

BP 6430

**PROHIBITION OF HARASSMENT AND
RETALIATION**

References:

- Education Code Sections 212.5, 44100, 66252, 66262.5, and 66281.5;
- Government Code Sections 12923, 12940, and 12950.1;
- Civil Code Section 51.9;
- Title 2 Sections 10500 et seq.;
- Title VII of the Civil Rights Act of 1964, 42 U.S. Code Section 2000e;
- Age Discrimination in Employment Act of 1967 (ADEA);
- Americans with Disabilities Act of 1990 (ADA)

All forms of harassment are contrary to basic standards of conduct between individuals. State and federal law, as well as this policy, prohibit harassment, and the District will not tolerate harassment. The District is committed to providing an academic and work environment that respects the dignity of individuals and groups. The District shall be free of unlawful harassment, including that which is based on any of the following statuses: race, religious creed, color, national origin, ethnicity, ancestry, immigration status, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, or because the person is perceived to have one or more of the foregoing characteristics.

The District seeks to foster an environment in which all employees, students, unpaid interns, and volunteers feel free to report incidents of harassment without fear of retaliation or reprisal. Therefore, the District also strictly prohibits retaliation against any individual for filing a complaint of harassment or for participating in a harassment investigation. Such conduct is illegal and constitutes a violation of this policy. The District will investigate all allegations of retaliation swiftly and thoroughly. If the District determines that someone has retaliated, it will take all reasonable steps within its power to stop such conduct. Individuals who engage in retaliatory conduct are subject to disciplinary action, up to and including termination or expulsion.

Any student, employee, unpaid intern, or volunteer who believes that harassment or retaliation has occurred in violation of this policy should immediately report such incidents by following the procedures described in AP 6435 Discrimination and Harassment Complaints and Investigations. The District requires supervisors to report all incidents of harassment or retaliation that come to their attention.

This policy applies to all aspects of the academic environment, including but not limited to classroom conditions, grades, academic standing, employment opportunities, scholarships, recommendations, disciplinary actions, and participation in any community

college activity. In addition, this policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities, and compensation.

The Chancellor shall establish procedures that define harassment on campus and in District programs, activities, and employment. The Chancellor shall further establish procedures for employees, students, unpaid interns, volunteers, and other members of the District community that provide for the investigation and resolution of complaints regarding discrimination and harassment, and procedures to resolve complaints of harassment and discrimination. State and federal law and this policy prohibit retaliatory acts by the District, its employees, students, and agents.

To this end, the Chancellor shall ensure that the institution undertakes education and training activities to counter harassment and to prevent, minimize, and/or eliminate any hostile environment that impairs access to equal education opportunity or impacts the terms and conditions of employment.

The District will publish and publicize this policy and related written procedures, including the procedure for making complaints, to administrators, faculty, staff, students, unpaid interns, and volunteers particularly when they are new to the institution. The District will make this policy and related written procedures (including the procedure for making complaints) available in all administrative offices and will post them on the District's website.

Employees who violate this policy and related procedures may be subject to disciplinary action up to and including termination. Students who violate this policy and related procedures may be subject to disciplinary measures up to and including expulsion. Unpaid interns who violate this policy and related procedures may be subject to disciplinary measure up to and including termination from the internship or other unpaid work experience program.

Also see BP/AP 6410 Nondiscrimination, BP/AP 6420 Equal Employment Opportunity, and AP 6435 Discrimination and Harassment Complaints and Investigations.

Date Adopted: February 26, 2008
Revised: November 18, 2008
Revised: September 18, 2012
Provisional Approval: August 18, 2020
(Replaces Policies 3110/4110/6110)
Revised: September 19, 2023
Formerly: 3430

INTERIM AP 6430 PROHIBITION OF HARASSMENT

References:

Education Code Sections 212.5, 44100, and 66281.5;
Government Code Sections 12940 and 12923
Civil Code Section 51.9;
Title 2 Sections 10500 et seq.;
Title 5 Sections 59320 et seq.;
Title VII of the Civil Rights Act of 1964, 42 U.S. Code Annotated Section 2000e

The District is committed to providing an academic and work environment free of all forms of harassment. This procedure defines sexual harassment and other forms of harassment on campus and sets forth a procedure for the investigation and resolution of complaints of harassment by or against any staff or faculty member or student within the District.

