

**CIVIL RIGHTS COUNCIL
PROPOSED MODIFICATIONS TO
CONTRACTOR NONDISCRIMINATION AND COMPLIANCE REGULATIONS**

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Civil Rights Department

Chapter 5. Civil Rights Council

TEXT

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Subchapter 1. Administration

Article 2. Powers and Duties of the Council

§ 11004. Other Powers and Duties.

The functions, powers and duties of the Council shall also include, but are not limited to, the authority to:

- (a) Make inquiries into general discrimination problems and issue informal and formal findings, including published reports;
- (b) Establish such advisory agencies and councils as will assist in fostering goodwill, cooperation and conciliation among groups and elements of the population of the state through studies, conciliation, hearings, and recommendations to the Council;
- (c) Hold hearings, issue publications, results of inquiries and research, and reports to the Governor and the Legislature that, in its judgment, will tend to aid in effectuating the purpose of the Fair Employment and Housing Act, promote good will, cooperation and conciliation, and minimize or eliminate unlawful discrimination, or advance civil rights in the State of California.
- ~~(d) Advise and concur with the Secretary of Health and Human Services in establishing standards and guidelines determining unlawful practices of state contractors under section 11135, et seq.~~

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections ~~11139.5~~, 12935, 12946 and 12990, Government Code.

Subchapter 5. Contractor Nondiscrimination and Compliance

Article 1. General Matters

§ 11105. Nondiscrimination Clause.

Each state contract and subcontract shall contain a nondiscrimination clause unless specifically exempted pursuant to section 11111. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of section 12990 of the Government Code only; clause (b) ~~contains language that~~ will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code sections 11135-~~11139.8~~ et seq.). Standardized state form OCP-1, containing clause (a), and OCP-2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP-1 or OCP-2, include the required clause in the written contract directly.

Clause (a)

1. Contractor and its subcontractors shall comply with the employment and state contractor provisions of the Fair Employment and Housing Act (Gov. Code, §§ 12900 et seq. & 12990) and applicable regulations (Cal. Code Regs., tit. 2, § 11000 et seq.), which are incorporated into and part of this contract.

2. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against or harass any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractors ~~and its~~ subcontractors shall ~~insure~~ ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. ~~Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Civil Rights Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full.~~ Contractor and its subcontractor shall, among other obligations, implement a non-discrimination program that complies with Government Code section 12990, take all reasonable steps necessary to prevent discrimination and harassment from occurring, take immediate and appropriate action to correct known harassment, train employees on sexual harassment prevention, comply with family and medical leave requirements, provide reasonable accommodations for disabilities, comply with applicable limitations on consideration of an applicant's criminal history, and not retaliate against employees asserting their rights, as required by law.

3. Upon reasonable notice of at least 24 hours, contractor and its subcontractors shall permit representatives of the Civil Rights Department and the awarding state agency to access, at any time during normal business hours, its books, records, accounts, and all other sources of information and its facilities as the Department or Agency shall require to ascertain compliance with this clause.

24. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. Contractor and its subcontractors shall comply with the employment and state contractor provisions of the Fair Employment and Housing Act (Gov. Code, §§ 12900 et seq.), and applicable regulations (Cal. Code Regs., tit. 2, § 11000 et seq.), which are incorporated into and part of this contract. During the performance of this contract, the recipient, contractor, and its subcontractors shall not deny the contract's benefits to any person unlawfully discriminate against or harass any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and its subcontractors shall insure ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination and harassment. Contractor and its subcontractors shall, among other obligations, implement a non-discrimination program that complies with Government Code section 12990, take all reasonable steps necessary to prevent discrimination and harassment from occurring, take immediate and appropriate action to correct known harassment, train employees on sexual harassment prevention, comply with family and medical leave requirements, provide reasonable accommodations for disabilities, comply with limitations on consideration of an applicant's criminal history, and not retaliate against employees asserting their rights, as required by law.

2. Recipient (as defined by Cal. Code Regs., tit. 2, § 14020(pp)), contractor, and its subcontractors shall also comply with the provisions of the Fair Employment and

Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135–11139.8 et seq.), and the applicable regulations or standards adopted by the awarding state agency to implement such article. (Cal. Code Regs., tit. 2, § 14000 et seq.). During the performance of this contract, recipient, contractor, and its subcontractors shall not deny the contract's benefits or discriminate against any person on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental disability and/or physical disability), medical condition, genetic information, marital status, or sexual orientation.

