

AMENDED IN ASSEMBLY FEBRUARY 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 76**

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**Introduced by Assembly Member Corbett**

*(Principal coauthors: Assembly Members Jackson, Koretz, and Steinberg)*

*(Principal coauthor: Senator Kuehl)*

*(Coauthors: Assembly Members Cohn, Hancock, Laird, Levine, Lieber, and Yee)*

*(Coauthor: Senator Romero)*

December 23, 2002

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An act to amend Section 12940 of the Government Code, relating to unlawful employment practices.

LEGISLATIVE COUNSEL'S DIGEST

AB 76, as amended, Corbett. Employment discrimination.

Existing law makes it an unlawful employment practice for an employer to harass any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or to fail to take immediate and appropriate corrective action to prevent harassment by an employee other than an agent or supervisor, if the employer knows or should have known of this conduct.

This bill would make it unlawful for an employer to fail to take immediate and appropriate corrective action to prevent harassment of an employee by any person, once the employer knows or should have known of this conduct.

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 12940 of the Government Code is~~  
2 *SECTION 1. Section 12940 of the Government Code is*  
3 *amended to read:*

4 12940. It shall be an unlawful employment practice, unless  
5 based upon a bona fide occupational qualification, or, except  
6 where based upon applicable security regulations established by  
7 the United States or the State of California:

8 (a) For an employer, because of the race, religious creed, color,  
9 national origin, ancestry, physical disability, mental disability,  
10 medical condition, marital status, sex, age, or sexual orientation of  
11 any person, to refuse to hire or employ the person or to refuse to  
12 select the person for a training program leading to employment, or  
13 to bar or to discharge the person from employment or from a  
14 training program leading to employment, or to discriminate  
15 against the person in compensation or in terms, conditions, or  
16 privileges of employment.

17 (1) This part does not prohibit an employer from refusing to  
18 hire or discharging an employee with a physical or mental  
19 disability, or subject an employer to any legal liability resulting  
20 from the refusal to employ or the discharge of an employee with  
21 a physical or mental disability, where the employee, because of his  
22 or her physical or mental disability, is unable to perform his or her  
23 essential duties even with reasonable accommodations, or cannot  
24 perform those duties in a manner that would not endanger his or  
25 her health or safety or the health or safety of others even with  
26 reasonable accommodations.

27 (2) This part does not prohibit an employer from refusing to  
28 hire or discharging an employee who, because of the employee's  
29 medical condition, is unable to perform his or her essential duties  
30 even with reasonable accommodations, or cannot perform those  
31 duties in a manner that would not endanger the employee's health  
32 or safety or the health or safety of others even with reasonable  
33 accommodations. Nothing in this part shall subject an employer to  
34 any legal liability resulting from the refusal to employ or the  
35 discharge of an employee who, because of the employee's medical



1 condition, is unable to perform his or her essential duties, or cannot  
2 perform those duties in a manner that would not endanger the  
3 employee's health or safety or the health or safety of others even  
4 with reasonable accommodations.

5 (3) Nothing in this part relating to discrimination on account of  
6 marital status shall do either of the following:

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

11 (B) Prohibit bona fide health plans from providing additional  
12 or greater benefits to employees with dependents than to those  
13 employees without or with fewer dependents.

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

18 (5) Nothing in this part prohibits an employer from refusing to  
19 employ an individual because of his or her age if the law compels  
20 or provides for that refusal. Promotions within the existing staff,  
21 hiring or promotion on the basis of experience and training,  
22 rehiring on the basis of seniority and prior service with the  
23 employer, or hiring under an established recruiting program from  
24 high schools, colleges, universities, or trade schools do not, in and  
25 of themselves, constitute unlawful employment practices.

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

39 (c) For any person to discriminate against any person in the  
40 selection or training of that person in any apprenticeship training



1 program or any other training program leading to employment  
2 because of the race, religious creed, color, national origin,  
3 ancestry, physical disability, mental disability, medical condition,  
4 marital status, sex, age, or sexual orientation of the person  
5 discriminated against.

