

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2003 LEGISLATIVE SUMMARY

This is a summary of the changes and amendments to California's civil rights statutes signed into law by Governor Davis this year. Most of the changes become effective January 1, 2004. They are organized by subject matter.

EMPLOYMENT

Gender Discrimination

This bill, sponsored by Equality California, broadens the definition of "sex" to include a person's gender, as that term is defined in Penal Code section 422.76. Gender is defined as the employee's actual sex, or the employer's perception of the employee's sex, and includes the employer's perception of the employee's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the employee's sex at birth. This bill also allows employers to require employees to comply with workplace appearance, grooming, or dress standards consistent with state and federal law. However, employers have to allow employees to dress in a manner consistent with the employee's gender identity.

Bill Number: AB 196 (Leno), Chapter 164

Code Section Amended: Government Code section 12926

Code Section Added: Government Code section 12949

Harassment by Third Parties

This bill clarifies that it is an unlawful employment practice under the Fair Employment and Housing Act (FEHA) for an employer to fail to take immediate and appropriate corrective action to prevent sexual harassment of an employee by nonemployees (customers, clients, patients, other third parties) that the employer knows or should have known about. The bill also requires that in reviewing these cases, consideration be given to the extent of the employer's control and any other legal responsibility for the conduct of those nonemployees. It also states that the Legislature's intent in enacting this bill is to construe and clarify existing law and reject the interpretation given to existing law by the appellate court in the recent court decision *Salazar v. Diversified Paratransit, Inc.*, (2002) 103 Cal.App.4th 131. This case held that an employer's duty to prevent harassment under the FEHA did not extend to harassment by an employer's customers or clients. The California Supreme Court is reviewing this case.

Bill Number: AB 76 (Corbett), Chapter 671

Code Section Amended: Government Code section 12940

Service of Complaints, DFEH's Authority for File for Preliminary Injunctive Relief

This bill was an Administration bill sponsored by DFEH. It makes multiple procedural and some technical clarifying changes to the FEHA. Specifically, AB 1536 provides:

1. DFEH is to serve on respondents only those complaints filed for investigation. It further provides that when a person (complainant) claiming to be aggrieved by an unlawful practice is represented by private counsel, private counsel, and not the department, will serve the complaint.
2. Service of complaints is to be completed within 60 days (formerly 45 days).
3. Deletes statutory language that requires DFEH to notify complainants that, if an accusation is issued, the individuals may only be able to recover emotional distress damages through a civil action in state court. This notice is no longer necessary because of the recent holding in *Konig v. Fair Employment and Housing Commission* (2002) 28 Cal.4th 743.
4. Clarifies the department's authority to seek a court order for preliminary injunctive relief in housing discrimination cases.

Bill Number: AB 1536 (Goldberg), Chapter 447

Code Sections Amended: Amends Government Code sections 12962, 12980, 12981 and 12983

HOUSING

Resolution Commemorating 40th Anniversary of Fair Housing Act

This resolution commemorates the 40th anniversary of the passage of the Fair Housing Act of 1963 authored by Assembly Member W. Byron Rumford and the progress that has been made to afford equal housing opportunities to all Californians regardless of race.

Bill Number: ACR 53 (Lowenthal), Chapter 77

Code Section Affected: None. This is a resolution.

FEHA Exemption - Housing for Homeless Veterans

This bill provides that restricting homeless shelters or transitional homes to veterans does not constitute unlawful discrimination. This bill establishes a state policy that favors restricting occupancy at emergency shelters or transitional housing to homeless veterans who possess significant barriers to social reintegration and employment due to a physical or mental disability, substance abuse, or the effects of long-term homelessness.

Bill Number: AB 1594 (Committee on Veterans Affairs), Chapter 776

Code Sections Amended: Health and Safety Code section 50801.5

Housing Accessibility

This bill requires developers of any new residential housing development to provide a buyer with a list of specified universal accessibility features that would, among others, make the home

entrance, interior routes of travel, kitchen, and bathrooms, fully accessible to persons with disabilities. The list must be made available beginning 90 days after the Department of Housing and Community Development adopts a standard form, but no sooner than July 1, 2004. It would provide that a willful violation of these provisions is punishable by a civil penalty of \$500. DFEH does not enforce these provisions.

