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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 amend ~~Section~~ *Sections 12926 and 12940* of the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 488, as amended, Gonzalez. Employment discrimination.

~~Existing law protects law, the California Fair Employment and Housing Act, 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 The act 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 The act prescribes requirements for filing complaints of employment discrimination with the Department of Fair Employment and Housing and charges 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 The act exempts employers from remedies for specified unlawful employment practices, including when the discrimination is on the basis of physical or mental~~

disability and the disability prevents the employee from safely performing essential duties even with reasonable accommodations. The act defines ~~employee~~ “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~~ “employee” to ~~remove the exemption for~~ include an individual ~~employed paid~~ under a special license in a nonprofit sheltered ~~workshop or~~ workshop, rehabilitation facility, or day program, thereby applying employment discrimination protections to these people. This bill would exempt an employer who obtains a special license, or hires or employs a qualified individual at a wage less than the minimum wage in conformity with a special license, from the act’s provisions prohibiting discrimination based on disability.

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 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
- 11 of records, reporting of records, and any other similar relief that
- 12 is intended to correct unlawful practices under this part.
- 13 (b) “Age” refers to the chronological age of any individual who
- 14 has reached his or her 40th birthday.
- 15 (c) “Employee” *includes an individual paid under a special*
- 16 *license in a sheltered workshop, rehabilitation facility, or day*
- 17 *program but does not include any individual employed by his or*
- 18 *her parents, spouse, or child.*
- 19 (d) “Employer” includes any person regularly employing five
- 20 or more persons, or any person acting as an agent of an employer,

1 directly or indirectly, the state or any political or civil subdivision
2 of the state, and cities, except as follows:

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

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

7 (f) “Essential functions” means the fundamental job duties of
8 the employment position the individual with a disability holds or
9 desires. “Essential functions” does not include the marginal
10 functions of the position.

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

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

16 (B) The function may be essential because of the limited number
17 of employees available among whom the performance of that job
18 function can be distributed.

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

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

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

25 (B) Written job descriptions prepared before advertising or
26 interviewing applicants for the job.

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

28 (D) The consequences of not requiring the incumbent to perform
29 the function.

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

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

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

33 (g) (1) “Genetic information” means, with respect to any
34 individual, information about any of the following:

35 (A) The individual’s genetic tests.

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

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

39 (2) “Genetic information” includes any request for, or receipt
40 of, genetic services, or participation in clinical research that

1 includes genetic services, by an individual or any family member
2 of the individual.

3 (3) “Genetic information” does not include information about
4 the sex or age of any individual.

5 (h) “Labor organization” includes any organization that exists
6 and is constituted for the purpose, in whole or in part, of collective
7 bargaining or of dealing with employers concerning grievances,
8 terms or conditions of employment, or of other mutual aid or
9 protection.

10 (i) “Medical condition” means either of the following:

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

13 (2) Genetic characteristics. For purposes of this section, “genetic
14 characteristics” means either of the following:

15 (A) Any scientifically or medically identifiable gene or
16 chromosome, or combination or alteration thereof, that is known
17 to be a cause of a disease or disorder in a person or his or her
18 offspring, or that is determined to be associated with a statistically
19 increased risk of development of a disease or disorder, and that is
20 presently not associated with any symptoms of any disease or
21 disorder.

22 (B) Inherited characteristics that may derive from the individual
23 or family member, that are known to be a cause of a disease or
24 disorder in a person or his or her offspring, or that are determined
25 to be associated with a statistically increased risk of development
26 of a disease or disorder, and that are presently not associated with
27 any symptoms of any disease or disorder.

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

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

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

38 (B) A mental or psychological disorder or condition limits a
39 major life activity if it makes the achievement of the major life
40 activity difficult.

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

3 (2) Any other mental or psychological disorder or condition not
4 described in paragraph (1) that requires special education or related
5 services.

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

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

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

17 “Mental disability” does not include sexual behavior disorders,
18 compulsive gambling, kleptomania, pyromania, or psychoactive
19 substance use disorders resulting from the current unlawful use of
20 controlled substances or other drugs.

21 (k) “Military and veteran status” means a member or veteran
22 of the United States Armed Forces, United States Armed Forces
23 Reserve, the United States National Guard, and the California
24 National Guard.

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

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

32 (1) Having any physiological disease, disorder, condition,
33 cosmetic disfigurement, or anatomical loss that does both of the
34 following:

35 (A) Affects one or more of the following body systems:
36 neurological, immunological, musculoskeletal, special sense
37 organs, respiratory, including speech organs, cardiovascular,
38 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
39 and endocrine.

