

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2008 LEGISLATIVE SUMMARY

The following bills, affecting or related to California's civil rights statutes, were signed and chaptered into law by Governor Schwarzenegger in 2008. Unless otherwise noted, the measures became effective January 1, 2009. They are organized by subject matter.

Also included is a summary of the ADA Amendments Act of 2008 and a summary of amendments to the federal Family and Medical Leave Act and its implementing regulations.

EMPLOYMENT

Peace officer candidate pre-employment inquiries

AB 2028 provides that the collection of non-medical and non-psychological information, in accordance with a thorough background investigation required of all peace officers, may be deferred until after a conditional offer of employment is made if the employer can demonstrate that the non-medical and non-psychological information could not reasonably have been collected prior to making an employment offer. This measure is not enforced by the DFEH.

Bill Number: AB 2028 (Solorio) (Stats. 2008, ch. 437.)

Code Section Amended: None.

Code Section Added: Government Code section 1031.2.

HOUSING

Modifications for persons with disabilities residing in mobilehome parks

The Mobilehome Residency Law (MRL) governs the relationship between mobilehome park owners and their tenants. SB 1107 amends the MRL to make clear that the management of a mobilehome park may not prohibit a homeowner or resident from making modifications to a mobilehome—or the site, lot, or space on which a mobilehome is located—to make the property accessible to persons with a disability. The measure also permits any mobilehome owner, regardless of age, to share his or her mobilehome with any person over 18 years of age who provides live-in health or supportive care, without paying a guest fee to management. The DFEH does not enforce the MRL.

Bill Number: SB 1107 (Correa) (Stats. 2008, ch. 170.)

Code Sections Amended: Civil Code sections 798.34 and 799.9.

Code Sections Added: Civil Code sections 798.29.6 and 799.11.

Multifamily Housing Program for veterans

SB 1220 allows sponsors of permanent supportive housing projects funded under the Multifamily Housing Program to restrict occupancy to veterans who have barriers to social reintegration if the property is owned or leased by the United States or California Department of Veterans Affairs and meets other specified requirements.

Bill Number: SB 1220 (Cedillo) (Stats. 2008, ch. 618.)

Code Section Amended: Health & Safety Code section 50675.1.

Code Section Added: None.

PUBLIC ACCOMODATIONS

Construction-related accessibility standards and civil complaints

SB 1608 is a comprehensive reform bill intended to improve building owners' compliance with the ADA and the state's Disabled Persons Act through education and increased awareness of construction-related accessibility requirements. Among other changes, the bill adds section 55.3 to the Civil Code which requires attorneys to send a specified notice to tenants and building owners -- advising them of their legal obligations and rights -- whenever a demand for money or a civil complaint is served that alleges a construction-related accessibility violation. This provision does not apply to alleged refusal to sell or rent a housing accommodation because of an applicant's disability, or any interference with the right of a disabled person caused by something other than a construction-related accessibility violation.

SB 1608 also enacts the Construction-Related Accessibility Compliance Act (Civ. Code, §§ 55.51 – 55.54) which provides for the inspection of privately owned public accommodations by a building inspector who is a certified access specialists ("CASp"). If a court determines that a public accommodation at issue in a construction-related accessibility action has a status of "CASp-inspected" or "CASp determination pending," the Act requires the court to issue an order granting a 90-day stay of the action and scheduling an early evaluation conference. Any attorney who serves a summons and complaint alleging a construction-related accessibility violation must serve a specified notice on the defendant informing the defendant of the right to request a stay of the action.

SB 1608 also adds sections 55.55 through 55.57 to the Civil Code, which codify a standard for awarding statutory damages and attorney fees in construction-related accessibility standards cases, and adds sections 8299.01, et seq., to the Government Code, creating the California Commission on Disability Access.

The enactment of SB 1608 should not impact the manner in which public accommodation complaints are processed by Enforcement.

Bill Number: SB 1608 (Corbett) (Stats. 2008, ch. 549.)

Code Sections Amended: Business & Professions Code section 5600; Government Code sections 4450 & 4459.5; and Health & Safety Code section 18949.29.

Code Sections Added: Civil Code sections 55.3, 55.51, 55.52, 55.53, 55.54, 55.55, 55.56 & 55.57; and Government Code sections 8299, 8299.01, 8299.02, 8299.03, 8299.04, 8299.05, 8299.06, 8299.07, 8299.08, 8299.09, 8299.10 & 8299.11.

