

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 488

Introduced by Assembly Member Gonzalez

February 23, 2015

An act to ~~add Sections 19155 and 19405 to the Welfare and Institutions Code~~, amend Section 12926 of the Government Code, relating to ~~rehabilitation~~; *employment discrimination*.

LEGISLATIVE COUNSEL'S DIGEST

AB 488, as amended, Gonzalez. ~~Rehabilitation; dignity stipend.~~
Employment discrimination.

Existing law protects the right to seek, obtain, and hold employment without discrimination because of race, religious creed, physical disability, mental disability, sex, age, and sexual orientation, among other characteristics. Existing law prohibits various forms of employment discrimination, including discharging or refusing to hire or to select for training programs on a prohibited basis. Existing law specifies requirements for filing complaints of employment discrimination with the Department of Fair Employment and Housing and charges this department with investigating and determining whether or not to bring a civil action on behalf of the complainant, among other duties. Existing law defines employee for these purposes and excludes from the definition any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility. A special

license permits the employment of individuals with disabilities at a wage less than the legal minimum wage.

This bill would redefine employee to remove the exemption for an individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility, thereby applying employment discrimination protections to these people.

~~Existing state and federal laws provide for payment of a special minimum wage for workers with disabilities that is lower than the established minimum wage rate, under specified circumstances. Existing law authorizes the Department of Rehabilitation to regulate vocational rehabilitation services, which are defined as specified services and goods to assist persons with disabilities in employment.~~

~~This bill would define “dignity stipend” as the value provided by an employer to workers defined by the Department of Rehabilitation as eligible individuals with an intellectual or developmental disability severe enough to result in a substantial impediment to employment when the employer pays a special minimum wage to those workers, operates a community rehabilitation program certified by the Department of Rehabilitation that provides services to those workers, and the hourly wage plus the hourly cost of providing those services exceeds 125% of the California minimum wage rate for those workers. The bill would require the department to determine whether an employer that operates a community rehabilitation program provides a dignity stipend, when certifying the program.~~

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

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

- 1 SECTION 1. Section 12926 of the Government Code is
- 2 amended to read:
- 3 12926. As used in this part in connection with unlawful
- 4 practices, unless a different meaning clearly appears from the
- 5 context:
- 6 (a) “Affirmative relief” or “prospective relief” includes the
- 7 authority to order reinstatement of an employee, awards of backpay,
- 8 reimbursement of out-of-pocket expenses, hiring, transfers,
- 9 reassignments, grants of tenure, promotions, cease and desist
- 10 orders, posting of notices, training of personnel, testing, expunging

1 of records, reporting of records, and any other similar relief that
2 is intended to correct unlawful practices under this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (k) “Military and veteran status” means a member or veteran
33 of the United States Armed Forces, United States Armed Forces
34 Reserve, the United States National Guard, and the California
35 National Guard.

36 (l) “On the bases enumerated in this part” means or refers to
37 discrimination on the basis of one or more of the following: race,
38 religious creed, color, national origin, ancestry, physical disability,
39 mental disability, medical condition, genetic information, marital
40 status, sex, age, sexual orientation, or military and veteran status.

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

1 of 1990 (Public Law 101-336) would result in broader protection
2 of the civil rights of individuals with a mental disability or physical
3 disability, as defined in subdivision (j) or (m), or would include
4 any medical condition not included within those definitions, then
5 that broader protection or coverage shall be deemed incorporated
6 by reference into, and shall prevail over conflicting provisions of,
7 the definitions in subdivisions (j) and (m).

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

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

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

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

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

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

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

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

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

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

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

1 gender expression. “Gender expression” means a person’s
2 gender-related appearance and behavior whether or not
3 stereotypically associated with the person’s assigned sex at birth.

4 (s) “Sexual orientation” means heterosexuality, homosexuality,
5 and bisexuality.

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

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

- 17 (1) The nature and cost of the accommodation needed.
- 18 (2) The overall financial resources of the facilities involved in
19 the provision of the reasonable accommodations, the number of
20 persons employed at the facility, and the effect on expenses and
21 resources or the impact otherwise of these accommodations upon
22 the operation of the facility.
- 23 (3) The overall financial resources of the covered entity, the
24 overall size of the business of a covered entity with respect to the
25 number of employees, and the number, type, and location of its
26 facilities.
- 27 (4) The type of operations, including the composition, structure,
28 and functions of the workforce of the entity.
- 29 (5) The geographic separateness or administrative or fiscal
30 relationship of the facility or facilities.

31 (v) “National origin” discrimination includes, but is not limited
32 to, discrimination on the basis of possessing a driver’s license
33 granted under Section 12801.9 of the Vehicle Code.

34 ~~SECTION 1. Section 19155 is added to the Welfare and
35 Institutions Code, to read:~~

36 ~~19155. “Dignity stipend” means the value provided by an
37 employer to workers defined by the Department of Rehabilitation
38 as eligible individuals with an intellectual or developmental
39 disability severe enough to result in a substantial impediment to
40 employment under the following conditions:~~

1 ~~(a) The employer operates a community rehabilitation program~~
2 ~~certified by the Department of Rehabilitation that provides~~
3 ~~vocational rehabilitation services to the workers described in~~
4 ~~subdivision (b).~~

5 ~~(b) The employer pays a special minimum wage to workers~~
6 ~~with disabilities pursuant to Section 214(c) of Title 29 of the United~~
7 ~~States Code or Section 1191 or 1191.5 of the Labor Code.~~

8 ~~(c) The hourly wage described in subdivision (b) added to the~~
9 ~~employer's hourly cost of providing the services described in~~
10 ~~subdivision (a) exceeds 125 percent of the California minimum~~
11 ~~wage rate for each of the workers described in subdivision (b).~~

12 ~~SEC. 2. Section 19405 is added to the Welfare and Institutions~~
13 ~~Code, to read:~~

14 ~~19405. The department shall determine, in certifying a~~
15 ~~community rehabilitation program, whether the employer that~~
16 ~~operates the program provides a dignity stipend, as defined in~~
17 ~~Section 19155.~~