

AMENDED IN ASSEMBLY JUNE 9, 1999

AMENDED IN SENATE MARCH 15, 1999

SENATE BILL

No. 26

Introduced by Senator Escutia

(Principal coauthors: Senators Schiff and Vasconcellos)

**(Coauthors: Senators Alpert, Dunn, O'Connell, Perata, and
~~Polanco~~ Polanco, and Speier)**

(Coauthors: Assembly Members Alquist, Aroner, Gallegos,
Honda, Jackson, Knox, Kuehl, Lempert, Mazzoni, Scott,
Shelley, Washington, Wayne, and Wildman)

December 7, 1998

An act to add Section 12941.1 to the Government Code,
relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Escutia. Employment: age
discrimination.

Existing law makes it an unlawful employment practice for
an employer to refuse to hire or employ, or to discharge,
dismiss, reduce, suspend, or demote, any individual over the
age of 40 on the ground of age, under specified circumstances.
In *Marks v. Loral Corp.* (1997) 57 Cal.App.4th 30, the court
held that existing law permits an employer to choose
employees with lower salaries, even though this may result in
choosing younger employees.

This bill would declare the Legislature's rejection of the
opinion in *Marks v. Loral Corp.*, supra, and state that the
opinion does not affect existing law in any way, including, but

not limited to, the law pertaining to disparate treatment. The bill would also declare the intent of the Legislature that, among other things, the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of this criterion disproportionately affects older workers as a group.

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. The Legislature hereby finds and
2 declares its support of the following pronouncements
3 made by the California Supreme Court in *Stevenson v.*
4 *Superior Court* (1997) 16 Cal.4th 880:

5 (a) "... the practice of age discrimination, like other
6 invidious forms of discrimination, 'foments domestic
7 strife and unrest' in the workplace ... making for a more
8 stressful and ultimately less productive work
9 environment"

10 (b) "[T]here can be little doubt that the FEHA's
11 express policy condemning employment discrimination
12 against older workers is one that benefits the public at
13 large. Because average life expectancy has risen to more
14 than 80 years, most California residents either are now or
15 will become over-40 employees, thus creating an
16 extraordinarily broad class of potential victims of age
17 discrimination in employment"

18 (c) "[T]he pernicious effects of age discrimination in
19 employment are not confined to employees who are its
20 immediate targets. As the Legislature has recognized in
21 Unemployment Insurance Code section 2070,
22 discrimination against older workers violates the public
23 policy that '[an employee's skills and potential] should be
24 used to [their] fullest extent,' thereby depriving society at
25 large of the benefit of valuable human resources"

26 (d) "[T]he FEHA's policy against age discrimination
27 in employment is ... similar in important ways to the
28 policies against race and sex discrimination Like race



1 and sex discrimination, age discrimination violates the
2 basic principle that each person should be judged on the
3 basis of individual merit, rather than by reference to
4 group stereotypes ...”

5 (e) “Age, like race and sex, is the product of the
6 workings of nature rather than the individual’s free
7 choice; once acquired, the status of being over 40 is as
8 permanent and immutable as race or sex. Age
9 discrimination attacks the individual’s sense of self-worth
10 in much the same fashion as race or sex discrimination.
11 Indeed, age discrimination (or ‘ageism,’ as it is sometimes
12 called) has been defined as ‘a systematic stereotyping of
13 and discrimination against people because they are old,
14 just as racism and sexism accomplish this with skin color
15 and gender ...’ ”

16 SEC. 2. Section 12941.1 is added to the Government
17 Code, to read:

18 12941.1. The Legislature hereby declares its rejection
19 of the court of appeal opinion in Marks v. Loral Corp.
20 (1997) 57 Cal.App.4th 30, and states that the opinion does
21 not affect existing law in any way, including, but not
22 limited to, the law pertaining to disparate treatment. The
23 Legislature declares its intent that the use of salary as the
24 basis for differentiating between employees when
25 terminating employment may be found to constitute age
26 discrimination if use of that criterion adversely impacts
27 older workers as a group, and further declares its intent
28 that the disparate impact theory of proof may be used in
29 claims of age discrimination. The Legislature further
30 reaffirms and declares its intent that the courts interpret
31 the state’s statutes prohibiting age discrimination in
32 employment broadly and vigorously, in a manner
33 comparable to prohibitions against sex and race
34 discrimination, and with the goal of not only protecting
35 older workers as individuals, but also of protecting older
36 workers as a group, since they face unique obstacles in the
37 later phases of their careers. Nothing in this section shall
38 limit the affirmative defenses traditionally available in
39 employment discrimination cases ~~that are~~ *including, but*



1 *not limited to, those* set forth in Section 7286.7 of Title 2
2 of the California Code of Regulations.

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