6 (d) For any employer or employment agency to print or  
7 circulate or cause to be printed or circulated any publication, or to  
8 make any non-job-related inquiry of an employee or applicant,  
9 either verbal or through use of an application form, that expresses,  
10 directly or indirectly, any limitation, specification, or  
11 discrimination as to race, religious creed, color, national origin,  
12 ancestry, physical disability, mental disability, medical condition,  
13 marital status, sex, age, or sexual orientation, or any intent to make  
14 any such limitation, specification or discrimination. Nothing in  
15 this part prohibits an employer or employment agency from  
16 inquiring into the age of an applicant, or from specifying age  
17 limitations, where the law compels or provides for that action.

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

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

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

38 (f) (1) Except as provided in paragraph (2), for any employer  
39 or employment agency to require any medical or psychological  
40 examination of an employee, to make any medical or



1 psychological inquiry of an employee, to make any inquiry  
2 whether an employee has a mental disability, physical disability,  
3 or medical condition, or to make any inquiry regarding the nature  
4 or severity of a physical disability, mental disability, or medical  
5 condition.

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

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

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

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

27 (j) (1) For an employer, labor organization, employment  
28 agency, apprenticeship training program or any training program  
29 leading to employment, or any other person, because of race,  
30 religious creed, color, national origin, ancestry, physical disability,  
31 mental disability, medical condition, marital status, sex, age, or  
32 sexual orientation, to harass an employee, an applicant, or a person  
33 providing services pursuant to a contract. Harassment of an  
34 employee, an applicant, or a person providing services pursuant to  
35 a contract by ~~an employee~~ *any person* other than an agent or  
36 supervisor shall be unlawful if the entity, or its agents or  
37 supervisors, knows or should have known of this conduct and fails  
38 to take immediate and appropriate corrective action. An entity  
39 shall take all reasonable steps to prevent harassment from



1 occurring. Loss of tangible job benefits shall not be necessary in  
2 order to establish harassment.

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

6 (3) An employee of an entity subject to this subdivision is  
7 personally liable for any harassment prohibited by this section that  
8 is perpetrated by the employee, regardless of whether the  
9 employer or covered entity knows or should have known of the  
10 conduct and fails to take immediate and appropriate corrective  
11 action.

12 (4) (A) For purposes of this subdivision only, “employer”  
13 means any person regularly employing one or more persons or  
14 regularly receiving the services of one or more persons providing  
15 services pursuant to a contract, or any person acting as an agent of  
16 an employer, directly or indirectly, the state, or any political or  
17 civil subdivision of the state, and cities. The definition of  
18 “employer” in subdivision (d) of Section 12926 applies to all  
19 provisions of this section other than this subdivision.

20 (B) Notwithstanding subparagraph (A), for purposes of this  
21 subdivision, “employer” does not include a religious association  
22 or corporation not organized for private profit, except as provided  
23 in Section 12926.2.

24 (C) For purposes of this subdivision, “harassment” because of  
25 sex includes sexual harassment, gender harassment, and  
26 harassment based on pregnancy, childbirth, or related medical  
27 conditions.

28 (5) For purposes of this subdivision, “a person providing  
29 services pursuant to a contract” means a person who meets all of  
30 the following criteria:

31 (A) The person has the right to control the performance of the  
32 contract for services and discretion as to the manner of  
33 performance.

34 (B) The person is customarily engaged in an independently  
35 established business.

36 (C) The person has control over the time and place the work is  
37 performed, supplies the tools and instruments used in the work,  
38 and performs work that requires a particular skill not ordinarily  
39 used in the course of the employer’s work.



1 (k) For an employer, labor organization, employment agency,  
2 apprenticeship training program, or any training program leading  
3 to employment, to fail to take all reasonable steps necessary to  
4 prevent discrimination and harassment from occurring.

5 (l) For an employer or other entity covered by this part to refuse  
6 to hire or employ a person or to refuse to select a person for a  
7 training program leading to employment or to bar or to discharge  
8 a person from employment or from a training program leading to  
9 employment, or to discriminate against a person in compensation  
10 or in terms, conditions, or privileges of employment because of a  
11 conflict between the person's religious belief or observance and  
12 any employment requirement, unless the employer or other entity  
13 covered by this part demonstrates that it has explored any available  
14 reasonable alternative means of accommodating the religious  
15 belief or observance, including the possibilities of excusing the  
16 person from those duties that conflict with his or her religious  
17 belief or observance or permitting those duties to be performed at  
18 another time or by another person, but is unable to reasonably  
19 accommodate the religious belief or observance without undue  
20 hardship on the conduct of the business of the employer or other  
21 entity covered by this part. Religious belief or observance, as used  
22 in this section, includes, but is not limited to, observance of a  
23 Sabbath or other religious holy day or days, and reasonable time  
24 necessary for travel prior and subsequent to a religious  
25 observance.

