

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2002 LEGISLATIVE SUMMARY

This is a summary of the changes and amendments to California's civil rights statutes signed into law by Governor Davis this year. Most of the changes become effective January 1, 2003. They are organized by subject matter.

EMPLOYMENT

Discrimination: Age

Effective January 1, 2003, it is an unlawful employment practice for an employer to discriminate on the basis of "age" when making decisions as to whether to grant or deny certain employee benefits and privileges. "Age" is now included as an enumerated bases under the Fair Employment and Housing Act (FEHA). Specifically, the new law requires employers that provide training, free college or postgraduate education to younger employees to make those benefits available to older workers as well.

However, an employer may refuse to hire an individual because of "age" if the law requires it. The law further provides that promotions within 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 from an established recruiting program from high schools, colleges, universities or trade schools do not, in and of themselves, constitute a violation of FEHA.

This statute is in response to the recent California Supreme Court decision in Esberg v. Union Oil Co., which held that the FEHA did not prohibit employers from considering age in determining whether to furnish employee benefits or privileges to an employee.

Bill Number: AB 1599 (Negrete McLeod), Chapter 525

Code Section Affected: Government Code section 12940, subdivisions (a), (a)(5), (b), (c), (d), (j)(4)(B)

Code Section Repealed: Government Code sections 12941 and 12941.1 repealed, amended and renumbered to 12941

Discrimination: Immigration Status

Effective January 1, 2003, undocumented workers who have applied for employment, or who are or who have been employed, in this state are provided with "all of the protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, ... regardless of immigration status ...". This statute makes legislative findings and declarations regarding remedies currently available to

immigrant workers under state law. The statute declares that the provisions are declaratory of existing law.

This statute is in response to the United States Supreme Court's recent decision in Hoffman Plastic Compounds Inc. v. NLRB, precluding back pay awards to undocumented workers.

Bill Number: SB 1818 (Romero), Chapter 1071

Pertinent Code Sections Added: Civil Code section 3339 and Government Code section 7285

Procedure: Statute of Limitations

Effective January 1, 2003, the statute of limitations period for filing a civil cause of action for employment discrimination in state court is tolled when the Department of Fair Employment and Housing (DFEH) defers its investigation to the U.S. Equal Employment Opportunity Commission (EEOC). The time for filing in state court is also tolled when the EEOC agrees to review a determination of the department or decides to conduct its own investigation. The one-year statute of limitations to file a civil cause of action is tolled until the federal right-to-sue period to commence a civil action expires, or one-year from the date of the right-to-sue notice by DFEH, whichever is later. (Sponsored by DFEH.)

Bill Number: AB 1146 (Chan), Chapter 294

Code Section Affected: Government Code section 12965, subdivision (d)

HOUSING

Unlawful Restrictive Covenant Modification

Effective January 1, 2003, any person that holds an ownership interest of record in property documents containing an unlawful restrictive covenant may strike the language and record a modified document without a prior determination by DFEH. The county recorder may record the document or may refer the person to DFEH for a determination. This is an alternative to the department's Restrictive Covenant Identification Service (RCIS) program.

Under RCIS, a person holding an ownership interest of record in a property that he or she believes is the subject of an illegal restrictive covenant may submit an application to the department's RCIS program. The application requests the department determine whether the restrictive covenant violates fair housing laws and is, therefore, void. If the department finds that the restrictive covenant is unlawful, it issues a written determination to the applicant. The applicant may then strike out the void restrictive covenant and record the modified document. This legislation does not affect the department's RCIS program.

Bill Number: AB 1926 (Horton), Chapter 803

Code Section Affected: Government Code section 12956.1, subdivision (g)

Discrimination: Emergency Shelters and Transitional Housing

Effective immediately, emergency shelters or transitional housing programs that serve persons who are 24 years old or younger may limit access to their housing on the basis of "age" without violating the FEHA or any other state statute prohibiting age discrimination. However, in the case of families, providers shall provide, to the extent feasible, adequate facilities within their range of services so that all members of a family may be housed together, regardless of age and gender.

Bill Number: AB 1354 (Rod Pacheco), Chapter 716

Code Sections Affected: Health and Safety Code section 50801.5

Discrimination: Homeless Youth

Effective January 1, 2003, housing for homeless youth is authorized by the state, and shall not be considered age discrimination under the FEHA or the Unruh Civil Rights Act. A homeless youth is defined as a person who is either at least 18 years of age but not older than 24 years, or is no longer eligible for foster care on the basis of age; or a person less than 18 years of age who has been emancipated and is homeless or at risk of becoming homeless. This bill is intended to address the lack of housing, services, and assistance to homeless youth.

