GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] *(Title 2 enacted by Stats. 1943, Ch. 134.)*

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] *(Division 3 added by Stats. 1945, Ch. 111.)*

PART 2.8. CIVIL RIGHTS DEPARTMENT [12900 - 12999] *(Heading of Part 2.8 amended by Stats. 2022, Ch. 48, Sec. 29.)*

CHAPTER 6. Discrimination Prohibited [12940 - 12957] *(Chapter 6 added by Stats. 1980, Ch. 992.)*

ARTICLE 1. Unlawful Practices, Generally [12940 - 12954] *(Article 1 added by Stats. 1980, Ch. 992.)*

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, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

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

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

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

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's 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, reproductive health decisionmaking, or veteran or military 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, reproductive health decisionmaking, or veteran or military 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 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 that 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, reproductive health decisionmaking, or veteran or military status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to 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, reproductive health decisionmaking, or veteran or military status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

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

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

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

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

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

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

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

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

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of 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, reproductive health decisionmaking, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

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

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

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

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

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

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

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

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

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

(l) (1) For an employer or other entity covered by this part 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 to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in 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.

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

(m) (1) 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.

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

(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) For an employer to require, as a condition of employment, continued employment, or a benefit of employment, the disclosure of information relating to an applicant's or employee's reproductive health decisionmaking.

(q) (1) For an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license unless both of the following conditions are satisfied:

(A) The employer reasonably expects driving to be one of the job functions for the position.

(B) The employer reasonably believes that satisfying the job function described in paragraph (1) using an alternative form of transportation would not be comparable in travel time or cost to the employer.

(2) For purposes of this subdivision, "alternative form of transportation" includes, but is not limited to, all of the following:

(A) Using a ride hailing service.

(B) Using a taxi.

(C) Carpooling.

(D) Bicycling.

(E) Walking.

(r) 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.

(Amended by Stats. 2024, Ch. 877, Sec. 1. (SB 1100) Effective January 1, 2025.)

12940.1. For the purposes of paragraph (1) of subdivision (a) of Section 12940, it shall be presumed that an individual with heart trouble, as referred to in Section 3212 of the Labor Code, applying for either a firefighter position or participation in an apprenticeship training program leading to employment in that position, if the actual duties require physical, active fire suppression, or a law enforcement position, the principal duties of which clearly consist of active law enforcement, could not perform those duties in a manner that would not endanger the individual's health or safety or the health or safety of others. This presumption may be overcome by the applicant or the department proving, by a preponderance of the evidence, that the applicant would be able to safely perform the job. Law enforcement, for the purposes of this section, means police officer, deputy sheriff, or sheriff whose principal duties consist of active law enforcement service.

(Amended by Stats. 2017, Ch. 799, Sec. 7. (AB 1556) Effective January 1, 2018.)

12940.3. Prior to January 1, 1996, a study or survey of the costs, including litigation and reasonable accommodation expenses and other impacts on California employers of 15 or more employees, resulting from compliance with Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), shall be undertaken jointly by the California Chamber of Commerce, the Civil Rights Department, Protection and Advocacy, Inc., and the State Department of Rehabilitation. The study shall also include an analysis of the benefits of the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) to persons with disabilities. The results of the study shall be submitted to the Commission on Special Education for their review and recommendations. The study shall provide a basis for a recommendation to the Legislature and the Governor concerning whether the hardships imposed upon businesses outweigh the benefits to persons with disabilities when the requirements of Title I of the

Americans with Disabilities Act of 1990 (Public Law 101-336) are extended to California employers of 5 to 14, inclusive, employees by amending the California Fair Employment and Housing Act to include people with mental disabilities as a protected class. In conducting the study and making a recommendation, the parties shall consider whether the additional requirements or consequences of being subject to the additional requirements will impose a significant hardship on employers of 5 to 14, inclusive, employees.

It is the intent to the Legislature that if, at the conclusion of the study and report to the Legislature, it is determined that employers of between 5 and 14 employees would not have a significant hardship in implementing the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), legislation should be introduced to require that employers with between 5 and 14 employees are covered by the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Legislature intends that all employers, including employers of 5 to 14, inclusive, employees, voluntarily comply with the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) so that persons with mental disabilities can participate fully in the employment opportunities provided to all Californians. However, it is the intent of the Legislature that existing employment discrimination provisions covering employers of 5 to 14, inclusive, employees shall not be altered by amendments to this part that become effective on January 1, 1993.

(Amended by Stats. 2022, Ch. 48, Sec. 37. (SB 189) Effective June 30, 2022.)

12941. The Legislature hereby declares its rejection of the court of appeal opinion in Marks v. Loral Corp. (1997) 57 Cal.App.4th 30, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The Legislature declares its intent that the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of that criterion adversely impacts older workers as a group, and further declares its intent that the disparate impact theory of proof may be used in claims of age discrimination. The Legislature further reaffirms and declares its intent that the courts interpret the state's statutes prohibiting age discrimination in employment broadly and vigorously, in a manner comparable to prohibitions against sex and race discrimination, and with the goal of not only protecting older workers as individuals, but also of protecting older workers as a group, since they face unique obstacles in the later phases of their careers. Nothing in this section shall limit the affirmative defenses traditionally available in employment discrimination cases including, but not limited to, those set forth in Section 7286.7 of Title 2 of the California Code of Regulations.