Bill Number: AB 1400 (Wolk), Chapter 648

Code Section Added: Health and Safety Code section 17959.6

Landlord/Tenants: Menacing and Retaliatory Acts

This bill makes it unlawful for a landlord to engage in illegal conduct meant to influence a tenant to vacate a rental dwelling. A tenant who files a civil action may be entitled to up to a \$2,000 civil penalty. A landlord may be subject to the penalty if he or she engages in theft or extortion, use or threatened use of force, or menacing conduct that interferes with the tenant's right to quiet enjoyment of the premises and creates an apprehension of harm. This bill also increases from \$1,000 to \$2,000 the punitive damages award against a landlord for retaliatory acts against a tenant. DFEH does not enforce these provisions.

Bill Number: AB 1059 (Lieber), Chapter 542

Code Section Amended: Civil Code section 1942.5

Code Section Added: Civil Code section 1940.2

Mobile Home Park Termination of Tenancy

This bill adds assault with a firearm and battery resulting in serious bodily harm, child molestation, and arson to the types of criminal offenses that can result in the termination of a mobilehome park tenancy. Under current law, a mobilehome park tenancy may be terminated when a homeowner or resident is convicted of prostitution or a felony controlled substance offense if the act is committed in the mobilehome park.

Bill Number: AB 767 (Nakano), Chapter 388

Code Section Amended: Civil Code section 798.56

Fair Housing - Multistory Dwelling Units - Townhouses

This bill amends the FEHA to require that ten percent of the multistory dwelling units (townhouses included), for which a construction permit is issued on or after July 1, 2005 comply with the accessibility requirements of the FEHA. In addition, the multistory dwelling units must contain an accessible route to the primary entry-level entrance and at least one accessible bathroom on the primary entry level and in the public and common areas.

Bill Number: SB 1025 (Escutia), Chapter 642

Code Section Amended: Government Code section 12955.1

Code Section Added: Government Code section 12955.1.1

Recovery of Fees

This bill would allow the Attorney General's office to recover reasonable attorney's fees and costs in civil actions filed pursuant to the FEHA.

Bill Number: AB 1759 (Committee on Budget), Chapter 159

Pertinent Code Section Amended: Government Code section 12989.3

RELATED STATUTES

Domestic Partners

This bill enacts the California Domestic Partner Rights and Responsibilities Act of 2003. The Act extends to domestic partners rights, protections, and benefits, as well as responsibilities, obligations, and duties that are provided to spouses under the law. Some of these rights and obligations include those associated with the custody of children. It also includes the protections and benefits that are granted to a surviving spouse of a decedent. Furthermore, the Act provides the same rights and obligations that occur in the dissolution of a marriage, including the division of joint property pursuant to community property laws. DFEH does not enforce these provisions.

Bill Number: AB 205 (Goldberg), Chapter 421

Code Sections Amended: Family Code sections 297, 298 and 298.5; section 3 of Chapter 447 of the statutes of 2002 relating to domestic partnerships

Code Sections Added: Family Code sections 297.5, 299.2 and 299.3; Government Code section 14771

Code Section Repealed: Family Code section 299.5

Domestic Partners and State Contracts

This bill prohibits state agencies from entering into any contract for goods or services for \$100,000 or more with a contractor that, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees. This provision does not apply to contracts entered into before January 1, 2007 unless those contracts are amended after December 31, 2006. If the duration of a contract executed or amended before January 1, 2007 is for more than one year beyond January 1, 2008, the provisions of this bill apply to the contract on January 1, 2008. Under certain circumstances, a state agency may waive the requirements of this bill. This bill also provides that every contract subject to this bill shall contain a statement by which the contractor certifies that the contractor complies with the provisions of this bill. DFEH does not enforce these provisions.

Bill Number: AB 17 (Kehoe), Chapter 752

Code Section Added: Public Contract Code section 10295.3

Family Temporary Disability Insurance - Unemployment and Disability Compensation

Effective July 1, 2004, California workers will be able to take up to six (6) weeks of paid leave per year for the purpose of caring for a new child by birth, adoption, or foster-care placement. Last year, legislation established the Family Temporary Disability Insurance (FTDI) program, also called the "Paid Family Leave (PFL)" benefit program, believed to be the first of its kind in the United States. The FTDI program makes paid leave equally available to mothers and fathers. The program also provides paid leave for the care of a seriously ill child, spouse, domestic partner, or parent. The paid-leave benefit program applies to all employees who are covered by the State Disability Insurance (SDI) program. The statute specifically provides FTDI leave must be taken concurrently with leave under the federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Under the new law, compensation for covered leave will be funded by employee contributions, which will be deposited into a special family temporary disability fund and administered by California's State Disability Insurance Program. This bill makes conforming and clarifying changes to the provisions relating to the FTDI.

