

AMENDED IN SENATE MAY 4, 2016  
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**

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

February 27, 2015

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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~~ *policy, to be applied uniformly to hiring decisions*, 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:~~

1 ~~(a) For an employer, because of the race, religious creed, color,~~  
2 ~~national origin, ancestry, physical disability, mental disability,~~  
3 ~~medical condition, genetic information, marital status, sex, gender,~~  
4 ~~gender identity, gender expression, age, sexual orientation, or~~  
5 ~~military and veteran status of any person, to refuse to hire or~~  
6 ~~employ the person or to refuse to select the person for a training~~  
7 ~~program leading to employment, or to bar or to discharge the~~  
8 ~~person from employment or from a training program leading to~~  
9 ~~employment, or to discriminate against the person in compensation~~  
10 ~~or in terms, conditions, or privileges of employment.~~

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

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

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

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

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

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

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

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

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

1 ~~(e) For any person to discriminate against any person in the~~  
2 ~~selection, termination, training, or other terms or treatment of that~~  
3 ~~person in any apprenticeship training program, any other training~~  
4 ~~program leading to employment, an unpaid internship, or another~~  
5 ~~limited duration program to provide unpaid work experience for~~  
6 ~~that person because of the race, religious creed, color, national~~  
7 ~~origin, ancestry, physical disability, mental disability, medical~~  
8 ~~condition, genetic information, marital status, sex, gender, gender~~  
9 ~~identity, gender expression, age, sexual orientation, or military~~  
10 ~~and veteran status of the person discriminated against.~~

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

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

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

36 ~~(3) Notwithstanding paragraph (1), an employer or employment~~  
37 ~~agency may require a medical or psychological examination or~~  
38 ~~make a medical or psychological inquiry of a job applicant after~~  
39 ~~an employment offer has been made but prior to the~~  
40 ~~commencement of employment duties, provided that the~~

1 examination or inquiry is job related and consistent with business  
2 necessity and that all entering employees in the same job  
3 classification are subject to the same examination or inquiry.

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

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

18 ~~(g) For any employer, labor organization, or employment agency  
19 to harass, discharge, expel, or otherwise discriminate against any  
20 person because the person has made a report pursuant to Section  
21 11161.8 of the Penal Code, which prohibits retaliation against  
22 hospital employees who report suspected patient abuse by health  
23 facilities or community care facilities.~~

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

29 ~~(i) For any person to aid, abet, incite, compel, or coerce the  
30 doing of any of the acts forbidden under this part, or to attempt to  
31 do so.~~

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

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

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

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

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

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

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

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

4     ~~(A) The person has the right to control the performance of the~~  
5 ~~contract for services and discretion as to the manner of~~  
6 ~~performance.~~

7     ~~(B) The person is customarily engaged in an independently~~  
8 ~~established business.~~

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

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

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

1 any other program to provide unpaid experience for a person in  
2 the workplace or industry.

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

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

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

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

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

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

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

34 ~~12940. It is an unlawful employment practice, unless based  
35 upon a bona fide occupational qualification, or, except where based  
36 upon applicable security regulations established by the United  
37 States or the State of California:~~

38 (a) ~~For an employer, because of the race, religious creed, color,  
39 national origin, ancestry, physical disability, mental disability,  
40 medical condition, genetic information, marital status, sex, gender,~~

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

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

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

~~31 (3) Nothing in this part relating to discrimination on account of  
32 marital status shall do either of the following:~~

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

~~37 (B) Prohibit bona fide health plans from providing additional  
38 or greater benefits to employees with dependents than to those  
39 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.

- 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 person~~  
13    ~~for requesting accommodation under this subdivision, regardless~~  
14    ~~of whether the request was granted.~~
- 15    ~~(m) (1) For an employer or other entity covered by this part to~~  
16    ~~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 person~~  
25    ~~for requesting accommodation under this subdivision, regardless~~  
26    ~~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     *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,  
9     medical condition, genetic information, marital status, sex, gender,  
10    gender identity, gender expression, age, sexual orientation, or  
11    military and veteran status of any person, to refuse to hire or  
12    employ the person or to refuse to select the person for a training  
13    program leading to employment, or to bar or to discharge the  
14    person from employment or from a training program leading to  
15    employment, or to discriminate against the person in compensation  
16    or in terms, conditions, or 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  
22    his or her physical or mental disability, is unable to perform his  
23    or her essential duties even with reasonable accommodations, or  
24    cannot perform those duties in a manner that would not endanger  
25    his or her health or safety or the health or safety of others even  
26    with 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  
34    to any legal liability resulting from the refusal to employ or the  
35    discharge of an employee who, because of the employee's medical  
36    condition, is unable to perform his or her essential duties, or cannot  
37    perform those duties in a manner that would not endanger the  
38    employee's health or safety or the health or safety of others even  
39    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.~~ *hiring decisions if the employer maintains*  
14 *a veterans' preference employment policy established in*  
15 *accordance with Article 3 (commencing with Section 12958).*

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

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

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

8 (c) For any person to discriminate against any person in the  
9 selection, termination, training, or other terms or treatment of that  
10 person in any apprenticeship training program, any other training  
11 program leading to employment, an unpaid internship, or another  
12 limited duration program to provide unpaid work experience for  
13 that person because of the race, religious creed, color, national  
14 origin, ancestry, physical disability, mental disability, medical  
15 condition, genetic information, marital status, sex, gender, gender  
16 identity, gender expression, age, sexual orientation, or military  
17 and veteran status of the person discriminated against.