26 (m) For an employer or other entity covered by this part to fail  
27 to make reasonable accommodation for the known physical or  
28 mental disability of an applicant or employee. Nothing in this  
29 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
30 construed to require an accommodation that is demonstrated by the  
31 employer or other covered entity to produce undue hardship to its  
32 operation.

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



1 (o) For an employer or other entity covered by this part, to  
2 subject, directly or indirectly, any employee, applicant, or other  
3 person to a test for the presence of a genetic characteristic.  
4 ~~amended to read:~~

5 ~~12940. It shall be an unlawful employment practice, unless~~  
6 ~~based upon a bona fide occupational qualification, or, except~~  
7 ~~where based upon applicable security regulations established by~~  
8 ~~the United States or the State of California:~~

9 ~~(a) For an employer, because of the race, religious creed, color,~~  
10 ~~national origin, ancestry, physical disability, mental disability,~~  
11 ~~medical condition, marital status, sex, or sexual orientation of any~~  
12 ~~person, to refuse to hire or employ the person or to refuse to select~~  
13 ~~the person for a training program leading to employment, or to bar~~  
14 ~~or to discharge the person from employment or from a training~~  
15 ~~program leading to employment, or to discriminate against the~~  
16 ~~person in compensation or in terms, conditions, or privileges of~~  
17 ~~employment.~~

18 ~~(1) This part does not prohibit an employer from refusing to~~  
19 ~~hire or discharging an employee with a physical or mental~~  
20 ~~disability, or subject an employer to any legal liability resulting~~  
21 ~~from the refusal to employ or the discharge of an employee with~~  
22 ~~a physical or mental disability, where the employee, because of his~~  
23 ~~or her physical or mental disability, is unable to perform his or her~~  
24 ~~essential duties even with reasonable accommodations, or cannot~~  
25 ~~perform those duties in a manner that would not endanger his or~~  
26 ~~her health or safety or the health or safety of others even with~~  
27 ~~reasonable accommodations.~~

28 ~~(2) This part does not prohibit an employer from refusing to~~  
29 ~~hire or discharging an employee who, because of the employee's~~  
30 ~~medical condition, is unable to perform his or her essential duties~~  
31 ~~even with reasonable accommodations, or cannot perform those~~  
32 ~~duties in a manner that would not endanger the employee's health~~  
33 ~~or safety or the health or safety of others even with reasonable~~  
34 ~~accommodations. Nothing in this part shall subject an employer to~~  
35 ~~any legal liability resulting from the refusal to employ or the~~  
36 ~~discharge of an employee who, because of the employee's medical~~  
37 ~~condition, is unable to perform his or her essential duties, or cannot~~  
38 ~~perform those duties in a manner that would not endanger the~~  
39 ~~employee's health or safety or the health or safety of others even~~  
40 ~~with reasonable accommodations.~~



1 ~~(3) Nothing in this part relating to discrimination on account of~~  
2 ~~marital status shall do either of the following:~~

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

7 ~~(B) Prohibit bona fide health plans from providing additional~~  
8 ~~or greater benefits to employees with dependents than to those~~  
9 ~~employees without or with fewer dependents.~~

10 ~~(4) Nothing in this part relating to discrimination on account of~~  
11 ~~sex shall affect the right of an employer to use veteran status as a~~  
12 ~~factor in employee selection or to give special consideration to~~  
13 ~~Vietnam era veterans.~~

14 ~~(b) For a labor organization, because of the race, religious~~  
15 ~~creed, color, national origin, ancestry, physical disability, mental~~  
16 ~~disability, medical condition, marital status, sex, or sexual~~  
17 ~~orientation of any person, to exclude, expel, or restrict from its~~  
18 ~~membership the person, or to provide only second-class or~~  
19 ~~segregated membership or to discriminate against any person~~  
20 ~~because of the race, religious creed, color, national origin,~~  
21 ~~ancestry, physical disability, mental disability, medical condition,~~  
22 ~~marital status, sex, or sexual orientation of the person in the~~  
23 ~~election of officers of the labor organization or in the selection of~~  
24 ~~the labor organization's staff or to discriminate in any way against~~  
25 ~~any of its members or against any employer or against any person~~  
26 ~~employed by an employer.~~