Bill Number: AB 2972 (Aroner), Chapter 1074

Code Section Added: Government Code section 11139.3

Code Section Affected: Health and Safety Code section 50801.5

HATE VIOLENCE

Procedure: Ralph Civil Rights Act

Effective January 1, 2003, the time period for filing a complaint with DFEH for an alleged violation of the Ralph Civil Rights Act is extended from one year to three years from the date of injury. Under current law, a hate crime victim must file a complaint with DFEH within one year from the date of injury. This statute extends the time period for filing a complaint to one year from the day the aggrieved person becomes aware of the perpetrator's identity, but in no case shall it exceed three (3) years from the date of the injury if during that period the aggrieved person is unaware of the identity of the alleged perpetrator(s). This statute will allow crime victims the opportunity to find out who was responsible for the violence. (Sponsored by DFEH).

Bill Number: SB 1945 (Kuehl), Chapter 490

Code Section Affected: Government Code sections 12950 and 12960, subdivision (d)(3)

Procedure: Civil Appeals

Effective January 1, 2003, any party to an appeal in state court must serve a copy of the party's petition and brief on the State Solicitor General at the office of the California Attorney General. Under the statute, a brief may not be accepted for filing unless the proof of service shows service on the State Solicitor General. A party who fails to comply with the provisions of this statute will be allowed a reasonable opportunity to correct and comply with this requirement. The requirement to file the brief applies to appeals pertaining to, among others, violations of the Unruh, Ralph, and the Bane Civil Rights Acts. Sponsored by the Attorney General's office.

Bill Number: AB 2524 (Goldberg), Chapter 244

Pertinent Code Sections Added: Civil Code sections 51.1 and 55.2

OTHER STATUTES OF INTEREST

Disability: Access to Government Programs

Effective January 1, 2003, the Bagley-Keene Open Meeting Act requires that notices and agendas of public and closed session meetings, and the public records distributed at these meetings be made available to the disabled in appropriate alternative formats upon request consistent with the federal Americans with Disabilities Act of 1990. The statute also requires that the notice include information on the availability of disability-related aids and services to enable the person to participate in a public meeting consistent with the federal Americans with Disabilities Act of 1990. Under current law, the Bagley-Kenne Open Meeting Act requires that all meetings of a state body be open and public. Writings that are public records and are distributed to members of the state body prior to or during a public meeting, pertaining to any item to be considered during the public meeting, are required to be made available for public inspection, and any person may attend any public meeting of a state body. The act also requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

Bill Number: AB 3035 (Committee on Judiciary), Chapter 300

Code Sections Affected: Government Code sections 11125, 11125.1, 11135, 54954.1, 54954.2., and 54957.5

Code Section Added: Government Code section 54953.2

Disability: Access

Effective January 1, 2003, all state governmental and state-funded entities are required to comply with the access requirements of the federal Rehabilitation Act of 1973 and the Act's implementing regulations. These requirements would allow individuals with disabilities greater access to existing technology and would increase their employment.

In addition, the Department of Rehabilitation has a new division whose purpose it is to serve persons who are blind, visually impaired, deaf, or hard of hearing. The purpose of that division is to enlarge economic opportunities and enhance the self-sufficiency of those persons and to assist them in gaining competitive employment.

Bill Number: SB 105 (Burton), Chapter 1102

Code Section Amended: Government Code sections 11135, subdivision (d); 19050; 19050.5 and add section 19095.

Civil Action: Gender Violence

Effective January 1, 2003, there is a new civil cause of action for gender violence. Specifically, it permits a person injured by a crime of violence motivated by gender to bring a civil action against the responsible person or persons. The damages may include actual, compensatory, and punitive damages. They may also include injunctive relief, or a combination of damages, or any other appropriate relief, including attorney's fees and costs. The bill provides that "gender violence" is a form of sex discrimination. The bill provides that an employer is not civilly liable because of his or her status as an employer, unless the employer personally committed an act of gender violence. The DFEH does not enforce this new code section.

Bill Number: AB 1928 (Jackson), Chapter 842

Code Section Added: Civil Code section 52.4

Civil Action: Domestic Violence

Effective January 1, 2003, there is a civil cause of action for the tort of domestic violence. It specifically provides that a person that commits an act of domestic violence is liable for damages, including but not limited to, general, special, and punitive damages. The rights and remedies provided under this new statute are in addition to any other rights and remedies provided by law.

Bill Number: AB 1933 (Reyes), Chapter 193

Code Section Added: Civil Code section 1708.6

Labor and Workforce Diversity Development Agency

This legislation created the Labor and Workforce Development Agency, consisting of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board. DFEH is not included in this new agency.

