

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 556**

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**Introduced by Assembly Member Salas**

February 20, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 556, as amended, 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 *employment* discrimination under the act. ~~This~~ *The* 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 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, genetic information, marital status,  
9 sex, gender, gender identity, gender expression, age, ~~or sexual~~  
10 ~~orientation.~~ *sexual orientation, or military and veteran status.*

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

17     Further, the practice of discrimination because of race, color,  
18 religion, sex, gender, gender identity, gender expression, sexual  
19 orientation, marital status, national origin, ancestry, familial status,  
20 source of income, disability, or genetic information in housing  
21 accommodations is declared to be against public policy.

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

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

27     SEC. 2. Section 12921 of the Government Code is amended to  
28 read:

29     12921. (a) The opportunity to seek, obtain, and hold  
30 employment without discrimination because of race, religious  
31 creed, color, national origin, ancestry, physical disability, mental  
32 disability, medical condition, genetic information, marital status,  
33 sex, gender, gender identity, gender expression, age, ~~or sexual~~  
34 ~~orientation~~ *sexual orientation, or military and veteran status* is  
35 hereby recognized as and declared to be a civil right.

36     (b) The opportunity to seek, obtain, and hold housing without  
37 discrimination because of race, color, religion, sex, gender, gender  
38 identity, gender expression, sexual orientation, marital status,

1 national origin, ancestry, familial status, source of income,  
2 disability, genetic information, or any other basis prohibited by  
3 Section 51 of the Civil Code is hereby recognized as and declared  
4 to be a civil right.

5 **SECTION 1.**

6 *SEC. 3.* Section 12926 of the Government Code is amended  
7 to read:

8 12926. As used in this part in connection with unlawful  
9 practices, unless a different meaning clearly appears from the  
10 context:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (A) The individual's genetic tests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (5) Being regarded or treated by the employer or other entity  
39 covered by this part as having, or having had, a mental or  
40 psychological disorder or condition that has no present disabling

1 effect, but that may become a mental disability as described in  
2 paragraph (1) or (2).

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

7 (k) “Military and veteran status” means a member or veteran  
8 of the United States Armed Forces, United States Armed Forces  
9 Reserve, the United States National Guard, and the California  
10 National Guard.

11 (l) “On the bases enumerated in this part” means or refers to  
12 discrimination on the basis of one or more of the following: race,  
13 religious creed, color, national origin, ancestry, physical disability,  
14 mental disability, medical condition, genetic information, marital  
15 status, sex, age, ~~or sexual orientation~~. *sexual orientation, or military*  
16 *and veteran status*.

17 (m) “Physical disability” includes, but is not limited to, all of  
18 the following:

19 (1) Having any physiological disease, disorder, condition,  
20 cosmetic disfigurement, or anatomical loss that does both of the  
21 following:

22 (A) Affects one or more of the following body systems:  
23 neurological, immunological, musculoskeletal, special sense  
24 organs, respiratory, including speech organs, cardiovascular,  
25 reproductive, digestive, genitourinary, hemic and lymphatic, skin,  
26 and endocrine.

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

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

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

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

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

39 (3) Having a record or history of a disease, disorder, condition,  
40 cosmetic disfigurement, anatomical loss, or health impairment

1 described in paragraph (1) or (2), which is known to the employer  
2 or other entity covered by this part.

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

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

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

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

24 (o) “Race, religious creed, color, national origin, ancestry,  
25 physical disability, mental disability, medical condition, genetic  
26 information, marital status, sex, age, ~~or sexual orientation~~” *sexual*  
27 *orientation, or military and veteran status*” includes a perception  
28 that the person has any of those characteristics or that the person  
29 is associated with a person who has, or is perceived to have, any  
30 of those characteristics.

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

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

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

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

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

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

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

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

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

16 “Gender” means sex, and includes a person’s gender identity and  
17 gender expression. “Gender expression” means a person’s  
18 gender-related appearance and behavior whether or not  
19 stereotypically associated with the person’s assigned sex at birth.

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

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

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

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

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

39 (3) The overall financial resources of the covered entity, the  
40 overall size of the business of a covered entity with respect to the

1 number of employees, and the number, type, and location of its  
2 facilities.

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

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

7 ~~SEC. 2.~~

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

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

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

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

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

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

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

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

13 (B) Prohibit bona fide health plans from providing additional  
14 or greater benefits to employees with dependents than to those  
15 employees without or with fewer dependents.

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

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

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

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

1 any person, to exclude, expel, or restrict from its membership the  
2 person, or to provide only second-class or segregated membership  
3 or to discriminate against any person because of the 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~~ *sexual orientation, or military and veteran status* of  
8 the person in the election of officers of the labor organization or  
9 in the selection of the labor organization's staff or to discriminate  
10 in any way against any of its members or against any employer or  
11 against any person 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~~ *sexual orientation, or military*  
19 *and veteran status* of the person discriminated 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~~, *sexual orientation, or military and*  
29 *veteran status*, or any intent to make any such limitation,  
30 specification, or discrimination. This part does not prohibit an  
31 employer or employment agency from inquiring into the age of  
32 an applicant, or from specifying age limitations, where the law  
33 compels or provides for that action.

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

1 or severity of a physical disability, mental disability, or medical  
2 condition.

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

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

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

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

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

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

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

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

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

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

38 (4) (A) For purposes of this subdivision only, "employer" means  
39 any person regularly employing one or more persons or regularly  
40 receiving the services of one or more persons providing services

1 pursuant to a contract, or any person acting as an agent of an  
 2 employer, directly or indirectly, the state, or any political or civil  
 3 subdivision of the state, and cities. The definition of “employer”  
 4 in subdivision (d) of Section 12926 applies to all provisions of this  
 5 section other than this subdivision.

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

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

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

16 (A) The person has the right to control the performance of the  
 17 contract for services and discretion as to the manner of  
 18 performance.

19 (B) The person is customarily engaged in an independently  
 20 established business.

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

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

29 (l) (1) For an employer or other entity covered by this part to  
 30 refuse to hire or employ a person or to refuse to select a person  
 31 for a training program leading to employment or to bar or to  
 32 discharge a person from employment or from a training program  
 33 leading to employment, or to discriminate against a person in  
 34 compensation or in terms, conditions, or privileges of employment  
 35 because of a conflict between the person’s religious belief or  
 36 observance and any employment requirement, unless the employer  
 37 or other entity covered by this part demonstrates that it has explored  
 38 any available reasonable alternative means of accommodating the  
 39 religious belief or observance, including the possibilities of  
 40 excusing the person from those duties that conflict with his or her

1 religious belief or observance or permitting those duties to be  
2 performed at another time or by another person, but is unable to  
3 reasonably accommodate the religious belief or observance without  
4 undue hardship, as defined in subdivision (u) of Section 12926,  
5 on the conduct of the business of the employer or other entity  
6 covered by this part. Religious belief or observance, as used in  
7 this section, includes, but is not limited to, observance of a Sabbath  
8 or other religious holy day or days, reasonable time necessary for  
9 travel prior and subsequent to a religious observance, and religious  
10 dress practice and religious grooming practice as described in  
11 subdivision (q) of Section 12926.

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

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

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

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

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

37 (p) Nothing in this section shall be interpreted as preventing the  
38 ability of employers to identify members of the military or veterans

- 1 for purposes of awarding a veteran's preference as permitted by
- 2 law.

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