(Added by renumbering Section 12941.1 by Stats. 2002, Ch. 525, Sec. 3. Effective January 1, 2003.)

12942. (a) Every employer in this state shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue the employee's employment beyond any retirement date contained in any private pension or retirement plan.

This employment shall continue so long as the employee demonstrates the ability to perform the functions of the job adequately and the employer is satisfied with the quality of the work performed.

(b) Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date.

(c) Nothing in this section or Section 12941 shall be construed to prohibit any of the following:

(1) To prohibit an institution of higher education, as defined by Section 1001 of Title 20 of the United States Code, from imposing a retirement policy for tenured faculty members, provided that the institution has a policy permitting reemployment of these individuals on a year-to-year basis.

(2) To prohibit compulsory retirement of any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

(3) To prohibit compulsory retirement of any employee who has attained 65 years of age and who for the two-year period immediately before retirement was employed in a bona fide executive or a high policymaking position, if that employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer for the employee, which equals in the aggregate at least twenty-seven thousand dollars ($27,000).

(Amended by Stats. 2017, Ch. 799, Sec. 8. (AB 1556) Effective January 1, 2018.)

12943. It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

(a) For the governing board of any school district, because of the pregnancy of any person, to refuse to hire or employ that person, or to refuse to select that person for a training program leading to employment, or to bar or to discharge that person from employment or from a training program leading to employment, or to discriminate against that person in compensation or in terms, conditions, or privileges of employment.

(b) For the governing board of any school district to terminate any employee who is temporarily disabled, pursuant to or on the basis of an employment policy under which insufficient or no leave is available, if the policy has a disparate impact on employees of one sex and is not justified by necessity of the public schools.

(Amended by Stats. 2017, Ch. 799, Sec. 9. (AB 1556) Effective January 1, 2018.)

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, gender, gender identity, gender expression, age, medical condition, genetic information, physical disability, mental disability, reproductive health decisionmaking, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the council, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the council, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, sex, gender, gender identity, gender expression, age, reproductive health decisionmaking, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the Business, Consumer Services, and Housing Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Amended (as amended by Stats. 2022, Ch. 48, Sec. 38) by Stats. 2022, Ch. 630, Sec. 8. (SB 523) Effective January 1, 2023.)

12945. (a) In addition to the provisions that govern pregnancy, childbirth, or a related medical condition in Sections 12926 and 12940, each of the following shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(1) For an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the council's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(2) (A) For an employer to refuse to maintain and pay for coverage for an eligible employee who takes leave pursuant to paragraph (1) under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed four months over the course of a 12-month period, commencing on the date the leave taken under paragraph (1) begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in this paragraph shall preclude an employer from maintaining and paying for coverage under a group health plan beyond four months. An employer may recover from the employee the premium that the employer paid as required under this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(i) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(ii) The employee's failure to return from leave is for a reason other than one of the following:

(I) The employee taking leave under the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(II) The continuation, recurrence, or onset of a health condition that entitles the employee to leave under paragraph (1) or other circumstance beyond the control of the employee.

(B) If the employer is a state agency, the collective bargaining agreement shall govern with respect to the continued receipt by an eligible employee of the health care coverage specified in subparagraph (A).

(3) (A) For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if the employee so requests, with the advice of the employee's health care provider.

(B) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant employee who so requests.

(C) For an employer to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee's physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(4) For an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this part, including subdivision (a) of Section 12940.

(Amended by Stats. 2022, Ch. 48, Sec. 39. (SB 189) Effective June 30, 2022.)

12945.1. Sections 12945.2 and 19702.3 shall be known, and may be cited, as the Moore-Brown-Roberti Family Rights Act.

(Added by Stats. 1993, Ch. 580, Sec. 1. Effective January 1, 1994.)

12945.2. (a) It shall be an unlawful employment practice for any employer, as defined in paragraph (4) of subdivision (b), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (r), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The council shall adopt a regulation specifying the elements of a reasonable request.

(b) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

(2) "Designated person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave.

(3) "Domestic partner" has the same meaning as defined in Section 297 of the Family Code.

(4) "Employer" means either of the following:

(A) Any person who directly employs five or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(5) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

(B) Leave to care for a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(D) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Section 3302.2 of the Unemployment Insurance Code.

(6) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(7) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(8) "Grandchild" means a child of the employee's child.

(9) "Grandparent" means a parent of the employee's parent.

(10) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(11) "Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(12) "Parent-in-law" means the parent of a spouse or domestic partner.

(13) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(14) "Sibling" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(c) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (d).

(d) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person with a serious health condition, unless mutually agreed to by the employer and the employee.

(e) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover

the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(f) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(g) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(h) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(i) (1) An employer may require that an employee's request for leave to care for a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(j) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by the employee's health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee's position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee's health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(k) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to the individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(l) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(m) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(n) This section shall be construed as separate and distinct from Section 12945.

