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Unlawful Discrimination: Your Rights and Remedies. Civil Rights Handbook, 3rd ed.

California Attorney General

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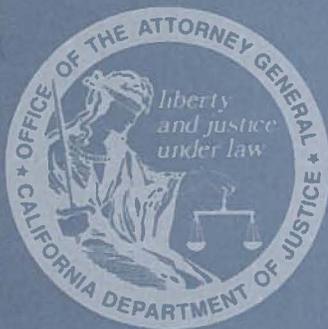
UNLAWFUL

Discrimination

Your Rights and Remedies

Civil Rights Handbook

Third Edition



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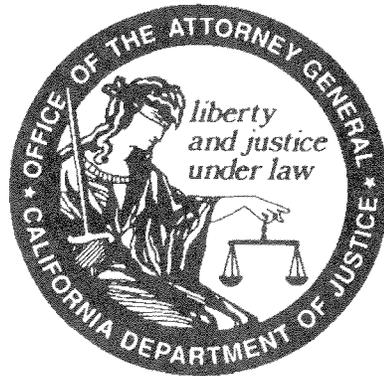
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UNLAWFUL DISCRIMINATION

Your Rights and Remedies

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UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES, Third Edition,*
was prepared under the supervision of the Office of the Attorney General, State of California,
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* Much of the material in this Third Edition is an update of the First Edition, Louis Verdugo, Jr. and Henry Torres, Jr., Deputy Attorneys General, writers and editors, and Second Edition, Kathleen W. Mikkelson, Deputy Attorney General, writer and editor, and Marian M. Johnston, Supervising Deputy Attorney General, editor.

PREFACE

Equal opportunity and freedom from discrimination are fundamental goals of our nation and state.

Both the California Constitution and the United States Constitution contain provisions commonly referred to as “equal protection” clauses. These constitutional provisions prohibit government from engaging in unlawful discrimination. Furthermore, Congress and the California Legislature have adopted statutes to address specific problems of discrimination in the private as well as the public sector. No doubt, the inspiration for these anti-discrimination laws is the concept of equality embodied in the equal protection clauses and in our nation’s history.

This third edition of “Unlawful Discrimination: Your Rights and Remedies” promotes our goal of equality for all. While the primary focus of this publication is on California law, this handbook also describes some of the major federal laws prohibiting discrimination. In addition, it provides information on the agencies that can assist you in asserting your civil rights under the law. This handbook also serves as a quick reference tool for spotting civil rights violations. Hopefully, the availability of such a reference tool will result in channeling discrimination complaints to the appropriate governmental agency.

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INTRODUCTION

California and Federal Law

This handbook discusses both California and federal laws which protect your civil rights. California and federal law should be examined together to get a complete picture of the law on a particular topic.

Statutes and Cases

“The law” usually consists of a combination of statutes and cases. Statutes are laws passed by either Congress or the California State Legislature. Examples of citations to federal and state statutes are:

- 42 U.S.C. § 3601 et seq.
- Civil Code section 51.7.

Case law is created when disputes go to court and judges issue opinions which resolve these disputes. Examples of citations to federal and state cases are:

- *Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409.
- *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1976) 24 Cal.3d 458.

The United States Supreme Court is the highest court in the country, and the California Supreme Court is the highest court in the state. Most cases cited in this handbook are cases which were decided by one of those two courts.

Opinions of the California Attorney General

There are occasional references in this handbook to opinions of the California Attorney General. Opinions are issued by the Attorney General’s Office in response to questions by state legislators or other public officials or agencies. Opinions of the Attorney General are a prediction of how a court will likely decide a case. Courts are not bound by these opinions, but the opinions are given great deference. An example of a citation to an opinion of the Attorney General is:

- 69 Ops.Cal.Atty.Gen. 80 (1986).

What Action Can Individuals Take?

Complaints

People who believe that they have experienced discrimination or have been denied other rights may often be able to file a complaint with a responsible governmental agency. The agency will investigate the complaint. If an agency finds that violations of the law have occurred, it can sometimes impose various sanctions on the violator and award various remedies to the individual who filed the complaint.

Lawsuits

People who believe they have been denied their rights may also be able to file a lawsuit in a court. It may be necessary to go through the agency (“administrative”) complaint process first. Contact the responsible agency to find out when and if you can file a lawsuit. These state and federal agencies are listed under each of the chapters of this handbook. Although you may file a lawsuit by yourself without an attorney, you may prefer to talk with a legal organization or private attorney if you plan to do so.

CHAPTER I

RACIAL, ETHNIC, RELIGIOUS, AND MINORITY VIOLENCE

Violence inflicted because of the particular victim's perceived or actual race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or physical or mental disability is an all too common occurrence in some areas of California. So-called hate groups too often transform their rhetoric to action. Cross-burnings, the desecration of our places of worship, gay-bashings, and other such hateful criminal activities have no place in our society. To eliminate such violence, California has specific laws, both civil and criminal, which are designed to protect people from this type of violence and to punish severely those who engage in such offensive behavior.

The Ralph Civil Rights Act

The Ralph Civil Rights Act, Civil Code section 51.7, addresses the repugnance of racial, ethnic, religious, gender, age, disability, sexual orientation, and political violence in California by providing civil and administrative remedies for those who are victims of this type of violence, or of violence directed against any particular class of persons.

The Ralph Act provides that all persons within this state have the right to be free from violence committed against themselves or their property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation,¹ age, disability, position in a labor dispute, or because another person perceives them to have one or more of these characteristics.² The Ralph Act also declares that the prohibited types of discrimination listed in section 51.7 are merely illustrative. This means that if someone threatens you or commits a violent act against you because you possess, or are perceived to possess, a characteristic which is shared by members of any identifiable group, you may have a claim under this law.

The rights provided for in the Ralph Act can be enforced by an aggrieved individual (i.e., a victim), the Attorney General, your local district attorney, or your local city attorney. If you, as an aggrieved person, seek to enforce your Ralph Act rights, you can either file a private lawsuit in the appropriate court,³ or you can file a complaint with the Department of Fair Employment and Housing (DFEH).⁴

¹Sexual orientation means heterosexuality, homosexuality, or bisexuality. (Civ. Code, § 51.7, subd. (b).)

²Civil Code section 51.7, subdivision (a). This section by its terms does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing.

³Civil Code section 52, subdivision (b).

⁴Civil Code section 52, subdivision (f), and Government Code sections 12930 and 12948.

The addresses, telephone numbers and web sites of the DFEH district offices are listed in the next chapter.

If you choose to file a complaint with the DFEH, you must do so no later than one year after your Ralph Act rights have been violated. If your claim is accepted, the DFEH will investigate your claim and will attempt to settle your case. If settlement is not achieved, you may file a lawsuit, or the DFEH may institute an administrative action with the Fair Employment and Housing Commission (FEHC), which conducts hearings and issues administrative decisions. If you choose to file a private lawsuit, either on your own or after filing a complaint with the DFEH, you may wish to retain your own attorney.

Where there is a reasonable basis to believe that a person or group of persons is engaged in a pattern or practice of violating rights secured by the Ralph Act, the Attorney General, your local district attorney and city attorney are all authorized to file a lawsuit immediately to protect the rights secured by this Act.⁵ If you have evidence of such a pattern or practice, you should contact the Attorney General Office's Public Inquiry Unit at the telephone number or address noted at the beginning of this pamphlet, your local district attorney, or your local city attorney.

Persons who are successful in enforcing their Ralph Act rights in court are entitled to awards for money lost and emotional distress, as well as a civil penalty of \$25,000, and reasonable attorney fees.⁶ Court orders banning the unlawful behavior and a civil penalty for the victim can be obtained by a victim, the Attorney General, or your local district or city attorney if a violation of the Ralph Act can be established in court.⁷

The Bane Civil Rights Act

The Bane Civil Rights Act, Civil Code section 52.1 and Penal Code section 422.6 et seq., prohibits violence or the threat of violence based on grounds such as race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age disability or position in a labor dispute.

⁵Civil Code section 52, subdivision (c).

⁶Civil Code section 52, subdivision (b).

⁷Legislation effective January 1, 2001, clarified that an award of a civil penalty of \$25,000 to the person denied the right provided by Civil Code section 51.7 (Ralph Act) is authorized in any action brought by the person denied the right, or by the Attorney General, a district attorney or a city attorney. (Civ. Code, § 52, subds. (b)(2), (c)(3) .) Code of Civil Procedure section 527.6 provides alternative methods for securing injunctive relief in situations involving racial, ethnic, religious, and minority violence, or other forms of harassment where substantial emotional distress is caused to the victim. Code of Civil Procedure section 527.7 provides that an injunction can be obtained against a group which is meeting and taking substantial action in furtherance of the commission of acts of violence if it can be shown that the group will probably engage in those acts in the future.