This procedure and the related policy protects students, ~~and~~ employees, unpaid interns, and volunteers in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities, a District bus, or at a class or training program sponsored by the District at another location.

RETALIATION

The District strictly prohibits retaliation toward any individual who files a complaint of discrimination and/or harassment, who refers a matter for investigation or complaint, who participates in an investigation, who represents or serves as an advocate for an alleged victim or alleged offender, or who otherwise furthers the principles of unlawful discrimination or harassment.

REPORTING DISCRIMINATION AND/OR HARASSMENT

Incidents of alleged discrimination, harassment or retaliation shall be investigated promptly and equitably through AP 6435 Discrimination and Harassment Complaints and Investigations. Any concerns or questions shall be immediately reported to the District Compliance Officer and Title IX Coordinator:

Lorraine Y. Jones, M.S.W.
Human Resources and Employee Relations
3801 Market Street, Riverside CA 92501
Voice: (951) 222-8039 FAX: (951) 222-8831

TRAINING AND DISSEMINATION OF INFORMATION

District policies and procedures relating to non-discrimination, prohibition of harassment and handling complaints of unlawful discrimination or harassment shall be disseminated to all employees and students.

A summary handout explaining the legal right to file a complaint, the District complaint procedure and process, complainants' appeal rights and complaint contact information shall be distributed annually to all employees and students, and shall be given to any individual raising concerns of discrimination and/or harassment. The handout shall be posted in prominent locations on each campus and in District offices.

The District shall make training available for all employees and students. However, because of their special responsibilities under the law, supervisors (including department chairs) will undergo mandatory training within six months of assuming their position. Update training shall be mandatory for all District administrators, department chairs, managers, and supervisors when the Policy, Procedure or applicable laws substantially change, and they will strive to prevent all forms of harassment. The District will take immediate and appropriate corrective action whenever it is made aware of a suspected violation, whether this information comes from the complainant or a third party.

Copies of all pertinent policies and procedures related to harassment and unlawful discrimination are available at the following District locations:

The District Offices:

- Lobby Reception;
- Office of Human Resources and Employee Relations; and
- Chancellor's Office

Each College's:

- President's Office;
- Vice President Student Services,
- Vice President Academic Affairs;
- Vice President Business Services
- District Police

In addition to the above locations, these documents can also be found on the District's webpages as follows:

- Board of Trustees, Board Policies & Administrative Procedures
- Human Resources and Employee Relations, Diversity, Equity & Compliance

APPLICABLE DEFINITIONS

General Harassment: Harassment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information,

marital status, sex, gender, gender identity, gender expression, age, sexual orientation of any person, military and veteran status, or the perception that a person has one or more of these characteristics is illegal and violates District policy. Harassment shall be found where a reasonable person with the same characteristics as the victim of the harassing conduct would be adversely affected to a degree that interferes with his/her/their ability to participate in or to realize the intended benefits of an institutional activity, employment, or resource.

For sexual harassment under Title IX, Complainants must proceed under BP 6433 Prohibition of Sexual Harassment under Title IX, AP 6433 Prohibition of Sexual Harassment under Title IX, and AP 6434 Responding to Harassment Based on Sex under Title IX. For other forms of sexual harassment or gender-based harassment, Complainants should use this procedure.

Gender-based harassment does not necessarily involve conduct that is sexual. Any hostile or offensive conduct based on gender can constitute prohibited harassment if it meets the definition above. For example, repeated derisive comments about a person's competency to do the job, when based on that person's gender, could constitute gender-based harassment. Harassment comes in many forms, including but not limited to the following conduct that could, depending on the circumstances, meet the definition above, or could contribute to a set of circumstances that meets the definition:

Forms of Harassment:

- **Verbal:** Inappropriate or offensive remarks, slurs, jokes, or innuendoes, based on a person's race gender, sexual orientation, or other protected status. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation; or sexist, patronizing or ridiculing statements that convey derogatory attitudes based on gender, race nationality, sexual orientation or other protected status.
- **Physical:** Inappropriate or offensive touching, assault, or physical interference with free movement. Including, but is not limited to kissing, patting, lingering or intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling, or sexual gestures. It also includes any physical assault or intimidation directed at an individual due to that person's gender, race, national origin, sexual orientation, or other protected status. Physical sexual harassment includes acts of sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion.
- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs

or alcohol. An individual also may be unable to give consent due to an intellectual or other disability.