DFEH does not enforce this law. The Employment Development Department administers the Paid Family Leave program. Attached is a comparison chart of the CFRA & FTDI.

Bill Number: SB 727 (Kuehl), Chapter 797

Code Sections Amended: Labor Code sections 4903 and 4904; Unemployment Insurance Code sections 140.5, 984, 1143, 2601, 2613, 2656, 2676, 2679, 2707.5, 2708, 2708.1, 2709, 2714, 3012, 3253, 3254, 3300, 3301, 3302, 3303 and 3305

Discrimination - Foster Children

This bill provides that foster children and their caregivers have the right to fair and equal access to all available services, placement, care, treatment, and benefits. It also protects foster children and their caregivers from discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or HIV status. DFEH does not enforce these provisions.

Bill Number: AB 458 (Chu), Chapter 331

Code Sections Amended: Health and Safety Code sections 1522.41, 1429.2 and 1563; Welfare and Institutions Code sections 16001.9 and 16003

Code Section Added: Welfare and Institutions Code section 16013

Labor and Workforce Development Agency - Penalties

This bill, to be known as the Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code when the Labor Commissioner fails to act. The employees who file the actions may collect penalties ranging from \$100 per employee to \$200 per worker per pay period for subsequent violations. The penalties collected would be distributed as follows: 50% to the General Fund, 25% to the agency

for education, and 25% to the aggrieved employee. The aggrieved employee may also recover attorney's fees and costs. DFEH does not enforce these provisions.

Bill Number: SB 796 (Dunn), Chapter 906

Code Section Added: Labor Code, Division 2, Part 13 (commencing with section 2698)

Racial Discrimination Definition

This bill defines "racial discrimination" as it is defined in the Convention on the Elimination of All Forms of Racial Discrimination. This treaty was signed in 1966 and ratified in 1994 by the United States Senate. The bill also provides that Article 1, section 31 of the California Constitution (Proposition 209) shall not be interpreted as granting an individual a private cause of action to challenge special measures adopted by the government to secure the advancement of racial groups. It also provides that special measures shall not be interpreted as preferential treatment.

Bill Number: AB 703 (Dymally), Chapter 211

Code Section Added: Government Code section 8315

State and Consumer Services Agency

This bill moves the Victim Compensation and Government Claims Board under the jurisdiction of State and Consumer Services Agency (SCSA) and allows the Secretary of SCSA or his/her designee to serve on the Board. This bill also makes technical, non-substantive changes to statutes governing the organization of SCSA to accurately reflect those governmental entities that report to SCSA. This bill also updates the reporting relationship that exists between SCSA, the Fair Employment and Housing Commission, and the California African-American Museum.

Bill Number: AB 702 (Jackson), Chapter 84

Code Sections Amended: Government Code sections 12804 and 13901

Discrimination - State Programs and Activities

SB 302 requires that the California State University System comply with the accessibility requirements of the federal Rehabilitation Act of 1973 and its implementing regulations. The purpose of which is to improve persons with disabilities access to electronic or information technology. This bill corrects an oversight in SB 105 (Stats. 2002, c. 1102) which applied the accessibility requirements to all state governmental agencies and entities but inadvertently failed to mention the above-mentioned university system.

Bill Number: SB 302 (Kuehl), Chapter 784

Code Section Amended: Government Code section 11135

State Employees - Dismissed Employees - Exams

This bill requires that the State Personnel Board (SPB) establish a rule that would grant a dismissed state employee a blanket waiver to apply for any civil service examination instead of applying for a separate waiver for each exam. It also requires that the SPB prepare a written notice that explains the effect of dismissal from state employment on eligibility to take civil service examinations and the process by which a dismissed employee can compete in a civil service examination.

Bill Number: AB 577 (Jerome Horton), Chapter 836
Code Section Added: Government Code section 18941

State Payroll Statements

This bill requires that state agencies issue to state employees, at the discretion of the employee, their payroll statements electronically rather than in writing. This bill also specifies that the electronic statement would only be provided if the "21st Century Project" is funded and funding from that project is available to the Controller to provide the electronic statements.

Bill Number: AB 385 (Nakano), Chapter 433
Code Section Amended: Government Code section 19849.7

Personal Services Contracts - Legal Services

This bill requires state agencies and the Attorney General provide specific notices to the designated representative of State Employees Bargaining Unit 2 regarding contracts with outside counsel and the consent of the Attorney General with regard to those contracts. This bill would exempt from the notice requirement certain confidential matters and would deem disclosures made in a required notice to be privileged communications.

