

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE APRIL 15, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 655

Introduced by Senator Wright

February 22, 2013

An act to amend ~~Sections 12940 and~~ *Section 12965* of, and to add *Section 12940.5* to, the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 655, as amended, Wright. Fair Employment and Housing Act: unlawful practices.

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, *participate in a labor organization, and participate in employment training or apprenticeship programs* 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. Existing law authorizes a person claiming to be aggrieved by an alleged unlawful practice under these provisions to file a complaint with the Department of Fair Employment and Housing and authorizes the department to bring a civil action on the behalf of the person in the case of a failure to eliminate an unlawful practice under these provisions.

This bill would provide that, in a claim of ~~an unlawful practice~~ *discrimination or retaliation* under these provisions, ~~the employee prevails~~ *person claiming to have been aggrieved shall prevail if the*

employee *he or she* has proven that a protected characteristic *or activity* was a substantial *motivating* factor, as defined, in the—adverse employment action *or decision*. If an employer *pleads and proves*—as an affirmative defense that it would have taken the same adverse action against an employee based on lawful reasons *that it would have made the same employment action or decision at the same time, without considering the protected characteristic or activity*, the remedies available to the employee would be limited as provided. The bill would also provide for a specified civil penalty to be paid by the employer to the employee, and for *specified*. If an employer fails to prove that it would have made the same employment action or decision at the same time without considering the protected characteristic or activity, the bill would authorize noneconomic damages, injunctive relief, and attorney’s and expert’s fees against an the employer who violates these provisions. and would require a specified civil penalty to be paid by that employer to the employee.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 12940 of the Government Code is~~
 2 ~~amended to read:~~
 3 ~~12940. It is an unlawful employment practice, unless based~~
 4 ~~upon a bona fide occupational qualification, or, except where based~~
 5 ~~upon applicable security regulations established by the United~~
 6 ~~States or the State of California:~~
 7 ~~(a) For an employer, because of the race, religious creed, color,~~
 8 ~~national origin, ancestry, physical disability, mental disability,~~
 9 ~~medical condition, genetic information, marital status, sex, gender,~~
 10 ~~gender identity, gender expression, age, or sexual orientation of~~
 11 ~~any person, to refuse to hire or employ the person or to refuse to~~
 12 ~~select the person for a training program leading to employment,~~
 13 ~~or to bar or to discharge the person from employment or from a~~
 14 ~~training program leading to employment, or to discriminate against~~
 15 ~~the person in compensation or in terms, conditions, or privileges~~
 16 ~~of employment.~~
 17 ~~(1) This part does not prohibit an employer from refusing to~~
 18 ~~hire or discharging an employee with a physical or mental~~
 19 ~~disability, or subject an employer to any legal liability resulting~~

1 from the refusal to employ or the discharge of an employee with
2 a physical or mental disability, where the employee, because of
3 his or her physical or mental disability, is unable to perform his
4 or her essential duties even with reasonable accommodations, or
5 cannot perform those duties in a manner that would not endanger
6 his or her health or safety or the health or safety of others even
7 with reasonable accommodations.

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

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

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

27 (B) ~~Prohibit bona fide health plans from providing additional~~
28 ~~or greater benefits to employees with dependents than to those~~
29 ~~employees without or with fewer dependents.~~

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

34 (5) (A) ~~This part does not prohibit an employer from refusing~~
35 ~~to employ an individual because of his or her age if the law~~
36 ~~compels or provides for that refusal. Promotions within the existing~~
37 ~~staff, hiring or promotion on the basis of experience and training,~~
38 ~~rehiring on the basis of seniority and prior service with the~~
39 ~~employer, or hiring under an established recruiting program from~~

1 high schools, colleges, universities, or trade schools do not, in and
2 of themselves, constitute unlawful employment practices.

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

11 (6) (A) For purposes of a claim of an unlawful practice under
12 this subdivision, the employee shall prevail if the employee has
13 proven that a protected characteristic was a substantial factor in
14 the adverse employment action. If an employer proves as an
15 affirmative defense that it would have taken the same adverse
16 employment action against an employee, at the same time, for
17 lawful reasons, absent consideration of the protected characteristic,
18 the remedies available to the employee shall be limited to the
19 remedies provided in paragraph (2) of subdivision (b) of Section
20 12965.

21 (B) For purposes of this subdivision, “substantial factor” means
22 that a reasonable person would conclude that the factor contributed
23 to the harm. It must be more than a remote or trivial factor but
24 need not be the only cause of the harm to the employee.