Civil Code section 52.1 protects all people within this state from interference with their free exercise or enjoyment of the rights guaranteed them by the state or the United States. If the interference is by means of speech alone, however, no remedy will be available to you under the Bane Act unless it can be shown that the speech itself threatened violence against you; that you reasonably feared violence would be committed against you or your property because of the speech; and that the person threatening violence had the apparent ability to carry out the threat.⁸

If anyone interferes with your rights under this law⁹ by threats, intimidation, or coercion, you may be able to get a court order banning this behavior and be awarded for money lost and emotional distress, as well as a \$25,000 civil penalty and attorney's fees.¹⁰ The Attorney General, your local district attorney or city attorney may also seek court orders to ban the unlawful behavior and other appropriate relief.¹¹

If you believe you have a claim under this Act, you may either file a private lawsuit or contact the Attorney General's Office, your local district attorney or city attorney. The court may grant an injunction prohibiting further intimidating or coercive behavior. Any violation of this order is a misdemeanor and may result in fines or imprisonment.¹² If a judgment is awarded in your favor in a private lawsuit, you may receive reasonable attorney's fees as well.¹³

Penal Code section 422.6. In addition to civil remedies, the Bane Act establishes criminal remedies. Penal Code section 422.6, subdivision (a), makes it unlawful to, by force or threat of force, oppress, injure, intimidate, or interfere with any other person in the free exercise or enjoyment of any right secured by the state or federal government because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation or because it is perceived that the victim has one or more of these characteristics. If the force or threat of force is through speech alone, it must be shown that the speech itself threatened violence against a specific person or group of persons, and that the accused had the apparent ability to carry out the violence.

Subdivision (b) of this Penal Code Section prohibits the knowing destruction of real or personal property of any other person in order to intimidate or interfere with the free exercise or enjoyment of rights provided under federal and state constitutions and laws because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Violations of these Penal Code sections are punishable by a jail term and/or a fine.

⁸Civil Code section 52.1, subdivision (j).

⁹This includes the right to be free from racial, ethnic, religious, gender, age, disability, sexual orientation, and political violence established by the Ralph Act.

¹⁰Civil Code sections 52.1, subdivision (b), and 52, subdivision (b).

¹¹Civil Code section 52.1, subdivisions (a), (c)(3).

¹²Civil Code section 52.1, subdivision (i), and Penal Code section 422.9.

¹³Civil Code section 52.1, subdivision (h).

Penal Code section 422.7 provides that misdemeanors committed because of the victim's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation may, under certain circumstances, be punishable as felonies (except in the case of a person punished under Penal Code section 422.6).

Penal Code section 422.75 provides for sentencing enhancements of one to three years for certain bias-motivated felonies against the above groups, or against persons perceived to belong to one or more of these groups. Penal Code section 422.75 also provides for heightened penalties of one to four years if more than one felony hate crime was committed at the same time, the offender had a prior hate crime conviction, a firearm was used, or if the hate crime was committed on certain types of public or private property (i.e., schools, libraries, community centers, meeting halls, places of worship, offices of advocacy groups, etc.).

Penal Code section 422.76 defines gender for purposes of various hate crime statutes to mean the victim's actual sex or the defendant's perception of the victim's sex. This includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not the characteristics are traditionally associated with the victim's sex at birth.

Penal Code section 422.9, subdivision (a), provides that it is a misdemeanor to violate an order issued pursuant to Civil Code section 52.1, subdivision (a) or (b), the civil portion of the Bane Act. Such a misdemeanor is punishable by up to six months in jail or \$1,000 or both.

Penal Code section 422.9, subdivision (b), provides up to one year in jail for a person previously convicted of violating an order issued pursuant to Civil Code section 52.1, subdivision (a) or (b), on a different charge.

Penal Code section 422.9, subdivision (c), gives county prosecuting agencies the primary responsibility for enforcing orders issued pursuant to Civil Code section 52.1.

Penal Code section 422.95, subdivisions (a) and (b), provide that if a person is granted probation for any Penal Code section 422.6, 422.7, 422.75, 594.3 or 11411 offenses, the court may order the defendant to complete an available class or program on racial or ethnic sensitivity or other similar training in civil rights as a condition of probation; to make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence; and to reimburse the victim for reasonable costs of counseling and other expenses. Any payments or compensation are in addition to restitution payments required under Penal Code section 1203.04.

Penal Code section 422.95, subdivision (c), states that it is the intent of the Legislature to encourage counties, cities, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes.

If you are the victim of or a witness to any of the activities described by these Penal Code sections, contact your local law enforcement agency. If criminal action is taken and you are a victim, you may pursue injunctive relief on your own, independent of any action taken by the Attorney General,

district or city attorneys. The Bane Act provides that victims may pursue either private lawsuits or criminal prosecutions, or both.¹⁴

Local Human Relations Commissions

Government Code section 50260 et seq. authorizes and encourages cities and counties to establish local human relations commissions to preserve peace among citizens of different races, religions, and national origins. If your community has such a commission, you may wish to seek its assistance to address hate violence. Below is a list of local human relations commissions.

California Association of Human Relations Organizations (CAHRO)

1426 Fillmore Ave., Suite 216
 San Francisco, CA 94115
 (415) 775-2341, (415) 775-2342 fax

Web Site: <http://www.cahro.org/>

Human Relations Commissions by Counties

| COUNTY | ADDRESS | TELEPHONE NO. |
|---|---|--------------------------------------|
| Alameda County Human Relations Commission | 310 45th Street Oakland, CA 94609 | (510) 596-0405 |
| Contra Costa County Human Relations Commission | 2020 N. Broadway, #203A Walnut Creek, CA 94596 | (925) 646-6160 |
| El Dorado County Round Table on Human Relations | 330 Fair Lane Placerville, CA 95667 | (530) 621-5390 |
| Humboldt County Human Rights Commission | 535 5th Street Eureka, CA 95501 | (707) 268-2548 |
| County of Kern Human Relations Commission | 1115 Truxton Avenue Bakersfield, CA 93301 | (805) 868-3941 or (805) 868-3944 |
| Los Angeles County Human Relations Commission | 320 West Temple, Room 1184 Los Angeles, CA 90012 | (213) 974-7611 Fax (213) 687-4251 |
| Marin County Human Rights Commission | Marin County Civic Center San Rafael, CA 94101 | (415) 499-6189 |
| Orange County Human Relations Commission | 1300 S. Grand, Bldg. B Santa Ana, CA 92705 | (714) 567-7470 |

¹⁴Civil Code section 52.1, subdivision (g).

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| Human Rights and Fair Housing Commission of the City and County of Sacramento | 1112 I Street, #250 Sacramento, CA 95814 | (916) 444-6903 |
| Human Rights Commission of San Francisco | 25 Van Ness, #800 San Francisco, CA 94102 | (415) 252-2500 |
| Santa Clara County Human Relations Commission | Office of Human Relations 70 W. Hedding San Jose, CA 95110 | (408) 299-2206 |
| Sonoma County Commission on Human Rights | 2300 Country Center Drive, B-167 Santa Rosa, CA 95403 | (707) 527-2693 |
| County of Santa Barbara Human Relations Commission | 105 E. Anapamu St., #406 Santa Barbara, CA 93101 | (805) 884-6802 Fax (805) 884-6801 |

Human Relations Commissions by Cities

| CITY | ADDRESS | TELEPHONE NO. |
|--|---|--------------------------------------|
| City of Alameda Social Services Human Relations Board | 2263 Santa Clara Ave. Alameda, CA 94501 | (510) 749-5811 |
| Berkeley Human Welfare and Community Action Commission | 2201 Dwight Way, 2nd Floor Berkeley, CA 94704 | (510) 665-3475 Fax (510) 644-8678 |
| City of Carson Human Relations Commission | 701 E. Carson Street Carson, CA 90745 | (310) 952-1729 |
| City of Chula Vista Human Relations Commission | 654 Sea Vale St. Chula Vista, CA 91910 | (619) 427-5456 |
| Claremont Committee on Human Relations | Human Services Department 840 Indian Hill Blvd. Claremont, CA 91711 | (909) 399-5495 |
| City of Colton Neighborhood Services | 670 Colton Avenue Colton, CA 92324 | (909) 370-6155 |
| Compton City Human Relations Commission | 205 S. Willowbrook Ave. Compton, CA 90220 | (310) 605-5500 |
| Concord Human Relations Commission | Concord Leisure Services Department 1948 Colfax St. Concord, CA 94520 | (925) 671-3461 |