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

31 (e) (1) Except as provided in paragraph (2) or (3), for any  
32 employer or employment agency to require any medical or  
33 psychological examination of an applicant, to make any medical  
34 or psychological inquiry of an applicant, to make any inquiry  
35 whether an applicant has a mental ~~disability or~~ *disability*, physical  
36 ~~disability~~ *disability*, or medical condition, or to make any inquiry  
37 regarding the nature or severity of a physical disability, mental  
38 disability, or medical condition.

39 (2) Notwithstanding paragraph (1), an employer or employment  
40 agency may inquire into the ability of an applicant to perform

1 job-related functions and may respond to an applicant's request  
2 for reasonable accommodation.

3 (3) Notwithstanding paragraph (1), an employer or employment  
4 agency may require a medical or psychological examination or  
5 make a medical or psychological inquiry of a job applicant after  
6 an employment offer has been made but prior to the  
7 commencement of employment duties, provided that the  
8 examination or inquiry is job related and consistent with business  
9 necessity and that all entering employees in the same job  
10 classification are subject to the same examination or inquiry.

11 (f) (1) Except as provided in paragraph (2), for any employer  
12 or employment agency to require any medical or psychological  
13 examination of an employee, to make any medical or psychological  
14 inquiry of an employee, to make any inquiry whether an employee  
15 has a mental disability, physical disability, or medical condition,  
16 or to make any inquiry regarding the nature or severity of a physical  
17 disability, mental disability, or medical condition.

18 (2) Notwithstanding paragraph (1), an employer or employment  
19 agency may require any examinations or inquiries that ~~it~~ *the*  
20 *employer or employment agency* can show to be job related and  
21 consistent with business necessity. An employer or employment  
22 agency may conduct voluntary medical examinations, including  
23 voluntary medical ~~histories, which~~ *histories that* are part of an  
24 employee health program available to employees at that worksite.

25 (g) For any employer, labor organization, or employment agency  
26 to harass, discharge, expel, or otherwise discriminate against any  
27 person because the person has made a report pursuant to Section  
28 11161.8 of the Penal ~~Code that~~ *Code, which* prohibits retaliation  
29 against hospital employees who report suspected patient abuse by  
30 health facilities or community care facilities.

31 (h) For any employer, labor organization, employment agency,  
32 or person to discharge, expel, or otherwise discriminate against  
33 any person because the person has opposed any practices forbidden  
34 under this part or because the person has filed a complaint, testified,  
35 or assisted in any proceeding under this part.

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

39 (j) (1) For an employer, labor organization, employment agency,  
40 apprenticeship training ~~program~~ *program*, or any training program

1 leading to employment, or any other person, because of race,  
2 religious creed, color, national origin, ancestry, physical disability,  
3 mental disability, medical condition, genetic information, marital  
4 status, sex, gender, gender identity, gender expression, age, sexual  
5 orientation, or military and veteran status, to harass an employee,  
6 an applicant, an unpaid intern or volunteer, or a person providing  
7 services pursuant to a contract. Harassment of an employee, an  
8 applicant, an unpaid intern or volunteer, or a person providing  
9 services pursuant to a contract by an employee, other than an agent  
10 or supervisor, shall be unlawful if the entity, or its agents or  
11 supervisors, knows or should have known of this conduct and fails  
12 to take immediate and appropriate corrective action. An employer  
13 may also be responsible for the acts of nonemployees, with respect  
14 to sexual harassment of employees, applicants, unpaid interns or  
15 volunteers, or persons providing services pursuant to a contract in  
16 the workplace, where the employer, or its agents or supervisors,  
17 knows or should have known of the conduct and fails to take  
18 immediate and appropriate corrective action. In reviewing cases  
19 involving the acts of nonemployees, the extent of the employer's  
20 control and any other legal responsibility that the employer may  
21 have with respect to the conduct of those nonemployees shall be  
22 considered. An entity shall take all reasonable steps to prevent  
23 harassment from occurring. Loss of tangible job benefits shall not  
24 be necessary in order to establish harassment.