3. Contractor Upon reasonable notice of at least 24 hours, recipient, contractor, its subcontractors, or recipient shall permit access by representatives of the Civil Rights Department and the awarding state agency to access, at any time upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

4. Recipient, contractor, and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. The recipient or contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Sections 11135, 11136, 11137, and 12990, Government Code.

Subchapter 9. Nondiscrimination in State-Supported Programs and Activities

Article 1. General Matters

§ 14000. Purpose of This Subchapter.

(a) The purpose of this subchapter is to implement Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, sections 11135 through 11139.8, inclusive et seq. (hereinafter "the Act" or "Article 9.5"). Section 11135 provides, inter alia

"No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated or administered by the state or any state

agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding section 11000, this section applies to the California State University.”

(b) These rules, regulations, and standards are established in order to advance the objectives of Article 9.5 and this subchapter; to protect against unlawful discrimination and denial of full and equal access; to ensure that consistent practices are utilized by state agencies with respect to Article 9.5; to eliminate conflicting interpretations and standards of enforcement insofar as they afford less protection; and to increase efficiency and ensure that the ultimate beneficiaries of Article 9.5 have a clear understanding of their rights and the means by which to enforce them.

(c) All definitions and prohibitions set forth in other subchapters of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are hereby incorporated by reference. Acts or omissions that are violations of said prohibitions are also violations of this subchapter, and subject to the sanctions provided for in this subchapter, when the jurisdictional requirements of Article 9.5 are met. In the event of any conflict between the definitions and prohibitions of the provisions incorporated by this reference and the definitions and prohibitions set forth in this subchapter, the definitions and prohibitions set forth in this subchapter shall prevail.

(d) The provisions of Article 9.5, this subchapter and other implementing regulations shall be construed liberally for the accomplishment of the purposes of this part.

(e) Article 9.5’s prohibition against discrimination includes intersectional discrimination, discrimination on more than one basis, harassment, coercion, intimidation, and retaliation for exercising a protected right or refusing to engage in an act prohibited by Article 9.5.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, ~~11139.8~~ and 12993, Government Code.

§ 14003. Legal Scope.

(a) The protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this subchapter, and other implementing regulations are not exclusive and are in addition to any other protections, prohibitions, rights, duties, sanctions, and remedies imposed by other federal or state laws. Compliance with other laws does not in itself constitute compliance with or discharge the protections, prohibitions, rights, duties, sanctions, and remedies imposed by Article 9.5, this subchapter, or other implementing regulations, nor does compliance with Article 9.5, this subchapter, or other implementing regulations necessarily constitute compliance with other laws where those other laws impose requirements that are more protective of protected classes. Compliance with such other laws does not in itself exempt the state, a state agency, or a recipient from complying with Article 9.5 or other implementing regulations.

(b) Article 9.5 shall not be interpreted in a manner that would adversely affect lawful programs or activities that benefit members of protected classes in order to overcome the effects of

conditions that result or have resulted in limited participation in, or receipt of benefits from, any program or activity provided by a covered entity.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, ~~and 11139 and 11139.5~~, Government Code.

Article 2. General Definitions

§ 14020. Definitions.

As used in Article 9.5 and this subchapter, the following definitions shall govern the meaning of terms defined, unless the terms are otherwise defined or modified in the context in which they are used in Article 9.5, this subchapter, or any other implementing regulations:

- (a) “The Act” or “Article 9.5” refer to Government Code Article 9.5, section 11135 et seq., and are used interchangeably.
- (b) “Adverse action” includes any action that harms or has a negative effect on an aggrieved person, including harassment, intimidation, threats, coercion, inferior or unfavorable treatment, discrimination, or any denial of full and equal access.
- (c) “Age” refers to the chronological age of any individual who has reached a 40th birthday. “Age distinction” means any action using age or an age-related term. “Age-related term” means a word or words which describe or imply a particular age or range of ages (for example: “children,” “adult,” “older persons,” but not “student”).
- (d) “Aggrieved person” includes any person who believes that they have been injured by a discriminatory practice or denial of full and equal access, or believes that the person will be injured by a discriminatory practice or denial of full and equal access that is about to occur. “Aggrieved person” shall include unpaid interns, volunteers, and persons providing services pursuant to a contract.
- (e) “Ancestry” means an individual’s actual or self-identified family or ethnic origin, descent or lineage, nationality group, tribal affiliation, or geographical place of origin in which the individual or the individual’s parents or ancestors originated, or the perception of the individual’s ancestry.
- (f) “Assistance animals” include service animals and support animals, as described in subsections (1) and (2) below. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional, cognitive, or similar support that alleviates one or more identified symptoms or effects of an individual’s disability.