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| Costa Mesa Human Relations Committee | P.O. Box 1200 Costa Mesa, CA 92628-1200 | (714) 754-5667 |
| Human Services and Park Commission of Culver City | Department of Human Services Culver City Hall 9770 Culver Boulevard Culver City, CA 90232-0507 | (310) 253-6655 |
| City of Davis Human Relations Commission | Davis Police Department 226 F Street Davis, CA 95616 | (530) 756-3740, ext. 7446 |
| El Cerrito Human Relations Commission | 10890 San Pablo Avenue El Cerrito, CA 94530 | (510) 215-4425 |
| Fremont Human Relations Commission | 2901 Barrington Terrace Fremont, CA 94536 | (510) 797-1050 |
| City of Fresno Human Relations Commission | 2600 Fresno Street Room 2162N Fresno, CA 93721 | (559) 498-1646 |
| Gardena Human Relations Commission | 1700 West 162nd Street Gardena, CA 90247 | (310) 217-9500 |
| Glendale Human Relations Coalition | 613 E. Broadway, #200 Glendale, CA 91206 | (818) 548-4844 |
| Hayward Community Relations Commission | 777 B St. Hayward, CA 94541 | (510) 583-4227 |
| Heartland Human Relations and Fair Housing Association | 4710 4th St., Suite 600 La Mesa, CA 91941 | (619) 460-2744 |
| Hemet Human Relations Commission | P.O. Box 3036 Hemet, CA 92546 | (909) 765-2300, Fax (909) 765-2337 |
| Huntington Beach Human Relations Task Force | 2000 Main Street Huntington Beach, CA 92648 | (714) 536-5577 |
| Inglewood Human Affairs Commission | 1 Manchester Blvd., 9th Floor Inglewood, CA 90301 | (310) 412-5301 |
| City of Livermore Human Services Commission | 1052 South Livermore Ave. Livermore, CA 94550 | (925) 373-5149 |
| Long Beach Human Relations Commission | 2525 Grand Avenue Long Beach, CA 90815 | (562) 570-4001 |

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| Human Relations Commission of the City of Los Angeles | 200 N. Main St., City Hall East, #700 Los Angeles, CA 90012 | (213) 485-4495 |
| City of Modesto Human Relations Commission | City Manager's Office 801 11th Street P.O. Box 84 Modesto, CA 95353 | (209) 577-5463 |
| Monterey Park Community Relations Commission | 320 W. Newmark Avenue Monterey Park, CA 91754 | (626) 307-1387 |
| City of Oakland Human Relations Commission | 1 Frank Ogawa Plaza Oakland, CA 94612 | (510) 238-7298 |
| Community Relations Commission of the City of Oxnard | Human Services Program 305 W. Third Street Oxnard, CA 93030 | (805) 385-7947 |
| Palm Springs Human Rights Commission | Human Resources Department P.O. Box 2743 Palm Springs, CA 92263 | (760) 323-8337 |
| Palo Alto Human Relations Commission | Cubberly Community Center 4000 Middlefield Road Palo Alto, CA 94303 | (650) 329-2571 |
| Pasadena Human Relations Commission | 100 N. Garfield Ave. Pasadena, CA 91109 | (626) 744-4000 |
| Pinole Human Relations Commission | 2131 Pear Street Pinole, California 94564 | (510) 724-9000 |
| Pittsburg Community Advisory Commission | 65 Civic Avenue Pittsburg, CA 94565 | (925) 252-4959 |
| City of Pleasanton Human Services Commission | P.O. Box 520 Pleasanton, CA 94566-0802 | (925) 931-5006 Fax (925) 931-5488 |
| City of Pomona Community Life Commission | 505 S. Garvey P.O. Box 660 Pomona, CA 91769 | (909) 620-2438 |
| Human Relations Council of Pomona Valley | 913 W. Bonita Ave. P.O. Box 1023 Claremont, CA 91711 | (909) 949-0883 |
| Rialto Human Relations Commission | 150 South Palm Rialto, CA 92376 | (909) 820-2519 |

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| City of Richmond Human Relations and Affirmative Action Commission | 2600 Barrett Avenue, #301 Richmond, CA 94804 | (510) 307-8017 |
| Riverside Human Relations Commission | 3900 Main St. Riverside, CA 92522 | (909) 826-5709 or (909) 826-5302 |
| San Bernardino Human Relations Commission | 300 North "D" Street San Bernardino, CA 92418 | (909) 384-5133 ext. 3618 |
| San Clemente Human Affairs Committee | 100 Avenida Presidio San Clemente, CA 92672 | (949) 361-8322 |
| San Diego Human Relations Commission | 1200 3rd Street, Suite 916 San Diego, CA 92101 | (619) 236-6420 |
| San Jose Human Relations Commission | 801 N. First St., Rm. 460 San Jose, CA 95110 | (408) 293-8300 |
| City of San Leandro Human Relations Commission | 300 Estudillo Ave. San Leandro, CA 94577 | (510) 577-3464 |
| City of San Luis Obispo Human Relations Commission | Parks and Recreation Department 1341 Nipomo Street San Luis Obispo, CA 93401 | (805) 781-7296 |
| Santa Ana Human Relations Commission | Parks, Recreation, and Community Services 888 West Santa Ana Blvd. Suite 200 Santa Ana, CA 92701 | (714) 245-8022 |
| Santa Clarita Human Relations Forum | 23920 Valencia Blvd., #308 Santa Clarita, CA 91355 | (661) 255-4918 or (661) 255-4929 |
| City of Seaside Human Relations Commission | City Hall P.O. Box 810 440 Harcourt Seaside, CA 93955 | (408) 899-6202 |
| Union City Human Relations Commission | 34009 Alvarado-Niles Road Union City, CA 94587 | (510) 471-3232 |
| City of Vallejo Human Relations Commission | P.O. Box 3068 Vallejo, CA 94590 | (707) 648-4435 |
| West Hollywood Human Services Commission | 8300 Santa Monica Boulevard West Hollywood, CA 90069 | (323) 848-6471 |

Miscellaneous State Penal Statutes Which Address Racial, Ethnic, Religious, and Minority Violence

Listed below are some of the other key Penal Code statutes which have been enacted to curb racial, ethnic, religious, and minority violence in California. If you are the victim of or a witness to any of the activities described by these statutes, immediately contact your local law enforcement or police agency:

1. **Penal Code section 136.2** provides for protective orders. The district attorney or city attorney may seek protective orders to protect against further harm to or intimidation of hate crimes victims and witnesses by the accused perpetrators.

Once criminal charges are filed under the Bane Civil Rights Act, or under any other criminal statute, hate crime victims have the right to a court order prohibiting any additional harassment from, or any communication or contact with the accused perpetrator.

2. **Penal Code section 139** creates a felony when someone already convicted of a felony communicates a credible threat to use force or violence to witnesses, victims, informants or their immediate families. The penalty is one year in county jail or two to four years in state prison.
3. **Penal Code section 140** creates a misdemeanor when someone communicates a credible threat to witnesses, victims, informants or their immediate families to use force or violence. This does not require that the perpetrator already be convicted of a related crime. The penalty is one year in county jail or two to four years in state prison.
4. **Penal Code section 185** provides that it is a misdemeanor for any person to wear any mask, false whiskers or any personal disguise (whether complete or partial) in order to evade or escape discovery, recognition, or identification in the commission of any public offense.
5. **Penal Code section 186.21** declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. (This is part of the “California Street Terrorism Enforcement and Prevention Act,” enacted in 1988.)
6. **Penal Code section 190.03** provides that a person who commits first-degree murder shall be punished by life imprisonment in state prison without the possibility of parole if the defendant intentionally killed the victim because of the victim’s actual or perceived disability, gender, or sexual orientation.

7. **Penal Code section 190.2**, subdivision (a)(16), provides for the death penalty or life imprisonment without the possibility of parole when a person is intentionally murdered because of his or her race, color, religion, nationality, or country of origin.
8. **Penal Code section 302** makes it a misdemeanor willfully to disturb a group which has met for religious worship with unnecessary noise, profanity, or behavior which is rude and/or indecent.
9. **Penal Code section 538c** makes it a misdemeanor for any person who attaches or inserts an unauthorized advertisement in a newspaper offered for sale or made available for free and who redistributes it or has the intent to redistribute it to the public.
10. **Penal Code section 594** makes it a crime to deface, damage, or destroy another's property. This is either a misdemeanor or a felony, depending primarily on the amount of damage. This statute may be applied to racial, ethnic, religious, gender, disability and political violence against property.
11. **Penal Code section 594.1** makes it unlawful for a minor or any person or entity other than a parent to provide a minor with aerosol paint containers in excess of six ounces. A court can order community service, graffiti removal or counseling in the event of a violation of this section.
12. **Penal Code section 594.3** makes it a crime knowingly to vandalize a church, synagogue, or any building owned and occupied by a religious educational institution, or knowingly to vandalize any other place primarily and regularly used as a place of worship. This can be either a felony or misdemeanor. It is a felony if the vandalism is committed because of the race, color, religion or national origin of an individual or group and in order to intimidate and deter those persons from exercising their religious beliefs.
13. **Penal Code section 640.2** makes it a misdemeanor to stamp, print, place or insert any writing in or on any box, package or other container containing a consumer product offered for sale.
14. **Penal Code section 1170.75** makes it possible to impose higher sentences for felonies committed because of the victim's actual or perceived race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation.
15. **Penal Code section 1170.8** makes it possible to impose higher sentences for a robbery, or an assault with a weapon or by any means likely to produce great bodily injury, committed against a person while that person is in a church, synagogue, or any other place primarily and regularly used as a place of worship, or for arson of a place primarily used as a place of worship.

