

AMENDED IN SENATE JUNE 19, 2015

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1383

Introduced by Assembly Member Jones
(Coauthors: Assembly Members Achadjian, Brough, and Chang)
(Coauthor: Senator Vidak)

February 27, 2015

An act to amend Section 12940 of, and to add Article 3 (commencing with Section 12958) to Chapter 6 of Part 2.8 of Division 3 of Title 2 of, the Government Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 1383, as amended, Jones. Veterans preferences: voluntary policy.

Under the California Fair Employment and Housing Act, it is an unlawful employment practice for an employer, unless based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California, to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment, or to bar or discharge a person from employment or a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender

identity, gender expression, age, sexual orientation, or military and veteran status of that person. The California Fair Employment and Housing Act provides that nothing in that act relating to discrimination on account of sex affects the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

This bill would enact the Voluntary Veterans' Preference Employment Policy Act to authorize a private employer to establish and maintain a written veterans' preference employment policy to give a voluntary preference for hiring or retaining a veteran over another qualified applicant or employee. The bill would provide that the granting of a veterans' preference pursuant to the bill, in and of itself, shall be deemed not to violate any local or state equal employment opportunity law or regulation, including, but not limited to, the antidiscrimination provisions of the California Fair Employment and Housing Act. The bill would revise the existing veteran status provision in the California Fair Employment and Housing Act to remove references to discrimination on account of sex and to Vietnam-era veterans, and would, instead, provide that nothing in that act relating to discrimination affects the right of an employer to use veteran status as a factor in hiring decisions if the employer maintains a veterans' preference employment policy established in accordance with the Voluntary Veterans' Preference Employment Policy Act.

The bill would incorporate changes to Section 12940 of the Government Code proposed by both this bill and AB 987 which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is enacted last.

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 amended to read:
- 3 12940. It is an unlawful employment practice, unless based
- 4 upon a bona fide occupational qualification, or, except where based
- 5 upon applicable security regulations established by the United
- 6 States or the State of California:
- 7 (a) For an employer, because of the race, religious creed, color,
- 8 national origin, ancestry, physical disability, mental disability,

1 medical condition, genetic information, marital status, sex, gender,
2 gender identity, gender expression, age, sexual orientation, or
3 military and veteran status of any person, to refuse to hire or
4 employ the person or to refuse to select the person for a training
5 program leading to employment, or to bar or to discharge the
6 person from employment or from a training program leading to
7 employment, or to discriminate against the person in compensation
8 or in terms, conditions, or privileges of employment.

9 (1) This part does not prohibit an employer from refusing to
10 hire or discharging an employee with a physical or mental
11 disability, or subject an employer to any legal liability resulting
12 from the refusal to employ or the discharge of an employee with
13 a physical or mental disability, where the employee, because of
14 his or her physical or mental disability, is unable to perform his
15 or her essential duties even with reasonable accommodations, or
16 cannot perform those duties in a manner that would not endanger
17 his or her health or safety or the health or safety of others even
18 with reasonable accommodations.

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

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

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

38 (B) Prohibit bona fide health plans from providing additional
39 or greater benefits to employees with dependents than to those
40 employees without or with fewer dependents.

1 (4) Nothing in this part relating to discrimination shall affect
2 the right of an employer to use veteran status as a factor in hiring
3 decisions if the employer maintains a veterans' preference
4 employment policy established in accordance with Article 3
5 (commencing with Section 12958).

6 (5) (A) This part does not prohibit an employer from refusing
7 to employ an individual because of his or her age if the law
8 compels or provides for that refusal. Promotions within the existing
9 staff, hiring or promotion on the basis of experience and training,
10 rehiring on the basis of seniority and prior service with the
11 employer, or hiring under an established recruiting program from
12 high schools, colleges, universities, or trade schools do not, in and
13 of themselves, constitute unlawful employment practices.

14 (B) The provisions of this part relating to discrimination on the
15 basis of age do not prohibit an employer from providing health
16 benefits or health care reimbursement plans to retired persons that
17 are altered, reduced, or eliminated when the person becomes
18 eligible for Medicare health benefits. This subparagraph applies
19 to all retiree health benefit plans and contractual provisions or
20 practices concerning retiree health benefits and health care
21 reimbursement plans in effect on or after January 1, 2011.

