

## DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

### 2011 LEGISLATIVE SUMMARY

The following bills, affecting or related to California's civil rights statutes, were signed and chaptered into law by Governor Edmund G. Brown, Jr., in 2011. Unless otherwise noted, the measures became effective January 1, 2012. They are organized by subject matter.

#### **EMPLOYMENT, HOUSING & PUBLIC ACCOMMODATIONS**

##### **Prohibition against gender discrimination clarified**

AB 887 amended thirty-four statutes to clarify that the definition of "gender"—or in the case of the Government Code, the definition of "sex"—includes "gender identity" and "gender expression." AB 887 amended specified FEHA provisions to expressly include the terms "gender," "gender identity" and "gender expression" where previously only the term "sex" appeared. These FEHA and Civil Code section 51 provisions that previously only expressly stated "sex" had already prohibited gender discrimination because the FEHA at Government Code section 12926, subdivision (p), defined sex to include gender. Further, these statutes had already prohibited gender identity discrimination because the FEHA definition of sex also expressly incorporated the Penal Code's definition of sex, which includes gender identity. These statutes also had previously prohibited discrimination on the basis of gender expression, because the incorporated Penal Code definition of sex included the language AB 887 uses to define gender expression, i.e., a person's "gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."

**Bill Number:** AB 887 (Atkins) (Stats. 2011, ch. 719.)

**Code Sections Amended:** Civil Code section 51; Education Code sections 200, 210.2, 210.7, 220, 32228, 47605.6, 51007, 66260.6, 66260.7, & 66270; Government Code sections 12920, 12921, 12926, 12930, 12931, 12935, 12940, 12944, 12949, 12955, 12955.8, 12956.1, & 12956.2; Insurance Code sections 676.10, 10140, 10140.2, & 12693.28; Labor Code section 3600; and Penal Code sections 186.21, 422.56, 422.85, 3053.4, & 11410.

**Code Section Added:** None.

##### **Nondiscrimination and genetic information**

SB 559 amended the Unruh Civil Rights Act, the FEHA, and Government Code section 11135 to add genetic information to the list of characteristics upon which discrimination in employment, housing, public accommodations and state operated or funded programs is prohibited. The bill further amended Civil Code section 51 and Government Code section 12926 to add the definition of genetic information and make technical conforming changes to specified statutes that refer to other definitions in Government Code section 12926, which passage of SB 559 reordered. The bill was intended to

codify in state law the protections afforded under the federal Genetic Information and Nondiscrimination Act (GINA). However, even before the GINA was enacted by Congress in 2008, the FEHA and the Unruh Civil Rights Act had already protected Californians from discrimination on the basis of genetic characteristics.

**Bill Number:** SB 559 (Padilla) (Stats. 2011, ch. 261.)

**Code Section Amended:** Business and Professions Code section 23438; Civil Code section 51; Education Code section 32228; Elections Code section 354.5; Government Code sections 11135, 12920, 12921, 12926, 12926.1, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, 12956.1, 12956.2, and 12993; Penal Code section 868.8; Revenue and Taxation Code sections 17269 and 24343.2; and Welfare and Institutions Code section 4900.

**Code Section Added:** None.

## EMPLOYMENT

### Interference with employee's right to take CFRA, pregnancy disability leave

AB 592 amended the FEHA to expressly state that it is an unlawful employment practice for an employer to interfere with the exercise of—or the attempt to exercise—any right provided under California's Family Rights Act (CFRA) (Gov. Code, § 12945.2) or pregnancy disability leave law (Gov. Code, §12945). In 2007, the California Court of Appeal recognized that interference with an employee's right to take protected leave is a basis for employer liability under the CFRA. (*Faust v. California Portland Cement Company* (2007) 150 Cal.App.4th 864, 879.) This bill is intended to clarify existing law by conforming the FEHA to the federal Family and Medical Leave Act (FMLA), which expressly provides that an employer's interference with any right provided under the FMLA is an unlawful employment practice.

**Bill Number:** AB 592 (Lara) (Stats. 2011, ch. 678.)

**Code Section Amended:** Government Code sections 12945 and 12945.2.

**Code Section Added:** None.

### Continuation of health insurance during pregnancy disability leave

SB 299 amended Government Code section 12945 to require the continuation of employer-provided group health insurance benefits for up to four months while an employee is unable to work due to pregnancy disability. The bill is intended to ensure that women who work for California employers with five to 49 employees do not lose their employer-provided health insurance coverage if they become disabled by pregnancy, childbirth or a related medical condition that renders them temporarily unable to work.