16. **Penal Code section 1170.85** makes it possible to impose higher sentences for a felony if the victim is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability. Penal Code section 667.9 provides specific term enhancements for repeat offenders who commit certain crimes against persons whom the perpetrator knows is disabled, persons 65 years or older, or persons under the age of 14.
17. **Penal Code section 11410** (terrorism) expresses the Legislature's intent that it is the right of every person, regardless of his or her race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation and physical harm caused by the activities of violent groups and individuals. This section also contains the Legislature's express finding that the advocacy of unlawful violent acts by groups against other persons or groups where death and/or great bodily injury is likely, is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal and civil sanctions.
18. **Penal Code section 11411** makes it a misdemeanor to burn or desecrate a cross or other religious symbol, or to display a sign, mark, symbol, or emblem (e.g., a Nazi swastika) on another's private property, or on the property of a primary, junior high or high school, for the purpose of terrorizing (i.e., causing a person to fear for his or her personal safety) the owner or occupant of the private property or any person associated with the school.
19. **Penal Code section 11412** makes it a felony for a person to attempt to cause or to cause another, by means of a direct, personal threat of unlawful injury upon any person or property, to refrain from exercising his or her religion, or engaging in a religious service. It must reasonably appear to the recipient of the threat that the threat could be carried out.
20. **Penal Code section 11413** makes it a felony for a person to explode, ignite or to attempt to explode or ignite, any destructive device, or to commit arson in any church, temple, synagogue, or other place of worship, any offices or buildings where counsel representing groups working for or against abortion meet or organize, any place in which a presentation regarding abortion is conducted, any bookstore or public or private library, any courthouse, the home or office of a judicial officer, any building occupied by probation officers, and any private property if the property was targeted because of the race, color, religion, ancestry, national origin, disability, gender, or sexual orientation of the owner or occupant of the property.
21. **Penal Code section 11460** makes it a misdemeanor for two or more persons to assemble as a paramilitary organization for the purpose of practicing with weapons. This section also makes it a misdemeanor for any individual to demonstrate to another how to make or use any firearm, explosive, or destructive device while knowing or having reason to know that this device will be used in an unlawful manner for purposes of civil disorder.

22. **Penal Code section 12303.2** makes it a felony “recklessly or maliciously” to have in one’s possession an explosive or destructive device at or near any public place, including churches.
23. **Penal Code section 13519.4** requires the Peace Officer Standards and Training Commission to train peace officers in racial and cultural diversity, including gender and sexual orientation issues.

Hate Crimes Reporting

Effective January 1, 2001, Education Code section 233 requires the State Board of Education to revise the school curriculum to include human relations education, with the aim of fostering an appreciation of the diversity of California’s population and discouraging the development of discriminatory attitudes and practices. Education Code section 32228 provides that public schools should have access to supplemental resources to combat bias on the bases contained in Government Code section 12926 of the Fair Employment and Housing Act (see Chapter 2, Employment), and to prevent and respond to acts of hate violence. At the same time, Education Code section 32228.1 requires school districts that receive funds under the School Safety and Violence Prevention Act to certify that funds will be used for one or more of a variety of purposes, including, but not limited to, preventing and responding to acts of hate violence and bias related incidents. Effective also January 1, 2001, Education Code section 44253.3 adds course work on human relations to the curriculum for a certificate to provide certain services to limited-English-proficient pupils. As of January 1, 2001, Penal Code sections 628, 628.1, 628.2, and 628.5 require the Department of Education to report on hate-motivated incidents and hate crimes.

Penal Code section 13023 requires local law enforcement agencies to report to the Department of Justice any criminal act where there is reasonable cause to believe the crime was motivated by the victim’s race, ethnicity, national origin, religion, gender, sexual orientation, or physical or mental disability. The Department of Justice is required to issue an annual report on July 1st of every year concerning such crimes.

Penal Code section 13515.25, effective January 1, 2001, requires that the Commission on Peace Officer Standards and Training establish a continuing education course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

Penal Code section 13519.6 provides that the Commission on Peace Officer Standards and Training shall develop guidelines and a course of instruction and training in hate crimes for law enforcement officers who are employed as peace officers or enrolled in a training academy for law enforcement officers. Hate crime for purposes of this section means any act of intimidation, harassment, physical force, or the threat of physical force, directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability or sexual orientation of that person, with the intent to cause fear and intimidation.

Pursuant to the federal Hate Crimes Statistics Act of 1990, 28 U.S.C. § 534 et seq., the United States Department of Justice collects data on hate crimes.

Education Code Provisions Regarding Hate Crimes

In 1994, the Legislature enacted the California Schools Hate Violence Reduction Act of 1995. This Act requires the State Board of Education to do the following if private funds are available, and if requested by the Superintendent of Public Instruction:

1. adopt policies and guidelines to prevent and respond to acts of violence;
2. revise existing state curricula, frameworks and guidelines to include human relations education;
3. establish guidelines for use in teacher and administrator in-service training programs:
 - a) to promote an appreciation of diversity;
 - b) to discourage discriminatory attitudes and practices among pupils, teachers, administrators, and counselors; and
 - c) to enable teachers and administrators to prevent and respond to acts of hate violence;
4. revise guidelines previously adopted by the Board to include procedures to prevent and respond to acts of hate violence; and
5. encourage teachers to impress upon the minds of pupils the meaning of equality and human dignity and to foster an environment that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence. (Ed. Code, §§ 201 and 233.5.)

Among the grounds for the suspension or expulsion of a pupil in grades four through 12 is now the commission of acts of hate violence. (Ed. Code, §§ 48900.3 and 48915.)

Education Code section 233.8 provides that effective January 1, 2001, the State Department of Education, subject to available funding, is required to provide training to school district personnel in identifying and determining hate violence on school campuses. Pupils and teachers may participate in a grant program focused on fostering ethnic sensitivity, overcoming racism and prejudice, and countering hatred and intolerance, subject to available funding.

California's Victims of Crime Program

Under Government Code sections 13959-13969.4, some crime victims may be eligible for financial assistance for unreimbursed expenses resulting from the crime.

For information and assistance, contact:

California Department of Justice
Attorney General's Office
Office of Victims' Services
1300 I Street
Sacramento, CA 95814
Toll Free Number: (877) 433-9069 (in California)

CHAPTER II
EMPLOYMENT

State Laws

The Fair Employment and Housing Act

The Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) is California's primary law prohibiting discrimination in employment, housing, and public accommodation. In enacting the FEHA, the Legislature declared that it is a civil right to seek, obtain, and hold employment without discrimination,¹⁵ and that it is the public policy of this state to protect and safeguard such rights and opportunities.¹⁶

The Department of Fair Employment and Housing (DFEH), which prosecutes cases, and the Fair Employment and Housing Commission (FEHC), which rules on cases, are the state agencies charged with enforcing the provisions of the FEHA.¹⁷

Under the FEHA, if the case is litigated in an administrative hearing before the FEHC, employees who prevail may recover back pay, out-of-pocket losses, and up to \$150,000 in combined emotional distress damages per respondent.¹⁸ The administrative fines are payable to the State.¹⁹ If the case is litigated in civil court, the employee may recover unlimited monetary damages, including back pay, emotional distress damages, punitive damages, any other out-of-pocket losses, and attorney's fees and costs, including expert witness fees.²⁰

Discrimination Prohibited by the FEHA

The FEHA prohibits employment discrimination, harassment and retaliation based upon race, religious creed, color, national origin, ancestry, physical disability (including AIDS and HIV), mental disability, medical condition, marital status, sex (including pregnancy, childbirth, or related

¹⁵ Government Code section 12921, subdivision (a).

¹⁶ Government Code section 12920.

¹⁷ Government Code sections 12930-12935.

¹⁸ Legislation effective January 1, 2000, increased the money damages from \$50,000 to \$150,000 per aggrieved person per respondent. (Gov. Code, § 12970, subd. (a)(3).)

¹⁹ Government Code section 12970, subdivision (d).

²⁰ Legislation effective January 1, 2000, added expert witness fees which may be awarded to a prevailing party. However, no attorney's fees, costs or expert witness fees may be awarded to the prevailing party where the action is filed by a public entity or public official, acting in an official capacity. (Gov. Code, § 12965, subd. (b).)

medical conditions), age (40 or older), or sexual orientation²¹ (heterosexuality, homosexuality, and bisexuality).²² The prohibition includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. Physical and mental impairment includes conditions that are disabling, potentially disabling, or perceived as disabling.²³

Additionally, it is unlawful under the FEHA to refuse to grant a female employee up to four months of pregnancy disability leave.²⁴ The California Family Rights Act (CFRA) (Gov. Code, § 12945.2) added provisions to the FEHA to provide up to 12 workweeks leave for the reason of the birth of a child of the employee, the placement or adoption of a child by the employee, the serious health condition of the child, parent, spouse, or the employee.²⁵

²¹ Legislation effective January 1, 2000, added sexual orientation as a protected basis under the FEHA. (Gov. Code, §§ 12920, 12926, subd. (q).) Previously, discrimination based on sexual orientation in employment was part of the now-repealed Labor Code section 1102.1, which required employees to file their complaints with the Labor Commissioner within 30 days. Under the FEHA, complainants have one year to file such complaints with the DFEH. (Gov. Code, § 12965, subd. (b).) The FEHA's protections extend to actual as well as perceived sexual orientation, and include persons who are discriminated against because of their association with a person who is or is perceived to be of a particular sexual orientation. (Gov. Code, § 12926, subd. (m).) Under former Labor Code section 1102.1, money damages were limited to back pay only. (Lab. Code, § 1102.1, repealed by Stats. 1999, ch. 592 (AB 1001), § 12.)