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

- 1 (i) “Limits” shall be determined without regard to mitigating
2 measures such as medications, assistive devices, prosthetics, or
3 reasonable accommodations, unless the mitigating measure itself
4 limits a major life activity.
- 5 (ii) A physiological disease, disorder, condition, cosmetic
6 disfigurement, or anatomical loss limits a major life activity if it
7 makes the achievement of the major life activity difficult.
- 8 (iii) “Major life activities” shall be broadly construed and
9 includes physical, mental, and social activities and working.
- 10 (2) Any other health impairment not described in paragraph (1)
11 that requires special education or related services.
- 12 (3) Having a record or history of a disease, disorder, condition,
13 cosmetic disfigurement, anatomical loss, or health impairment
14 described in paragraph (1) or (2), which is known to the employer
15 or other entity covered by this part.
- 16 (4) Being regarded or treated by the employer or other entity
17 covered by this part as having, or having had, any physical
18 condition that makes achievement of a major life activity difficult.
- 19 (5) Being regarded or treated by the employer or other entity
20 covered by this part as having, or having had, a disease, disorder,
21 condition, cosmetic disfigurement, anatomical loss, or health
22 impairment that has no present disabling effect but may become
23 a physical disability as described in paragraph (1) or (2).
- 24 (6) “Physical disability” does not include sexual behavior
25 disorders, compulsive gambling, kleptomania, pyromania, or
26 psychoactive substance use disorders resulting from the current
27 unlawful use of controlled substances or other drugs.
- 28 (n) Notwithstanding subdivisions (j) and (m), if the definition
29 of “disability” used in the federal Americans with Disabilities Act
30 of 1990 (Public Law 101-336) would result in broader protection
31 of the civil rights of individuals with a mental disability or physical
32 disability, as defined in subdivision (j) or (m), or would include
33 any medical condition not included within those definitions, then
34 that broader protection or coverage shall be deemed incorporated
35 by reference into, and shall prevail over conflicting provisions of,
36 the definitions in subdivisions (j) and (m).
- 37 (o) “Race, religious creed, color, national origin, ancestry,
38 physical disability, mental disability, medical condition, genetic
39 information, marital status, sex, age, sexual orientation, or military
40 and veteran status” includes a perception that the person has any

1 of those characteristics or that the person is associated with a
2 person who has, or is perceived to have, any of those
3 characteristics.

4 (p) “Reasonable accommodation” may include either of the
5 following:

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

8 (2) Job restructuring, part-time or modified work schedules,
9 reassignment to a vacant position, acquisition or modification of
10 equipment or devices, adjustment or modifications of examinations,
11 training ~~materials~~ *materials*, or policies, the provision of qualified
12 readers or interpreters, and other similar accommodations for
13 individuals with disabilities.

14 (q) “Religious creed,” “religion,” “religious observance,”
15 “religious belief,” and “creed” include all aspects of religious
16 belief, observance, and practice, including religious dress and
17 grooming practices. “Religious dress practice” shall be construed
18 broadly to include the wearing or carrying of religious clothing,
19 head or face coverings, jewelry, artifacts, and any other item that
20 is part of the observance by an individual of his or her religious
21 creed. “Religious grooming practice” shall be construed broadly
22 to include all forms of head, facial, and body hair that are part of
23 the observance by an individual of his or her religious creed.

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

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

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

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

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

33 (s) “Sexual orientation” means heterosexuality, homosexuality,
34 and bisexuality.

35 (t) “Supervisor” means any individual having the authority, in
36 the interest of the employer, to hire, transfer, suspend, lay off,
37 recall, promote, discharge, assign, reward, or discipline other
38 employees, or the responsibility to direct them, or to adjust their
39 grievances, or effectively to recommend that action, if, in
40 connection with the foregoing, the exercise of that authority is not

1 of a merely routine or clerical nature, but requires the use of
2 independent judgment.

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

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

7 (2) The overall financial resources of the facilities involved in
8 the provision of the reasonable accommodations, the number of
9 persons employed at the facility, and the effect on expenses and
10 resources or the impact otherwise of these accommodations upon
11 the operation of the facility.

12 (3) The overall financial resources of the covered entity, the
13 overall size of the business of a covered entity with respect to the
14 number of employees, and the number, type, and location of its
15 facilities.

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

18 (5) The geographic separateness or administrative or fiscal
19 relationship of the facility or facilities.

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

23 *SEC. 2. Section 12940 of the Government Code is amended to*
24 *read:*

25 12940. It is an unlawful employment practice, unless based
26 upon a bona fide occupational qualification, or, except where based
27 upon applicable security regulations established by the United
28 States or the State of California:

29 (a) For an employer, because of the race, religious creed, color,
30 national origin, ancestry, physical disability, mental disability,
31 medical condition, genetic information, marital status, sex, gender,
32 gender identity, gender expression, age, sexual orientation, or
33 military and veteran status of any person, to refuse to hire or
34 employ the person or to refuse to select the person for a training
35 program leading to employment, or to bar or to discharge the
36 person from employment or from a training program leading to
37 employment, or to discriminate against the person in compensation
38 or in terms, conditions, or privileges of employment.