- **Visual or Written:** Display or circulation of visual or written material that degrades an individual or group based on gender, race, nationality, sexual orientation, or other protected status. Including, but not limited to: posters, cartoons, drawings, graffiti, reading materials, computer graphics, or electronic media transmissions.
- **Environmental:** A hostile academic or work environment may exist where it is permeated by sexual innuendo; insults or abusive comments directed at an individual or group based on gender, race, nationality, sexual orientation or other protected status; or gratuitous comments regarding gender, race, sexual orientation, or other protected status that are not relevant to the subject matter of the class or activities on the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements in the classroom or work environment. It can also be created by an unwarranted focus on, or stereotyping of, particular racial or ethnic groups, sexual orientations, genders or other protected statuses. An environment may also be hostile toward anyone who merely witnesses unlawful harassment in his/her/their immediate surroundings, although the conduct is directed at others. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's learning or work.

Sexual Harassment: In addition to the above, sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:

- submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment (as more fully described below); or
- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.

This definition encompasses two kinds of sexual harassment:

- **"Quid pro quo"** sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
- **"Hostile environment"** sexual harassment occurs when unwelcome conduct based on a person's gender alters the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile, and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile. A single or isolated incident of sexual harassment may be sufficient to create a hostile environment if it unreasonably interfered with the person's academic or work performance or created an intimidating, hostile, or offensive learning or working environment.

Sexually harassing conduct can occur between people of the same or different genders. The standard for determining whether conduct constitutes sexual harassment is whether a reasonable person of the same gender as the victim would perceive the conduct as harassment based on sex.

CONSENSUAL RELATIONSHIPS

Romantic or sexual relationships between supervisors and employees, or between administrators, faculty or staff members, or with students are strongly discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. A conflict of interest may arise if the administrator, faculty members, or staff member must evaluate the student's or employee's work or make decisions affecting the employee or student. The relationship may create an appearance of impropriety and lead to charges of favoritism by other students or employees. A consensual sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing. In the event that such relationships do occur, the District has the authority to transfer any involved employee to eliminate or attenuate the supervisory authority of one over the other, or of a teacher over a student. Such action by the District is a proactive and preventive measure to avoid possible charges of harassment and does not constitute discipline against any affected employee.

ACADEMIC FREEDOM

The District reaffirms its commitment to academic freedom but recognizes that academic freedom does not permit unlawful discrimination or harassment. To the extent that these policies and procedures are in conflict with the District's policy on academic freedom, the harassment policies and procedures shall prevail. Nothing in these policies and procedures shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. Freedom of speech and academic freedom are, however,

not limitless and this procedure will not protect speech or expressive conduct that violates federal or California anti-discrimination laws.

It is recognized that an essential function of education is a probing of opinions and an exploration of information and ideas that may cause some students discomfort. It is further recognized that academic freedom ensures the faculty's right to teach and the students' right to learn.

When investigating unlawful discrimination or harassment complaints containing issues of academic freedom, the designated investigator will consult with a group of one to three (1-3) faculty members in that subject area appointed by the Academic Senate with respect to contemporary practices and standards for course content and delivery.

FILING A COMPLAINT

Refer to the steps outlined in Administrative Procedure 6435 Discrimination and Harassment Complaints and Investigations.

Also see BP/AP 5840 Sexual and Other Assaults on Campus, BP/AP 6410 Nondiscrimination, BP 6430 Prohibition of Harassment, BP/AP 6433 Prohibition of Sexual Harassment under Title IX, AP 6434 Responding to Harassment Based on Sex under Title IX, and AP 6435 Discrimination and Harassment Complaints and Investigations.

