

AMENDED IN ASSEMBLY APRIL 6, 2015
AMENDED IN ASSEMBLY MARCH 24, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 883

Introduced by Assembly Member Low

February 26, 2015

An act to add Section 432.6 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 883, as amended, Low. Employment: public employee status.

Existing law regulates the terms and conditions of employment and, in particular, contracts and applications for employment. Existing law prohibits private employers from requiring an applicant for employment to take a polygraph test as a condition of employment or continued employment. Existing law generally prohibits public and private employers from requiring an applicant to disclose an arrest or detention that did not result in a conviction, subject to various exceptions. Existing law makes a violation of these provisions a misdemeanor.

This bill would prohibit private and public employers from publishing or posting a job advertisement or announcement that states or indicates directly or indirectly that the applicant for employment must not be a current or former public employee. The bill would also prohibit these employers from communicating, directly or indirectly, that an applicant's status as a current or former public employee disqualifies an individual from eligibility for employment or from basing an *adverse* employment decision on an applicant's current or former employment as a public employee. The bill would create a related prohibition for a person who

operates an Internet Web site for posting jobs in this state. The bill would except these provisions from the misdemeanor provisions described above. The bill would prescribe penalties for a violation of these provisions and would provide that an intentional violation of these provisions is an infraction, as specified. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 432.6 is added to the Labor Code, to
2 read:

3 432.6. (a) An employer, including a public employer, shall
4 not do any of the following:

5 (1) Publish in print, on an Internet Web site, or in any other
6 medium, an advertisement or announcement for any job that
7 includes a provision stating or indicating directly or indirectly that
8 the applicant for employment must not be a current or former
9 public employee.

10 (2) Communicate or disclose directly or indirectly, through any
11 written form or verbally, that an applicant’s status as a current or
12 former public employee disqualifies an individual from eligibility
13 for employment.

14 (3) Make an *adverse* employment decision based on an
15 applicant’s current or former employment as a public employee.

16 (b) A person who operates an Internet Web site for posting jobs
17 in this state shall not publish on that Internet Web site an
18 advertisement or announcement for any job that includes a
19 provision stating or indicating directly or indirectly that the
20 applicant for employment must not be a current or former public
21 employee.

22 (c) *This section shall not be construed to prohibit an employer*
23 *or a person who operates an Internet Web site for posting jobs*
24 *from:*

- 1 (1) *Publishing in print, on an Internet Web site, or in any other*
2 *medium, an advertisement or announcement for a job that contains*
3 *provisions setting forth qualifications for the job, including:*
4 (A) *Holding a current and valid professional or occupational*
5 *license, certificate, registration, permit, or other credential.*
6 (B) *Requiring a minimum level of education or training or*
7 *professional, occupational, or field experience.*
8 (C) *Stating that only individuals who are current employees of*
9 *the employer will be considered for that job.*
10 (2) *Setting forth qualifications for a job, including:*
11 (A) *Holding a current and valid professional or occupational*
12 *license, certificate, registration, permit, or other credential.*
13 (B) *Requiring a minimum level of education, training, or*
14 *professional, occupational, or field experience.*
15 (C) *Stating that only individuals who are current employees of*
16 *the employer will be considered for that job.*
17 (3) *Obtaining information regarding an individual's current or*
18 *former status as a public employee, including recent relevant*
19 *experience.*
20 (4) *Having knowledge of a person's current or former status*
21 *as a public employee.*
22 (5) *Otherwise making employment decisions pertaining to that*
23 *individual.*
24 ~~(e)~~
25 (d) *If an employer violates this section, a job applicant or*
26 *prospective applicant may bring an action to recover from that*
27 *employer actual damages or two hundred dollars (\$200), whichever*
28 *is greater, plus costs, and reasonable attorney's fees. An intentional*
29 *violation of this section shall entitle the applicant or prospective*
30 *applicant to treble actual damages, or five hundred dollars (\$500),*
31 *whichever is greater, plus costs, and reasonable attorney's fees.*
32 *An intentional violation of this section is also a infraction*
33 *punishable by a fine not to exceed five hundred dollars (\$500).*
34 ~~(d)~~
35 (e) *The remedies under this section shall be in addition to and*
36 *not in derogation of all other rights and remedies that an applicant*
37 *may have under any other law.*
38 ~~(e)~~
39 (f) *Section 433 does not apply to this section.*

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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