(o) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(q) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(r) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term "applicable monthly guarantee" means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule those employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay those employees on reserve status for any given month, as established in the collective bargaining agreement

or, if none exists, in the employer's policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

(Amended by Stats. 2022, Ch. 748, Sec. 1. (AB 1041) Effective January 1, 2023.)

12945.21. (a) The department shall create a small employer family leave mediation program for employers with between 5 and 19 employees. Under the program, when an employee requests an immediate right to sue alleging a violation of Section 12945.2, 12945.6, or 12945.7 by an employer having between 5 and 19 employees, the department shall notify the employee in writing of the requirement for mediation prior to filing a civil action if mediation is requested by the employer or employee. The employee shall contact the department's dispute resolution division prior to filing a civil action.

(b) (1) Under the program, the employee shall contact the department's dispute resolution division prior to filing a civil action in the manner specified by the department. The employee shall also indicate whether they are requesting mediation.

(2) Upon contacting the dispute resolution division regarding the intent to pursue a legal action for a violation of Section 12945.2, 12945.6, or 12945.7 by an employer having between 5 and 19 employees, the department shall notify all named respondents of the alleged violation and the requirement for mediation, if mediation is requested by the employee or employer, in writing.

(3) The department shall terminate its activity if neither the employee nor the employer requests mediation within 30 days of receipt by all named respondents of the notification specified in paragraph (2).

(4) If the department receives a request for mediation from the employee or employer within 30 days of receipt by all named respondents of the notification specified in paragraph (2), the department shall initiate the mediation within 60 days of the department's receipt of the request or the receipt of the notification by all named respondents, whichever is later.

(5) Once the mediation has been initiated, no later than seven days before the mediation date, the mediator shall notify the employee of their right to request information pursuant to Sections 226 and 1198.5 of the Labor Code. The mediator shall also help facilitate any other reasonable requests for information that may be necessary for either party to present their claim in mediation.

(c) (1) The employee shall not pursue any civil action under Section 12945.2, 12945.6, or 12945.7 unless the mediation is not initiated by the department within the time period specified in subdivision (b) or until the mediation is complete or the mediation is deemed unsuccessful.

(2) The statute of limitations applicable to the employee's claim, including for all related claims under Section 12945.2, 12945.6, or 12945.7, and not under Section 12945.2, 12945.6, or 12945.7, shall be tolled from the date the employee contacts the department's dispute resolution division regarding the intent to pursue a legal action until the mediation is complete or the mediation is deemed unsuccessful.

(d) For purposes of this section, the following shall apply:

(1) A mediation is deemed complete when any of the following occur:

(A) Neither the employee nor the employer requests the mediation within 30 days of receipt by all named respondents of the notification or both parties agree not to participate in the mediation.

(B) The employer fails to respond to the notification or mediation request within 30 days of receipt.

(C) The department fails to initiate the mediation within 60 days of the department's receipt of the request for mediation or the receipt by all named respondents of the notification, whichever is later.

(D) The department notifies the parties that it has determined that further mediation would be fruitless, both parties agree that further mediation would be fruitless, or one of the parties failed to submit information requested by the other party and deemed by the mediator to be reasonably necessary or fair for the other party to obtain.

(E) The mediator determines that the core facts of the employee's complaint are unrelated to Section 12945.2, 12945.6, or 12945.7.

(F) (i) The mediator determines that the employer has fewer than 5 or more than 19 employees.

(ii) Clause (i) shall not apply if the parties disagree about whether the employer has between 5 and 19 employees and the mediator is unable to determine that the employer has between 5 and 19 employees.

(2) A mediation is unsuccessful if the claim is not resolved within 30 days of the department's initiation of mediation, unless the department notifies the parties that it has determined more time is needed to make the mediation successful.

(e) A respondent or defendant in a civil action that did not receive a notification pursuant to subdivision (b) as a result of the employee's failure to contact the department's alternative dispute resolution division prior to filing a civil action, and who had between 5 and 19 employees at the time that the alleged violation occurred, shall, upon a timely request, be entitled to a stay of any pending civil action or arbitration until mediation is complete or is deemed unsuccessful.

(f) If a request for an immediate right to sue includes other alleged violations under this part, this section shall only apply to the claim alleging a violation of Section 12945.2, 12945.6, or 12945.7. Notwithstanding this subdivision, nothing in this section prohibits the parties from voluntarily choosing to mediate all alleged violations.

(Amended by Stats. 2024, Ch. 147, Sec. 1. (AB 2011) Effective January 1, 2025.)

12945.5. It shall be an unlawful employment practice for an employer to require any employee to be sterilized as a condition of employment.

(Added by Stats. 1980, Ch. 619.)

12945.6. (a) For purposes of this section, the following definitions apply:

(1) (A) "Assisted reproduction" means a method of achieving a pregnancy through an artificial insemination or an embryo transfer and includes gamete and embryo donation.

(B) "Assisted reproduction" does not include any pregnancy achieved through sexual intercourse.

(2) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(3) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(4) "Failed adoption" means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.

(5) "Failed surrogacy" means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to a person who would have been a parent of a child born as a result of the surrogacy.

(6) "Miscarriage" means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.

(7) "Reproductive loss event" means the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

(8) "Reproductive loss leave" means the leave provided by subdivision (b).