Office of Primary Responsibility: Vice Chancellor, Human Resources & Employee Relations

Administrative Approval: April 21, 2008 Revised:
December 8, 2008
Revised: June 15, 2011
Revised: September 24, 2012
(Replaces current Riverside CCD Regulations 3110/4110/6110 and addendum)
Formerly: 3430

Legal Citations for AP 6430

Education Code Sections 212.5, 44100, 66252, and 66281.5; Government Code Sections 12940 and 12950.1; Title 5 Sections 59320 et seq.; Title VII of the Civil Rights Act of 1964; 42 U.S. Code Annotated Section 2000e; Title 2 Sections 10500 et seq.

EDUCATION CODE SECTION 212.5

*EDUCATION CODE - EDC
TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500]*

(Title 1 enacted by Stats. 1976, Ch. 1010.)
DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500]
(Division 1 enacted by Stats. 1976, Ch. 1010.)
PART 1 GENERAL PROVISIONS [1. - 446]
(Part 1 enacted by Stats. 1976, Ch. 1010.)
CHAPTER 2. Educational Equity [200 - 262.4]
(Heading of Chapter 2 amended by Stats. 1998, Ch. 914, Sec. 6.)

ARTICLE 2. Definitions [210 - 214]
(Article 2 added by Stats. 1982, Ch. 1117, Sec. 1.)

212.5.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

(Amended by Stats. 1998, Ch. 914, Sec. 12. Effective January 1, 1999.)

EDUCATION CODE SECTION 44100

EDUCATION CODE - EDC

TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 64100]

(Title 2 enacted by Stats. 1976, Ch. 1010.)

DIVISION 3. LOCAL ADMINISTRATION [35000 - 45460]

(Division 3 enacted by Stats. 1976, Ch. 1010.)

PART 25. EMPLOYEES [44000 - 45460]

(Part 25 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 1. Employees [44000 - 44114]

(Chapter 1 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 4. Affirmative Action Employment [44100 - 44105]
(Article 4 added by Stats. 1977, Ch. 1090.)

44100.

(a) The Legislature finds and declares the following:

- (1) Generally, California school districts employ a disproportionately low number of racial and ethnic minority classified and certificated employees and a disproportionately low number of women and members of racial and ethnic minorities in administrative positions.
 - (2) It is educationally sound for the minority student attending a racially impacted school to have available to him or her the positive image provided by minority classified and certificated employees. It is likewise educationally sound for the child from the majority group to have positive experiences with minority people, that can be provided, in part, by having minority classified and certificated employees at schools where the enrollment is largely made up of majority group students. It is also educationally important for students to observe that women as well as men can assume responsible and diverse roles in society.
 - (3) Past employment practices created artificial barriers and past efforts to promote additional action in the recruitment, employment, and promotion of women and minorities did not result in a substantial increase in employment opportunities for these persons.
 - (4) Lessons concerning democratic principles and the richness that racial diversity brings to our national heritage can be best taught by staffs composed of mixed races and ethnic groups working toward a common goal.
- (b) It is the intent of the Legislature to do all of the following:
- (1) Establish and maintain a policy of equal opportunity in employment for all persons.
 - (2) Prohibit discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, in every aspect of personnel policy and practice in the employment, development, advancement, and treatment of persons employed in the public school system.
 - (3) Promote the total realization of equal employment opportunity through a continuing affirmative action employment program.
- (c) The Legislature recognizes that it is not enough to proclaim that public employers do not discriminate in employment, but that effort must also be made to build a community in which opportunity is equalized. It is the intent of the Legislature to require educational agencies to adopt and implement plans for increasing the numbers of women and minority persons at all levels of responsibility.

(Amended by Stats. 2004, Ch. 788, Sec. 1. Effective January 1, 2005.)

EDUCATION CODE - EDC

TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]

(Title 3 enacted by Stats. 1976, Ch. 1010.)

DIVISION 5. GENERAL PROVISIONS [66000 - 70129]

(Division 5 enacted by Stats. 1976, Ch. 1010.)

PART 40. DONAHOE HIGHER EDUCATION ACT [66000 - 67400]

(Part 40 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 4.5. Equity in Higher Education Act [66250 - 66292.4]

(Heading of Chapter 4.5 amended by Stats. 2011, Ch. 637, Sec. 3.)