Bill Number: AB 862 (Firebaugh), Chapter 862
Code Section Added: Government Code section 11045

Public Employees Retirement Enhancement

This bill allows state employees who are members of PERS to purchase up to five years of service credit in order to enhance their retirement benefit. The contributions must be in one-year increments of not less than one year, or more than five years. A member may not elect additional retirement service credit more than once. The additional credit may not be counted to meet the minimum qualifications for service or disability retirement or for health care benefits. The member must pay the entire cost of the benefit.

Bill Number: AB 719 (Negrete McLeod), Chapter 836
Code Section Added: Government Code section 20909

State Employees Memorandum of Understanding

This bill ratifies the memorandum of understanding negotiated between the state and the California State Employees Association (representing Bargaining Unit 1 and 4, among others). AB 375 specifically provides the following:

- 1) State pays 80% health benefits of employee and 80% for dependents
- 2) Defines "Final Compensation" for pension purposes as the highest annual compensation the member would have earned as of July 1, 2003, if the 5% reduction had not occurred.

Bill Number: AB 375 (Bermudez), Chapter 615

Code Sections Added: Government Code sections 20035.4, 20035.3, 20035.9, 22825.12 and 22825.19

State Supervisor Training

This bill requires that the existing mandatory supervisor's training for state employees include in its curriculum employment law as it relates to individuals with disabilities.

Bill Number: AB 268 (Mullin), Chapter 165

Code Section Amended: Government Code section 19995.4

Teacher Development - Intolerance and Hatred Prevention

This bill would provide funding to eligible school districts and charter schools for training classroom instructional aides and certified teaching assistants in "intolerance and hatred prevention. "

Bill Number: AB 1250 (Laird), Chapter 346

Code Section Amended: Education Code section 44579.1

Voter Registration

This bill requires that the California voter registration form contain a space where the voter has the option of indicating his/her ethnicity, race, or both.

Bill Number: AB 587 (Ridley-Thomas), Chapter 385

Code Section Amended: Elections Code section 2150

**Comparison of Major Distinctions in the California Family Rights Act/
Family Medical Leave Act and Paid Family Leave (PFL) also known as
Family Temporary Disability Insurance (FTDI)**

	California Family Rights Act (CFRA)/Family Medical Leave Act (FMLA)	Paid Family Leave (PFL) or Family Temporary Disability Insurance (FTDI)
Covered Employer	50 or more employees within a 75 mile radius	One or more employees
Eligible Employee	Must have worked for employer 12 months, and 1,250 hours in last 12-month period	There is no set number of hours worked required of employee; must contribute to PFL; waiting period of 7 consecutive days during which no benefits are available
Amount of Leave/ Paid Time Off	12 weeks in a 12-month period (usually unpaid)	6 weeks in a 12-month period (paid)
Reason for Leave/ Paid Time Off	Birth of employee's own child, placement of child with employee for adoption or foster care, or employee's own serious health condition or serious health condition of child, parent or spouse of employee	To bond with employee's own child or employee's domestic partner's child; or a child placed for adoption or foster care with employee or employee's domestic partner; seriously ill child, parent, spouse or domestic partner of employee
Medical Certification Requirement	Employee must notify employer within 30 days, or reasonable time under the circumstances, of need for CFRA leave; employer may require medical certification	Employee must file claim with EDD, including certification from family member's medical doctor
Leave Usage	For the birth of employee's own child, placement of child with employee for adoption or foster care, or serious health condition of child, parent or spouse of employee, an employer may require employee to use vacation leave or other paid leave credit For the employee's own serious health condition, the employer may require the employee (or the employee may elect) to use sick leave	PFL must be taken concurrently with leave taken under FMLA and CFRA Employer may require employee to take up to two weeks earned, but unused, vacation prior to the employee's initial receipt of PFL benefits If employee has less than one week of unused vacation, that leave shall be applied to the waiting period
Employee Reinstatement Rights	Employer must guarantee employee reinstatement to same or comparable position following CFRA leave	Employer not required to hold job for employee on PFL; however, if employee is taking CFRA leave concurrently with PFL, employee has reinstatement rights under CFRA/FMLA
Relationship to Current Leave Laws	Unless employee is disabled by pregnancy, CFRA/FMLA run concurrently	For eligible employees, PFL runs concurrently with FMLA/CFRA

NOTE: This chart is for informational purposes only.

- Click [here](#) for more information about CFRA, or contact our Communications Center toll free at **1-800-884-1684**.
- For questions about PFL, visit the Employment Development Department's Web site at www.edd.ca.gov or call **1-877-BE-THERE**.