(1) "Service animals" are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

(A) "Guide dog," as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

(B) "Signal dog," as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) "Service dog," as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) "Miniature horses" meeting the requirements of 28 CFR 35.136(i) (March 13, 2011) and 28 CFR 36.302(c)(9) (October 11, 2016).

(E) "Service animals in training," including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) "Support animals" are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

(g) "Associated with" means linked or related to a person who is or is perceived to be a member of a protected class; who identifies with or advocates for a member of a protected class; or who expresses support or sympathy for, encourages, or participates in groups composed of or representing members of a protected class or groups organized for the protection or assertion of rights protected under this subchapter. "Associated with" includes an individual's current or prior social or professional relationship with, marriage to, or domestic partnership with a member of a protected class; an individual's familial relationship with a person who is a member of the class, including an adoptive, step, or foster care relationship; a person's relationship as an attendant, aide, or caregiver of an individual with a disability; membership in or association with an organization identified with or seeking to promote the interests of a protected class; attendance or participation in schools, clubs, associations, organizations, or places of worship, generally associated with a protected class; being on the premises of a facility or building owned or rented by an entity, group, or person that has, or is identified with people who have, one or more characteristics of a protected class; or actual or perceived association of a person's name or other characteristics with a protected class.

(h) “Auxiliary aids and services” include:

(1) Qualified Interpreters; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, video relay services, video remote interpreting (VRI), or other telecommunications devices that make communication as equally effective as oral communication in English; videotext displays; accessible electronic and information technology; tactile sign language; or other equally effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing or assisting those individuals to communicate;

(2) Qualified Readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision or assisting those individuals to communicate;

(A) “Qualified Reader” means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

(3) qualified interpreters, speech-to-speech relay services, or other effective methods of making aurally delivered information available to individuals who have speech disabilities or assisting those individuals to communicate;

(4) acquisition or modification of equipment or devices; and

(5) other similar services and actions, including newly developed forms of electronic information systems and technology as they become available.

(i) “Benefit” means anything offered or provided with the intention of or for the purpose of contributing to an improvement in condition, maintaining a condition, or preventing anticipated deterioration of a condition over time, including aid or services offered or provided by a covered entity.

(j) “Color” means the actual or perceived physical characteristics of an individual’s complexion, pigmentation, or skin tone.

(k) “Contract” means any agreement, upon consideration, to do or not do a particular act or acts.

(l) "Contractor" includes a person or recipient that receives any state support under contract or subcontract. "Contractor" includes prime contractors and subcontractors at any tier.

(m) "Covered entity" includes:

(1) the state or a state agency, including the California Judicial Branch;

(2) any entity or individual involved in carrying out any program or activity that is conducted, operated, or administered by the state or by any state agency;

(3) any entity or individual, including local agencies, recipients, contractors, and grantees, that is funded directly by the state or receives any state support;

(4) a local agency and any entity or individual involved in carrying out any program or activity of a local agency if any part of the local agency receives state support;

(5) a public college, university, or other postsecondary institution, or a public system of higher education; or a local educational agency system of career and technical education, or other public school system;

(6) a corporation, partnership, other private organization, or a sole proprietorship, or a private college, university, or other postsecondary institution, or system of education; or a private career or technical education school, or other private school if:

(A) state support is extended to or received by such entity; or

(B) the entity is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(C) the entire facility, plant, or other comparable, geographically separate facility, if any part of it receives state support or to which state support is extended, in the case of any corporation, partnership, private organization, or sole proprietorship;

(7) any program, activity, benefits, or services outside of California that receive state support or to which state support is extended;

(8) any other entity which is established by two or more covered entities; and

(9) the California State University, notwithstanding Government Code section 11000.

