbal or through use of an application form, that expresses,  
24 directly or indirectly, any limitation, specification, or discrimination  
25 as to race, religious creed, color, national origin, ancestry, physical  
26 disability, mental disability, medical condition, genetic information,  
27 marital status, sex, gender, gender identity, gender expression,  
28 age, or sexual orientation, or any intent to make any such limitation,  
29 specification, or discrimination. This part does not prohibit an  
30 employer or employment agency from inquiring into the age of  
31 an applicant, or from specifying age limitations, where the law  
32 compels or provides for that action.

33 (e) (1) Except as provided in paragraph (2) or (3), for any  
34 employer or employment agency to require any medical or  
35 psychological examination of an applicant, to make any medical  
36 or psychological inquiry of an applicant, to make any inquiry  
37 whether an applicant has a mental disability or physical disability  
38 or medical condition, or to make any inquiry regarding the nature  
39 or severity of a physical disability, mental disability, or medical  
40 condition.

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

5 (3) Notwithstanding paragraph (1), an employer or employment  
6 agency may require a medical or psychological examination or  
7 make a medical or psychological inquiry of a job applicant after  
8 an employment offer has been made but prior to the  
9 commencement of employment duties, provided that the  
10 examination or inquiry is job related and consistent with business  
11 necessity and that all entering employees in the same job  
12 classification are subject to the same examination or inquiry.

13 (f) (1) Except as provided in paragraph (2), for any employer  
14 or employment agency to require any medical or psychological  
15 examination of an employee, to make any medical or psychological  
16 inquiry of an employee, to make any inquiry whether an employee  
17 has a mental disability, physical disability, or medical condition,  
18 or to make any inquiry regarding the nature or severity of a physical  
19 disability, mental disability, or medical condition.

20 (2) Notwithstanding paragraph (1), an employer or employment  
21 agency may require any examinations or inquiries that it can show  
22 to be job related and consistent with business necessity. An  
23 employer or employment agency may conduct voluntary medical  
24 examinations, including voluntary medical histories, which are  
25 part of an employee health program available to employees at that  
26 worksite.

27 (g) For any employer, labor organization, or employment agency  
28 to harass, discharge, expel, or otherwise discriminate against any  
29 person because the person has made a report pursuant to Section  
30 11161.8 of the Penal Code that prohibits retaliation against hospital  
31 employees who report suspected patient abuse by health facilities  
32 or community care facilities.

33 (h) For any employer, labor organization, employment agency,  
34 or person to discharge, expel, or otherwise discriminate against  
35 any person because the person has opposed any practices forbidden  
36 under this part or because the person has filed a complaint, testified,  
37 or assisted in any proceeding under this part.

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

1 (j) (1) For an employer, labor organization, employment agency,  
2 apprenticeship training program or any training program leading  
3 to employment, or any other person, because of race, religious  
4 creed, color, national origin, ancestry, physical disability, mental  
5 disability, medical condition, genetic information, marital status,  
6 sex, gender, gender identity, gender expression, age, or sexual  
7 orientation, to harass an employee, an applicant, or a person  
8 providing services pursuant to a contract. Harassment of an  
9 employee, an applicant, or a person providing services pursuant  
10 to a contract by an employee, other than an agent or supervisor,  
11 shall be unlawful if the entity, or its agents or supervisors, knows  
12 or should have known of this conduct and fails to take immediate  
13 and appropriate corrective action. An employer may also be  
14 responsible for the acts of nonemployees, with respect to sexual  
15 harassment of employees, applicants, or persons providing services  
16 pursuant to a contract in the workplace, where the employer, or  
17 its agents or supervisors, knows or should have known of the  
18 conduct and fails to take immediate and appropriate corrective  
19 action. In reviewing cases involving the acts of nonemployees, the  
20 extent of the employer's control and any other legal responsibility  
21 that the employer may have with respect to the conduct of those  
22 nonemployees shall be considered. An entity shall take all  
23 reasonable steps to prevent harassment from occurring. Loss of  
24 tangible job benefits shall not be necessary in order to establish  
25 harassment.

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

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

34 (4) (A) For purposes of this subdivision only, "employer" means  
35 any person regularly employing one or more persons or regularly  
36 receiving the services of one or more persons providing services  
37 pursuant to a contract, or any person acting as an agent of an  
38 employer, directly or indirectly, the state, or any political or civil  
39 subdivision of the state, and cities. The definition of "employer"

1 in subdivision (d) of Section 12926 applies to all provisions of this  
2 section other than this subdivision.

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

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

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

13 (A) The person has the right to control the performance of the  
14 contract for services and discretion as to the manner of  
15 performance.

16 (B) The person is customarily engaged in an independently  
17 established business.

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

22 (k) For an employer, labor organization, employment agency,  
23 apprenticeship training program, or any training program leading  
24 to employment, to fail to take all reasonable steps necessary to  
25 prevent discrimination and harassment from occurring.

26 (l) (1) For an employer or other entity covered by this part to  
27 refuse to hire or employ a person or to refuse to select a person  
28 for a training program leading to employment or to bar or to  
29 discharge a person from employment or from a training program  
30 leading to employment, or to discriminate against a person in  
31 compensation or in terms, conditions, or privileges of employment  
32 because of a conflict between the person’s religious belief or  
33 observance and any employment requirement, unless the employer  
34 or other entity covered by this part demonstrates that it has explored  
35 any available reasonable alternative means of accommodating the  
36 religious belief or observance, including the possibilities of  
37 excusing the person from those duties that conflict with his or her  
38 religious belief or observance or permitting those duties to be  
39 performed at another time or by another person, but is unable to  
40 reasonably accommodate the religious belief or observance without

1 undue hardship, as defined in subdivision-~~(t)~~ (u) of Section 12926,  
2 on the conduct of the business of the employer or other entity  
3 covered by this part. Religious belief or observance, as used in  
4 this section, includes, but is not limited to, observance of a Sabbath  
5 or other religious holy day or days, reasonable time necessary for  
6 travel prior and subsequent to a religious observance, and religious  
7 dress practice and religious grooming practice as described in  
8 subdivision-~~(p)~~ (q) of Section 12926.

9 (2) An accommodation of an individual's religious dress practice  
10 or religious grooming practice is not reasonable if the  
11 accommodation requires segregation of the individual from other  
12 employees or the public.

13 (3) An accommodation is not required under this subdivision  
14 if it would result in a violation of this part or any other law  
15 prohibiting discrimination or protecting civil rights, including  
16 subdivision (b) of Section 51 of the Civil Code and Section 11135  
17 of this code.

18 (m) For an employer or other entity covered by this part to fail  
19 to make reasonable accommodation for the known physical or  
20 mental disability of an applicant or employee. Nothing in this  
21 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
22 construed to require an accommodation that is demonstrated by  
23 the employer or other covered entity to produce undue hardship,  
24 as defined in subdivision-~~(t)~~ (u) of Section 12926, to its operation.

25 (n) For an employer or other entity covered by this part to fail  
26 to engage in a timely, good faith, interactive process with the  
27 employee or applicant to determine effective reasonable  
28 accommodations, if any, in response to a request for reasonable  
29 accommodation by an employee or applicant with a known physical  
30 or mental disability or known medical condition.

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

34 (p) *Nothing in this section shall be interpreted as preventing*  
35 *the ability of employers to identify members of the military or*  
36 *veterans for purposes of awarding a veteran's preference as*  
37 *permitted by law.*