27 ~~(c) For any person to discriminate against any person in the~~  
28 ~~selection or training of that person in any apprenticeship training~~  
29 ~~program or any other training program leading to employment~~  
30 ~~because of the race, religious creed, color, national origin,~~  
31 ~~ancestry, physical disability, mental disability, medical condition,~~  
32 ~~marital status, sex, or sexual orientation of the person~~  
33 ~~discriminated against.~~

34 ~~(d) For any employer or employment agency to print or~~  
35 ~~circulate or cause to be printed or circulated any publication, or to~~  
36 ~~make any non-job-related inquiry of an employee or applicant,~~  
37 ~~either verbal or through use of an application form, that expresses,~~  
38 ~~directly or indirectly, any limitation, specification, or~~  
39 ~~discrimination as to race, religious creed, color, national origin,~~  
40 ~~ancestry, physical disability, mental disability, medical condition,~~



1 marital status, sex, or sexual orientation, or any intent to make any  
2 limitation, specification, or discrimination.

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

11 ~~(2) Notwithstanding paragraph (1), an employer or~~  
12 ~~employment agency may inquire into the ability of an applicant to~~  
13 ~~perform job-related functions and may respond to an applicant's~~  
14 ~~request for reasonable accommodation.~~

15 ~~(3) Notwithstanding paragraph (1), an employer or~~  
16 ~~employment agency may require a medical or psychological~~  
17 ~~examination or make a medical or psychological inquiry of a job~~  
18 ~~applicant after an employment offer has been made but prior to the~~  
19 ~~commencement of employment duties, provided that the~~  
20 ~~examination or inquiry is job-related and consistent with business~~  
21 ~~necessity and that all entering employees in the same job~~  
22 ~~classification are subject to the same examination or inquiry.~~

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

31 ~~(2) Notwithstanding paragraph (1), an employer or~~  
32 ~~employment agency may require any examinations or inquiries~~  
33 ~~that it can show to be job-related and consistent with business~~  
34 ~~necessity. An employer or employment agency may conduct~~  
35 ~~voluntary medical examinations, including voluntary medical~~  
36 ~~histories, which are part of an employee health program available~~  
37 ~~to employees at that worksite.~~

38 ~~(g) For any employer, labor organization, or employment~~  
39 ~~agency to harass, discharge, expel, or otherwise discriminate~~  
40 ~~against any person because the person has made a report pursuant~~



1 to Section 11161.8 of the Penal Code that prohibits retaliation  
2 against hospital employees who report suspected patient abuse by  
3 health facilities or community care facilities.

4 (h) For any employer, labor organization, employment agency,  
5 or person to discharge, expel, or otherwise discriminate against  
6 any person because the person has opposed any practices  
7 forbidden under this part or because the person has filed a  
8 complaint, testified, or assisted in any proceeding under this part.

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

12 (j) (1) For an employer, labor organization, employment  
13 agency, apprenticeship training program or any training program  
14 leading to employment, or any other person, because of race,  
15 religious creed, color, national origin, ancestry, physical disability,  
16 mental disability, medical condition, marital status, sex, age, or  
17 sexual orientation, to harass an employee, an applicant, or a person  
18 providing services pursuant to a contract. Harassment of an  
19 employee, an applicant, or a person providing services pursuant to  
20 a contract by any person other than an agent or supervisor shall be  
21 unlawful if the entity, or its agents or supervisors, knows or should  
22 have known of this conduct and fails to take immediate and  
23 appropriate corrective action. An entity shall take all reasonable  
24 steps to prevent harassment from occurring. Loss of tangible job  
25 benefits shall not be necessary in order to establish harassment.

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

29 (3) An employee of an entity subject to this subdivision is  
30 personally liable for any harassment prohibited by this section that  
31 is perpetrated by the employee, regardless of whether the  
32 employer or covered entity knows or should have known of the  
33 conduct and fails to take immediate and appropriate corrective  
34 action.