RELATED STATE STATUTES

Peace officer and firefighter canine units and lodging

AB 2131 makes it unlawful for a peace officer or firefighter who works with a canine unit, and who is assigned to duty away from his or her home jurisdiction because of a declared federal, state, or local emergency, to pay an extra charge or security deposit in lodging establishments, restaurants, or on public transportation because he or she is accompanied by a peace officer or firefighter dog. Violators are subject to a civil fine not to exceed one thousand dollars (\$1,000). This section is intended "to provide accessibility without discrimination" to a peace officer or firefighter accompanied in public accommodations during declared emergencies by a trained, public-owned dog. This measure is not enforced by the DFEH.

Bill Number: AB 2131 (Niello) (Stats. 2008, ch. 226.)

Code Section Amended: None.

Code Section Added: Civil Code section 54.25.

RELATED FEDERAL STATUTES AND REGULATIONS

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) Amendments Act of 2008 (ADA Amendments Act) was signed into law on September 25, 2008 and became effective January 1, 2009. The ADA Amendments Act retains the ADA's basic definition of "disability" (i.e., an impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment) but directs the Equal Employment Opportunity Commission (EEOC) to revise its regulations defining "substantially limits" and expands the definition of "major life activities" to include a non-exhaustive list of major life activities (e.g., seeing, hearing, eating, sleeping, walking, learning and concentrating), as well as the operation of "major bodily functions" (e.g., the immune and endocrine systems and normal cell growth).

The ADA Amendments Act also: (1) states that mitigating measures other than "ordinary eyeglasses or contact lenses" must not be considered in assessing whether an individual has a disability; (2) clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; (3) provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment meets the "regarded as" definition of

disability (unless the impairment is transitory and minor); and (4) provides that individuals covered only under the "regarded as" definition of disability are not entitled to reasonable accommodation.

Family Medical Leave Act and Regulations

The U.S. Department of Labor (DOL) issued amended regulations on November 17, 2008 implementing the federal Family Medical Leave Act (FMLA). The new regulations became effective January 16, 2009. The amendments were spearheaded by the addition of military service related leave provisions to the FMLA signed into law in January 2008 and court decisions striking down or calling into question certain sections of the 1995 FMLA regulations.

Family Military Leave

In addition to leave rights the FMLA already provides, the FMLA was amended in January 2008 to permit an eligible employee to take up to: (1) 12 work-weeks of unpaid leave if the employee's spouse, child or parent is on active duty in the military or is a reservist who faces a recall to active duty if a "qualifying exigency exists;" and (2) 26 weeks of unpaid leave to care for a spouse, son, daughter, parent, or next of kin (i.e., "nearest blood relative") who is a "covered service member" injured while serving in the military.

The FMLA regulations were amended November 2008 to define "qualifying exigency" with a non-exhaustive list of the types of circumstances considered a "qualifying exigency" under the amended FMLA. The regulations were further amended to define "covered service member" as "a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy ... for a serious injury or illness incurred in the line of duty on active duty."

The FEHA has not been amended to include military service related leave rights.

Family Medical Leave

A number of sections of the 1995 FMLA regulations have been amended to clarify provisions called into question by the courts. Under the amended FMLA regulations, for example, an employee who has had a break in service is eligible for FMLA leave so long as the employee has worked for the employer for a total of 12 months and the break was not longer than 7 years. As amended, the FMLA regulations also provide that: (1) an employer must notify an employee within 5 business days (instead of 2 days) whether the employee is eligible for FMLA leave and, if it is determined the employee is ineligible, the employer must provide at least one reason for its determination; (2) calling in sick in the case of unforeseeable leave is not sufficient to trigger an employer's obligation to determine if the leave is FMLA-protected; (3) employers are permitted to ask for a diagnosis of the employee's serious health

condition; (4) if additional leave is requested at the end of the originally estimated leave period, the employer may require the employee to obtain recertification; (5) employers are permitted to obtain second and third medical opinions regarding the serious health condition of a family member; (6) employers may disqualify an employee from a bonus or award conditioned on the achievement of a specific goal (e.g., hours worked or perfect attendance) where the employee fails to achieve the goal because of a FMLA absence, so long as disqualification standards apply equally to non-FMLA absences; and (7) an employer may require an employee to furnish a fitness-for-duty statement every 30 days if the employee has used intermittent leave and there exist reasonable safety concerns regarding the employee's reinstatement.

The foregoing is not an exhaustive list of the 2008 FMLA regulation amendments. For more information regarding the FMLA regulation amendments, including a detailed comparison between the FMLA regulations, as amended November 2008, and the California Family Rights Act regulations, please visit the Fair Employment and Housing Commission's Internet Web site at www.fehc.ca.gov.