

AMENDED IN SENATE APRIL 28, 2014  
AMENDED IN SENATE MARCH 26, 2014

**SENATE BILL**

**No. 1407**

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**Introduced by Senator Jackson**

February 21, 2014

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An act to add Section 12964.5 to the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as amended, Jackson. Employment discrimination.

Existing law, the California Fair Employment and Housing Act, creates the Department of Fair Employment and Housing and authorizes the department to receive, investigate, and prosecute complaints alleging specified unlawful practices. Under existing law, any person claiming to be aggrieved by an alleged unlawful practice is authorized to file with the department a verified complaint, in writing, that states the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, that sets forth the particulars thereof, and contains other information as required by the department. Existing law requires any agreement entered into by any dispute resolution to be in writing.

~~This bill would require a release of liability under the act to be valid only if the release is a separate and distinct document that includes a recital of claims that is based upon an employee's internal or external complaint.~~ *declare that a waiver or release of claims under this part is contrary to public policy and unenforceable, unless the waiver or release of claims is knowing and voluntary and is clearly stated as part of a negotiated settlement agreement of claims. The bill would prohibit a waiver or release of claims from being considered knowing and*

*voluntary unless specified conditions have been met. The bill would prohibit a waiver executed under the bill from waiving any right or claim that arises following the execution of the waiver, except that a waiver or release that would be valid for purposes of a specified statute would also be valid for purposes of this bill, if the waiver or release also meets the conditions described in the bill. The bill would define “release of claims” for its purposes.*

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 12964.5 is added to the Government  
 2 Code, to read:  
 3 ~~12964.5. A release of liability under this part shall be valid~~  
 4 ~~only if the release is a separate and distinct document that includes~~  
 5 ~~a recital of claims that is based upon an employee’s internal or~~  
 6 ~~external complaint.~~  
 7 12964.5. (a) (1) *A waiver or release of claims under this part*  
 8 *is contrary to public policy and shall be unenforceable, unless the*  
 9 *waiver or release of claims is knowing and voluntary and is clearly*  
 10 *stated as part of a negotiated settlement agreement of the claims.*  
 11 (2) *A waiver or release of claims shall not be considered*  
 12 *knowing and voluntary unless, at a minimum, the following*  
 13 *conditions have been met:*  
 14 (A) *The waiver or release is part of a negotiated agreement*  
 15 *between the individual and the employer that is written in plain*  
 16 *language and in a manner calculated to be understood by that*  
 17 *individual or by the average individual eligible to enter into a*  
 18 *negotiated agreement.*  
 19 (B) *The waiver or release shall be in conspicuous writing,*  
 20 *specifically refer to the individual’s claims under this part, and*  
 21 *refer by name to the California Fair Employment and Housing*  
 22 *Act (this part) in connection with the waiver or release.*  
 23 (C) *The individual waives or releases claims under this part*  
 24 *only in exchange for consideration in addition to anything of value*  
 25 *to which the employee already is entitled.*  
 26 (D) *The individual is advised in writing to consult with an*  
 27 *attorney before executing the final negotiated agreement.*

1 (E) The agreement shall not have the effect of misleading,  
2 misinforming, or failing to inform participants and affected  
3 individuals. Any advantages or disadvantages described shall be  
4 presented without exaggerating the benefits or minimizing the  
5 limitations.

6 (F) The individual shall be given at least 21 days after receipt  
7 to consider the final negotiated agreement.

8 (G) The agreement shall provide that, for at least seven days  
9 following the execution of the agreement, the individual may revoke  
10 the agreement, and the agreement shall not become effective or  
11 enforceable until that seven-day period or a longer negotiated  
12 period has expired.

13 (H) The waiver or release of claims is prohibited when the  
14 consideration for the waiver or release is employment, continued  
15 employment, or the payment of wages, including, but not limited  
16 to, a raise or a bonus, unless the individual has previously initiated  
17 a written claim to an administrative agency or a court, or presented  
18 a written grievance or complaint to the employer. In those  
19 instances, the waiver or release of claims shall reference the  
20 written claim, grievance, or complaint.

21 (b) A waiver executed under this section shall not waive any  
22 right or claim that arises after the execution of the waiver.  
23 However, a waiver or release of claims under this section, that  
24 would be valid for purposes of Section 1542 of the Civil Code, is  
25 valid under this section if the conditions under subdivision (a)  
26 have been met.

27 (c) A waiver agreement does not affect the department's  
28 authority and responsibilities to enforce this part. A waiver shall  
29 not be used to justify interfering with the protected right of an  
30 individual to file a charge or participate in an investigation or  
31 proceeding conducted by the department.

32 (d) As used in this section, "release of claims" includes, but is  
33 not limited to, requiring an individual to execute a statement that  
34 he or she does not possess any claims or injuries against the  
35 employer.

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