(n) "CRD" or "the Department" means the Civil Rights Department as defined in section 12901 of the Government Code.

(o) “Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(p) “Disability” means a physical or mental impairment that limits one or more major life activities of an individual, a record of such an impairment, or being regarded as having such an impairment. It includes any mental or physical disability as defined in this section, and shall be construed as follows:

(1) This subchapter provides protections that are independent from those in the federal Americans with Disabilities Act of 1990 (P.L. 101-3361) and the American with Disabilities Amendments Act of 2008 (P.L. 110-325) (collectively, “the ADA”), and may afford additional protections, but in no event shall be construed to provide fewer protections than the ADA. Notwithstanding the definitions of physical disability and mental disability in this section, if the definition of “disability” used in the ADA would result in broader protection of the civil rights of individuals with a mental disability or physical disability, or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in this section.

(2) All definitions shall be interpreted in accordance with the expansive construction mandates of section 12926.1 of the Government Code.

(3) “Mental disability” includes:

(A) having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity;

(B) any other mental or psychological disorder or condition not described in paragraph (A) that requires special education or related services;

(C) having a diagnosis, record, or history of a mental or psychological disorder or condition described in paragraph (A) or (B);

(D) being regarded or treated as having, or having had, any mental condition that makes achievement of a major life activity difficult; or

(E) being regarded or treated as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (A) or (B).

(4) “Physical Disability” includes:

(A) having any physiological disease, disorder, or condition, cosmetic disfigurement, or anatomical loss that affects one or more body systems (neurological, including immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic; lymphatic; skin; and endocrine systems), and limits a major life activity;

(B) any other health impairment not described in subparagraph (A) that requires special education or related services;

(C) having a diagnosis, record, or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in subparagraph (A) or (B) of this paragraph;

(D) being regarded or treated as having, or having had, any physical condition that makes achievement of a major life activity difficult; or

(E) being regarded or treated as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in subparagraph (A) or (B) of this paragraph.

(5) “Having a record of such impairment” means has a history of, or has been misclassified as having, an impairment that limits one or more major life activities.

(6) Reserved.

(7) The definition of disability in this subchapter shall be construed in favor of broad coverage of individuals under this subchapter, to the maximum extent permitted by the terms of this subchapter. Disabilities include contagious diseases, noncontagious disease, orthopedic impairments, visual impairments, speech impairments, hearing impairments, traumatic brain injuries, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disabilities, developmental disabilities, autism or autism spectrum, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(8) Individuals are protected from discrimination and denial of full and equal access due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived or regarded as disabling or potentially disabling (even if it has no present disabling effect), including when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity, whether or not the impairment actually limits or is perceived to limit a major life activity.

(9) Physical and mental disabilities include chronic or episodic conditions, such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. An impairment that is episodic or in remission is a disability if it would limit a major life activity when active.

(10) The definitions of “physical disability” and “mental disability” require a “limitation” upon a major life activity, but do not require, as does the ADA, a “substantial limitation.” This distinction is intended to result in broader coverage under this subchapter than under the ADA.

(11) “Major life activities” shall be broadly construed and include physical, mental, and social activities; caring for one’s self; performing manual tasks, walking, seeing, hearing, speaking, breathing, eating, sleeping, standing, lifting, bending, learning, reading, concentrating, thinking, communicating, and working. Working is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employment.

(12) For purposes of subparagraph (11), a major life activity also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, cardiovascular, genitourinary, hemic, neurological, lymphatic, brain, respiratory (including speech organs), circulatory, endocrine, and reproductive functions.

(13) A disability limits a major life activity if it makes the achievement of the major life activity difficult.

(14) An impairment that limits one major life activity need not limit other major life activities in order to be considered a disability.

(15) The determination of whether an impairment limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the ADA. Mitigating measures include:

(A) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(B) use of assistive technology devices and assistive technology services;

(i) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to

increase, maintain, or improve functional capabilities of individuals with disabilities.

(ii) "Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

(C) reasonable accommodations or auxiliary aids or services; or

(D) learned behavioral or adaptive neurological modifications.

(16) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment limits a major life activity. As used in this subparagraph:

(A) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(B) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

(17) "Disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. "Sexual behavior disorders" means pedophilia, exhibitionism, and voyeurism.

