

Introduced by Senator Jackson

February 20, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 404, as introduced, Jackson. Fair employment: familial status.

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

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

1 disability, medical condition, genetic information, marital status,
2 *familial status*, sex, gender, gender identity, gender expression,
3 age, or sexual orientation.

4 It is recognized that the practice of denying employment
5 opportunity and discriminating in the terms of employment for
6 these reasons foments domestic strife and unrest, deprives the state
7 of the fullest utilization of its capacities for development and
8 advancement, and substantially and adversely affects the interests
9 of employees, employers, and the public in general.

10 Further, the practice of discrimination because of race, color,
11 religion, sex, gender, gender identity, gender expression, sexual
12 orientation, marital status, national origin, ancestry, familial status,
13 source of income, disability, or genetic information in housing
14 accommodations is declared to be against public policy.

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

17 This part shall be deemed an exercise of the police power of the
18 state for the protection of the welfare, health, and peace of the
19 people of this state.

20 SEC. 2. Section 12921 of the Government Code is amended
21 to read:

22 12921. (a) The opportunity to seek, obtain, and hold
23 employment without discrimination because of race, religious
24 creed, color, national origin, ancestry, physical disability, mental
25 disability, medical condition, genetic information, marital status,
26 *familial status*, sex, gender, gender identity, gender expression,
27 age, or sexual orientation is hereby recognized as and declared to
28 be a civil right.

29 (b) The opportunity to seek, obtain, and hold housing without
30 discrimination because of race, color, religion, sex, gender, gender
31 identity, gender expression, sexual orientation, marital status,
32 national origin, ancestry, familial status, source of income,
33 disability, genetic information, or any other basis prohibited by
34 Section 51 of the Civil Code is hereby recognized as and declared
35 to be a civil right.

36 SEC. 3. Section 12926 of the Government Code is amended
37 to read:

38 12926. As used in this part in connection with unlawful
39 practices, unless a different meaning clearly appears from the
40 context:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (B) Written job descriptions prepared before advertising or
2 interviewing applicants for the job.
- 3 (C) The amount of time spent on the job performing the function.
- 4 (D) The consequences of not requiring the incumbent to perform
5 the function.
- 6 (E) The terms of a collective bargaining agreement.
- 7 (F) The work experiences of past incumbents in the job.
- 8 (G) The current work experience of incumbents in similar jobs.
- 9 (g) (1) “Genetic information” means, with respect to any
10 individual, information about any of the following:
- 11 (A) The individual’s genetic tests.
- 12 (B) The genetic tests of family members of the individual.
- 13 (C) The manifestation of a disease or disorder in family members
14 of the individual.
- 15 (2) “Genetic information” includes any request for, or receipt
16 of, genetic services, or participation in clinical research that
17 includes genetic services, by an individual or any family member
18 of the individual.
- 19 (3) “Genetic information” does not include information about
20 the sex or age of any individual.
- 21 (h) “Labor organization” includes any organization that exists
22 and is constituted for the purpose, in whole or in part, of collective
23 bargaining or of dealing with employers concerning grievances,
24 terms or conditions of employment, or of other mutual aid or
25 protection.
- 26 (i) “Medical condition” means either of the following:
- 27 (1) Any health impairment related to or associated with a
28 diagnosis of cancer or a record or history of cancer.
- 29 (2) Genetic characteristics. For purposes of this section, “genetic
30 characteristics” means either of the following:
- 31 (A) Any scientifically or medically identifiable gene or
32 chromosome, or combination or alteration thereof, that is known
33 to be a cause of a disease or disorder in a person or his or her
34 offspring, or that is determined to be associated with a statistically
35 increased risk of development of a disease or disorder, and that is
36 presently not associated with any symptoms of any disease or
37 disorder.
- 38 (B) Inherited characteristics that may derive from the individual
39 or family member, that are known to be a cause of a disease or
40 disorder in a person or his or her offspring, or that are determined

1 to be associated with a statistically increased risk of development
2 of a disease or disorder, and that are presently not associated with
3 any symptoms of any disease or disorder.

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

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

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

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

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

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

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

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

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

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

37 (k) “On the bases enumerated in this part” means or refers to
38 discrimination on the basis of one or more of the following: race,
39 religious creed, color, national origin, ancestry, physical disability,

1 mental disability, medical condition, genetic information, marital
2 status, *familial status*, sex, age, or sexual orientation.
3 (l) “Physical disability” includes, but is not limited to, all of the
4 following:
5 (1) Having any physiological disease, disorder, condition,
6 cosmetic disfigurement, or anatomical loss that does both of the
7 following:
8 (A) Affects one or more of the following body systems:
9 neurological, immunological, musculoskeletal, special sense
10 organs, respiratory, including speech organs, cardiovascular,
11 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
12 and endocrine.
13 (B) Limits a major life activity. For purposes of this section:
14 (i) “Limits” shall be determined without regard to mitigating
15 measures such as medications, assistive devices, prosthetics, or
16 reasonable accommodations, unless the mitigating measure itself
17 limits a major life activity.
18 (ii) A physiological disease, disorder, condition, cosmetic
19 disfigurement, or anatomical loss limits a major life activity if it
20 makes the achievement of the major life activity difficult.
21 (iii) “Major life activities” shall be broadly construed and
22 includes physical, mental, and social activities and working.
23 (2) Any other health impairment not described in paragraph (1)
24 that requires special education or related services.
25 (3) Having a record or history of a disease, disorder, condition,
26 cosmetic disfigurement, anatomical loss, or health impairment
27 described in paragraph (1) or (2), which is known to the employer
28 or other entity covered by this part.
29 (4) Being regarded or treated by the employer or other entity
30 covered by this part as having, or having had, any physical
31 condition that makes achievement of a major life activity difficult.
32 (5) Being regarded or treated by the employer or other entity
33 covered by this part as having, or having had, a disease, disorder,
34 condition, cosmetic disfigurement, anatomical loss, or health
35 impairment that has no present disabling effect but may become
36 a physical disability as described in paragraph (1) or (2).
37 (6) “Physical disability” does not include sexual behavior
38 disorders, compulsive gambling, kleptomania, pyromania, or
39 psychoactive substance use disorders resulting from the current
40 unlawful use of controlled substances or other drugs.