ARTICLE 1. Title and Declaration of Purpose [66250 - 66252]

(Article 1 added by Stats. 1998, Ch. 914, Sec. 49.)

66252.

- (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.
- (b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.
- (c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.
- (d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.
- (e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.
- (f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.
- (g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

(Added by Stats. 1998, Ch. 914, Sec. 49. Effective January 1, 1999.)

Education Code Section 66281.5

EDUCATION CODE - EDC

TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]

(Title 3 enacted by Stats. 1976, Ch. 1010.)

DIVISION 5. GENERAL PROVISIONS [66000 - 70110]

(Division 5 enacted by Stats. 1976, Ch. 1010.)

PART 40. DONAHOE HIGHER EDUCATION ACT [66000 - 67400]

(Part 40 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 4.5. Equity in Higher Education Act [66250 - 66292.4] (Heading of Chapter 4.5 amended by Stats. 2011, Ch. 637, Sec. 3.)

ARTICLE 4. Sex Equity in Education [66271.5 - 66281.7]
(Article 4 added by Stats. 1998, Ch. 914, Sec. 49.)

66281.5.

- (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.
- (b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment, including information on the complaint process and the timeline for the complaint process, which shall be available on its Internet Web site. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.
- (c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies and resources, both on and off campus. (d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.
- (e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.
- (f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.
- (g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

(Amended by Stats. 2016, Ch. 107, Sec. 1. (AB 2654) Effective January 1, 2017.)

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]

(Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]

(Division 3 added by Stats. 1945, Ch. 111.)

PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900 - 12996]

(Part 2.8 added by Stats. 1980, Ch. 992.)

CHAPTER 6. Discrimination Prohibited [12940 - 12957]

(Chapter 6 added by Stats. 1980, Ch. 992.)

ARTICLE 1. Unlawful Practices, Generally [12940 - 12952]
(Article 1 added by Stats. 1980, Ch. 992.)

12940.

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

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

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

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

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

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

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

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer. (c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

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

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

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

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

disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

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

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

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

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

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

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

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

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision. (B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

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

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

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

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

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

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

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

(2) An accommodation of an individual’s religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

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

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for

requesting accommodation under this subdivision, regardless of whether the request was granted. (n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition. (o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic. (p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

(Amended by Stats. 2017, Ch. 799, Sec. 6. (AB 1556) Effective January 1, 2018.)

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]

(Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]

(Division 3 added by Stats. 1945, Ch. 111.)

PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900 - 12996]

(Part 2.8 added by Stats. 1980, Ch. 992.)

CHAPTER 6. Discrimination Prohibited [12940 - 12957]

(Chapter 6 added by Stats. 1980, Ch. 992.)

ARTICLE 1. Unlawful Practices, Generally [12940 - 12952]

(Article 1 added by Stats. 1980, Ch. 992.)

12950.1.

(a) An employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California within six months of their assumption of a supervisory position. An employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

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

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

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

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

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

(g) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

(h) (1) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

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

(Amended by Stats. 2017, Ch. 858, Sec. 2. (SB 396) Effective January 1, 2018.)

The U.S. Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964

EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) amends several sections of Title VII. These amendments appear in boldface type. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, jointstock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 *[bankruptcy]*, or receivers.

- (b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 *[of the United States Code]*), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26 *[the Internal Revenue Code of 1954]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.
- (c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.
- (d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and

any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [*29 U.S.C. 151 et seq.*], or the Railway Labor Act, as amended [*45 U.S.C. 151 et seq.*];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside

thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

- (h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.
- (i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].
- (j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.
- (l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.
- (m) The term "demonstrates" means meets the burdens of production and persuasion.
- (n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title .

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 - CIVIL RIGHTS
SUBCHAPTER VI - EQUAL EMPLOYMENT OPPORTUNITIES
Sec. 2000e. Definitions

For the purposes of this subchapter –

- (a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.
- (b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.
- (c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.
- (d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.
- (e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization - (1) is the certified representative of employees under the provisions of the

National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.]; (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or (4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or (5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

- (f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.
- (g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.
- (h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.
- (i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].
- (j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to

work, and nothing in **section 2000e-2(h)** of this **title** shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. (l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to **section 2000e-16** of this **title**.