Bill Number: SB 1236 (Alarcon), Chapter 859

Code Section Affected: Government Code sections 11550, 11552, 12800, 12803, and 12813; Labor Code sections 18.5, 50, and 1141; and Unemployment Insurance Code section 301

Paid Leave: Family Temporary Disability Insurance

Effective July 1, 2004, California workers will be able to take up to six (6) weeks of paid leave per year for the purpose of caring for a new child by birth, adoption, or foster-care placement. This legislation established the Family Temporary Disability Insurance (FTDI) program that is believed to be the first of its kind in the United States. The FTDI program makes paid leave equally available to mothers and fathers. The program also provides six (6) weeks of paid leave for the care of a seriously ill child, spouse, domestic partner, or parent. The new paid-leave benefit statute applies to all private employers and does not exempt small employers from its requirements. The bill specifically provides FTDI leave must be taken concurrently with leave under the federal Family Medical Leave Act and the California Family Rights Act. Under the new law, compensation for covered leave will be funded by employee contributions, which will be deposited into a special family temporary disability fund and administered by California's State Disability Insurance Program. DFEH does not enforce this new law.

Bill Number: SB 1661 (Kuehl), Chapter 901

Code Sections Affected: Unemployment Insurance Code sections 984, 2116, 2613, 2708 and 3254

Code Sections Added: Unemployment Insurance Code sections 3300 through 3305

Employment Discrimination: Victims of Sexual Assault

Effective January 1, 2003, an employer is prohibited from discharging or discriminating against an employee for taking time off from work to obtain or attempt to obtain a temporary or permanent restraining order, injunctive relief or other assistance on account of being a victim of sexual assault. Employees can use paid or unpaid leave to attend such matters. Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against for exercising their rights under the statute may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations. Employers who violate the law may be found guilty of a misdemeanor. DFEH does not enforce this statute.

Bill Number: AB 2195 (Corbett), Chapter 275

Code Section Affected: Labor Code section 230

Sick Leave

Effective January 1, 2003, an employer is prohibited from using an absence-control policy to penalize an employee for taking sick leave to care for an ill child, parent, spouse, or domestic partner. Specifically, it makes it unlawful for an employer to maintain an absence control policy of sick leave used to attend such an illness as a basis of discipline, demotion, discharge, or suspension. The policy itself would be a per se violation of the law, entitling an employee working under the policy to recover legal

and equitable relief for any violation under the Labor Code. DFEH does not enforce this new section.

Bill Number: SB 1471 (Romero), Chapter 1107
Code Section Added: Labor Code section 234

State Employment: Ethics Orientation for Employees Who Must File A Statement of Economic Interest

Effective January 1, 2003, every state employee who files a Statement of Economic Interest must attend an ethics orientation course every two years. Such individuals who are employed on January 1, 2003 must attend no later than December 31, 2003, and at least once every consecutive two-year period commencing January 1, 2005. Such individuals who become employed after January 1, 2003, must attend within six months, and at least once each consecutive two-year period commencing on the first odd numbered year thereafter.

Bill Number: AB 3022 (Special Committee on Assembly Legislative Ethics), Chapter 663
Code Section Affected: Government Code sections 11146 and 11146.3

State Employment: Leave of Absence – Organ/Blood Marrow Donation

Effective January 1, 2003, state agencies/departments are required to grant an employee who exhausted all available sick leave, a leave of absence not exceeding 30 days in any one-year period for donating an organ to another person. In addition, it must grant a leave of absence not exceeding 5 days in any one-year period for donating bone marrow to another person.

Bill Number: AB 1825 (Nakano), Chapter 869
Code Sections Added: Education Code sections 89519.5 and 92611.5; and Government Code section 19991.11

State Employment: Probationary Periods

Effective January 1, 2003, if a state agency/department and an employee who has a disability requiring reasonable accommodation agree in writing, the State Personnel Board may extend the employee's probationary period for a period not to exceed six (6) months.

Bill Number: AB 1950 (Wright), Chapter 236
Code Section Affected: Government Code section 19170

Public Employment Contracting

Effective January 1, 2003, each state department or agency awarding a contract or procuring goods or services, and authorizes each local agency receiving state funds, may collect information and report annually to the Governor and the Legislature on the participation level of minority, women, and disabled veteran-owned business enterprises in these contract and procurement activities. It also authorizes departments to engage in various general recruitment and outreach programs and focused outreach activities to increase diversity in public employment and public contracting.

Bill Number: SB 1045 (Polanco), Chapter 1165

Code Section Added: Government Code sections 11139.6, 11139.7 and 11139.8

Commission on Asian and Pacific Islander American Affairs

This legislation created the Commission on Asian and Pacific Islander American Affairs. This commission will consist of 13 appointed members. The duties of the commission include advising the administration, the Legislature, state agencies, departments and commissions on issues relating to the social and economic development and rights of interested Asian and Pacific Islander American communities.

Bill Number: AB 116 (Nakano), Chapter 716

Code Sections Added: Government Code sections 8255 through 8259.5