25 (b) For a labor organization, because of the race, religious creed,
26 color, national origin, ancestry, physical disability, mental
27 disability, medical condition, genetic information, marital status,
28 sex, gender, gender identity, gender expression, age, or sexual
29 orientation of any person, to exclude, expel, or restrict from its
30 membership the person, or to provide only second-class or
31 segregated membership or to discriminate against any person
32 because of the race, religious creed, color, national origin, ancestry,
33 physical disability, mental disability, medical condition, genetic
34 information, marital status, sex, gender, gender identity, gender
35 expression, age, or sexual orientation of the person in the election
36 of officers of the labor organization or in the selection of the labor
37 organization’s staff or to discriminate in any way against any of
38 its members or against any employer or against any person
39 employed by an employer.

1 ~~(e) For any person to discriminate against any person in the~~
2 ~~selection or training of that person in any apprenticeship training~~
3 ~~program or any other training program leading to employment~~
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 discriminated~~
8 ~~against.~~

9 ~~(d) For any employer or employment agency to print or circulate~~
10 ~~or cause to be printed or circulated any publication, or to make~~
11 ~~any nonjob-related inquiry of an employee or applicant, either~~
12 ~~verbal or through use of an application form, that expresses,~~
13 ~~directly or indirectly, any limitation, specification, or discrimination~~
14 ~~as to race, religious creed, color, national origin, ancestry, physical~~
15 ~~disability, mental disability, medical condition, genetic information,~~
16 ~~marital status, sex, gender, gender identity, gender expression,~~
17 ~~age, or sexual orientation, or any intent to make any such limitation,~~
18 ~~specification, or discrimination. This part does not prohibit an~~
19 ~~employer or employment agency from inquiring into the age of~~
20 ~~an applicant, or from specifying age limitations, where the law~~
21 ~~compels or provides for that action.~~

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

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

34 ~~(3) Notwithstanding paragraph (1), an employer or employment~~
35 ~~agency may require a medical or psychological examination or~~
36 ~~make a medical or psychological inquiry of a job applicant after~~
37 ~~an employment offer has been made but prior to the~~
38 ~~commencement of employment duties, provided that the~~
39 ~~examination or inquiry is job related and consistent with business~~

1 ~~necessity and that all entering employees in the same job~~
2 ~~classification are subject to the same examination or inquiry.~~

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

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

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

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

28 ~~(i) For any person to aid, abet, incite, compel, or coerce the~~
29 ~~doing of any of the acts forbidden under this part, or to attempt to~~
30 ~~do so.~~

31 ~~(j) (1) For an employer, labor organization, employment agency,~~
32 ~~apprenticeship training program or any training program leading~~
33 ~~to employment, or any other person, because of race, religious~~
34 ~~creed, color, national origin, ancestry, physical disability, mental~~
35 ~~disability, medical condition, genetic information, marital status,~~
36 ~~sex, gender, gender identity, gender expression, age, or sexual~~
37 ~~orientation, to harass an employee, an applicant, or a person~~
38 ~~providing services pursuant to a contract. Harassment of an~~
39 ~~employee, an applicant, or a person providing services pursuant~~
40 ~~to a contract by an employee, other than an agent or supervisor,~~

1 shall be unlawful if the entity, or its agents or supervisors, knows
2 or should have known of this conduct and fails to take immediate
3 and appropriate corrective action. An employer may also be
4 responsible for the acts of nonemployees, with respect to sexual
5 harassment of employees, applicants, or persons providing services
6 pursuant to a contract in the workplace, where the employer, or
7 its agents or supervisors, knows or should have known of the
8 conduct and fails to take immediate and appropriate corrective
9 action. In reviewing cases involving the acts of nonemployees, the
10 extent of the employer's control and any other legal responsibility
11 that the employer may have with respect to the conduct of those
12 nonemployees shall be considered. An entity shall take all
13 reasonable steps to prevent harassment from occurring. Loss of
14 tangible job benefits shall not be necessary in order to establish
15 harassment.

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

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

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

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

36 (C) For purposes of this subdivision, "harassment" because of
37 sex includes sexual harassment, gender harassment, and harassment
38 based on pregnancy, childbirth, or related medical conditions.