²² Government Code sections 12920, 12921, 12926, subdivision (j), 12940.

²³ Though interpreted by some that the FEHA had previously provided for a broad range of disability coverage, legislation effective January 1, 2001, officially expanded the scope of physical and mental impairment to include conditions that are disabling, potentially disabling, or perceived as disabling. (Gov. Code, § 12926.1, subs. (b) and (c).) In determining whether an individual has a disability under the FEHA, mitigating measures, such as medication or assistive devices, are not considered.

²⁴ Government Code section 12945.

²⁵ CFRA applies to all California public employers of any size, as well as all private employers that directly employ 50 or more full or part-time persons within a 75-mile radius from the work site where the California employee is employed. (Cal. Code of Regs., tit. 2, § 7297.0, subd. (d).) An eligible employee may take CFRA leave for up to a total of 12 workweeks in a 12-month period for family care and medical leave, but it does not have to be taken in one continuous period of time. (Cal. Code of Regs., tit. 2, § 7297.0, subd. (e).) CFRA need not be taken in one continuous period of time, but it cannot exceed more than 12 workweeks total for any purpose in a 12-month period. (Cal. Code of Regs., tit. 2, § 7297.3.) An employee is required to give at least verbal notice sufficient to make the employer aware that CFRA-qualifying leave is needed. (Cal. Code of Regs., tit. 2, § 7297.4., subd. (a)(1).) The employer may require a certification, but this certification need not disclose the underlying diagnosis of the serious health condition. (Gov. Code, § 12945.2, subs. (j) and (k); Cal. Code Regs., tit. 2, §§

The FEHA also protects employees and contract workers from harassment on any of the prohibited bases in the work place.²⁶ Harassment because of sex includes sexual harassment, gender harassment, same-sex harassment, and harassment based on pregnancy.²⁷ Sexual harassment may be “quid pro quo,” involving situations where the victim’s submission to sexual advances or conduct is made a condition of an employment benefit, or it may create a “hostile work environment,” which deprives the employee of a discrimination-free work environment.²⁸

Entities and Persons Covered by the FEHA

Generally, any employer regularly employing five or more persons is covered by the FEHA. Such employers include the state,²⁹ cities, counties, other government bodies and private employers. All governmental employers are covered under the FEHA regardless of size. Also subject to the provisions of the FEHA are labor organizations, employment agencies, and apprenticeship programs. An exception to the five-employee minimum occurs whenever harassment is at issue. Every employer employing one or more persons or receiving the services of one or more independent

7297.0, subd. (a)(1) and (2); 7297.4, subd. (b)(1) and (2), and 7297.11.) An employee may elect or an employer may require the employee to substitute accrued vacation leave, other accrued time off, any other paid or unpaid time off negotiated with the employer, or sick leave because of the employee’s serious health condition. (Gov. Code, § 12945.2, subd. (e); Cal. Code of Regs., tit. 2, § 7297.5.) During the period that an employee takes CFRA leave, the employer shall maintain and pay for coverage under a group health plan. (Gov. Code, § 12945.2, subd. (f)(1); Cal. Code Regs., tit. 2, § 7297.5, subd. (c).)

²⁶ Legislation effective January 1, 2000, covers “a person providing services pursuant to a contract” under the FEHA. The criteria for independent contractor include: (1) a person who has the right to control the performance of the contract; (2) a person who is customarily engaged in an independently established business; and (3) a person who has control over the time and place the work is performed, supplies the tools and instruments used, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work. (Gov. Code, § 12940, subd. (j)(5)(A)-(C).)

²⁷ Government Code section 12940, subdivision (j)(3)(C); *Matthews v. Super. Ct.* (1995) 34 Cal.App.4th 598; *Mogilefsky v. Super. Ct.* (1993) 20 Cal.App.4th 1409.

²⁸ *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 607-608, 611.

²⁹ If you are a state employee, you can also file a discrimination claim with the State Personnel Board in addition to any claims you may separately file under the FEHA. (Gov. Code, § 19702.) The State Personnel Board and the FEHC both have jurisdiction over complaints concerning state employees. (See *State Personnel Board v. Fair Employment and Housing Com.* (1985) 39 Cal.3d 422).

contractor(s)³⁰ is subject to the FEHA's prohibition of harassment.³¹ Individual co-workers who harass another employee in violation of the FEHA are personally liable.³²

Religious associations or religious corporations not organized for private profit may be exempt from the provisions of the FEHA under certain circumstances.³³ Employees of the federal government are protected from discrimination under federal laws. Additionally, an employee is personally liable for any unlawful employment harassment of another employee.³⁴

Procedures and Remedies

If you have an employment discrimination problem covered by the FEHA, you should file a complaint with the DFEH. Under the FEHA, the DFEH is the administrative agency responsible for investigating and prosecuting violations of the FEHA. A complaint can be filed with the DFEH by an aggrieved person or the Director of the DFEH.

To file a complaint of employment discrimination, call the Department's Communication Center or log onto the DFEH Web site listed below. If the matter falls within the Department's jurisdiction, you, or the person you represent, will be given an appointment for an interview at the nearest DFEH office.

Listed below are the Web site, Communication Center, and District Office addresses and telephone numbers of the DFEH which can help you with employment discrimination complaints.

DFEH Web site:

www.dfeh.ca.gov

³⁰ See footnote 26.

³¹ Government Code section 12940, subdivision (j).

³² Government Code section 12940, subdivision (j)(3).

³³ The Commission by precedential decision, in *Dept. of Fair Employment and Housing v. Hoag Memorial Hospital Presbyterian* (1985) FEHC Dec. No. 85-10 [1985 WL 62889 (Cal.F.E.H.C.); 1984-85 CEB 14], has interpreted Government Code section 12926, subdivision (d), to exempt the sectarian activities of religious organizations from coverage under the FEHA. However, the Commission has interpreted this section not to exempt those activities engaged in by such organizations whenever the job at issue is purely secular in nature. Legislation effective January 1, 2001, redefined religious exemption to exclude religious associations or corporations not organized for private profit.

³⁴ Legislation effective January 1, 2001, imposes personal liability on an employee who engages in unlawful harassment in employment under the FEHA. (Gov. Code, § 12940, subd. (j).)

DFEH Communication Center: (800) 884-1684 (Within California)
(916) 227-0551 (Outside California)
(800) 700-2320 TTY

FAX: (916) 227-2859

DFEH District Offices:

Bakersfield Department of Fair Employment & Housing
Bakersfield District Office
1001 Tower Way, #250
Bakersfield, CA 93309-1586
Telephone: (805) 395-2729

Fresno Department of Fair Employment & Housing
Fresno District Office
1320 E Shaw, #150
Fresno, CA 93710
Telephone: (559) 244-4760

Los Angeles Department of Fair Employment & Housing
Los Angeles District Office
611 West Sixth Street Suite 1500
Los Angeles, CA 90017
Telephone: (213) 439-6700

Oakland Department of Fair Employment & Housing
Oakland District Office
1515 Clay Street, Suite 701
Oakland, CA 94612-2512
Telephone: (510) 622-2941

Sacramento Department of Fair Employment & Housing
Sacramento District Office
2000 O Street, #120
Sacramento, CA 95814-5212
Telephone: (916) 445-5523

San Bernardino Department of Fair Employment & Housing
San Bernardino District Office
1845 S. Business Ctr. Dr., #127
San Bernardino, CA 92408-3426
Telephone: (909) 383-4373

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| San Diego | Department of Fair Employment & Housing San Diego District Office 350 West Ash Street, #950 San Diego, CA 92101-3901 Telephone: (619) 645-2681 |
| San Francisco | Department of Fair Employment & Housing San Francisco District Office 455 Golden Gate Avenue, #7600 San Francisco, CA 94102-6073 Telephone: (415) 703-4177 |
| San Jose | Department of Fair Employment & Housing San Jose District Office 111 North Market St., #180 San Jose, CA 95113-1102 Telephone: (408) 277-1271 |
| Santa Ana | Department of Fair Employment & Housing Santa Ana District Office 28 Civic Center Drive, #200 Santa Ana, CA 92701-4010 Telephone: (714) 558-4266 |
| Ventura | Department of Fair Employment & Housing Ventura District Office 1732 Palma Drive #200 Ventura, CA 93003 Telephone: (805) 654-4514 |

Unless the discriminatory action taken against you is of a continuing nature, the FEHA requires you to file your complaint with the DFEH within one year of the alleged unlawful employment discrimination. If you do not discover facts about an unlawful employment practice until after the expiration of the one-year filing period, you have an additional 90 days to file a complaint.³⁵ Once your complaint has been filed, the DFEH may investigate and attempt to resolve your complaint through conciliation and persuasion. If conciliation proves unsuccessful, the DFEH is authorized to prosecute an administrative action against the accused employer by issuing a document referred to as an “accusation.” You do not need your own attorney if the DFEH issues an accusation.

You will be issued a “right to sue” letter, notifying you that you can file a private lawsuit in court if you desire. However, you may request a “right to sue” letter immediately upon filing your complaint if you have your own private attorney or choose to represent yourself in a court action.

