

AMENDED IN ASSEMBLY MARCH 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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; define specified reserve or auxiliary public safety officers as “employees” for purposes of these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. 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, the following terms have the following meanings:

1 (a) “Affirmative relief” or “prospective relief” includes the
2 authority to order reinstatement of an employee, awards of backpay,
3 reimbursement of out-of-pocket expenses, hiring, transfers,
4 reassignments, grants of tenure, promotions, cease and desist
5 orders, posting of notices, training of personnel, testing, expunging
6 of records, reporting of records, and any other similar relief that
7 is intended to correct unlawful practices under this part.

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

10 (c) “Employee” *also includes a qualified person deputized or*
11 *appointed by proper authority as a reserve or auxiliary sheriff or*
12 *city police officer, a deputy sheriff, or a reserve police officer of*
13 *a regional park district or a transit district, and is assigned specific*
14 *police functions. “Employee” does not include any individual*
15 *employed by his or her parents, spouse, or child, or any individual*
16 *employed under a special license in a nonprofit sheltered workshop*
17 *or rehabilitation facility.*

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

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

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

26 (f) “Essential functions” means the fundamental job duties of
27 the employment position the individual with a disability holds or
28 desires. “Essential functions” does not include the marginal
29 functions of the position.

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

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

35 (B) The function may be essential because of the limited number
36 of employees available among whom the performance of that job
37 function can be distributed.

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

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

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

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

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

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

(E) The terms of a collective bargaining agreement.

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

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

(g) (1) "Genetic information" means, with respect to any individual, information about any of the following:

(A) The individual's genetic tests.

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

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

(2) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) "Genetic information" does not include information about the sex or age of any individual.

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

(i) "Medical condition" means either of the following:

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

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

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

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

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

5 (l) “On the bases enumerated in this part” means or refers to
6 discrimination on the basis of one or more of the following: race,
7 religious creed, color, national origin, ancestry, physical disability,
8 mental disability, medical condition, genetic information, marital
9 status, sex, age, sexual orientation, or military and veteran status.

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

12 (1) Having any physiological disease, disorder, condition,
13 cosmetic disfigurement, or anatomical loss that does both of the
14 following:

15 (A) Affects one or more of the following body systems:
16 neurological, immunological, musculoskeletal, special sense
17 organs, respiratory, including speech organs, cardiovascular,
18 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
19 and endocrine.

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

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

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

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

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

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

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

39 (5) Being regarded or treated by the employer or other entity
40 covered by this part as having, or having had, a disease, disorder,

1 condition, cosmetic disfigurement, anatomical loss, or health
2 impairment that has no present disabling effect but may become
3 a physical disability as described in paragraph (1) or (2).

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

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

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

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

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

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

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

1 creed. "Religious grooming practice" shall be construed broadly
2 to include all forms of head, facial, and body hair that are part of
3 the observance by an individual of his or her religious creed.

4 (r) (1) "Sex" includes, but is not limited to, the following:

5 (A) Pregnancy or medical conditions related to pregnancy.

6 (B) Childbirth or medical conditions related to childbirth.

7 (C) Breastfeeding or medical conditions related to breastfeeding.

8 (2) "Sex" also includes, but is not limited to, a person's gender.

9 "Gender" means sex, and includes a person's gender identity and

10 gender expression. "Gender expression" means a person's

11 gender-related appearance and behavior whether or not

12 stereotypically associated with the person's assigned sex at birth.

13 (s) "Sexual orientation" means heterosexuality, homosexuality,
14 and bisexuality.

15 (t) "Supervisor" means any individual having the authority, in

16 the interest of the employer, to hire, transfer, suspend, lay off,

17 recall, promote, discharge, assign, reward, or discipline other

18 employees, or the responsibility to direct them, or to adjust their

19 grievances, or effectively to recommend that action, if, in

20 connection with the foregoing, the exercise of that authority is not

21 of a merely routine or clerical nature, but requires the use of

22 independent judgment.

23 (u) "Undue hardship" means an action requiring significant
24 difficulty or expense, when considered in light of the following
25 factors:

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

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

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

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

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

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