

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2019 LEGISLATIVE SUMMARY

The following bills were signed and chaptered into law by Governor Gavin Newsom in 2019 and become effective January 1, 2020, unless stated otherwise.

EMPLOYMENT

Filing Deadline

AB 9 amended the Fair Employment and Housing Act to extend the deadline to file a complaint of employment discrimination, harassment, or retaliation with the Department from one year to three years. The bill also clarified that a complainant meets the deadline for filing an administrative complaint with DFEH by filing an intake form with the department, and the operative date of the verified complaint relates back to the filing of the intake form. The bill further clarified that for purposes of DFEH's litigation deadlines, "filing a complaint" means filing a verified complaint.

Bill Number: AB 9 (Reyes) (Stats. 2019, ch. 709.)

Code Section Amended: Government Code sections 12960 and 12965.

Code Section Added: None.

Prohibition on Forum Waiver

AB 51 prohibited employers from requiring employees or applicants for employment to waive a right, forum, or procedure for a violation of the Fair Employment and Housing Act or the Labor Code as a condition of employment or employment-related benefit. The bill also prohibited employers from threatening, retaliating or discriminating against, or terminating employees or applicants because they refused to waive any such right, forum, or procedure. AB 51 made any violation of it an unlawful employment practice under both the Labor Code and the Fair Employment and Housing Act.

Bill Number: AB 51 (Gonzalez) (Stats. 2019, ch. 711.)

Code Section Amended: None.

Code Section Added: Government Code section 12953 and Labor Code section 432.6.

Flight Crews & the California Family Rights Act

AB 1748 aligned state and federal family and medical leave laws as they relate to airline flight deck and cabin crewmembers. The bill amended the California Family Rights Act, which is part of the Fair Employment and Housing Act, to establish airline flight deck and cabin crewmember-specific eligibility requirements in conformity with the federal Family and Medical Leave Act.

Bill Number: AB 1748 (Bonta) (Stats. 2019, ch. 718.)
Code Section Amended: Government Code section 12945.2.
Code Section Added: None.

DFEH & Federal Law

AB 1820 clarified that the Department has authority to enforce federal law, where authorized by federal statute.

Bill Number: AB 1820 (Committee on Judiciary) (Stats. 2019, ch. 834.)
Code Section Amended: Government Code section 12930.
Code Section Added: None.

Definition of “Race” & Hairstyles

As it relates to the Department’s work, SB 188 prohibited race-based discrimination stemming from workplace dress and grooming rules that prohibit hairstyles typically and historically associated with black natural hair.

Bill Number: SB 188 (Mitchell) (Stats. 2019, ch. 58.)
Code Section Amended: Education Code section 212.1 and Government Code section 12926.
Code Section Added: None.

Sexual Harassment Prevention Training

As it relates to the Department’s work, SB 530 amended the Fair Employment and Housing Act (1) to set the compliance deadline for employers of seasonal, temporary, or other employees that are hired to work for less than six months to provide sexual harassment prevention training to January 1, 2021, and (2) to prescribe training requirements specific to employers that employ workers pursuant to a multiemployer collective bargaining agreement in the construction industry.

Bill Number: SB 530 (Galgiani) (Stats. 2019, ch. 722.)
Code Section Amended: Government Code section 12950.1 and Labor Code section 3073.9.
Code Section Added: Labor Code section 107.5.

SB 778 amended the Fair Employment and Housing Act to extend the deadline for covered employers to provide sexual harassment prevention training and education by one year to January 1, 2021, clarify when such training and education must be provided to new employees, and outline when refresher training must be provided. This bill was an urgency measure and therefore effective upon enactment — August 30, 2019.

Bill Number: SB 778 (Committee on Labor, Public Employment and Retirement) (Stats. 2019, ch. 215.)

Code Section Amended: Government Code section 12950.1.

Code Section Added: None.

Housing

Hosting Platforms

AB 1497 added to the Fair Employment and Housing Act's definition of "housing accommodation" housing offered for rent on online hosting platforms, including services like Airbnb and HomeAway.