³⁵ Government Code section 12960.

Once you opt out of the administrative process, all subsequent proceedings will take place through private litigation and the DFEH will no longer be involved.

If you stay in the administrative process, and if the DFEH chooses to institute proceedings itself by issuing an accusation, an evidentiary hearing will begin within 90 days unless waived by the parties. The merits of your employment discrimination complaint will be litigated at this hearing. If the DFEH issues an accusation which asks for either compensatory damages for emotional injury or administrative fines, the employer has the right to opt out of the administrative system and have its case heard by the courts. The FEHC rules on charges brought by the DFEH, and has broad authority to fashion remedies which will effectively carry out and further the purposes of the FEHA. Employees who prevail may recover back pay, out-of-pocket losses, and up to \$150,000 in combined emotional distress damages per respondent.³⁶ The administrative fines are payable to the State.³⁷ If the case is litigated in civil court, the employee may recover unlimited monetary damages, including back pay, emotional distress damages, punitive damages, any other out-of-pocket losses, attorney's fees and costs, including expert witness fees.³⁸

Employment Discrimination Remedies with the State Personnel Board

In addition to the FEHA, other state statutes and constitutional guarantees may also prohibit employment discrimination. Article I, section 8, of the California Constitution provides that a person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin. Article I, section 31, of the California Constitution provides in relevant part that the State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.³⁹ An Executive Order prohibits any state entity from discriminating against an employee because of the employee's sexual orientation.⁴⁰ Violations of this Executive Order should be reported to the State

³⁶ Legislation effective January 1, 2000, increased the money damages from \$50,000 to \$150,000 per aggrieved person per respondent. (Gov. Code, § 12970, subd. (a)(3).)

³⁷ Government Code section 12970, subdivision (d).

³⁸ Legislation effective January 1, 2000, added expert witness fees which may be awarded to a prevailing party. However, no attorney's fees, costs or expert witness fees may be awarded to the prevailing party where the action is filed by a public entity or public official, acting in an official capacity. (Gov. Code, § 12965, subd. (b).)

³⁹ California Constitution, Article I, section 31, added by California Civil Rights Initiative, Primary Election (Prop. 209) (Nov. 5, 1996).

⁴⁰ Executive Order No. B-54-79 (1979). In addition, "[w]ithin 30 days after receipt of notice of termination of a career executive assignment, the affected employee may appeal to the State Personnel Board upon the grounds that the termination was effected for reasons of age, sex, sexual preference as prohibited by Governor's Executive Order B-54-79 (4/4/79), marital status, race, color, national origin, ancestry, disability as defined in Government Code section

Personnel Board in writing. The street, Web site and e-mail addresses of the State Personnel Board are as follows:

State Personnel Board
Appeals Division
801 Capitol Mall, MS #22
P.O. Box 944201
Sacramento, CA 94244-2010
Web site: www.spb.ca.gov
E-mail: Appeals@spb.ca.gov

If you have any questions or need further information regarding this Executive Order, contact:

State Personnel Board, Appeals Division:

| | |
|--|---------------------|
| General Information Sacramento | (916) 653-0544/0799 |
| General Information Los Angeles | (213) 897-3370 |
| Status of Appeals | (916) 657-2092 |
| Calendaring & Continuances | (916) 653-5505 |
| Transcript, Tape, Document & Administrative Record | (916) 657-2489 |
| Secretariat | (916) 653-0429 |
| FAX | (916) 654-6055 |
| TDD | (916) 654-2360 |

The California Equal Pay Law

The California Equal Pay Law, Labor Code section 1197.5, prohibits discrimination against employees on the basis of sex in the payment of wages. Therefore, male and female employees in the same classification who perform substantially the same quantity and quality of work are entitled to equal pay, unless pay differentials are based on bona fide factors other than sex, such as seniority or merit. An employer who denies a person the equal pay guaranteed by this law is liable to the affected employee for any difference in wages due the employee, plus interest. The employer is also liable for damages in an amount equal to the total amount of lost wages.

This law is enforced by the Division of Labor Standards Enforcement (Division) of the State Department of Industrial Relations. If you believe your rights under the Equal Pay Law have been violated, you may file a complaint with the Division. To file a complaint, log onto the Division's Web site at www.dir.ca.gov/dlse or contact the following regional telephone numbers and local offices:

19231(a)(1), religion, or religious opinions and affiliations, political affiliation, or political opinions. After hearing the appeal, the board may affirm the action of the appointing power, or restore the affected employee to the career executive assignment.” (Cal. Code Regs., tit. 2, § 548.13.)

San Francisco, Oakland, San Jose and Salinas: (415) 557-7878
San Francisco, P. O. Box 420603, San Francisco, CA 94142-3660
Oakland, 1515 Clay Street, Suite 801, Oakland, CA 94612
San Jose, 100 Paseo de San Antonio, Room 120, San Jose, CA 95113
Salinas, 1870 Main Street, Suite 150, Salinas, CA 93906

Santa Rosa and Eureka: (707) 445-9067
Santa Rosa, 50 "D" Street, Suite 360, Santa Rosa, CA 95404
Eureka, 619 Second Street, Room 109, Eureka, CA 95501

Sacramento, Redding, Marysville: (916) 323-4920
Sacramento, 2424 Arden Way, Suite 360, Sacramento, CA 95825
Redding, 2115 Akard Avenue, Room 17, Redding, CA 96001
Marysville, 1204 "E" Street, Marysville, CA 95901

Los Angeles, Santa Ana, Long Beach, Van Nuys: (213) 620-6330
320 West 4th Street Los Angeles, CA 90013
28 Civic Center Plaza, Room 625, Santa Ana, CA 92701
300 Oceangate, Third Floor, Long Beach, CA 90802
6150 Van Nuys Blvd., Room 100, Van Nuys, CA 91401

San Diego: (619) 467-3002
8765 Aero Drive, Suite 125, San Diego, CA 92123

Please note the public information numbers of the Division for the following areas:

Fresno: (209) 248-8400
770 East Shaw Ave, Suite 315 Fresno, CA 93710

Stockton: (209) 948-7770
31 East Channel Street, Room 317 Stockton, CA 95202

Bakersfield: (805) 395-2710
5555 California Ave., Suite 200 Bakersfield, CA 93309

San Bernardino: (909) 383-4334
464 West Fourth Street, Room 348, San Bernardino, CA 92401

Santa Barbara: (805) 568-1222
411 East Canon Perdido Street, Room 3, Santa Barbara, CA 93101

Upon the filing of the complaint, the Division is empowered to investigate your allegations to determine their validity. During the course of its investigation, the Division will keep your name confidential unless it becomes necessary to reveal your name to verify your allegations. If the Division verifies your claims, it is then authorized to initiate all necessary proceedings, including a civil lawsuit, to collect any wages and damages due you.

If you consent to the bringing of a civil action by the Division on your behalf, you will be held to have waived your right to file a private lawsuit under the Equal Pay Law. However, if the Division dismisses a civil action after filing it on your behalf, your right to bring a civil action will be renewed. Additionally, if 180 days have passed since the filing of a civil action by the Division, and you have not received your lost wages and damages, you have the right to intervene in the lawsuit brought by the Division.

If you choose not to file a complaint with the Division, you may file your own lawsuit under the Equal Pay Law. If you are successful in a private lawsuit, you may collect lost wages, damages in an amount equal to your lost wages, the costs of your suit, and reasonable attorney's fees. A civil action to recover wages and damages must be filed within two years of the alleged violation except where the violation is willful. If the violation is willful, the complaint must be filed within three years.

Miscellaneous State Laws Prohibiting Employment Discrimination

Various other state statutory provisions also prohibit discrimination in employment, including discrimination in particular jobs or on particular bases.

These provisions include:

1. **Education Code sections 44337 and 44338** provide that no otherwise qualified person shall be denied the right to receive a teaching credential or training, or to engage in the practice of teaching, on the grounds that he or she is disabled, provided that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.
2. **Education Code section 44858** prohibits any person charged by a school board with interviewing and recommending persons for employment in positions requiring certification, from refusing to interview or recommend a person for employment because of that person's age or marital status.
3. **Education Code section 45023.5** requires that all certified public school employees performing like work be paid the same amount for overtime without discrimination based on the employee's sex.
4. **Education Code section 45193** allows local school districts to provide leaves of absences for any pregnant female employee employed in the classified services of the district.
5. **Education Code section 45293** provides that no question may be asked of a candidate for a classified services position of any public school system regarding his or her political or religious opinions or affiliations, race, color, national origin, ancestry, sex, or marital status, nor may any candidate be discriminated against on any of these bases.