(18) "Current unlawful use of controlled substance or drugs" does not include an individual who:

(A) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated and is no longer engaging in such use;

(B) is participating in a supervised rehabilitation program and is no longer engaging in such use;

(C) is erroneously regarded as engaging in such use; or

(D) is using drugs taken under the supervision of a licensed health care professional, or other uses authorized by law.

(19) Notwithstanding other provisions of this subchapter, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on

the basis of current unlawful use of drugs if the individual is otherwise entitled to such services.

(q) “Ethnic group identification” means the actual or self-identified possession of the physical, cultural, or linguistic characteristics associated with a racial, cultural, or ethnic group or country, geographical place of origin, or the status of being a descendent of someone with such actual or self-identified characteristics, or the perception of a person’s ethnic group identification. “Ethnic Group Identification” includes ancestry, color, national origin, and race.

(r) “Facility” means all or any portion of buildings, structures, sites, complexes, vehicles, equipment, rolling stock or other conveyances, vessels, roads, walks, passageways, parking lots, other real or personal property, or interests in property, such as a life estate, including the site where the building, property, structure or equipment is located, and information systems and electronic technology, including mobile and tablet-based technology and newly developed forms of electronic information systems and technology as they become available.

(s) “CRC” or “Council” mean the Civil Rights Council as defined in section 12903 of the Government Code.

(t) “Gender” means sex and includes a person’s gender identity and gender expression, or a perception of any of the aforementioned.

(u) “Genetic information” means information about an individual’s genetic tests, the genetic tests of an individual’s family members, the manifestation of a disease or disorder in the individual’s family members, or the perception of any of the aforementioned. Genetic information includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. Genetic information does not include information about the sex or age of any individual.

(v) “Grant” means an agreement to provide, or the bestowal of, state support, including awards, donations, endowments, and gifts.

(w) “Grantee” means a person or recipient that receives state support under a grant or subgrant. “Grantee” includes prime grantees and subgrantees at any tier.

(x) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(y) “Intersectional discrimination” means discrimination on the basis of a combination of protected classes, i.e., where two or more bases for discrimination are alleged. Thus, an entity that is not unlawfully discriminating solely on the basis of race or gender still may be

discriminating against individuals who are perceived as or identified as having a combination of more than one protected basis, such as Asian males.

(z) “Local agency” means a public district, special district, public corporation, authority, joint power authority, agency, board, commission, county, city, city and county, school district, or other public educational entity, redevelopment agency, or successor to a redevelopment agency, regional agency, public or publicly administered health entity, or other public entity.

(aa) “Marital status” means an individual’s actual or perceived pending state of marriage, non-marriage, domestic partnership, divorce or dissolution, separation, widowhood, annulment, or other marital state.

(bb) “May” means permissive.

(cc) “Medical Condition” means any actual or perceived health impairment related to or associated with a diagnosis, record, or history of cancer; or genetic characteristics known to be a cause of a disease or disorder or associated with a statistically increased risk of developing a disease or disorder. “Genetic characteristics” means either of the following:

(1) any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or that person’s offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder; or

(2) inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or that person’s offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(dd) “National origin” includes:

(1) the individual’s or ancestors’ actual or perceived:

(A) physical, cultural, or linguistic characteristics, or name associated with a national origin group;

(B) marriage to or association with persons of a national origin group;

(C) tribal affiliation;

(D) membership in or association with an organization identified with or seeking to promote the interests of a national origin group; and

(E) attendance or participation in schools, places of worship or other religious institutions generally used by persons of a national origin group.

(2) “National origin groups” include ethnic groups or people from particular geographic places of origin and countries, whether or not they are presently in existence.

(3) “National origin” includes possessing a driver’s license or identification card granted under sections 12801.6, 12801.8, or 12801.9 of the Vehicle Code, or a driver’s license or identification card identified with the term “Federal Limits Apply.”

(ee) “Other implementing regulations” means any additional regulations, guidelines, or procedures other than this subchapter, adopted by the state or any state agency. Other implementing regulations, guidelines, or procedures shall not conflict with or provide fewer protections than the regulations in this subchapter.

