

ATTACHMENT B

Fair Employment & Housing Council Working Draft of Regulations Regarding Religious Creed and Age Discrimination

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 2. Discrimination in Employment

TEXT

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Article 8. Religious Creed Discrimination

[Proposal forthcoming]

Article 10. Age Discrimination

§ 11076. Establishing Age Discrimination.

(a) Employers. Discrimination on the basis of age may be established by showing that a job applicant's or employee's age over 40 was considered in the denial of employment or an employment benefit. The presumption of discrimination may also be established by showing disparate treatment of applicants or employees over the age of 40, unless such disparate treatment is tied to a legitimate overriding business necessity such that the treatment is necessary to the safe and efficient operation of the business and effectively fulfills the business purpose it is supposed to serve. The practice may still be impermissible where it is shown that an alternative practice would have accomplished the business purpose equally well with a lesser discriminatory impact. The mere preference to retain lower paid workers, alone, is insufficient to negate the presumption.

(b) Employment Agencies, Labor Organizations, and Apprenticeship Training Programs in Which the State Participates. Discrimination on the basis of age may be established against employment agencies, labor organizations, and apprenticeship training programs in which the state participates upon a showing that they have engaged in recruitment, screening, advertising, training, job referral, placement or similar activities that discriminate against an individual or individuals over 40.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12926(e), ~~(d) and (e)~~, and 12941, Government Code.