6. **Government Code section 11135** prohibits employment discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, by any entity that receives state funding.
7. **Government Code section 19231**, effective January 1, 2001, provides that the definitions in Government Code section 12926 of the FEHA apply to the State Civil Service Act, which prohibits discrimination in civil service employment on the bases of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability.
8. **Government Code section 18932** declares that there shall not be established any minimum or maximum age limits for any civil service examination, except in the cases of positions involving public health or safety, or involving the powers and duties of a peace officer. Where minimum and maximum age limits are allowed, they must relate to a “bona fide occupational qualification.”
9. **Government Code section 19240**, effective January 1, 2001, provides that the definition of disability contained in section 12926 of the FEHA applies to the provisions of the Limited Examination and Appointment Program.
10. **Government Code section 19701** requires that no person shall be denied state employment because of blindness or color blindness, unless normal eyesight is absolutely necessary for such employment.
11. **Government Code section 19702** provides that there is to be no discrimination, retaliation or harassment in state employment based on sex, race, religious creed, color, national origin, ancestry, marital status, or physical or mental disability.
12. **Government Code section 19703** prohibits the asking of any questions relating to political or religious affiliations of any state employee or employment candidate.
13. **Government Code section 19704** prohibits the making of any notation on a state employment application suggesting or pertaining to the applicant’s race, color, religion, sex, or marital status. Subsequent to employment, answers to questions regarding an employee’s race, color, religion, sex, or marital status may be obtained for research and statistical purposes only.
14. **Government Code section 19706** prohibits the notation of the date of birth upon or in any state civil service application under most circumstances.
15. **Government Code section 20600.1** states that separate rates of contribution into the retirement system or benefit factors for male and female members of the state civil service shall neither be established nor maintained.
16. **Government Code section 31005** prohibits any county from establishing a minimum or maximum age limit for any county employment.

17. **Government Code section 31006** prohibits any county from failing to hire any person, who is otherwise qualified, solely on account of age.
18. **Government Code section 45050** prohibits any city from establishing minimum or maximum age limits for any civil service examination.
19. **Government Code section 45051** prohibits any city from failing to hire a person, who is otherwise qualified, solely on account of age.
20. **Labor Code sections 230 and 230.1** effective January 1, 2001, enacted the Victims of Domestic Violence Employment Leave Act, which prohibits employers with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence and who takes time off from work to seek medical attention for injuries caused by domestic violence, to obtain services from a domestic violence shelter, program, or rape crisis center, to obtain psychological counseling, or to participate in safety planning and take other actions to increase safety from future domestic violence.
21. **Labor Code sections 1101 and 1102** prohibit employers from adopting or enforcing any rule, regulation, or policy preventing employers from participating in politics or controlling the political activities or affiliations of employees.
22. **Labor Code section 1153** states that it shall be an unfair labor practice for an agricultural employer to discriminate in regards to the hiring or tenure of employment, or to discriminate against an employee in any condition of employment, for purposes of encouraging or discouraging membership in any labor organization. This section furthermore states that it is an unlawful labor practice to retaliate against an employee because he or she has filed a charge or given testimony regarding an unlawful labor practice.
23. **Labor Code section 1735** prohibits discrimination against potential employees on public works projects because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex.
24. **Labor Code section 1777.6** prohibits discrimination in the employment of apprentices on any state public works projects because of their race, religious creed, color, national origin, ancestry, sex, or age (provided the person is at least 16 years of age and has entered an apprentice agreement with an employer or program sponsor).
25. **Labor Code section 3095** makes it a misdemeanor for anyone willfully to discriminate in any apprenticeship program on the basis or race, religious creed, color, national origin, ancestry, or sex.

26. **Welfare and Institutions Code section 14087.28** prohibits hospitals which participate in the Medi-Cal program from determining medical staff membership or clinical privileges on the basis of sex, race, creed, national origin, or any other criteria lacking professional justification.

Unemployment Insurance Compensation

Under California law, you have a right to unemployment insurance benefits if you quit your job as a result of discriminatory treatment by your employer. Unemployment Insurance Code section 1256.2 states that you have good cause to quit your job if you are discriminated against on the basis of your race, color, religious creed, sex, national origin, ancestry, or physical handicap. Moreover, under Unemployment Insurance Code section 1256.7, you also have good cause to quit your job if you are sexually harassed by your employer.⁴¹ Accordingly, if you are discriminated against on any of the bases set forth in section 1256.2 or are sexually harassed, you may not be disqualified from receiving unemployment insurance benefits if you quit your job. Of course, you must meet all other eligibility requirements under the Unemployment Insurance Code in order to receive benefits. For more information regarding your rights to unemployment insurance compensation, contact your local Employment Development Department (EDD) office for assistance.

It is very important to note that if you do quit your job because you have been discriminated against by your employer and file a claim for unemployment insurance benefits, your employer may appeal any EDD determination that you should receive benefits. If this occurs, you may wish to seek the advice of an attorney. Under California law, if you should subsequently lose your unemployment insurance case, your employer may then be able to use that decision against you in any subsequent discrimination case which you might file with some other governmental agency or in court. In other words, a loss in the unemployment insurance case may prevent you from prevailing in another forum under a different set of laws. If you cannot afford a lawyer and are faced with an employer appeal regarding your unemployment insurance compensation benefits, contact your nearest legal aid office for assistance.

Federal Laws

Title VII of the Federal Civil Rights Act of 1964

A key provision of federal law, Title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000e et seq.), also prohibits discrimination in employment.

Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin, in the classification, selection, hiring, promotion, compensation, or termination of employees, or any other discrimination in benefits or other conditions of employment. Title VII establishes a federal agency, the Equal Employment Opportunity Commission (EEOC), to seek out and eliminate unlawful employment practices in accordance with the procedures prescribed by Title VII. Title VII

⁴¹ You should note that before you quit you are required to take reasonable steps to preserve your employment.

covers state and local governments, private employers with fifteen or more employees, labor organizations, employment services and apprenticeship programs.

You must file your complaint with the EEOC within 300 days of the alleged discrimination or within 30 days of termination of any state proceeding, whichever period expires first. Title VII requires you to file your complaint with the DFEH before allowing you to lodge your Title VII complaint. However, the EEOC and DFEH have a joint filing agreement so a complaint filed with one agency is automatically filed with the other as well.

Like the FEHA, Title VII provides for administrative investigations and a private right of action. However, unlike awards given by the Fair Employment and Housing Commission under the FEHA, administrative findings of the EEOC are not enforceable in court. The EEOC may file a court action to enforce your rights under Title VII, or the EEOC will issue you a “right to sue” letter authorizing you to file your own action in court. If you file a private court action, you may recover back pay and other make-whole relief, injunctive relief, punitive damages, and reasonable attorney fees.

If you have been discriminated against in the area of employment, and want to bring a federal claim based upon Title VII, contact the nearest office of the EEOC. Listed below are the addresses and telephone numbers of the EEOC offices located throughout California:

EEOC Web site: <http://www.eeoc.gov/>

Field Offices

To be automatically connected with the nearest EEOC field office, call:

Phone: 1-800-669-4000

TDD: 1-800-669-6820

Fresno Local Office

1265 West Shaw Avenue, Suite 103

Fresno, CA 93711

Phone: 559-487-5793

TDD: 559-487-5837

Los Angeles District Office

255 E. Temple, 4th Floor

Los Angeles, CA 90012

Phone: 213-894-1000

TDD: 213-894-1121

Oakland Local Office

1301 Clay Street, Suite 1170-N
Oakland, CA 94612-5217
Phone: 510-637-3230
TDD: 510-637-3234

San Diego Area Office

401 B Street, Suite 1550
San Diego, CA 92101
Phone: 619-557-7235
TDD: 619-557-7232

San Francisco District Office

901 Market Street, Suite 500
San Francisco, CA 94103
Phone: 415-356-5100
TDD: 415-356-5098

San Jose Local Office

96 North 3rd Street, Suite 200
San Jose, CA 95112
Phone: 408-291-7352
TDD: 408-291-7374

42 U.S.C. § 1981

In addition to Title VII, 42 U.S.C. §1981 (section 1981), provides a federal remedy for some unlawful employment discrimination. Read literally, section 1981 simply provides that all persons have equal rights to make and enforce contracts. However, as interpreted by the United States Supreme Court, section 1981 includes the right to contract for employment free from racial discrimination.⁴² Therefore, section 1981 makes it unlawful for an employer to use a person's race as the basis for either interfering with the making of an employment contract or for refusing to enter such a contract.

A recent court decision has limited the reach of section 1981 to discriminatory refusal to enter into a contract, holding that section 1981 does not extend to discriminatory conduct after an employee is hired.⁴³ However, in certain circumstances you might still wish to pursue a section 1981 action, such as to receive compensatory and punitive damages or if your complaint is untimely under Title

⁴² *Runyon v. McCrary* (1976) 427 U.S. 160.

⁴³ *Patterson v. McLean Credit Union* (1989) 491 U.S. 164.

VII. Section 1981 is limited to race discrimination, but it applies to all private employers, regardless of size. Since no agency enforces section 1981, enforcement actions are filed directly in court.

Age Discrimination in Employment Act

The federal Age Discrimination in Employment Act (ADEA) (29 U.S.C. § 621 et seq.) prohibits discriminatory employment practices based upon age. This act provides protection for individuals who are at least 40 years of age.