(ff) “Perceived membership in a protected class” means being regarded as, perceived as, or treated as a member of a protected class or as having the characteristics associated with being a member of a protected class, regardless of whether the perception is accurate.

(gg) “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, corporation, association, committee, legal representative, trustee, trustee in bankruptcy, receiver, and any other organization, entity, group, or group of persons acting in concert.

(hh) “Practice” or “Practices” includes any action or failure to act, rule, law, ordinance, regulation, guideline, decision, standard, project, policy, process, or procedure, whether written or unwritten or singular or multiple.

(ii) “Program or activity” includes all of the operations and facilities of, or services, benefits, or aid provided by, a covered entity, directly or indirectly through others by grants, contracts, arrangements, or agreements. Such programs or activities include the provision of employment or goods; the procurement of goods or services; the provision of education, training, health, welfare, rehabilitation, housing, or other services; the provision of grants, cash, financial aid or other benefits, property, or loan assistance; permitting, site and facility selection decisions; or the provision of facilities for furnishing services, financial aid, or other benefits.

(1) The program or activity covered by Article 9.5, this subchapter, or other implementing regulations need not receive direct state support to be covered. Such coverage extends to all the operations of the covered entity. This is true even if only one part of the covered entity receives state support.

(2) The program or activity provided by the covered entity include any service, activity, financial aid or benefit provided in, at or through a facility that is or was provided by the state or any state agency or with the aid or benefit of state support or other funds or resources.

(jj) “Protected class” and “protected basis” are used interchangeably. They refer to the bases on which individuals are entitled to protections against discrimination and denial of full and equal access pursuant to Article 9.5 of the Government Code, Part 2.8 (commencing with section 12900) of the Government Code, section 51, 51.5, 51.7, 54, and 54.2 of the Civil Code, and any regulation adopted by the Council to implement these sections or Article 1 (commencing with section 12960) of the Government Code, as applicable. Protected bases include sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental and physical disability), medical condition, genetic information, marital status, and sexual orientation. To the extent protected bases are defined in sections 12926 and 12926.1 of the Government Code, those terms shall have the meanings set forth in this subchapter. Protected bases not defined in section 12926 of the Government Code or the Council’s implementing regulations are defined in this subchapter. All protected bases include a perception that a person is a member of a protected class or has any of those characteristics, or that a person is associated with a person who is, or is perceived to be, a member of a protected class. Discrimination or the denial of full and equal access on the basis of a protected class includes discrimination or denial of full and equal access on the basis of a stereotype about members of the protected class.

(kk) “Qualified individual with a disability” means:

(1) an individual with a disability who, with or without reasonable accommodations to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity or contractor, or recipient of a public entity.

(2) with respect to employment, a qualified individual with a disability is an applicant or employee who, with or without reasonable accommodations, can perform the essential functions of the job in question.

(ll) “Qualified interpreter” means a person qualified and capable of effective, accurate, and impartial rendition of spoken or signed communication from one language to another between people who speak, sign, read, or write in a different language, both receptively and expressively, using any necessary specialized vocabulary and with appropriate cultural relevance, either simultaneously or consecutively. “Interpretation” is the act of listening to spoken word, visual or tactile transmission of manual language, or reading something written in one language (source language) and expressing it accurately and with appropriate cultural relevance into another language (target language), either simultaneously or

consecutively. Whether an interpreter is qualified to provide services requires more than self-identification as bilingual or multilingual. To be qualified an interpreter must: (i) demonstrate proficiency in and ability to communicate information accurately in both the source and target language; (ii) have knowledge in both languages of any specialized term, concepts, or any particularized vocabulary and phraseology peculiar to the program or services; (iii) understand and follow interpreters' and translators' confidentiality, ethics, and impartiality rules; and (iv) understand and adhere to their roles as interpreters or translators. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. Also, to be qualified an interpreter must have received adequate education and training in interpreter ethics, conduct, practice, and confidentiality. In some circumstances, effective communication may require that an individual be provided more than one interpreter.

(mm) "Race" refers to the identification of a group of people as distinct from other groups based on supposed or presumed physical, cultural, or genetic characteristics, or the perception of an individual's race, without regard to whether those characteristics are immutable. "Race" is construed broadly to include classifications that might otherwise appear to be covered only by other protected bases such as national origin or religion. Race includes hair texture and protective hairstyles, including braids, locks, and twists.