**Bill Number:** SB 299 (Evans) (Stats. 2011, ch. 510.)

**Code Section Amended:** Government Code section 12945.

**Code Section Added:** None.

## **RELATED STATE STATUTES**

### **Use of credit reports for employment purposes limited**

The California Consumer Credit Reporting Agencies Act permits the use of consumer credit information for "employment purposes" when the information will be used to evaluate a consumer for employment, promotion, reassignment or retention as an employee. State law requires a user to provide written notice to the consumer whose credit report is being requested for employment purposes. The notice must inform the consumer that a report will be used, identify the source of the report, and give the consumer the option to request a copy of the report that is obtained. With the exception of specified financial institutions, AB 22 prohibits an employer from obtaining a consumer credit report to evaluate a job applicant's qualifications unless the position the applicant seeks is: (1) managerial, as defined; (2) in the state Department of Justice; (3) a sworn peace officer or other law enforcement position; (4) any position for which the law requires disclosure of the information contained in a consumer credit report; (5) involves regular access, for any purpose other than the routine processing of credit card applications in a retail establishment, to specified personal and financial information; (6) a position in which the incumbent would be a named signatory on the employer's bank or credit card account, or would be authorized to transfer money or to enter into financial contracts on behalf of the employer; (7) involves access to specified confidential or proprietary information; or (8) involves regular access to cash totaling ten thousand dollars (\$10,000) or more during the workday.

**Bill Number:** AB 22 (Mendoza) (Stats. 2011, ch. 724.)

**Code Section Amended:** Civil Code section 1785.20.5.

**Code Section Added:** Labor Code section 1024.5.

### **Itemized wage statements for farm labor contractors**

AB 243 provides that in addition to the requirement that an employer furnish its legal name and address on pay stubs, if an employer is a farm labor contractor, it must also disclose on its pay stubs the legal name and address of the entity that secured its services. Inability to identify the grower or other legal entity that hired a farm labor contractor can impede the enforcement efforts of agencies such as the Department of Fair Employment and Housing and Department of Industrial Relations, which endeavor to make workers whole by holding accountable all who share legal responsibility for employment and/or labor law violations. AB 243 was introduced and enacted to remedy this problem.

**Bill Number:** AB 243 (Alejo) (Stats. 2011, ch. 671.)

**Code Section Amended:** Labor Code section 226.

**Code Section Added:** None.

### **Health insurance coverage for domestic partners**

California law requires a health care insurer to provide group coverage to the registered domestic partner of an employee, subscriber, insured, or policyholder that is equal to the coverage it provides to a spouse. SB 757 prohibits plans or policies that discriminate in coverage between spouses or domestic partners of a different sex and spouses or domestic partners of the same sex.

**Bill Number:** SB 757(Lieu) (Stats. 2011, ch. 722.)

**Code Section Amended:** Health and Safety Code section 1374.58; Insurance Code sections 10112.5 & 10121.7

**Code Section Added:** Health and Safety Code section 1367.30.

### **Same sex spouses protected from discrimination by public contractors**

SB 117 amended California's Equal Benefits Law to prohibit a state agency from entering into a contract for \$100,000 or more with a contractor that fails to provide the same benefits to employees with spouses or domestic partners of a different sex that it provides to employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex spouses or domestic partners of employees.

**Bill Number:** SB 117 (Kehoe) (Stats. 2011, ch. 231.)

**Code Section Amended:** Public Contract Code section 10295.3.

**Code Section Added:** None.

### **Landlords' right to limit or prohibit smoking in or around residential rental units**

SB 332 codifies residential landlords' authority to prohibit smoking of tobacco on any or all portions of rental property, including in individual units. The bill also requires landlords to comply with specified notice requirements governing changes to the terms of rental lease agreements.

**Bill Number:** SB 332 (Padilla) (Stats. 2011, ch. 264.)

**Code Sections Amended:** None.

**Code Sections Added:** Civil Code section 1947.5.

### **Certified Access Specialist (CAsp) Clarification**

California law requires an attorney to provide a written advisory to a building owner or tenant with each demand for money or complaint for any construction-related accessibility claim. SB 384 amended existing law to clarify that the requirement to provide the written advisory applies whether or not the attorney intends to file a complaint or eventually files a complaint in state or federal court, and provides that a violation of this requirement may subject the attorney to disciplinary action.

**Bill Number:** SB 384 (Evans) (Stats. 2011, ch. 419.)

**Code Sections Amended:** Civil Code section 55.3; Code of Civil Procedure section 437c; Government Code section 70616.

**Code Sections Added:** Business and Professions Code section 6106.2.