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 2. Conflict of Interest Code

2 CCR § 10500

§ 10500. Department of Fair Employment and Housing (DFEH) -
Conflict of Interest Code.

<i>List of Designated Positions</i>	
<i>Executive Administration</i>	
Assistant Chief Counsel	
Career Executive Assignment, all levels	
Chief Deputy Director	
Deputy Director	
Director	
Deputy Director of Executive Programs	
<i>Enforcement Division</i>	

Administrator, FEH, all levels	
FEH Consultant, all ranges	
Associate Government Program Analyst	

The Political Reform Act (Gov. Code, § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2, § 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's regulation. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation, and the attached appendices designating positions and establishing disclosure requirements, shall constitute the conflict of interest code for the Department of Fair Employment and Housing (DFEH).

Individuals holding designated positions shall file their statements with the DFEH, which will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statement of the Director, the DFEH will make and retain a copy and forward the original to the Fair Political Practices Commission.

Appendix A

and shall disclose pursuant to the disclosure requirements in this conflict of interest code subject to the following limitation: The Director may determine in writing that a particular consultant or new position, although holding a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

<i>Legal Division</i>	
Legal Counsel, all levels and types	
<i>Administrative Division</i>	
Accounting Administrator I (Supervisor)	
Accounting Administrator II	
Associate Information Systems Analyst, (Specialist)	
Associate Business Management Analyst	
Business Service Assistant (Specialist), all types	
Data Processing Manager, all levels	
Information Officer II	
Labor Relations Manager I	
Senior Information Systems Analyst (Specialist)	
Special Consultant	
Staff Information Systems Analyst (Supervisor)	
Staff Services Manager, all levels and types	
Systems Software Specialist II (Supervisor)	

* Consultants / new positions shall be included in the list of designated positions

Appendix B

Disclosure Requirements

Disclosure Category 1

Individuals holding designated positions assigned to disclosure category 1 shall report interest in real property located within the State of California; investments and business positions in business entities, and income, including loans, gifts, and travel payments, from all sources.

Disclosure Category 2

Individuals holding designated positions assigned to disclosure category 2 shall report investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources, of the type to provide services, supplies, materials, and/or equipment to the DFEH. Such services include, but are not limited to, legal recording/reporting services, rental of meeting and/or administrative hearing space. *Disclosure Category 3*

Individuals holding designated positions assigned to disclosure category 3 shall report investments and business positions in business entities, and income, including receipt of gifts, loans, and travel payments, from sources, of the type to provide information technology and telecommunications services, goods, and/or supplies, including, but not limited to, software, hardware, data retrieval and/or security services.

Disclosure Category 4

Individuals holding designated positions assigned to disclosure category 4 must determine whether, during the reporting period, they had a financial interest in any of their assignments. If they had no such interest, they shall file Fair Political Practices Commission Form 700-A. Otherwise, they shall disclose their pertinent financial interests on the schedules for Fair Political Practices Commission Form 700.

Disclosure Category 5

Individuals holding designated positions assigned to category 5 must report investments, positions in business entities, and income (including receipt of loans, gifts, and travel payments) received from a department employee and from any of the following sources: training and educational services, labor specialists, and human resource management services.

Note: Authority cited: Sections 81008, 87300 and 87306, Government Code.

Reference: Section 87302, Government Code. **HISTORY**

1. New chapter 2 (section 10500) and renumbering of former section 11005.1 to new section 10500 filed 12-9-2015; operative 4-1-2016 (Register 2015, No. 50). For prior history, see Register 83, No. 24.
2. Repealer and new section and appendices A and B filed 11-28-2016; operative 12-28-2016 pursuant to Cal. Code Regs., tit. 2, section 18750(I). Approved by Fair Political Practices Commission 10-27-2016 and submitted to OAL for filing and printing only pursuant to Cal. Code Regs., tit. 2, section 18750(k) (Register 2016, No. 49).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Subchapter 1. Administration

Article 1. Administration

2 CCR § 11000 §
11000. Generally.

The authority for the rules and regulations set forth in this chapter is briefly described at the beginning of each subchapter herein and in some cases is set out with more particularity at the beginning of a constituent article within a subchapter. Special definitions or rules of construction, which only apply to a

particular subchapter or article, are set forth at the beginning of the subchapter or article to which they pertain.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2, Government Code.