1 ~~(5) For purposes of this subdivision, “a person providing services~~
2 ~~pursuant to a contract” means a person who meets all of the~~
3 ~~following criteria:~~

4 ~~(A) The person has the right to control the performance of the~~
5 ~~contract for services and discretion as to the manner of~~
6 ~~performance.~~

7 ~~(B) The person is customarily engaged in an independently~~
8 ~~established business.~~

9 ~~(C) The person has control over the time and place the work is~~
10 ~~performed, supplies the tools and instruments used in the work,~~
11 ~~and performs work that requires a particular skill not ordinarily~~
12 ~~used in the course of the employer’s work.~~

13 ~~(k) For an employer, labor organization, employment agency,~~
14 ~~apprenticeship training program, or any training program leading~~
15 ~~to employment, to fail to take all reasonable steps necessary to~~
16 ~~prevent discrimination and harassment from occurring.~~

17 ~~(l) (1) For an employer or other entity covered by this part to~~
18 ~~refuse to hire or employ a person or to refuse to select a person~~
19 ~~for a training program leading to employment or to bar or to~~
20 ~~discharge a person from employment or from a training program~~
21 ~~leading to employment, or to discriminate against a person in~~
22 ~~compensation or in terms, conditions, or privileges of employment~~
23 ~~because of a conflict between the person’s religious belief or~~
24 ~~observance and any employment requirement, unless the employer~~
25 ~~or other entity covered by this part demonstrates that it has explored~~
26 ~~any available reasonable alternative means of accommodating the~~
27 ~~religious belief or observance, including the possibilities of~~
28 ~~excusing the person from those duties that conflict with his or her~~
29 ~~religious belief or observance or permitting those duties to be~~
30 ~~performed at another time or by another person, but is unable to~~
31 ~~reasonably accommodate the religious belief or observance without~~
32 ~~undue hardship, as defined in subdivision (t) of Section 12926, on~~
33 ~~the conduct of the business of the employer or other entity covered~~
34 ~~by this part. Religious belief or observance, as used in this section,~~
35 ~~includes, but is not limited to, observance of a Sabbath or other~~
36 ~~religious holy day or days, reasonable time necessary for travel~~
37 ~~prior and subsequent to a religious observance, and religious dress~~
38 ~~practice and religious grooming practice as described in subdivision~~
39 ~~(p) of Section 12926.~~

1 ~~(2) An accommodation of an individual’s religious dress practice~~
2 ~~or religious grooming practice is not reasonable if the~~
3 ~~accommodation requires segregation of the individual from other~~
4 ~~employees or the public.~~

5 ~~(3) An accommodation is not required under this subdivision~~
6 ~~if it would result in a violation of this part or any other law~~
7 ~~prohibiting discrimination or protecting civil rights, including~~
8 ~~subdivision (b) of Section 51 of the Civil Code and Section 11135~~
9 ~~of this code.~~

10 ~~(m) For an employer or other entity covered by this part to fail~~
11 ~~to make reasonable accommodation for the known physical or~~
12 ~~mental disability of an applicant or employee. Nothing in this~~
13 ~~subdivision or in paragraph (1) or (2) of subdivision (a) shall be~~
14 ~~construed to require an accommodation that is demonstrated by~~
15 ~~the employer or other covered entity to produce undue hardship,~~
16 ~~as defined in subdivision (t) of Section 12926, to its operation.~~

17 ~~(n) For an employer or other entity covered by this part to fail~~
18 ~~to engage in a timely, good faith, interactive process with the~~
19 ~~employee or applicant to determine effective reasonable~~
20 ~~accommodations, if any, in response to a request for reasonable~~
21 ~~accommodation by an employee or applicant with a known physical~~
22 ~~or mental disability or known medical condition.~~

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

26 *SECTION 1. Section 12940.5 is added to the Government Code,*
27 *to read:*

28 *12940.5. (a) For purposes of a claim of discrimination or*
29 *retaliation under this article, the person claiming to be aggrieved*
30 *shall prevail if he or she has proven to the trier of fact that the*
31 *protected characteristic or activity was a substantial motivating*
32 *factor in the employment action or decision.*

33 *(b) For purposes of this section, “substantial motivating factor”*
34 *means a factor that actually contributed to the employment action*
35 *or decision. It must be more than a remote or trivial factor, but*
36 *need not be the only or main cause of the employment action or*
37 *decision. Evidence that the person claiming to be aggrieved had*
38 *a protected characteristic at the time of the employment action or*
39 *decision is not, by itself, sufficient proof that the protected*
40 *characteristic was a substantial motivating factor.*