(9) "Stillbirth" means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.

(10) "Unsuccessful assisted reproduction" means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a person, the person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

(b) (1) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of reproductive loss leave following a reproductive loss event. If an employee experiences more than one reproductive loss

event within a 12-month period, an employer shall not be obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period.

(2) The employer shall allow the days an employee takes for reproductive loss leave to be nonconsecutive.

(3) (A) Except as provided in subparagraph (B), reproductive loss leave shall be completed within three months of the event entitling the employee to that leave under paragraph (1).

(B) Notwithstanding subparagraph (A), if, prior to or immediately following a reproductive loss event, an employee is on or chooses to go on leave from work pursuant to Section 12945, 12945.2, or any other leave entitlement under state or federal law, the employee shall complete their reproductive loss leave within three months of the end date of the other leave.

(4) (A) Reproductive loss leave shall be taken pursuant to any existing applicable leave policy of the employer.

(B) If there is no existing applicable leave policy, reproductive loss leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(c) It shall be an unlawful employment practice for an employer to retaliate against an individual, including, but not limited to, refusing to hire, discharging, demoting, fining, suspending, expelling, or discriminating against, an individual because of either of the following:

(1) An individual's exercise of the right to reproductive loss leave.

(2) An individual's giving information or testimony as to their own reproductive loss leave, or another person's reproductive loss leave, in an inquiry or proceeding related to rights guaranteed under this section.

(d) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(e) The employer shall maintain the confidentiality of any employee requesting leave under this section. Any information provided to the employer pursuant to this section shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

(f) An employee's right to reproductive loss leave shall be construed as a separate and distinct right from any right under this part.

(Added by Stats. 2023, Ch. 724, Sec. 1. (SB 848) Effective January 1, 2024.)

12945.7. (a) As used in this section:

(1) (A) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(B) "Employee" does not include a person who is covered by Section 19859.3.

(2) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(3) "Family member" means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in Section 12945.2.

(b) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member.

(c) The days of bereavement leave need not be consecutive.

(d) The bereavement leave shall be completed within three months of the date of death of the family member.

(e) (1) The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer.

(2) If there is no existing bereavement leave policy, the bereavement leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(3) If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the

remainder of days of leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(4) If an existing leave policy provides for less than five days of unpaid bereavement leave, the employee shall be entitled to no less than five days of unpaid bereavement leave, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(f) The employee, if requested by the employer, within 30 days of the first day of the leave, shall provide documentation of the death of the family member. As used in this subdivision, “documentation” includes, but is not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual’s exercise of the right to bereavement leave provided by subdivision (b).

(2) An individual’s giving information or testimony as to their own bereavement leave, or another person’s bereavement leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) The employer shall maintain the confidentiality of any employee requesting leave under this section. Any documentation provided to the employer pursuant to subdivision (f) or subdivision (g) shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

(j) An employee’s right to leave under this section shall be construed as separate and distinct from any right under Section 12945.2.

(k) The section does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by this section and for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent above the state minimum wage.

(Added by Stats. 2022, Ch. 767, Sec. 1. (AB 1949) Effective January 1, 2023.)

12945.8. (a) An employer shall not do any of the following:

(1) Discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that the employee is required to serve.

(2) Discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(3) Discharge or in any manner discriminate or retaliate against an employee who is a victim for taking time off from work to obtain or attempt to obtain any relief. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or their child.

(b) An employer with 25 or more employees shall not discharge or in any manner discriminate or retaliate against an employee who is a victim or who has a family member who is a victim for taking time off from work for any of the following purposes:

(1) To obtain or attempt to obtain any relief for the family member. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the family member of the victim.

(2) To seek, obtain, or assist a family member to seek or obtain, medical attention for or to recover from injuries caused by a qualifying act of violence.

(3) To seek, obtain, or assist a family member to seek or obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of a qualifying act of violence.

(4) To seek, obtain, or assist a family member to seek or obtain psychological counseling or mental health services related to an experience of a qualifying act of violence.

(5) To participate in safety planning or take other actions to increase safety from future qualifying acts of violence.

(6) To relocate or engage in the process of securing a new residence due to the qualifying act of violence, including, but not limited to, securing temporary or permanent housing or enrolling children in a new school or childcare.

(7) To provide care to a family member who is recovering from injuries caused by a qualifying act of violence.

(8) To seek, obtain, or assist a family member to seek or obtain civil or criminal legal services in relation to the qualifying act of violence.

(9) To prepare for, participate in, or attend any civil, administrative, or criminal legal proceeding related to the qualifying act of violence.

(10) To seek, obtain, or provide childcare or care to a care-dependent adult if the childcare or care is necessary to ensure the safety of the child or dependent adult as a result of the qualifying act of violence.

(c) (1) As a condition of taking time off for a purpose set forth in paragraph (3) of subdivision (a), or subdivision (b), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer upon request by the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee or a family member of the employee was a victim.

(B) A court order protecting or separating the employee or a family member of the employee from the perpetrator of the qualifying act of violence, or other evidence from a court or prosecuting attorney that the employee or a family member of the employee has appeared in court.