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

38 (c) For any person to discriminate against any person in the
39 selection, termination, training, or other terms or treatment of that
40 person in any apprenticeship training program, any other training

1 program leading to employment, an unpaid internship, or another
2 limited duration program to provide unpaid work experience for
3 that person because of the race, religious creed, color, national
4 origin, ancestry, physical disability, mental disability, medical
5 condition, genetic information, marital status, sex, gender, gender
6 identity, gender expression, age, sexual orientation, or military
7 and veteran status of the person discriminated against.

8 (d) For any employer or employment agency to print or circulate
9 or cause to be printed or circulated any publication, or to make
10 any nonjob-related inquiry of an employee or applicant, either
11 verbal or through use of an application form, that expresses,
12 directly or indirectly, any limitation, specification, or discrimination
13 as to race, religious creed, color, national origin, ancestry, physical
14 disability, mental disability, medical condition, genetic information,
15 marital status, sex, gender, gender identity, gender expression,
16 age, sexual orientation, or military and veteran status, or any intent
17 to make any such limitation, specification, or discrimination. This
18 part does not prohibit an employer or employment agency from
19 inquiring into the age of an applicant or from specifying age
20 limitations, where the law compels or provides for that action.

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

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

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

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

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

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

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

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

29 (j) (1) For an employer, labor organization, employment agency,
30 apprenticeship training program, or any training program leading
31 to employment, or any other person, because of race, religious
32 creed, color, national origin, ancestry, physical disability, mental
33 disability, medical condition, genetic information, marital status,
34 sex, gender, gender identity, gender expression, age, sexual
35 orientation, or military and veteran status, to harass an employee,
36 an applicant, an unpaid intern or volunteer, or a person providing
37 services pursuant to a contract. Harassment of an employee, an
38 applicant, an unpaid intern or volunteer, or a person providing
39 services pursuant to a contract by an employee, other than an agent
40 or supervisor, shall be unlawful if the entity, or its agents or

1 supervisors, knows or should have known of this conduct and fails
2 to take immediate and appropriate corrective action. An employer
3 may also be responsible for the acts of nonemployees, with respect
4 to sexual harassment of employees, applicants, unpaid interns or
5 volunteers, or persons providing services pursuant to a contract in
6 the workplace, where the employer, or its agents or supervisors,
7 knows or should have known of the conduct and fails to take
8 immediate and appropriate corrective action. In reviewing cases
9 involving the acts of nonemployees, the extent of the employer's
10 control and any other legal responsibility that the employer may
11 have with respect to the conduct of those nonemployees shall be
12 considered. An entity shall take all reasonable steps to prevent
13 harassment from occurring. Loss of tangible job benefits shall not
14 be necessary in order to establish harassment.

15 (2) This subdivision is declaratory of existing law, except for
16 the new duties imposed on employers with regard to harassment.

17 (3) An employee of an entity subject to this subdivision is
18 personally liable for any harassment prohibited by this section that
19 is perpetrated by the employee, regardless of whether the employer
20 or covered entity knows or should have known of the conduct and
21 fails to take immediate and appropriate corrective action.

22 (4) (A) For purposes of this subdivision only, "employer" means
23 any person regularly employing one or more persons or regularly
24 receiving the services of one or more persons providing services
25 pursuant to a contract, or any person acting as an agent of an
26 employer, directly or indirectly, the state, or any political or civil
27 subdivision of the state, and cities. The definition of "employer"
28 in subdivision (d) of Section 12926 applies to all provisions of this
29 section other than this subdivision.

30 (B) Notwithstanding subparagraph (A), for purposes of this
31 subdivision, "employer" does not include a religious association
32 or corporation not organized for private profit, except as provided
33 in Section 12926.2.

34 (C) For purposes of this subdivision, "harassment" because of
35 sex includes sexual harassment, gender harassment, and harassment
36 based on pregnancy, childbirth, or related medical conditions.
37 Sexually harassing conduct need not be motivated by sexual desire.

38 (5) For purposes of this subdivision, "a person providing services
39 pursuant to a contract" means a person who meets all of the
40 following criteria:

1 (A) The person has the right to control the performance of the
2 contract for services and discretion as to the manner of
3 performance.

4 (B) The person is customarily engaged in an independently
5 established business.

6 (C) The person has control over the time and place the work is
7 performed, supplies the tools and instruments used in the work,
8 and performs work that requires a particular skill not ordinarily
9 used in the course of the employer's work.