Bill Number: AB 1497 (Holden) (Stats. 2019, ch. 599.)

Code Section Amended: Government Code section 12927.

Code Section Added: None.

Veteran or Military Status and VASH Vouchers

SB 222 amended the Fair Employment and Housing Act by adding veteran or military status to the bases upon which housing discrimination is prohibited in California, a protection already contained in the employment section of the Act. SB 222 also included federal Department of Housing and Urban Development Veterans Affairs Supportive Housing vouchers ("VASH vouchers") as a "source of income," making it unlawful for a landlord to refuse to accept VASH vouchers. The bill removed the exception that allowed landlords to turn away tenants who hold this type of government housing assistance vouchers.

Bill Number: SB 222 (Hill) (Stats. 2019, ch. 601.)

Code Section Amended: Government Code sections 12920, 12921, 12927, 12930, 12931, 12955, 12955.8, 12956.1, and 12956.2.

Code Section Added: None.

Source of Income Discrimination & Government Housing Subsidies

SB 329 redefined "source of income" for the purposes of the Fair Employment and Housing Act. The Act makes it unlawful for an owner of any housing accommodation to discriminate against, to harass, or to deny housing to any person because of their source of income. "Source of income" was previously defined to exclude government housing subsidies paid to a housing owner or landlord on behalf of a tenant. SB 329 removed the exception that allowed landlords to turn away tenants who hold government housing assistance vouchers, including programs like Section 8.

Bill Number: SB 329 (Mitchell) (Stats. 2019, ch. 600.)

Code Section Amended: Government Code sections 12927 and 12955.

Code Section Added: None.

RELATED STATUTES NOT ENFORCED BY DFEH

Independent Contractor Classification

AB 5 primarily codified *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903. *Dynamex* required a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor.

Bill Number: AB 5 (Gonzalez) (Stats. 2019, ch. 296.)

Code Section Amended: Labor Code section 3351 and Unemployment Insurance Code sections 606.5 and 621.

Code Section Added: Labor Code section 2750.3.

Sexual Violence and Harassment Prevention Training for Janitorial Workers

AB 547 required the director of the Department of Industrial Relations to convene an advisory committee to identify qualified organizations that janitorial employers must use to provide biennial, industry-specific, in-person training on sexual violence and harassment prevention.

Bill Number: AB 547 (Gonzalez) (Stats. 2019, ch. 715.)

Code Section Amended: Labor Code sections 1420, 1425, 1429, 1429.5, 1431, and 1432.

Code Section Added: None.

Limitation of “No Rehire” Clauses in Settlement Agreements

AB 749 prohibited settlement agreements from containing a “no rehire” clause unless the settling aggrieved person has committed sexual harassment or assault. The law does not require an employer to continue to employ or rehire a person if there is a legitimate non-discriminatory or non-retaliatory reason for terminating the employment relationship or refusing to rehire the person.

Bill Number: AB 749 (Stone) (Stats. 2019, ch. 808.)

Code Section Amended: None.

Code Section Added: Code of Civil Procedure section 1002.5.

Lactation Accommodation

SB 142 required an employer to provide a lactation room or location that includes prescribed features and required an employer, among other things, to provide access to

a sink and refrigerator in close proximity to the employee's workspace. The bill also deemed denial of reasonable break time or adequate space to express milk a failure to provide a rest period in accordance with state law. SB 142 additionally prohibited an employer from discharging, or in any other manner discriminating or retaliating against, an employee for exercising or attempting to exercise rights under these provisions and established remedies that include filing a complaint with the Labor Commissioner. An employer that employs fewer than 50 employees may be exempt from a requirement of the bill if it can demonstrate that a requirement would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

Bill Number: SB 142 (Wiener) (Stats. 2019, ch. 720.)

Code Section Amended: Labor Code sections 1030, 1031, and 1033.

Code Section Added: Labor Code section 1034.