

ASSEMBLY BILL

No. 272

Introduced by Assembly Member Lackey

February 11, 2015

An act to amend Section 12926 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 272, as introduced, Lackey. California Fair Employment and Housing Act.

Under the California Fair Employment and Housing Act, it is unlawful to engage in specified discriminatory practices in employment or housing accommodations on the basis of certain specified characteristics, including race, creed, or national origin. Existing law defines these characteristics and other terms for purposes of the act.

This bill would make a nonsubstantive change to these definitions.

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~~ context, the following terms have the following meanings:
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,

1 reassignments, grants of tenure, promotions, cease and desist
2 orders, posting of notices, training of personnel, testing, expunging
3 of records, reporting of records, and any other similar relief that
4 is intended to correct unlawful practices under this part.

5 (b) “Age” refers to the chronological age of any individual who
6 has reached his or her 40th birthday.

7 (c) “Employee” does not include any individual employed by
8 his or her parents, spouse, or child, or any individual employed
9 under a special license in a nonprofit sheltered workshop or
10 rehabilitation facility.

11 (d) “Employer” includes any person regularly employing five
12 or more persons, or any person acting as an agent of an employer,
13 directly or indirectly, the state or any political or civil subdivision
14 of the state, and cities, except as follows:

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

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

19 (f) “Essential functions” means the fundamental job duties of
20 the employment position the individual with a disability holds or
21 desires. “Essential functions” does not include the marginal
22 functions of the position.

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

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

28 (B) The function may be essential because of the limited number
29 of employees available among whom the performance of that job
30 function can be distributed.

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

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

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

37 (B) Written job descriptions prepared before advertising or
38 interviewing applicants for the job.

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

1 (D) The consequences of not requiring the incumbent to perform
2 the function.

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

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

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

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

8 (A) The individual’s genetic tests.

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

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

12 (2) “Genetic information” includes any request for, or receipt
13 of, genetic services, or participation in clinical research that
14 includes genetic services, by an individual or any family member
15 of the individual.

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

18 (h) “Labor organization” includes any organization that exists
19 and is constituted for the purpose, in whole or in part, of collective
20 bargaining or of dealing with employers concerning grievances,
21 terms or conditions of employment, or of other mutual aid or
22 protection.

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

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

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

28 (A) Any scientifically or medically identifiable gene or
29 chromosome, or combination or alteration thereof, that is known
30 to be a cause of a disease or disorder in a person or his or her
31 offspring, or that is determined to be associated with a statistically
32 increased risk of development of a disease or disorder, and that is
33 presently not associated with any symptoms of any disease or
34 disorder.

35 (B) Inherited characteristics that may derive from the individual
36 or family member, that are known to be a cause of a disease or
37 disorder in a person or his or her offspring, or that are determined
38 to be associated with a statistically increased risk of development
39 of a disease or disorder, and that are presently not associated with
40 any symptoms of any disease or disorder.

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

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

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

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

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

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

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

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

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

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

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

(l) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability,

1 mental disability, medical condition, genetic information, marital
2 status, sex, age, sexual orientation, or military and veteran status.

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

5 (1) Having any physiological disease, disorder, condition,
6 cosmetic disfigurement, or anatomical loss that does both of the
7 following:

8 (A) Affects one or more of the following body systems:
9 neurological, immunological, musculoskeletal, special sense
10 organs, respiratory, including speech organs, cardiovascular,
11 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
12 and endocrine.

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

14 (i) “Limits” shall be determined without regard to mitigating
15 measures such as medications, assistive devices, prosthetics, or
16 reasonable accommodations, unless the mitigating measure itself
17 limits a major life activity.

18 (ii) A physiological disease, disorder, condition, cosmetic
19 disfigurement, or anatomical loss limits a major life activity if it
20 makes the achievement of the major life activity difficult.

21 (iii) “Major life activities” shall be broadly construed and
22 includes physical, mental, and social activities and working.

23 (2) Any other health impairment not described in paragraph (1)
24 that requires special education or related services.

25 (3) Having a record or history of a disease, disorder, condition,
26 cosmetic disfigurement, anatomical loss, or health impairment
27 described in paragraph (1) or (2), which is known to the employer
28 or other entity covered by this part.

29 (4) Being regarded or treated by the employer or other entity
30 covered by this part as having, or having had, any physical
31 condition that makes achievement of a major life activity difficult.

32 (5) Being regarded or treated by the employer or other entity
33 covered by this part as having, or having had, a disease, disorder,
34 condition, cosmetic disfigurement, anatomical loss, or health
35 impairment that has no present disabling effect but may become
36 a physical disability as described in paragraph (1) or (2).

37 (6) “Physical disability” does not include sexual behavior
38 disorders, compulsive gambling, kleptomania, pyromania, or
39 psychoactive substance use disorders resulting from the current
40 unlawful use of controlled substances or other drugs.

(n) Notwithstanding subdivisions (j) and (m), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or (m), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (m).

(o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or military and veteran status” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

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

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

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

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

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

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

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

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

(t) “Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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

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

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

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

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

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

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