35 (4) (A) For purposes of this subdivision only, “employer”  
36 means any person regularly employing one or more persons or  
37 regularly receiving the services of one or more persons providing  
38 services pursuant to a contract, or any person acting as an agent of  
39 an employer, directly or indirectly, the state, or any political or  
40 civil subdivision of the state, and cities. The definition of



1 ~~“employer” in subdivision (d) of Section 12926 applies to all~~  
2 ~~provisions of this section other than this subdivision.~~

3 ~~(B) Notwithstanding subparagraph (A), for purposes of this~~  
4 ~~subdivision, “employer” does not include a religious association~~  
5 ~~or corporation not organized for private profit, except as provided~~  
6 ~~in Section 12926.2.~~

7 ~~(C) For purposes of this subdivision, “harassment” because of~~  
8 ~~sex includes sexual harassment, gender harassment, and~~  
9 ~~harassment based on pregnancy, childbirth, or related medical~~  
10 ~~conditions.~~

11 ~~(5) For purposes of this subdivision, “a person providing~~  
12 ~~services pursuant to a contract” means a person who meets all of~~  
13 ~~the following criteria:~~

14 ~~(A) The person has the right to control the performance of the~~  
15 ~~contract for services and discretion as to the manner of~~  
16 ~~performance.~~

17 ~~(B) The person is customarily engaged in an independently~~  
18 ~~established business.~~

19 ~~(C) The person has control over the time and place the work is~~  
20 ~~performed, supplies the tools and instruments used in the work,~~  
21 ~~and performs work that requires a particular skill not ordinarily~~  
22 ~~used in the course of the employer’s work.~~

23 ~~(k) For an employer, labor organization, employment agency,~~  
24 ~~apprenticeship training program, or any training program leading~~  
25 ~~to employment, to fail to take all reasonable steps necessary to~~  
26 ~~prevent discrimination and harassment from occurring.~~

27 ~~(l) For an employer or other entity covered by this part to refuse~~  
28 ~~to hire or employ a person or to refuse to select a person for a~~  
29 ~~training program leading to employment or to bar or to discharge~~  
30 ~~a person from employment or from a training program leading to~~  
31 ~~employment, or to discriminate against a person in compensation~~  
32 ~~or in terms, conditions, or privileges of employment because of a~~  
33 ~~conflict between the person’s religious belief or observance and~~  
34 ~~any employment requirement, unless the employer or other entity~~  
35 ~~covered by this part demonstrates that it has explored any available~~  
36 ~~reasonable alternative means of accommodating the religious~~  
37 ~~belief or observance, including the possibilities of excusing the~~  
38 ~~person from those duties that conflict with his or her religious~~  
39 ~~belief or observance or permitting those duties to be performed at~~  
40 ~~another time or by another person, but is unable to reasonably~~



1 ~~accommodate the religious belief or observance without undue~~  
2 ~~hardship on the conduct of the business of the employer or other~~  
3 ~~entity covered by this part. Religious belief or observance, as used~~  
4 ~~in this section, includes, but is not limited to, observance of a~~  
5 ~~Sabbath or other religious holy day or days, and reasonable time~~  
6 ~~necessary for travel prior and subsequent to a religious~~  
7 ~~observance.~~

8 ~~(m) For an employer or other entity covered by this part to fail~~  
9 ~~to make reasonable accommodation for the known physical or~~  
10 ~~mental disability of an applicant or employee. Nothing in this~~  
11 ~~subdivision or in paragraph (1) or (2) of subdivision (a) shall be~~  
12 ~~construed to require an accommodation that is demonstrated by the~~  
13 ~~employer or other covered entity to produce undue hardship to its~~  
14 ~~operation.~~

15 ~~(n) For an employer or other entity covered by this part to fail~~  
16 ~~to engage in a timely, good faith, interactive process with the~~  
17 ~~employee or applicant to determine effective reasonable~~  
18 ~~accommodations, if any, in response to a request for reasonable~~  
19 ~~accommodation by an employee or applicant with a known~~  
20 ~~physical or mental disability or known medical condition.~~

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

24 \_\_\_\_\_

25 CORRECTIONS

26 Page 1 — Amended line.

27 \_\_\_\_\_

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