(C) Documentation from a licensed medical professional, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, victim advocate, licensed health care provider, or counselor that the employee or a family member of the employee was undergoing treatment or seeking or receiving services directly related to the qualifying act of violence.

(D) Any other form of documentation that reasonably verifies that the qualifying act of violence occurred, including, but not limited to, a written statement signed by the employee, or an individual acting on the employee's behalf, certifying that the absence is for a purpose authorized under this section.

(3) To the extent allowed by law and consistent with subparagraph (D) of paragraph (7) of subdivision (e), the employer shall maintain the confidentiality of any employee requesting leave under paragraph (3) of subdivision (a), or subdivision (b). Furnishing evidence or providing a certification under this subdivision shall not waive any confidentiality or privilege that may exist between the employee or employee's family member and a third party.

(d) An employer shall not discharge or in any manner discriminate or retaliate against an employee because of the employee's status, or the employee's family member's status, as a victim if the employee provides notice to the employer of the status or the employer has actual knowledge of the status.

(e) (1) An employer shall provide reasonable accommodations for an employee who is a victim or whose family member is a victim of a qualifying act of violence who requests an accommodation for the safety of the employee while at work.

(2) For purposes of this subdivision, reasonable accommodations may include the implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, permission to carry telephone at work, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, stalking, or another qualifying act of violence that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, stalking, or other qualifying act of violence, or referral to a victim assistance organization.

(3) An employer is not required under this section to provide a reasonable accommodation to an employee who has not disclosed the employee's status, or the employee's family member's status, as a victim.

(4) The employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(5) In determining whether the accommodation is reasonable, the employer shall consider an exigent circumstance or danger facing the employee or their family member.

(6) This subdivision does not require the employer to undertake an action that constitutes an undue hardship on the employer's business operations, as defined by Section 12926 of the Government Code. For the purposes of this subdivision, an undue hardship also includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by Section 6400 of the Labor Code.

(7) (A) Upon the request of an employer, an employee requesting a reasonable accommodation pursuant to this subdivision shall provide the employer a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for a purpose authorized under this subdivision.

(B) The employer may also request certification from an employee requesting an accommodation pursuant to this subdivision demonstrating the employee's status, or the employee's family member's status, as a victim. Certification shall be sufficient in the form of any of the categories described in paragraph (2) of subdivision (c).

(C) An employer who requests certification pursuant to subparagraph (B) may request recertification of an employee's status, or an employee's family member's status, as a victim, or ongoing circumstances related to the qualifying act of violence, every six months after the date of the previous certification.

(D) Any verbal or written statement, police or court record, or other documentation provided to an employer identifying an employee or the employee's family member as a victim shall be maintained as confidential by the employer and shall not be disclosed by the employer except as required by federal or state law or as necessary to protect the employee's safety in the workplace. The employee shall be given notice before any authorized disclosure. Furnishing evidence or providing a certification under this subdivision shall not waive any confidentiality or privilege that may exist between the employee or employee's family member and a third party.

(E) (i) If circumstances change and an employee needs a new accommodation, the employee shall request a new accommodation from the employer.

(ii) Upon receiving the request, the employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(F) If an employee no longer needs an accommodation, the employee shall notify the employer that the accommodation is no longer needed.

(8) An employer shall not retaliate against an employee for requesting a reasonable accommodation under this subdivision, regardless of whether the request was granted.

(f) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(g) An employee may use vacation, personal leave, paid sick leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a) or (b). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(h) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the 12 weeks provided under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

(i) An employer may limit the total leave taken pursuant to this section as follows:

(1) An employer may limit total leave time taken pursuant to subdivision (b) to 12 weeks.

(2) If an employee's family member is a victim who is not deceased as a result of a crime, and the employee is not a victim, and the employee takes leave pursuant to paragraph (6) of subdivision (b), the employer may limit the leave taken for that reason to five days.

(3) If any employee's family member is a victim who is not deceased as a result of crime, and the employee is not a victim, the employer may limit the total leave taken pursuant to subdivision (b) to 10 days.

(4) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) and the Moore-Brown-Roberti Family Rights Act, commonly referred to as the California Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code), if the employee would have been eligible for that leave.

(j) For purposes of this section:

(1) “Crime” means a crime or public offense as set forth in Section 13951 of the Government Code, and regardless of whether any person is arrested for, prosecuted for, or convicted of, committing the crime.

(2) “Domestic violence” means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(3) “Employer” means any of the following:

(A) Any person who directly employs one or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(4) “Family member” means a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as those terms are defined in Section 12945.2, or designated person. For purposes of this paragraph, “designated person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for leave pursuant to this section.

(5) “Qualifying act of violence” means any of the following, regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime:

(A) Domestic violence.

(B) Sexual assault.

(C) Stalking.

(D) An act, conduct, or pattern of conduct that includes any of the following:

(i) In which an individual causes bodily injury or death to another individual.

(ii) In which an individual exhibits, draws, brandishes, or uses a firearm, or other dangerous weapon, with respect to another individual.

(iii) In which an individual uses, or makes a reasonably perceived or actual threat to use, force against another individual to cause physical injury or death.

(6) “Sexual assault” means any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent.