39 (1) This part does not prohibit an employer from refusing to
40 hire or discharging an employee with a physical or mental

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

9 *(2) Nothing in this part relating to discrimination on account*
10 *of disability shall subject an employer to legal liability for*
11 *obtaining a license pursuant to Section 1191.5 of the Labor Code*
12 *or paying an individual with a physical or mental disability less*
13 *than minimum wage pursuant to either Section 1191 or Section*
14 *1191.5 of the Labor Code.*

15 ~~(2)~~

16 (3) This part does not prohibit an employer from refusing to
17 hire or discharging an employee who, because of the employee's
18 medical condition, is unable to perform his or her essential duties
19 even with reasonable accommodations, or cannot perform those
20 duties in a manner that would not endanger the employee's health
21 or safety or the health or safety of others even with reasonable
22 accommodations. Nothing in this part shall subject an employer
23 to any legal liability resulting from the refusal to employ or the
24 discharge of an employee who, because of the employee's medical
25 condition, is unable to perform his or her essential duties, or cannot
26 perform those duties in a manner that would not endanger the
27 employee's health or safety or the health or safety of others even
28 with reasonable accommodations.

29 ~~(3)~~

30 (4) Nothing in this part relating to discrimination on account of
31 marital status shall do either of the following:

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

36 (B) Prohibit bona fide health plans from providing additional
37 or greater benefits to employees with dependents than to those
38 employees without or with fewer dependents.

39 ~~(4)~~

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

5 ~~(5)~~

6 (6) (A) This part does not prohibit an employer from refusing
7 to employ an individual because of his or her age if the law
8 compels or provides for that refusal. Promotions within the existing
9 staff, hiring or promotion on the basis of experience and training,
10 rehiring on the basis of seniority and prior service with the
11 employer, or hiring under an established recruiting program from
12 high schools, colleges, universities, or trade schools do not, in and
13 of themselves, constitute unlawful employment practices.

14 (B) The provisions of this part relating to discrimination on the
15 basis of age do not prohibit an employer from providing health
16 benefits or health care reimbursement plans to retired persons that
17 are altered, reduced, or eliminated when the person becomes
18 eligible for Medicare health benefits. This subparagraph applies
19 to all retiree health benefit plans and contractual provisions or
20 practices concerning retiree health benefits and health care
21 reimbursement plans in effect on or after January 1, 2011.

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

38 (c) For any person to discriminate against any person in the
39 selection, termination, training, or other terms or treatment of that
40 person in any apprenticeship training program, any other training

1 program leading to employment, an unpaid internship, or another
2 limited duration program to provide unpaid work experience for
3 that person because of the race, religious creed, color, national
4 origin, ancestry, physical disability, mental disability, medical
5 condition, genetic information, marital status, sex, gender, gender
6 identity, gender expression, age, sexual orientation, or military
7 and veteran status of the person discriminated against.

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

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

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

33 (3) Notwithstanding paragraph (1), an employer or employment
34 agency may require a medical or psychological examination or
35 make a medical or psychological inquiry of a job applicant after
36 an employment offer has been made but prior to the
37 commencement of employment duties, provided that the
38 examination or inquiry is job related and consistent with business
39 necessity and that all entering employees in the same job
40 classification are subject to the same examination or inquiry.

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

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

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

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

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

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

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

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

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

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

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

35 (C) For purposes of this subdivision, "harassment" because of
36 sex includes sexual harassment, gender harassment, and harassment
37 based on pregnancy, childbirth, or related medical conditions.
38 Sexually harassing conduct need not be motivated by sexual desire.

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 (u) of Section 12926,
33 on the conduct of the business of the employer or other entity
34 covered by this part. Religious belief or observance, as used in
35 this section, includes, but is not limited to, observance of a Sabbath
36 or other religious holy day or days, reasonable time necessary for
37 travel prior and subsequent to a religious observance, and religious
38 dress practice and religious grooming practice as described in
39 subdivision (q) of Section 12926. This subdivision shall also apply
40 to an apprenticeship training program, an unpaid internship, and

1 any other program to provide unpaid experience for a person in
2 the workplace or industry.

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

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

12 (4) For an employer or other entity covered by this part to, in
13 addition to the employee protections provided pursuant to
14 subdivision (h), retaliate or otherwise discriminate against a person
15 for requesting accommodation under this subdivision, regardless
16 of whether the request was granted.

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

24 (2) For an employer or other entity covered by this part to, in
25 addition to the employee protections provided pursuant to
26 subdivision (h), retaliate or otherwise discriminate against a person
27 for requesting accommodation under this subdivision, regardless
28 of whether the request was granted.

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

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

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

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

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