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

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

33 (4) (A) For purposes of this subdivision only, "employer" means  
34 any person regularly employing one or more persons or regularly  
35 receiving the services of one or more persons providing services  
36 pursuant to a contract, or any person acting as an agent of an  
37 employer, directly or indirectly, the state, or any political or civil  
38 subdivision of the state, and cities. The definition of "employer"  
39 in subdivision (d) of Section 12926 applies to all provisions of this  
40 section other than this subdivision.

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

5 (C) For purposes of this subdivision, “harassment” because of  
6 sex includes sexual harassment, gender harassment, and harassment  
7 based on pregnancy, childbirth, or related medical conditions.  
8 Sexually harassing conduct need not be motivated by sexual desire.

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

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

15 (B) The person is customarily engaged in an independently  
16 established business.

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

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

25 (l) (1) For an employer or other entity covered by this part to  
26 refuse to hire or employ a person or to refuse to select a person  
27 for a training program leading to employment or to bar or to  
28 discharge a person from employment or from a training program  
29 leading to employment, or to discriminate against a person in  
30 compensation or in terms, conditions, or privileges of employment  
31 because of a conflict between the person’s religious belief or  
32 observance and any employment requirement, unless the employer  
33 or other entity covered by this part demonstrates that it has explored  
34 any available reasonable alternative means of accommodating the  
35 religious belief or observance, including the possibilities of  
36 excusing the person from those duties that conflict with his or her  
37 religious belief or observance or permitting those duties to be  
38 performed at another time or by another person, but is unable to  
39 reasonably accommodate the religious belief or observance without  
40 undue hardship, as defined in subdivision (u) of Section 12926,

1 on the conduct of the business of the employer or other entity  
2 covered by this part. Religious belief or observance, as used in  
3 this section, includes, but is not limited to, observance of a Sabbath  
4 or other religious holy day or days, reasonable time necessary for  
5 travel prior and subsequent to a religious observance, and religious  
6 dress practice and religious grooming practice as described in  
7 subdivision (q) of Section 12926. This subdivision shall also apply  
8 to an apprenticeship training program, an unpaid internship, and  
9 any other program to provide unpaid experience for a person in  
10 the workplace or industry.

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

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

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

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

32 (2) For an employer or other entity covered by this part to, in  
33 addition to the employee protections provided pursuant to  
34 subdivision (h), retaliate or otherwise discriminate against a person  
35 for requesting accommodation under this subdivision, regardless  
36 of whether the request was granted.

37 (n) For an employer or other entity covered by this part to fail  
38 to engage in a timely, good faith, interactive process with the  
39 employee or applicant to determine effective reasonable  
40 accommodations, if any, in response to a request for reasonable

1 accommodation by an employee or applicant with a known physical  
 2 or mental disability or known medical condition.

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

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

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

13  
 14 Article 3. Voluntary Veterans’ Preference Employment Policies

15  
 16 12958. This article shall be known, and may be cited, as the  
 17 “Voluntary Veterans’ Preference Employment Policy Act.”

18 12958.1. As used in this article:

19 (a) “DD 214” means United States Department of Defense Form  
 20 214 or a similarly effective form issued by that department relating  
 21 to separation from military service.

22 (b) “Private employer” means a business entity in the private  
 23 sector of this state with one or more employees.

24 (c) “Veteran” means a person who served on active duty in the  
 25 Armed Forces of the United States who was discharged or released  
 26 with an honorable discharge.

27 (d) “Veterans’ preference employment policy” means a private  
 28 employer’s voluntary preference for hiring or retaining a veteran  
 29 over another qualified applicant or employee.

30 12958.2. (a) Notwithstanding any other law, a private employer  
 31 may establish and maintain a written veterans’ preference  
 32 employment ~~policy~~ *policy, which shall be applied uniformly to*  
 33 *hiring decisions.*

34 (b) An employer with a veterans’ preference employment policy  
 35 may require that a veteran submit a DD 214 to be eligible for the  
 36 preference.

37 (c) The granting of a veterans’ preference pursuant to this article,  
 38 in and of itself, shall be deemed not to violate any local or state  
 39 equal employment opportunity law or regulation, including, but  
 40 not limited to, this chapter.

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

4 (e) *Nothing in this section shall be construed to authorize the*  
5 *establishment or use of a veterans' preference employment policy*  
6 *for the purpose of discriminating against the employment applicant*  
7 *on the basis of any protected classification in subdivision (a) of*  
8 *Section 12940.*

9 ~~SEC. 3. Section 1.5 of this bill incorporates amendments to~~  
10 ~~Section 12940 of the Government Code proposed by both this bill~~  
11 ~~and Assembly Bill 987. It shall only become operative if (1) both~~  
12 ~~bills are enacted and become effective on or before January 1,~~  
13 ~~2016, (2) each bill amends Section 12940 of the Government Code,~~  
14 ~~and (3) this bill is enacted after Assembly Bill 987, in which case~~  
15 ~~Section 1 of this bill shall not become operative.~~

O