(7) “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for that person’s safety or the safety of others or suffer substantial emotional distress.

(8) “Victim” means either of the following:

(A) An individual against whom a qualifying act of violence is committed.

(B) For the purposes of paragraph (2) of subdivision (a) only, a person against whom any crime has been committed.

(9) “Victim advocate” means an individual, whether paid or serving as a volunteer, who provides services to victims under the auspices or supervision of an agency or organization that has a documented record of providing services to victims, or under the auspices or supervision of a court or a law enforcement or prosecution agency.

(10) “Victim services organization or agency” means an agency or organization that has a documented record of providing services to victims.

(k) (1) An employer shall inform each employee of their rights established under this section in writing. The information shall be provided to new employees upon hire, to all employees annually, at any time upon request, and any time an employee informs an employer that the employee or the employee’s family member is a victim. If an employer elects not to use the form developed by the department, as specified in paragraph (2), the notice provided by the employer to the employees shall be substantially similar in content and clarity to that form developed by the department.

(2) The department shall develop a form that an employer may use to comply with the notice requirements in paragraph (1). The form shall be entitled “Survivors of Violence and Family Members of Victims Right to Leave and Accommodations” and shall set forth the rights and duties of employers and employees under this section in clear and concise language. The notice shall also include language that advises employees in clear and concise language that if leave taken under this section is due to an employee’s inability to work as a result of a serious health condition, or need to care for a family member with a serious health condition, they may also be eligible for wage replacement under the disability insurance program, the family temporary disability

insurance program, or other programs administered by the Employment Development Department. The notice shall also include language that advises employees in clear and concise language that if they are a family member of a deceased victim, they may be eligible for leave under this section and also for bereavement leave under Section 12945.7. The notice shall also inform employees in clear and concise language that they may be eligible for leave pursuant to Sections 230.2 and 230.5 of the Labor Code. The department shall post the form in English, Spanish, Chinese, Vietnamese, Tagalog, Korean, Armenian, Arabic, Farsi, Punjabi, Russian, Japanese, Hindi, Mon-Khmer, Thai, and any other language that is spoken by a "substantial number of non-English-speaking people," as that phrase is defined in Section 7296.2, on the department's internet website to make it available to employers who are required to comply with this section. The department shall create the form and post it in accordance with this paragraph on or before July 1, 2025.

(3) An employer shall not be required to comply with paragraph (1) until the department posts the form on the department's internet website in accordance with paragraph (2).

(Added by Stats. 2024, Ch. 967, Sec. 3. (AB 2499) Effective January 1, 2025.)

12946. (a) It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of four years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of four years after the date of the employment action taken.

(b) Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the later of the following:

(1) The first date after the period of time for filing a civil action has expired.

(2) The first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have terminated.

(c) The council shall adopt suitable rules, regulations, and standards to carry out the purposes of this section.

(d) Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

(Amended by Stats. 2021, Ch. 278, Sec. 2. (SB 807) Effective January 1, 2022.)

12947. It shall not be an unlawful practice under this part for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature for its employees or members who are responsible for minor children.

(Added by Stats. 1980, Ch. 992.)

12947.5. (a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The council may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

(Amended by Stats. 2012, Ch. 46, Sec. 39. (SB 1038) Effective June 27, 2012. Operative January 1, 2013, by Sec. 140 of Ch. 46.)

12948. It is an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by Section 51, 51.5, 51.7, 51.9, 54, 54.1, or 54.2 of the Civil Code.

(Amended by Stats. 2018, Ch. 951, Sec. 3. (SB 224) Effective January 1, 2019.)

12949. Nothing in this part relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity or gender expression.

(Amended by Stats. 2011, Ch. 719, Sec. 20. (AB 887) Effective January 1, 2012.)

12950. In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department and the council, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) (1) The department's poster on discrimination in employment shall include information relating to the illegality of sexual harassment. One copy of the poster shall be provided by the department to an employer or a member of the public upon request. The poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall post the poster in a prominent and accessible location in the workplace.

(2) Post a poster developed by the department regarding transgender rights in a prominent and accessible location in the workplace.

(3) Provide sexual harassment training as required by Section 12950.1.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer or a member of the public upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Each employer shall distribute this information sheet to its employees, unless the employer provides equivalent information to its employees that contains, at a minimum, components on the following:

(1) The illegality of sexual harassment.

(2) The definition of sexual harassment under applicable state and federal law.

(3) A description of sexual harassment, utilizing examples.

(4) The internal complaint process of the employer available to the employee.

(5) The legal remedies and complaint process available through the department.

(6) Directions on how to contact the department.

(7) The protection against retaliation provided by Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the council.

(8) A link to, or the internet website address for, the sexual harassment online training courses developed pursuant to Section 12950.1 and located on the internet website of the department.

(c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.

(d) The department shall make the poster, fact sheet, and online training courses available in English, Spanish, Simplified Chinese, Tagalog, Vietnamese, Korean, and any other language that is spoken by a "substantial number of non-English-speaking people," as that phrase is defined in Section 7296.2. The department shall make versions of the online training courses with subtitles in each language and shall orally dub the online training courses into each language other than English. Simplified Chinese shall be sufficient for subtitling purposes.

