

AMENDED IN SENATE AUGUST 31, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 676

Introduced by Assembly Member Calderon

February 25, 2015

An act to add ~~Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of Section 432.4~~ to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 676, as amended, Calderon. Employment: discrimination: status as unemployed.

Existing law creates the Division of Labor Standards Enforcement in the Department of Industrial Relations for the purpose of enforcing labor laws. Existing law prohibits various forms of employment discrimination with respect to the personal characteristics of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

This bill, on and after July 1, 2016, would prohibit an ~~employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to publish~~ *employer from publishing* an advertisement or announcement for a job that states or indicates that ~~current employment is a requirement, unless this is based on a bona fide occupational qualification.~~ *an unemployed person is not eligible for the job.* The bill would prohibit an employer or employment agency from asking an applicant for employment to disclose, orally or in writing, ~~information concerning the applicant's current employment status, except as specified.~~ ~~The bill would prohibit an employer, an~~

~~employment agency, or a person operating an Internet Web site for posting jobs from interfering with, or discriminating against, a person exercising these rights. The bill would subject an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state who violates the above provisions to civil penalties that escalate with the number of violations. The bill would provide that a private right of action is not authorized for a violation of these provisions:~~

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

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

- 1 SECTION 1. Section 432.4 is added to the Labor Code, to read:
- 2 432.4. (a) For the purposes of this section:
- 3 (1) “Employer” means the state or any political or civil
- 4 subdivision of the state and any person, as defined in Section 18,
- 5 who directly or indirectly, or through an agent or any other person,
- 6 employs or exercises control over the wages, hours, or working
- 7 conditions of any person.
- 8 (2) “Employment status” means an individual’s present
- 9 unemployment, regardless of the length of time that the individual
- 10 has been unemployed.
- 11 (b) An employer shall not do either of the following:
- 12 (1) Publish in print, on the Internet, or in any other medium,
- 13 an advertisement or announcement for any job that includes a
- 14 provision stating or indicating that an unemployed person is not
- 15 eligible for the job.
- 16 (2) Ask an applicant to disclose, orally or in writing, the
- 17 applicant’s employment status until the employer has determined
- 18 that the applicant meets the minimum employment qualifications
- 19 for the position, as stated in the published notice for the job.
- 20 (c) This chapter shall not be construed to prohibit an employer
- 21 from:
- 22 (1) Publishing in print, on the Internet, or in any other medium,
- 23 an advertisement or announcement for any job that contains any
- 24 provision setting forth qualifications for a job, including:
- 25 (A) Holding a current and valid professional or occupational
- 26 license, certificate, registration, permit, or other credential.

1 (B) Requiring a minimum level of education or training, or
2 professional, occupational, or field experience.

3 (C) Stating that only individuals who are current employees of
4 the employer will be considered for that job.

5 (2) Setting forth qualifications for any job, including:

6 (A) Holding a current and valid professional or occupational
7 license, certificate, registration, permit, or other credential.

8 (B) Requiring a minimum level of education or training, or
9 professional, occupational, or field experience.

10 (C) Stating that only individuals who are current employees of
11 the employer will be considered for that job.

12 (3) Obtaining information regarding an individual's
13 employment, including recent relevant experience.

14 (4) Having knowledge of a person's employment status.

15 (5) Inquiring as to the reasons for an individual's employment
16 status.

17 (6) Refusing to offer employment to a person because of the
18 reasons underlying an individual's employment status.

19 (7) Otherwise making employment decisions pertaining to that
20 individual.

21 (d) Section 433 does not apply to this section.

22 (e) This section shall become operative on July 1, 2016.

23 SECTION 1. ~~Chapter 3.95 (commencing with Section 1045)~~
24 ~~is added to Part 3 of Division 2 of the Labor Code, to read:~~

25
26 ~~CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS~~
27 ~~OF EMPLOYMENT STATUS~~

28
29 1045. ~~For purposes of this chapter, the following definitions~~
30 ~~apply:~~

31 (a) ~~"Employer" means the state or any political or civil~~
32 ~~subdivision of the state and any person, as defined in Section 18,~~
33 ~~who directly or indirectly, or through an agent or any other person,~~
34 ~~employs or exercises control over the wages, hours, or working~~
35 ~~conditions of any person.~~

36 (b) ~~"Employment agency" has the same meaning as defined in~~
37 ~~Section 1812.501 of the Civil Code.~~

38 (c) ~~"Employment status" means an individual's present~~
39 ~~unemployment, regardless of the length of time that the individual~~
40 ~~has been unemployed.~~

1 1046.—(a) Unless based on a bona fide occupational
2 qualification, an employer shall not do either of the following:

3 (1) Publish in print, on the Internet or in any other medium, an
4 advertisement or announcement for any job that includes a
5 provision stating or indicating that an individual's current
6 employment is a requirement for the job.