10 (k) For an employer, labor organization, employment agency,
11 apprenticeship training program, or any training program leading
12 to employment, to fail to take all reasonable steps necessary to
13 prevent discrimination and harassment from occurring.

14 (l) (1) For an employer or other entity covered by this part to
15 refuse to hire or employ a person or to refuse to select a person
16 for a training program leading to employment or to bar or to
17 discharge a person from employment or from a training program
18 leading to employment, or to discriminate against a person in
19 compensation or in terms, conditions, or privileges of employment
20 because of a conflict between the person's religious belief or
21 observance and any employment requirement, unless the employer
22 or other entity covered by this part demonstrates that it has explored
23 any available reasonable alternative means of accommodating the
24 religious belief or observance, including the possibilities of
25 excusing the person from those duties that conflict with his or her
26 religious belief or observance or permitting those duties to be
27 performed at another time or by another person, but is unable to
28 reasonably accommodate the religious belief or observance without
29 undue hardship, as defined in subdivision (u) of Section 12926,
30 on the conduct of the business of the employer or other entity
31 covered by this part. Religious belief or observance, as used in
32 this section, includes, but is not limited to, observance of a Sabbath
33 or other religious holy day or days, reasonable time necessary for
34 travel prior and subsequent to a religious observance, and religious
35 dress practice and religious grooming practice as described in
36 subdivision (q) of Section 12926. This subdivision shall also apply
37 to an apprenticeship training program, an unpaid internship, and
38 any other program to provide unpaid experience for a person in
39 the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

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

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

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

SEC. 1.5. Section 12940 of the Government Code is amended to read:

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

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or

1 employ the person or to refuse to select the person for a training
2 program leading to employment, or to bar or to discharge the
3 person from employment or from a training program leading to
4 employment, or to discriminate against the person in compensation
5 or in terms, conditions, or privileges of employment.

6 (1) This part does not prohibit an employer from refusing to
7 hire or discharging an employee with a physical or mental
8 disability, or subject an employer to any legal liability resulting
9 from the refusal to employ or the discharge of an employee with
10 a physical or mental disability, where the employee, because of
11 his or her physical or mental disability, is unable to perform his
12 or her essential duties even with reasonable accommodations, or
13 cannot perform those duties in a manner that would not endanger
14 his or her health or safety or the health or safety of others even
15 with reasonable accommodations.

16 (2) This part does not prohibit an employer from refusing to
17 hire or discharging an employee who, because of the employee's
18 medical condition, is unable to perform his or her essential duties
19 even with reasonable accommodations, or cannot perform those
20 duties in a manner that would not endanger the employee's health
21 or safety or the health or safety of others even with reasonable
22 accommodations. Nothing in this part shall subject an employer
23 to any legal liability resulting from the refusal to employ or the
24 discharge of an employee who, because of the employee's medical
25 condition, is unable to perform his or her essential duties, or cannot
26 perform those duties in a manner that would not endanger the
27 employee's health or safety or the health or safety of others even
28 with reasonable accommodations.

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

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

35 (B) Prohibit bona fide health plans from providing additional
36 or greater benefits to employees with dependents than to those
37 employees without or with fewer dependents.

38 (4) Nothing in this part relating to discrimination ~~on account of~~
39 ~~sex~~ shall affect the right of an employer to use veteran status as a
40 factor in employee selection or to give special consideration to

~~Vietnam-era veterans. hiring decisions if the employer maintains a veterans' preference employment policy established in accordance with Article 3 (commencing with Section 12958).~~

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its ~~members or against any employer or against~~ members, any employer, or any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for

1 that person because of the race, religious creed, color, national
2 origin, ancestry, physical disability, mental disability, medical
3 condition, genetic information, marital status, sex, gender, gender
4 identity, gender expression, age, sexual orientation, or military
5 and veteran status of the person discriminated against.

6 (d) For any employer or employment agency to print or circulate
7 or cause to be printed or circulated any publication, or to make
8 any nonjob-related inquiry of an employee or applicant, either
9 verbal or through use of an application form, that expresses,
10 directly or indirectly, any limitation, specification, or discrimination
11 as to race, religious creed, color, national origin, ancestry, physical
12 disability, mental disability, medical condition, genetic information,
13 marital status, sex, gender, gender identity, gender expression,
14 age, sexual orientation, or military and veteran status, or any intent
15 to make any such limitation, specification, or discrimination. This
16 part does not prohibit an employer or employment agency from
17 inquiring into the age of an ~~applicant~~, *applicant* or from specifying
18 age limitations, where the law compels or provides for that action.