1 (c) *If an employer pleads and proves that it would have made*
2 *the same employment action or decision at the same time without*
3 *considering the protected characteristic or activity, the remedies*
4 *available to the employee shall be limited to the remedies provided*
5 *in paragraph (2) of subdivision (b) of Section 12965.*

6 SEC. 2. Section 12965 of the Government Code is amended
7 to read:

8 12965. (a) In the case of failure to eliminate an unlawful
9 practice under this part through conference, conciliation, mediation,
10 or persuasion, or in advance thereof if circumstances warrant, the
11 director in his or her discretion may bring a civil action in the name
12 of the department on behalf of the person claiming to be aggrieved.
13 Prior to filing a civil action, the department shall require all parties
14 to participate in mandatory dispute resolution in the department's
15 internal dispute resolution division free of charge to the parties in
16 an effort to resolve the dispute without litigation. In any civil
17 action, the person claiming to be aggrieved shall be the real party
18 in interest and shall have the right to participate as a party and be
19 represented by his or her own counsel. The civil action shall be
20 brought in any county in which unlawful practices are alleged to
21 have been committed, in the county in which records relevant to
22 the alleged unlawful practices are maintained and administered,
23 or in the county in which the person claiming to be aggrieved
24 would have worked or would have had access to public
25 accommodation, but for the alleged unlawful practices. If the
26 defendant is not found in any of these counties, the action may be
27 brought within the county of the defendant's residence or principal
28 office.

29 For any complaint treated by the director as a group or class
30 complaint for purposes of investigation, conciliation, mediation,
31 or civil action pursuant to Section 12961, a civil action shall be
32 brought, if at all, within two years after the filing of the complaint.
33 For any complaint alleging a violation of Section 51.7 of the Civil
34 Code, a civil action shall be brought, if at all, within two years
35 after the filing of the complaint. For all other complaints, a civil
36 action shall be brought, if at all, within one year after the filing of
37 a complaint. If the director determines, pursuant to Section 12961,
38 that a complaint investigated as a group or class complaint under
39 Section 12961 is to be treated as a group or class complaint for
40 purposes of conciliation, mediation, or civil action as well, that

1 determination shall be made and shall be communicated in writing
2 within one year after the filing of the complaint to each person,
3 employer, labor organization, employment agency, or public entity
4 alleged in the complaint to have committed an unlawful practice.

5 (b) (1) If a civil action is not brought by the department within
6 150 days after the filing of a complaint, or if the department earlier
7 determines that no civil action will be brought, the department
8 shall promptly notify, in writing, the person claiming to be
9 aggrieved that the department shall issue, on his or her request,
10 the right-to-sue notice. This notice shall indicate that the person
11 claiming to be aggrieved may bring a civil action under this part
12 against the person, employer, labor organization, or employment
13 agency named in the verified complaint within one year from the
14 date of that notice. If the person claiming to be aggrieved does not
15 request a right-to-sue notice, the department shall issue the notice
16 upon completion of its investigation, and not later than one year
17 after the filing of the complaint. A city, county, or district attorney
18 in a location having an enforcement unit established on or before
19 March 1, 1991, pursuant to a local ordinance enacted for the
20 purpose of prosecuting HIV/AIDS discrimination claims, acting
21 on behalf of any person claiming to be aggrieved due to HIV/AIDS
22 discrimination, may also bring a civil action under this part against
23 the person, employer, labor organization, or employment agency
24 named in the notice. The superior courts of the State of California
25 shall have jurisdiction of those actions, and the aggrieved person
26 may file in these courts. An action may be brought in any county
27 in the state in which the unlawful practice is alleged to have been
28 committed, in the county in which the records relevant to the
29 practice are maintained and administered, or in the county in which
30 the aggrieved person would have worked or would have had access
31 to the public accommodation but for the alleged unlawful practice,
32 but if the defendant is not found within any of these counties, an
33 action may be brought within the county of the defendant's
34 residence or principal office. A copy of any complaint filed
35 pursuant to this part shall be served on the principal offices of the
36 department. The remedy for failure to send a copy of a complaint
37 is an order to do so. Those actions may not be filed as class actions
38 or may not be maintained as class actions by the person or persons
39 claiming to be aggrieved where those persons have filed a civil
40 class action in the federal courts alleging a comparable claim of

1 employment discrimination against the same defendant or
2 defendants.