HISTORY

1. Change without regulatory effect renumbering title 2, division 4 (chapters 1-5) to title 2, division 4.1, chapter 5 (subchapters 1-5), renumbering former chapter 1 (subchapters 1-2) to new subchapter 1 (articles 1-2), renumbering former subchapter 1 (sections 7285.0-7285.2) to new article 1 (sections 11000-11002), renumbering section 7285.0 to new section 11000 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Subchapter 1. Administration

Article 1. Administration

2 CCR § 11001 §

11001. Construction.

(a) These rules and regulations are to be construed liberally so as to further the policy and purposes of the statutes they interpret and implement.

(b) Except as required by the Supremacy Clause of the United States Constitution, federal laws and their interpretations regarding discrimination in employment and housing are not determinative of the construction of these rules and regulations and the California statutes they interpret and implement but, in the spirit of comity, shall be considered to the extent practical and appropriate. (c) Unless the context dictates otherwise, terms used herein that are in the singular include the plural, and terms that are in the plural include the singular. (d) If any rule or regulation, or portion thereof, in this chapter is adjudged by a court of competent jurisdiction to be invalid, or if any such rule or regulation, or portion thereof, loses its force and effect by legislative action, that judgment or action does not affect the remainder of the rules and regulations.

(e) Pursuant to the Governor's Reorganization Plan No. 1 (1980), the Fair Employment Practice Act is renamed the Fair Employment and Housing Act and renumbered in Part 2.8 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2 of the Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 7285.1 to new section 11001 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration
Division 4.1. Department of Fair Employment and Housing
Chapter 5. Fair Employment and Housing Council
Subchapter 1. Administration
Article 1. Administration

2 CCR § 11002 §
11002. Definitions.

Unless a different meaning clearly applies from the context, the meaning of the words and phrases as defined in this section shall apply throughout this chapter:

- (a) "Council or FEHC" means the State Fair Employment and Housing Council created by section 12903 of the Government Code pursuant to Senate Bill 1038 (2011-2012 Reg. Sess.) (State. 2012, ch. 46).
- (b) "Department or DFEH" means the Department of Fair Employment and Housing created by section 12901 of the Government Code pursuant to the Governor's Reorganization Plan No. 1 (1980).
- (c) "Person" includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (d) "Complainant" means the person who files a timely, verified complaint with the DFEH alleging aggrievement by an unlawful practice.
- (e) "Respondent" means the person who is alleged to have committed an unlawful practice in a complaint filed with the DFEH.
- (f) "Act" means the California Fair Employment and Housing Act, created by Government Code section 12900.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12903 and 12925, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 7285.2 to new section 11002 and amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration
Division 4.1. Department of Fair Employment and Housing
Chapter 5. Fair Employment and Housing Council
Article 2. Powers and Duties of the Council

2 CCR § 11003
§ 11003. Rules, Regulations and Guidelines.

(a) The Council shall adopt, promulgate, amend and rescind suitable rules, regulations and guidelines as are necessary to interpret, implement and apply laws within its jurisdiction and as are necessary to carry out all of its other functions and duties.

(b) All rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Section 12935(a), Government Code. Reference: Part 2.8 of Division 3 of Title 2, Government Code.

HISTORY

1. Change without regulatory effect renumbering former subchapter 2 (sections 7285.3-7285.7) to new article 2 (sections 11003-11004), renumbering former section 7285.4 to new section 11003 and amending article heading, section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 5. Fair Employment and Housing Council

Article 2. Powers and Duties of the Council

2 CCR § 11004

§ 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.

HISTORY

1. Change without regulatory effect renumbering former section 7285.7 to new section 11004 amending section and Note filed 10-3-2013 pursuant to section 100, title 1, California Code of Regulations (Register 2013, No. 40).

Administrative Approval:
August 17, 2020