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**GOVERNMENT CODE - GOV**

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

**DIVISION 5. PERSONNEL [18000 - 22980]** ( Division 5 added by Stats. 1945, Ch. 123. )

**PART 2. STATE CIVIL SERVICE [18500 - 19799]** ( Part 2 added by Stats. 1945, Ch. 123. )

**CHAPTER 10. Prohibitions and Offenses [19680 - 19765]** ( Chapter 10 added by Stats. 1945, Ch. 123. )

**ARTICLE 2. Discrimination [19700 - 19706]** ( Article 2 added by Stats. 1945, Ch. 123. )

**19700.** The board, its executive officer, or any appointing power shall not adopt any rule, either written or unwritten, prohibiting the employment of any person in any state position who is otherwise qualified therefor, solely because of his or her age, except as provided in Section 18932.

(Amended by Stats. 1990, Ch. 478, Sec. 18.)

**19701.** A person shall not be discriminated against under this part because of total or partial blindness unless normal eyesight is absolutely indispensable to do the physical acts to be performed.

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification as determined by a validation study conducted by the Department of Human Resources, for the state to refuse to hire, employ, promote, or select for a training program leading to employment, or to discriminate in compensation or in terms or privileges of employment because of color vision anomaly or defect, commonly known as color blindness or color weakness, in the vision of any person.

(Amended by Stats. 2012, Ch. 360, Sec. 67. (SB 1309) Effective January 1, 2013.)

**19702.** (a) A person shall not be discriminated against in the terms, conditions, and privileges of his or her employment with the state under this section based on his or her medical condition, mental disability, or physical disability as those terms are defined in subdivisions (i), (j), and (l) of Section 12926. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

(b) For purposes of this article, "discrimination" includes harassment.

(c) (1) Except as otherwise provided in paragraph (2), if the board finds that discrimination has occurred in violation of subdivision (a) of this section, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this section. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order may include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph applies to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of subdivision (a) of this section, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this section. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order may include a requirement of reporting the manner of compliance.

(d) Any person claiming discrimination based upon medical condition, mental disability, or physical disability within the state civil service may submit a written complaint with the appointing authority that states the particulars of the alleged discrimination. The written complaint shall be filed with the appointing authority within one year of the alleged discrimination or the failure to act. Any person claiming discrimination based upon medical condition, mental disability, or physical disability may file a complaint of

discrimination with the board subsequent to lodging a complaint with the appointing authority. Complaints of discrimination filed with the board shall satisfy and comply with board rules.

(e) If an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination under subdivision (a) of this section, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action that will effectuate the purpose of this section.

(f) If a person demonstrates by a preponderance of the evidence that the person's opposition to any practice made an unlawful employment practice under this section, or the person's charging, testifying, assisting, or participation in any manner in an investigation, proceeding, or hearing under this section, was a contributing factor in any adverse employment action taken against him or her, the burden of proof shall be on the supervisor, manager, employee, or appointing power to demonstrate by clear and convincing evidence that the alleged adverse employment action would have occurred for legitimate, independent reasons even if the person had not engaged in activities protected under this section. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the person shall have a complete affirmative defense to the adverse employment action.

(g) As used in this section, "adverse employment action" includes promising to confer, or conferring, any benefit, effecting, or threatening to effect, any reprisal, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

*(Repealed and added by Stats. 2012, Ch. 360, Sec. 69. (SB 1309) Effective January 1, 2013.)*

**19702.1.** Hiring and promotion pursuant to this part shall conform to the Federal Civil Rights Act of 1964.

*(Added by Stats. 1972, Ch. 915.)*

**19702.2.** Educational prerequisites or testing or evaluation methods which are not job-related shall not be employed as part of hiring practices or promotional practices conducted pursuant to this part unless there is no adverse effect.

Nothing in this section shall be interpreted to limit the authority of the State Personnel Board regarding the state merit selection and examining program under Article VII of the California Constitution and this division.

*(Amended by Stats. 1985, Ch. 794, Sec. 34.)*

**19702.3.** (a) An appointing authority shall not refuse to hire, and shall not discharge, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care leave provided by subdivision (a) of Section 12945.2.

(2) An individual's giving information or testimony as to his or her own family care leave, or another person's family care leave, in any inquiry or proceeding related to rights guaranteed under Section 12945.2.

(b) 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.

*(Amended by Stats. 1994, Ch. 1232, Sec. 1. Effective January 1, 1995.)*

**19702.5.** (a) The Department of Human Resources shall provide to the Fair Employment and Housing Commission a copy of each affirmative action plan, and all subsequent amendments of such plans, adopted by each state agency, department, office, or commission.

(b) The department shall annually, commencing January 1, 1975, submit to the Fair Employment and Housing Commission a statistical survey of the employment of each state agency, department, office, or commission. The survey shall include, but not be limited to: sex, age, ethnic origin, current employment classification, salary, full-time or other employment status, department and administrative unit, and county of employment of employees.

*(Amended by Stats. 2012, Ch. 360, Sec. 70. (SB 1309) Effective January 1, 2013.)*

**19703.** A recommendation, question, or inquiry under this part shall not relate to the political or religious opinions or affiliations of any person, and an appointment to, change in, or removal from any position under this part or by rule shall not be in any manner affected or influenced by such opinions or affiliations.

*(Amended by Stats. 2013, Ch. 427, Sec. 80. (AB 1062) Effective January 1, 2014.)*

**19704.** (a) It is unlawful to require, permit, or suffer any notation or entry to be made upon or in any application, examination paper, or other paper, book, document, or record used under this part indicating or in any way suggesting or pertaining to any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1.

(b) Notwithstanding subdivision (a), subsequent to employment, ethnic, marital status, and gender data may be obtained and maintained for research and statistical purposes when safeguards preventing misuse of the information exist as approved by the Civil Rights Council, except that in no event shall any notation, entry, or record of that data be made on papers or records relating to the examination, appointment, or promotion of an individual.

*(Amended by Stats. 2022, Ch. 48, Sec. 51. (SB 189) Effective June 30, 2022.)*

**19705.** Notwithstanding Section 19704, the Department of Human Resources may, after public hearing, adopt a system in which applicants for employment in the state civil service shall be asked to provide, voluntarily, ethnic data about themselves where such data is determined by the department to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. The department shall provide by rule for safeguards to insure that such data shall not be used in a discriminatory manner in the selection process. Ethnic data may be compiled for women and minorities. Ethnic data information gathered pursuant to this section on an individual applicant shall not be available to any interviewer or any officer or employee empowered to make or influence the civil service appointment of such individual. The department shall report annually to the Governor and the Legislature on the results of the selection process as determined by data gathered under this section.

*(Amended by Stats. 2012, Ch. 360, Sec. 71. (SB 1309) Effective January 1, 2013.)*

**19706.** It is unlawful to require or permit any notation or entry to be made upon or in any state civil service application form for examination regarding the date of birth of an applicant, unless the class for which the examination is being given has established minimum or maximum age limitations as specified on the examination announcement. In any event, it is unlawful to require or permit any notation or entry to be made on a civil service application form for examination with regard to date of completion of high school and G.E.D. high school tests, and dates of completion of certificates of professional or vocational competence, licenses, or membership in professional associations. The state may use existing state civil service application forms for examination prior to printing new forms pursuant to this section, but such printing shall take place no later than June 1, 1977. Subsequent to a bona fide offer of employment of an applicant, the state may ask for information covered under this section in order to verify such information.

*(Added by Stats. 1976, Ch. 1180.)*