3 (2) In a civil action brought pursuant to this subdivision, ~~if an~~
4 ~~employee establishes that an employer committed an unlawful~~
5 ~~practice under the provisions of paragraph (6) of subdivision (a)~~
6 ~~of Section 12940, a if, under subdivision (c) of Section 12940.5,~~
7 *an employer pleads and proves that it would have made the same*
8 *employment action or decision at the same time without*
9 *considering the protected characteristic or activity, the employee*
10 *shall not be entitled to reinstatement, back pay, or declaratory*
11 *relief. The employee may recover noneconomic damages caused*
12 *by the adverse action and attorney's fees and costs, including*
13 *expert witness fees, pursuant to paragraph (1). The court shall*
14 *also grant, in addition to any other available remedy, a statutory*
15 *penalty of ~~twenty-five~~ fifteen thousand dollars (~~\$25,000~~) (\$15,000)*
16 *to be awarded directly to the employee. A court may also grant as*
17 ~~relief any other relief that, in the judgment of the court, will~~
18 ~~effectuate the purpose of this part. An employee who prevails in~~
19 ~~a civil action brought pursuant to this subdivision shall not be~~
20 ~~entitled to reinstatement or back pay. *injunctive relief*~~
21 *commensurate to the nature and scope of the violation.*

22 (c) A court may grant as relief in any action filed pursuant to
23 subdivision (a) any relief a court is empowered to grant in a civil
24 action brought pursuant to *paragraph (1) of subdivision (b)*, in
25 addition to any other relief that, in the judgment of the court, will
26 effectuate the purpose of this part. This relief may include a
27 requirement that the employer conduct training for all employees,
28 supervisors, and management on the requirements of this part, the
29 rights and remedies of those who allege a violation of this part,
30 and the employer's internal grievance procedures. In addition, in
31 order to vindicate the purposes and policies of this part, a court
32 may assess against the defendant, if the civil complaint or amended
33 civil complaint so prays, a civil penalty of up to twenty-five
34 thousand dollars (\$25,000) to be awarded to a person denied any
35 right provided for by Section 51.7 of the Civil Code, as an unlawful
36 practice prohibited under this part.

37 (d) In a civil action brought under this section, the court may
38 award to the prevailing party, including the department, reasonable
39 attorney's fees and costs, including expert witness fees.

1 (e) (1) Notwithstanding subdivision (b), the one-year statute
2 of limitations, commencing from the date of the right-to-sue notice
3 by the Department of Fair Employment and Housing, to the person
4 claiming to be aggrieved, shall be tolled when all of the following
5 requirements have been met:

6 (A) A charge of discrimination or harassment is timely filed
7 concurrently with the Equal Employment Opportunity Commission
8 and the Department of Fair Employment and Housing.

9 (B) The investigation of the charge is deferred by the
10 Department of Fair Employment and Housing to the Equal
11 Employment Opportunity Commission.

12 (C) A right-to-sue notice is issued to the person claiming to be
13 aggrieved upon deferral of the charge by the Department of Fair
14 Employment and Housing to the Equal Employment Opportunity
15 Commission.

16 (2) The time for commencing an action for which the statute of
17 limitations is tolled under paragraph (1) expires when the federal
18 right-to-sue period to commence a civil action expires, or one year
19 from the date of the right-to-sue notice by the Department of Fair
20 Employment and Housing, whichever is later.

21 (3) This subdivision is intended to codify the holding in *Downs*
22 *v. Department of Water and Power of City of Los Angeles* (1997)
23 58 Cal.App.4th 1093.

24 (f) (1) Notwithstanding subdivision (b), the one-year statute of
25 limitations, commencing from the date of the right-to-sue notice
26 by the Department of Fair Employment and Housing, to the person
27 claiming to be aggrieved, shall be tolled when all of the following
28 requirements have been met:

29 (A) A charge of discrimination or harassment is timely filed
30 concurrently with the Equal Employment Opportunity Commission
31 and the Department of Fair Employment and Housing.

32 (B) The investigation of the charge is deferred by the Equal
33 Employment Opportunity Commission to the Department of Fair
34 Employment and Housing.

35 (C) After investigation and determination by the Department
36 of Fair Employment and Housing, the Equal Employment
37 Opportunity Commission agrees to perform a substantial weight
38 review of the determination of the department or conducts its own
39 investigation of the claim filed by the aggrieved person.

1 (2) The time for commencing an action for which the statute of
2 limitations is tolled under paragraph (1) shall expire when the
3 federal right-to-sue period to commence a civil action expires, or
4 one year from the date of the right-to-sue notice by the Department
5 of Fair Employment and Housing, whichever is later.

O