7 (2) Affirmatively ask an applicant for employment to disclose,
8 orally or in writing, information concerning the applicant's current
9 employment status until the employer has determined that the
10 applicant meets the minimum employment qualifications for the
11 position, as stated in the published notice for the job.

12 (b) Unless based on a bona fide occupational qualification, an
13 employment agency shall not do any of the following:

14 (1) Publish in print, on the Internet or in any other medium, an
15 advertisement or announcement for any job that includes a
16 provision stating or indicating that an individual's current
17 employment is a requirement for a job.

18 (2) Limit, segregate, or classify an individual in any manner
19 that may limit that individual's access to information about jobs
20 or referrals for consideration of jobs because of the individual's
21 employment status.

22 (3) Affirmatively ask an applicant for employment to disclose,
23 orally or in writing, information concerning the applicant's current
24 employment status until the employer has determined that the
25 applicant meets the minimum employment qualifications for the
26 position, as stated in the published notice for the job.

27 (c) Unless based on a bona fide occupational qualification, a
28 person who operates an Internet Web site for posting jobs in this
29 state shall not publish on that Internet Web site an advertisement
30 or announcement for any job that includes a provision stating or
31 indicating that an individual's current employment is a requirement
32 for a job.

33 1047. This chapter shall not be construed to prohibit an
34 employer, employment agency, or a person who operates an
35 Internet Web site for posting jobs in this state, or an agent,
36 representative, or designee of that employer, employment agency,
37 or Internet Web site, from:

38 (a) Publishing in print, on the Internet or in any other medium,
39 an advertisement or announcement for any job that contains any
40 provision setting forth qualifications for a job, including:

- 1 ~~(1) Holding a current and valid professional or occupational~~
- 2 ~~license, certificate, registration, permit, or other credential.~~
- 3 ~~(2) Requiring a minimum level of education or training or~~
- 4 ~~professional, occupational, or field experience.~~
- 5 ~~(3) Stating that only individuals who are current employees of~~
- 6 ~~the employer will be considered for that job.~~
- 7 ~~(b) Setting forth qualifications for any job, including:~~
- 8 ~~(1) Holding a current and valid professional or occupational~~
- 9 ~~license, certificate, registration, permit, or other credential.~~
- 10 ~~(2) Requiring a minimum level of education or training or~~
- 11 ~~professional, occupational, or field experience.~~
- 12 ~~(3) Stating that only individuals who are current employees of~~
- 13 ~~the employer will be considered for that job.~~
- 14 ~~(c) Obtaining information regarding an individual's employment,~~
- 15 ~~including recent relevant experience.~~
- 16 ~~(d) Having knowledge of a person's employment status.~~
- 17 ~~(e) Inquiring as to the reasons for an individual's employment~~
- 18 ~~status.~~
- 19 ~~(f) Refusing to offer employment to a person because of the~~
- 20 ~~reasons underlying an individual's employment status.~~
- 21 ~~(g) Otherwise making employment decisions pertaining to that~~
- 22 ~~individual.~~
- 23 ~~1048. — An employer, an employment agency, or a person~~
- 24 ~~operating an Internet Web site for posting jobs shall not do either~~
- 25 ~~of the following:~~
- 26 ~~(a) Interfere with, restrain, or deny the exercise of, or the attempt~~
- 27 ~~to exercise, any right provided under this chapter.~~
- 28 ~~(b) Discriminate against any individual because the individual:~~
- 29 ~~(1) Opposed any practice made unlawful by this chapter.~~
- 30 ~~(2) Has instituted, or caused to be instituted, any proceeding~~
- 31 ~~under or related to this chapter.~~
- 32 ~~(3) Has provided, or is about to provide, any information in~~
- 33 ~~connection with any inquiry or proceeding relating to any right~~
- 34 ~~provided under this chapter.~~
- 35 ~~(4) Has testified, or is about to testify, in any inquiry or~~
- 36 ~~proceeding relating to any right provided under this chapter.~~
- 37 ~~1049. — An individual aggrieved by a violation of this chapter~~
- 38 ~~may file a complaint with the Labor Commissioner. The Labor~~
- 39 ~~Commissioner may impose a civil penalty against any employer,~~
- 40 ~~employment agency, or person operating an Internet Web site for~~

1 posting jobs that the commissioner finds to be in violation of this
2 chapter. An employer, employment agency, or person operating
3 an Internet Web site for posting jobs that violates any provision
4 of this chapter shall be subject to a civil penalty of one thousand
5 dollars (\$1,000) for the first violation of this chapter, five thousand
6 dollars (\$5,000) for the second violation, and ten thousand dollars
7 (\$10,000) for each subsequent violation.
8 1049.5. Notwithstanding any provision of law, this chapter
9 does not create or authorize a private right of action for a violation
10 of this chapter.
11 1049.7. This chapter shall become operative on July 1, 2016.