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

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

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

39 (f) (1) Except as provided in paragraph (2), for any employer
40 or employment agency to require any medical or psychological

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

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

13 (g) For any employer, labor organization, or employment agency
14 to harass, discharge, expel, or otherwise discriminate against any
15 person because the person has made a report pursuant to Section
16 11161.8 of the Penal ~~Code that~~ *Code, which* 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 forbidden
22 under this part or because the person has filed a complaint, testified,
23 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 agency,
28 apprenticeship training ~~program~~ *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, genetic information, marital
32 status, sex, gender, gender identity, gender expression, age, sexual
33 orientation, or military and veteran status, to harass an employee,
34 an applicant, an unpaid intern or volunteer, or a person providing
35 services pursuant to a contract. Harassment of an employee, an
36 applicant, an unpaid intern or volunteer, or a person providing
37 services pursuant to a contract by an employee, other than an agent
38 or supervisor, shall be unlawful if the entity, or its agents or
39 supervisors, knows or should have known of this conduct and fails
40 to take immediate and appropriate corrective action. An employer

1 may also be responsible for the acts of nonemployees, with respect
2 to sexual harassment of employees, applicants, unpaid interns or
3 volunteers, or persons providing services pursuant to a contract in
4 the workplace, where the employer, or its agents or supervisors,
5 knows or should have known of the conduct and fails to take
6 immediate and appropriate corrective action. In reviewing cases
7 involving the acts of nonemployees, the extent of the employer's
8 control and any other legal responsibility that the employer may
9 have with respect to the conduct of those nonemployees shall be
10 considered. An entity shall take all reasonable steps to prevent
11 harassment from occurring. Loss of tangible job benefits shall not
12 be necessary in order to establish harassment.

13 (2) ~~The provisions of this subdivision are~~ *This subdivision is*
14 declaratory of existing law, except for the new duties imposed on
15 employers with regard to harassment.

16 (3) An employee of an entity subject to this subdivision is
17 personally liable for any harassment prohibited by this section that
18 is perpetrated by the employee, regardless of whether the employer
19 or covered entity knows or should have known of the conduct and
20 fails to take immediate and appropriate corrective action.

21 (4) (A) For purposes of this subdivision only, "employer" means
22 any person regularly employing one or more persons or regularly
23 receiving the services of one or more persons providing services
24 pursuant to a contract, or any person acting as an agent of an
25 employer, directly or indirectly, the state, or any political or civil
26 subdivision of the state, and cities. The definition of "employer"
27 in subdivision (d) of Section 12926 applies to all provisions of this
28 section other than this subdivision.

29 (B) Notwithstanding subparagraph (A), for purposes of this
30 subdivision, "employer" does not include a religious association
31 or corporation not organized for private profit, except as provided
32 in Section 12926.2.

33 (C) For purposes of this subdivision, "harassment" because of
34 sex includes sexual harassment, gender harassment, and harassment
35 based on pregnancy, childbirth, or related medical conditions.
36 Sexually harassing conduct need not be motivated by sexual desire.

37 (5) For purposes of this subdivision, "a person providing services
38 pursuant to a contract" means a person who meets all of the
39 following criteria:

1 (A) The person has the right to control the performance of the
2 contract for services and discretion as to the manner of
3 performance.

4 (B) The person is customarily engaged in an independently
5 established business.

6 (C) The person has control over the time and place the work is
7 performed, supplies the tools and instruments used in the work,
8 and performs work that requires a particular skill not ordinarily
9 used in the course of the employer's work.

10 (k) For an employer, labor organization, employment agency,
11 apprenticeship training program, or any training program leading
12 to employment, to fail to take all reasonable steps necessary to
13 prevent discrimination and harassment from occurring.