(e) The department shall make the poster, fact sheet, and online training courses required by this section, and the corresponding translations, available to employers and to the public through its internet website in formats that may be streamed or downloaded.

(f) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(g) If an employer violates the requirements of this section, the department may seek an order requiring the employer to comply with these requirements.

(Amended by Stats. 2019, Ch. 497, Sec. 137. (AB 991) Effective January 1, 2020.)

12950.1. (a) (1) By January 1, 2021, an employer having five or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of

classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California. Thereafter, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. New nonsupervisory employees shall be provided training within six months of hire. New supervisory employees shall be provided training within six months of the assumption of a supervisory position. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee in 2019 is not required to provide refresher training and education again until two years thereafter. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

(2) An employer shall also include prevention of abusive conduct as a component of the training and education specified in paragraph (1).

(3) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in paragraph (1). The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(d) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(e) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.

(f) Except as provided in subdivision (l), beginning January 1, 2021, for seasonal, temporary, or other employees that are hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

(g) Beginning January 1, 2020, sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, et seq.), shall be consistent with training for nonsupervisory employees pursuant to paragraph (8) of subdivision (a) of Section 1684 of the Labor Code.

(h) (1) For purposes of this section only, "employer" means any person regularly employing five or more persons or regularly receiving the services of five or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(i) For purposes of providing training to employees as required by this section, an employer may develop its own training module or may direct employees to view the online training course referenced in subdivision (j) and this shall be deemed to have complied with and satisfied the employers' obligations as set forth in this section and Section 12950.

(j) The department shall develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with the provisions of this section. The course for nonsupervisory employees shall be one hour in length and the course

for supervisory employees shall be two hours in length.

(k) The department shall make the online training courses available on its internet website. The online training courses shall contain an interactive feature that requires the viewer to respond to a question periodically in order for the online training courses to continue to play. Any questions resulting from the online training course described in this subdivision shall be directed to the trainee's employer's human resources department or equally qualified professional rather than the department.

(l) (1) An employer that employs workers pursuant to a multiemployer collective bargaining agreement in the construction industry may satisfy the requirements of subdivision (a) or (f) by demonstrating that the employee has received the training required by subdivision (a) within the past two years under any of the following circumstances:

(A) While the employee was employed by another employer that is also signatory to a multiemployer collective bargaining agreement with the same trade in the building and construction industry.

(B) While the employee was an apprentice registered in a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards.

(C) Through a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards, a labor management training trust, or labor management cooperation committee. For purposes of this subdivision, "labor management cooperation committee" shall mean a committee that is established pursuant to Section 175a of Title 29 of the United States Code.

(2) For purposes of this subdivision, "multiemployer collective bargaining agreement" means a bona fide collective bargaining agreement to which multiple employers are signatory, including predecessor and successor agreements.

(3) An employer shall require verification that an employee has undergone prevention of harassment training pursuant to this subdivision within the past two years. The employer shall provide prevention of harassment training pursuant to subdivision (a) for any employee for whom verification cannot be obtained.

(4) A state-approved apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a certificate of completion of training for each person to whom the entity has provided prevention of harassment training pursuant to this subdivision for a period of not less than four years. The apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a database of journey-level worker and apprentice training that entity has provided and shall provide verification of an employee's or apprentice's prevention of harassment training status upon the request of an employer that is a party to the multiemployer collective bargaining agreement.

(5) (A) A qualified trainer may provide prevention of harassment training on behalf of an apprenticeship program, labor management training trust, or labor management cooperation committee.

(B) A "qualified trainer," for purposes of this subdivision, is any person who, through a combination of training and experience, has the ability to train employees about the following:

(i) How to identify behavior that may constitute unlawful harassment, discrimination, or retaliation under both California and federal law.

(ii) What steps to take when harassing behavior occurs in the workplace.

(iii) How to report harassment complaints.

(iv) Supervisory employees' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware.

(v) How to respond to a harassment complaint.

(vi) The employer's obligation to conduct a workplace investigation of a harassment complaint.

(vii) What constitutes retaliation and how to prevent it.

(viii) Essential components of an antiharassment policy.

(ix) The effect of harassment on harassed employees, coworkers, harassers, and employers.

(C) A "qualified trainer" includes, but is not limited to, an attorney admitted to the State Bar of California with at least two years of experience practicing employment law, a human resources professional with at least two years of practical experience in prevention of harassment training, investigation, and advising employers in the prevention of harassment, or any other person who has received training in the provision of prevention of harassment training from a qualified trainer.

(6) An apprenticeship program, labor management training trust, or labor management cooperation committee may also provide training by use of the online training courses referenced in subdivision (j).

(7) An apprenticeship program, labor management training trust, or labor management cooperation committee shall not incur any liability for providing prevention of harassment training or for maintaining records pursuant to this subdivision.

(m) An employee who has received training in compliance with this section within the prior two years either from a current, a prior, or an alternate or a joint employer, or who received a valid work permit from the Labor Commissioner that required the employee to receive training in compliance with this section within the prior two years, shall be given, and required to read and to acknowledge receipt of, the employer's anti-harassment policy within six months of assuming the employee's new position. That employee shall then be put on a two year tracking schedule based on the employee's last training. The current employer shall have the burden of establishing that the prior training was legally compliant with this section.