(nn) "Real property" means land, whether improved or unimproved; structures on land; fixtures attached to structures; interests in such property; and space on, over or under such property.

(oo) "Reasonable Accommodations" or "Reasonable Modifications" for individuals with disabilities are used interchangeably under this subchapter to mean the full range of adjustments necessary to afford an individual with a disability a full and equal opportunity to use or enjoy benefits, privileges, or services of a program or activity. They include, for example, changes, modifications, or adjustments in facilities, fixtures, furniture, equipment, devices, rules, policies, practices, procedures, licensing, ordinances, regulations, programs, the provision of auxiliary aids and services, and other such needed accommodations.

(pp) "Recipient" means any covered entity or person, other than the state or a state agency, whether operating directly or indirectly through another recipient, including any local agency, contractor, subcontractor, agent, successor, assignee, or transferee of a recipient who receives state support. The term "recipient" excludes the ultimate beneficiary of state support.

(qq) "Religion," "religious creed," "religious observance," "religious belief," and "creed" are used interchangeably under this subchapter to mean any actual or perceived traditionally recognized religion as well as beliefs, observances, or practices, which an individual sincerely holds and which occupy in their life a place of importance parallel to that of traditionally recognized religions. This includes all aspects of religious belief, observance, and practice, such as duties of the clergy or elders, and religious dress and grooming practices. Religion

includes atheism, agnosticism, and an individual's choice not to adopt a traditional or specific religious belief.

(1) "Religious dress practices" shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual's religious observance.

(2) "Religious grooming practices" shall be construed broadly to include forms of head, facial, and body hair, or body markings, that are part of an individual's religious observance.

(rr) "Sex" includes pregnancy, childbirth, and breastfeeding; medical conditions related to pregnancy, childbirth, or breast feeding; recovery from childbirth or termination of pregnancy, or other conditions related to the capacity to bear children; gender; transgender; intersex; transitioning; sex stereotype; gender identity; gender expression; and perception by a third party of any of the aforementioned.

(1) "Gender identity" means each person's internal understanding of their gender, or perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.

(2) "Gender expression" means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.

(3) "Transgender" is a general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual."

(ss) "Sexual Orientation" means actual or perceived heterosexuality, homosexuality, and bisexuality. This refers to a person's emotional, romantic, or sexual attraction toward other people, and may be described by terms including gay, lesbian, bisexual, straight, or queer.

(tt) "Shall" means mandatory.

(uu) "State" means the State of California or any entity of the State of California other than a state agency.

(vv) "State agency" means an administrative subdivision or instrumentality of state government, including agencies, special purpose district, departments, offices, officers,

commissions, councils, authorities, boards, bureaus, and divisions, and includes the California State University.

(ww) “State support” includes any funds, financial assistance, grant, entitlement, loan, note, donation, cooperative agreement, subsidy, contract, transfer, or allocation of state funds or property, benefit, or any other arrangement by which the state or any state agency provides or otherwise makes available aid, services, or benefits for the use of or to recipients, including aid, services, or benefits in the form of:

(1) any payment, transfer, or allocation of funds;

(2) provision or use of services of state personnel;

(3) provision or use of state materials or equipment;

(4) provision or use of real or personal property or any interest in or use of such property, including:

(A) transfers or leases of property for less than fair market value or for reduced consideration; or

(B) proceeds from a subsequent transfer or lease of property if the state share of its fair market value is not returned to the state; or

(5) aids, services, or benefits that the state or any state agency administers or allocates, including any competitive or discretionary tax credits, and any payments, subsidies, or other assistance extended to any person, agency, or entity providing insurance, including health-related insurance coverage for payments to or on behalf of a person obtaining health-related insurance coverage from that entity, or extended directly to such individual for payment to any entity providing health-related insurance coverage.

(xx) “State-supported program” means any program or activity that receives state support, in whole or in part.

(yy) “Stereotype” means a belief about a person’s appearance or behavior, gender roles, gender expression, or gender identity, or other roles, expressions or identities, or about an individual’s ability or inability to perform certain kinds of work or to participate in or benefit from programs or activities, or receive health or other services, based on a myth, bias or prejudice, assumption, social expectation, convention, statistical probabilities, or generalization about the individual or about other persons in a protected class.