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

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

16 (o) “Reasonable accommodation” may include either of the
17 following:

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

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

26 (p) “Religious creed,” “religion,” “religious observance,”
27 “religious belief,” and “creed” include all aspects of religious
28 belief, observance, and practice, including religious dress and
29 grooming practices. “Religious dress practice” shall be construed
30 broadly to include the wearing or carrying of religious clothing,
31 head or face coverings, jewelry, artifacts, and any other item that
32 is part of the observance by an individual of his or her religious
33 creed. “Religious grooming practice” shall be construed broadly
34 to include all forms of head, facial, and body hair that are part of
35 the observance by an individual of his or her religious creed.

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

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

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

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

1 (2) “Sex” also includes, but is not limited to, a person’s gender.
2 “Gender” means sex, and includes a person’s gender identity and
3 gender expression. “Gender expression” means a person’s
4 gender-related appearance and behavior whether or not
5 stereotypically associated with the person’s assigned sex at birth.

6 (r) “Sexual orientation” means heterosexuality, homosexuality,
7 and bisexuality.

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

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

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

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

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

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

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

32 (u) *In connection with unlawful employment practices, “familial*
33 *status” means an individual who provides medical or supervisory*
34 *care to a family member. For purposes of this subdivision, “family*
35 *member” means any of the following:*

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

38 (2) *A parent, as defined in Section 3302 of the Unemployment*
39 *Insurance Code.*

40 (3) *A spouse, which means the partner of a lawful marriage.*

1 (4) *A domestic partner, as defined in Section 297 of the Family*
2 *Code.*

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

5 (6) *A sibling, as defined in subdivision (c) of Section 362.1 of*
6 *the Welfare and Institutions Code.*

7 (7) *A grandparent.*

8 (8) *A grandchild.*

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

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

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

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

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

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

14 (B) Prohibit 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 *familial status*, sex, gender, gender identity, gender expression,

1 age, or sexual orientation of any person, to exclude, expel, or
2 restrict from its membership the person, or to provide only
3 second-class or segregated membership or to discriminate against
4 any person because of the race, religious creed, color, national
5 origin, ancestry, physical disability, mental disability, medical
6 condition, genetic information, marital status, *familial status*, sex,
7 gender, gender identity, gender expression, age, or sexual
8 orientation of the person in the election of officers of the labor
9 organization or in the selection of the labor organization's staff or
10 to discriminate in any way against any of its members or against
11 any employer or 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, *familial status*, sex, gender, gender
18 identity, gender expression, age, or sexual orientation of the person
19 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, *familial status*, sex, gender, gender identity, gender
28 expression, age, or sexual orientation, or any intent to make any
29 such limitation, specification, or discrimination. This part does not
30 prohibit an employer or employment agency from inquiring into
31 the age of an applicant, or from specifying age limitations, where
32 the law 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 *familial status*, sex, gender, gender identity, gender expression,
7 age, or sexual orientation, to harass an employee, an applicant, or
8 a person providing services pursuant to a contract. Harassment of
9 an 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) of Section 12926, on
2 the conduct of the business of the employer or other entity covered
3 by this part. Religious belief or observance, as used in this section,
4 includes, but is not limited to, observance of a Sabbath or other
5 religious holy day or days, reasonable time necessary for travel
6 prior and subsequent to a religious observance, and religious dress
7 practice and religious grooming practice as described in subdivision
8 (p) 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) 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 SEC. 5. Section 12955.2 of the Government Code is amended
35 to read:

36 12955.2. For purposes of this part, *in connection with unlawful*
37 *housing practices, unless a different meaning clearly appears from*
38 *the context*, “familial status” means one or more individuals under
39 18 years of age who reside with a parent, another person with care
40 and legal custody of that individual, a person who has been given

1 care and custody of that individual by a state or local governmental
2 agency that is responsible for the welfare of children, or the
3 designee of that parent or other person with legal custody of any
4 individual under 18 years of age by written consent of the parent
5 or designated custodian. The protections afforded by this part
6 against discrimination on the basis of familial status also apply to
7 any individual who is ~~is pregnant~~, *pregnant*, who is in the process
8 of securing legal custody of any individual under 18 years of age,
9 or who is in the process of being given care and custody of any
10 individual under 18 years of age by a state or local governmental
11 agency responsible for the welfare of children.

12 SEC. 6. The Legislature intends that the amendments of
13 Sections 12920, 12921, and 12940, and 12955.2 to the Government
14 Code made by this act, do not supersede, limit, or preempt any
15 federal, state, or local law that provides greater protections from
16 employment discrimination than those provided in these sections.
17 The Legislature further intends that these amendments are not
18 intended to limit or preclude any claim or cause of action on the
19 basis of familial status or family responsibilities under federal,
20 state, or local law.