(Amended by Stats. 2020, Ch. 227, Sec. 1. (AB 3369) Effective September 28, 2020.)

12950.2. An employer may also provide bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behaviors. The training and education may include exercises to provide bystanders with the skills and confidence to intervene as appropriate and to provide bystanders with resources they can call upon that support their intervention.

(Added by Stats. 2018, Ch. 955, Sec. 3. (SB 1300) Effective January 1, 2019.)

12950.3. (a) For purposes of this section, "employer" means a hotel or motel. "Employer" does not mean a bed and breakfast inn, as that term is defined in subdivision (b) of Section 24045.12 of the Business and Professions Code.

(b) (1) By January 1, 2020, an employer shall provide at least 20 minutes of classroom or other effective interactive training and education regarding human trafficking awareness to each employee who is likely to interact or come into contact with victims of human trafficking and who is employed as of July 1, 2019, and, within six months of his or her employment in that role, to each new employee who is likely to interact or come into contact with victims of human trafficking. An employer who has provided this training and education to an employee on or before January 1, 2019, shall not be required to provide additional training to that employee to meet the requirements of this subparagraph.

(2) After January 1, 2020, an employer shall, once every two years, provide human trafficking awareness training and education to each employee who is likely to interact or come into contact with victims of human trafficking and, within six months of his or her employment in that role, to each new employee who is likely to interact or come into contact with victims of human trafficking.

(3) As used in this subdivision, "an employee who is likely to interact or come into contact with victims of human trafficking" includes, but is not limited to, an employee who has reoccurring interactions with the public, including, but not limited to, an employee who works in a reception area, performs housekeeping duties, helps customers in moving their possessions, or drives customers.

(c) The human trafficking awareness training and education required by subdivision (b) shall include, but is not limited to, the following:

(1) The definition of human trafficking and commercial exploitation of children.

(2) Guidance on how to identify individuals who are most at risk for human trafficking.

(3) The difference between labor and sex trafficking specific to the hotel sector.

(4) Guidance on the role of hospitality employees in reporting and responding to this issue.

(5) The contact information of appropriate agencies, including, but not limited to, the National Human Trafficking Hotline toll-free telephone number, 1-888-373-7888, and text line, 233733, and the telephone numbers of the appropriate local law enforcement agencies.

(d) The human trafficking awareness training and education required by subdivision (b) may also include, but is not limited to, materials and information provided by the Department of Justice, the Blue Campaign of the federal Department of Homeland Security, and private nonprofit organizations that represent the interests of victims of human trafficking.

(e) The lack of reporting of a human trafficking case that occurs in a hotel, motel, or bed and breakfast inn by an employee of that establishment, shall not, by itself, result in the liability of any employer or employee of that establishment to the human trafficking victim or victims in the case in question or to any other legal party.

(f) It is the intent of the Legislature in enacting this section to establish a minimum threshold for human trafficking awareness training and education. This section shall not be construed to discourage or relieve an employer from providing for longer, more frequent, or more elaborate training and education regarding human trafficking awareness. It is further the intent of the Legislature to encourage employers to take all reasonable steps necessary to lead to the rescue of human trafficking victims and prevent any kind of human trafficking in their establishments.

(g) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(Added by Stats. 2018, Ch. 842, Sec. 1. (SB 970) Effective January 1, 2019.)

12951. (a) It is an unlawful employment practice for an employer, as defined in subdivision (d) of Section 12926, to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

(1) The language restriction is justified by a business necessity.

(2) The employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

(b) For the purposes of this section, "business necessity" means an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.

(Added by Stats. 2001, Ch. 295, Sec. 2. Effective January 1, 2002.)

12952. (a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

(B) A copy of the conviction history report, if any.

(C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

(3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

(B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.

(C) The right to file a complaint with the department.

(d) This section does not apply in any of the following circumstances:

(1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.

(2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.

(f) For purposes of this section:

(1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.

(2) Notwithstanding paragraph (1), the term "conviction history" includes:

(A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.

(B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

(Amended by Stats. 2018, Ch. 824, Sec. 2. (AB 2845) Effective January 1, 2019.)

12953. It is an unlawful employment practice for an employer to violate Section 432.6 of the Labor Code.

(Added by Stats. 2019, Ch. 711, Sec. 2. (AB 51) Effective January 1, 2020.)

12954. (a) (1) Except as specified in subdivision (c), it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the

following:

(A) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

(B) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(2) This subdivision does not apply to an employee in the building and construction trades.

(b) Except as specified in subdivision (c), it is unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

(c) Information about a person's prior cannabis use obtained from the person's criminal history is subject to subdivisions (a) and (b), unless the employer is permitted to consider or inquire about that information under Section 12952 or other state or federal law.

(d) This section does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in Section 11362.45 of the Health and Safety Code, or any other rights or obligations of an employer specified by state or federal law or regulation.

(e) This section does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

(f) This section does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

(g) This section shall become operative on January 1, 2024.

(Amended by Stats. 2023, Ch. 408, Sec. 1. (SB 700) Effective January 1, 2024.)