(zz) “Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include changes in name and pronoun usage, facility usage, participation in a covered

entity's sponsored activities (e.g., sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

(aaa) "Ultimate beneficiary" means a person in a protected class who receives, applies for, participates in or benefits from, or is unlawfully deterred or excluded from benefiting from, full and equal access to the benefits of, or employment with, or is subjected to discrimination under a program, activity, or service that is conducted, operated, or administered by any covered entity.

(bbb) "Video remote interpreting" ("VRI") service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, 11139, **11139.8**, 12901, 12903, 12926, 12926.1, 12940 and 12960, Government Code.

Article 3. Prohibited Practices Relating to All Groups Protected by Article 9.5

§ 14025. General Prohibitions.

No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability (including mental disability and/or physical disability), medical condition, genetic information, marital status, or sexual orientation, by action or inaction, be unlawfully denied full and equal access to the benefits of any program or activity or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered by a covered entity.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, **11139.8**, 12926, 12926.1 and 12940, Government Code.

Article 4. Remedial Actions

§ 14051. Exhaustion of Administrative Remedies.

(a) Exhaustion of administrative remedies available for employment claims under the Fair Employment and Housing Act, Government Code section 12900 et seq., shall not be a prerequisite to the bringing of actions for judicial enforcement of Article 9.5, this subchapter, or other implementing regulations, nor shall any person first be required to exhaust administrative remedies of any other state or federal agency or the internal grievance procedures of any recipient, or comply with the Government Claims Act, Government Code sections 900 et seq., before filing an intake form or a complaint with the Department or a civil action for enforcement of Article 9.5.

(b) Where an underlying administrative proceeding has occurred, the civil action or Department investigation of violations of Article 9.5, this subchapter, and implementing regulations shall not be limited to a review of the administrative record even if the civil suit includes several causes of action, some of which may be subject to a review of an administrative record requirement. A civil action shall proceed by trial de novo.

(c) In a civil action, to the extent an aggrieved person alleges employment discrimination in violation of the Fair Employment and Housing Act, Government Code section 12900 et seq., as a separate claim in addition to a violation of Article 9.5, the person must exhaust administrative remedies for those separate claims as required by Government Code section 12960 and implementing regulations.

(d) If an aggrieved person chooses to seek resolution of a claim under Article 9.5, this subchapter, or other implementing regulations through a state or state agency administrative procedure or internal agency grievance procedure other than through the Department, or if a complaint is referred to an agency for investigation pursuant to section 14052(b), the one-year deadline for filing a complaint with the Department under Government Code section 12960 shall be tolled for the pendency of the investigation.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, and 11139 and 11139.8.

Article 12. Specific Practices Prohibited -- Disability, Medical Condition, and Genetic Information.

§ 14343. Accessible Transportation.

(a) It is a prohibited practice for a covered entity, in carrying out any program or activity directly, or through contractual, licensing or other arrangements, to make or permit selections of sites or locations of facilities that fail to consider and allow for the availability, or lack thereof, of accessible public transportation for people with disabilities.

(b) It is a prohibited practice for covered entities providing public or private transportation subject to section 504 of the Rehabilitation Act of 1973, as amended, and/or the Americans with Disabilities Act of 1990, as amended, to fail to adhere to the nondiscrimination and accessibility requirements of those Acts (for example, those set forth in the U.S. Department of Justice (DOJ) implementing regulations at 28 CFR Parts 35 and 36, and those set forth in the U.S. Department of Transportation (DOT) implementing regulations at 49 CFR Parts 27, 37, 38, and 39, as those Parts existed in the 10/1/2018 revision, which includes compliance with DOT requirements governing rail, bus, fixed-route, demand-responsive, and paratransit services, including requirements relating to program access, new construction, alterations, and vehicles).

(c) It is a prohibited practice for covered entities operating fixed route bus systems or paratransit systems to fail to adhere to the accessibility requirements for new vehicles or

alterations of existing vehicles as set forth in the Americans with Disabilities Act of 1990, as amended, and section 504 of the Rehabilitation Act of 1973, as amended (for example and 49 CFR Part 27, as that Part existed in the 10/1/2018 revision).

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, and 11139 and 11139.5, Government Code.