14 (l) (1) For an employer or other entity covered by this part to
15 refuse to hire or employ a person or to refuse to select a person
16 for a training program leading to employment or to bar or to
17 discharge a person from employment or from a training program
18 leading to employment, or to discriminate against a person in
19 compensation or in terms, conditions, or privileges of employment
20 because of a conflict between the person's religious belief or
21 observance and any employment requirement, unless the employer
22 or other entity covered by this part demonstrates that it has explored
23 any available reasonable alternative means of accommodating the
24 religious belief or observance, including the possibilities of
25 excusing the person from those duties that conflict with his or her
26 religious belief or observance or permitting those duties to be
27 performed at another time or by another person, but is unable to
28 reasonably accommodate the religious belief or observance without
29 undue hardship, as defined in subdivision (u) of Section 12926,
30 on the conduct of the business of the employer or other entity
31 covered by this part. Religious belief or observance, as used in
32 this section, includes, but is not limited to, observance of a Sabbath
33 or other religious holy day or days, reasonable time necessary for
34 travel prior and subsequent to a religious observance, and religious
35 dress practice and religious grooming practice as described in
36 subdivision (q) of Section 12926. This subdivision shall also apply
37 to an apprenticeship training program, an unpaid internship, and
38 any other program to provide unpaid experience for a person in
39 the workplace or industry.

1 (2) An accommodation of an individual's religious dress practice
2 or religious grooming practice is not reasonable if the
3 accommodation requires segregation of the individual from other
4 employees or the public.

5 (3) An accommodation is not required under this subdivision
6 if it would result in a violation of this part or any other law
7 prohibiting discrimination or protecting civil rights, including
8 subdivision (b) of Section 51 of the Civil Code and Section 11135
9 of this code.

10 (4) *For an employer or other entity covered by this part to, in*
11 *addition to the employee protections provided pursuant to*
12 *subdivision (h), retaliate or otherwise discriminate against a*
13 *person for requesting accommodation under this subdivision,*
14 *regardless of whether the request was granted.*

15 (m) (1) For an employer or other entity covered by this part
16 to fail to make reasonable accommodation for the known physical
17 or mental disability of an applicant or employee. Nothing in this
18 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
19 construed to require an accommodation that is demonstrated by
20 the employer or other covered entity to produce undue hardship,
21 as defined in subdivision (u) of Section 12926, to its operation.

22 (2) *For an employer or other entity covered by this part to, in*
23 *addition to the employee protections provided pursuant to*
24 *subdivision (h), retaliate or otherwise discriminate against a*
25 *person for requesting accommodation under this subdivision,*
26 *regardless of whether the request was granted.*

27 (n) For an employer or other entity covered by this part to fail
28 to engage in a timely, good faith, interactive process with the
29 employee or applicant to determine effective reasonable
30 accommodations, if any, in response to a request for reasonable
31 accommodation by an employee or applicant with a known physical
32 or mental disability or known medical condition.

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

36 (p) Nothing in this section shall be interpreted as preventing the
37 ability of employers to identify members of the military or veterans
38 for purposes of awarding a veteran's preference as permitted by
39 law.

1 SEC. 2. Article 3 (commencing with Section 12958) is added
2 to Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government
3 Code, to read:

4
5 Article 3. Voluntary Veterans' Preference Employment Policies

6
7 12958. This article shall be known, and may be cited, as the
8 "Voluntary Veterans' Preference Employment Policy Act."

9 12958.1. As used in this article:

10 (a) "DD 214" means United States Department of Defense Form
11 214 or a similarly effective form issued by that department relating
12 to separation from military service.

13 (b) "Private employer" means a business entity in the private
14 sector of this state with one or more employees.

15 (c) "Veteran" means a person who served on active duty in the
16 Armed Forces of the United States who was discharged or released
17 with an honorable discharge.

18 (d) "Veterans' preference employment policy" means a private
19 employer's voluntary preference for hiring or retaining a veteran
20 over another qualified applicant or employee.

21 12958.2. (a) Notwithstanding any other law, a private employer
22 may establish and maintain a written veterans' preference
23 employment policy.

24 (b) An employer with a veterans' preference employment policy
25 may require that a veteran submit a DD 214 to be eligible for the
26 preference.

27 (c) The granting of a veterans' preference pursuant to this article,
28 in and of itself, shall be deemed not to violate any local or state
29 equal employment opportunity law or regulation, including, but
30 not limited to, this chapter.

31 (d) The Department of Veterans Affairs shall assist any private
32 employer in determining if an applicant is a veteran to the extent
33 permitted by law.

34 SEC. 3. *Section 1.5 of this bill incorporates amendments to*
35 *Section 12940 of the Government Code proposed by both this bill*
36 *and Assembly Bill 987. It shall only become operative if (1) both*
37 *bills are enacted and become effective on or before January 1,*
38 *2016, (2) each bill amends Section 12940 of the Government Code,*

- 1 *and (3) this bill is enacted after Assembly Bill 987, in which case*
- 2 *Section 1 of this bill shall not become operative.*

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