The ADEA applies to employers engaged in an industry affecting commerce who employ 20 or more employees, agents of employers, state and local agencies, employment agencies, and labor organizations.⁴⁴ The EEOC is authorized to bring actions in federal court to enforce compliance with the ADEA. An aggrieved individual may also bring a private action in federal court under the ADEA.⁴⁵ The filing of a private action, however, must be preceded by the filing of a charge of unlawful age discrimination with the EEOC and a 60-day waiting period to allow the EEOC to attempt conciliation. In California, the charge must be filed with the EEOC within 300 days of the alleged discrimination or within 30 days of receiving notice that the California DFEH will not proceed with your claim, whichever is earlier. Because California's FEHA covers age discrimination, you must exhaust your state administrative remedies before filing a civil action under the ADEA. Upon receiving a charge of discrimination from an aggrieved party, the EEOC must promptly notify the prospective defendants and seek to settle the matter. Any private action must be brought within three years of the alleged unlawful act.⁴⁶ The applicable statute of limitations is tolled for a period not to exceed one year pending the EEOC's attempt to settle a dispute.

Remedies available in any civil action brought under the ADEA include back pay, hiring, reinstatement, and promotion orders, damages for willful violations, and reasonable attorney's fees. In order to enforce your rights under the ADEA, you should contact any of the EEOC offices listed earlier in this chapter.

Federal Equal Pay Act

The federal Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 et seq.) contains a provision commonly referred to as the federal "Equal Pay Act" (EPA) (29 U.S.C. § 206(d)). Like California's Equal Pay Law, the federal EPA prohibits employers from maintaining wage differentials based upon sex. The EPA also prohibits labor organizations from causing or attempting to cause an employer to discriminate in the payment of wages based upon the sex of an employee.

⁴⁴ However, the United States Supreme Court has held that, under the 11th Amendment of the U.S. Constitution, state employers are immune from ADEA suits by state employees in federal courts. (*Kimel v. Florida Board of Regents* (2000) 528 U.S. 62.) Thus, state employees alleging age discrimination in employment must file their claims under the FEHA.

⁴⁵ It should be noted, however, that if the EEOC commences an action under this act, the private lawsuit must be terminated.

⁴⁶ 29 U.S.C. § 255.

The EEOC also has jurisdiction over EPA matters. The EEOC may bring a civil action in federal court on behalf of any aggrieved employee to collect unpaid wages due the employee because of a violation of the EPA. The EEOC can in addition seek damages for the aggrieved employee in an amount equal to the unpaid wages. Injunctive relief is also available. The statute of limitations applicable to an EPA claim also provides for a private right of action in either federal or state court. Accordingly, you can retain an attorney and recover unpaid wages and damages on your own. Attorney's fees may also be awarded to you if you are successful in your lawsuit. As is the case in ADEA actions, if the EEOC brings an action to enforce your rights under the EPA, you must terminate your civil lawsuit. The EPA also contains criminal penalties for willful violations of its provisions. Up to six months in prison and a \$10,000 fine may be imposed for such criminal violations.

Unlike Title VII and ADEA claims, you need not file a complaint with the EEOC before you file a private EPA lawsuit. Of course, if you choose not to file a private action, you can always file a complaint with the EEOC, provided you do so within the statute of limitations.

Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.) is a comprehensive federal statute aimed at eliminating discrimination against disabled persons in employment, public services (including transportation), public accommodations, and telecommunications.

The ADA prohibits employment discrimination against a qualified individual with a disability because of that disability in job applications, hiring, advancement, discharge, compensation, job training, and other terms and conditions of employment.⁴⁷ An individual with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, who has a record of such an impairment, or who is regarded as having such an impairment. A qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the job.

Employers are required to provide reasonable accommodation for known limitations of qualified individuals with a disability, unless to do so would impose an undue hardship on the business. The procedures and remedies to redress ADA employment discrimination violations are those provided under Title VII, which, as discussed above, must begin with filing a complaint with the EEOC.

Federal Rehabilitation Act of 1973

The Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) is a federal law which prohibits certain employers from employment discrimination based upon handicap. The Act contains specific provisions barring employment discrimination against any qualified handicapped person by federal

⁴⁷ However, the United States Supreme Court has held that, under the 11th Amendment of the U.S. Constitution, state employers are immune from ADA suits by state employees in federal courts. (*Bd. of Trustees, U. of Ala. v. Garrett* (2001) 531 U.S. 356.) Thus, state employees alleging disability discrimination in employment must file their claims under the FEHA.

provisions barring employment discrimination against any qualified handicapped person by federal agencies, federal contractors, or recipients of federal financial assistance. The Act's protection extends to all aspects of employment including recruitment, hiring, promotion, benefits, and any other term, condition, or privilege of employment. If any federal funds are received, the Rehabilitation Act affects the entire program.

The Act's nondiscrimination provisions have been implemented by regulations developed by individual federal agencies. The various regulations contain similar guidelines although they differ in some aspects from agency to agency. All are designed to promote equal access to employment opportunities for qualified handicapped individuals.

Under the Rehabilitation Act, a handicapped individual is defined as a person who either has a physical or mental impairment which substantially limits some or more of the person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. However, someone with a contagious disease who is not a direct threat to the health and safety of others, and who is otherwise able to perform the job, is a "handicapped individual" protected by the Rehabilitation Act.⁴⁸

The procedure to follow and remedies available to you under the Rehabilitation Act depend upon who your employer is. If the employer is a federal agency, you may file a complaint with the EEOC. The complaint should be filed within 30 days of the occurrence of the discriminatory act.

Once the complaint is filed with the EEOC, you can bring a private lawsuit if you so desire. You may be awarded back pay and other make-whole relief, and reasonable attorney's fees.

If your employer is a government contractor, you should file your complaint with the United States Department of Labor's Office of Federal Contract Compliance Programs within 180 days of the occurrence of the alleged unlawful discrimination. If that office finds that your employer has violated the Rehabilitation Act, it may instruct the federal agency your employer contracts with to withhold payments from your employer, to terminate your employer's contract, or to bar your employer from receiving future government contracts until the discrimination is remedied. Federal courts across the country are not in agreement as to whether you can bring your own action under the Rehabilitation Act where your employer is a federal contractor.

Finally, the Rehabilitation Act also prohibits employment discrimination against the disabled where the employer is receiving federal funds. Each federal department and agency empowered to give financial assistance is authorized to issue compliance regulations. If there is a violation of the law by your employer, a federal agency has the right to enforce compliance by any authorized means, including the termination of federal funding to the employer until the discrimination is eliminated. An individual who believes that he or she has experienced discrimination generally must file a written complaint with the federal agency within 180 days from the date of the alleged discrimination. If the agency finds that your employer did not violate the Rehabilitation Act, you may appeal this determination to federal court. In most cases, you also can go directly to federal

⁴⁸ *School Board of Nassau County v. Arline* (1987) 480 U.S. 273.

court and bypass the entire administrative process by filing a private lawsuit. In cases involving educational programs funded under the Education of the Handicapped Act (EHA) (20 U.S.C. § 1400 et seq.), however, you may be required to complete the administrative process before going to court.

Recipients of federal funds who violate the Rehabilitation Act can be forced to stop their discriminatory practices or to hire a disabled individual who experienced discrimination. In addition, they may be liable for back pay and reimbursement of some of the victim's costs.

CHAPTER III

HOUSING

STATE LAWS

The Fair Employment and Housing Act and The Unruh Civil Rights Act

The California Legislature has declared that discrimination in housing is against the public policy of the State of California. Moreover, the Legislature has recognized that your right to seek, obtain, and hold housing without discrimination on any of the bases specified in the Fair Employment and Housing Act or on any other basis prohibited by the Unruh Civil Rights Act is a civil right.

The Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq., specifically prohibits housing discrimination on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability, or source of income.⁴⁹ The Unruh Civil Rights Act, Civil Code section 51 (hereafter the Unruh Act or the Act) prohibits discrimination in “all business establishments of every kind whatsoever.”⁵⁰ This provision has been interpreted to include businesses and persons engaged in the sale or rental of housing accommodations.⁵¹

While the Act specifically prohibits only discrimination on the basis of race, color, religion, sex, national origin, ancestry, or disability, its language, unlike the FEHA's, has been judicially and statutorily construed to apply to arbitrary discrimination based on personal traits, beliefs, or characteristics similar to those specifically listed.⁵² The Act, for example, has been held to prohibit discrimination against families with children and against persons based upon their sexual orientation or their age.⁵³ Accordingly, the Act does not apply only to those bases which are specifically listed, but may also apply to other, unlisted but similar bases, as well.

⁴⁹ Government Code section 12955.

⁵⁰ Although violations of the Unruh Act are also violations of the FEHA (see Civil Code, § 52, subd. (f), and Gov. Code, §§ 12948, 12955, subd. (d)), for ease of reference the two acts will be described separately.

⁵¹ *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463.

⁵² *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142.

⁵³ See Civil Code section 51.2, subdivision (a), (age); *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 (families with children); *Rolon v. Rulwitzky* (1984) 153 Cal.App. 3d 289 (sexual orientation). It should be noted that it is presently unclear whether the Unruh Act prohibits discrimination on the basis of marital status. (See *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1160.)

In addition, the Unruh Act, like the FEHA, prohibits discrimination against persons who are perceived to be a member of a protected class or who associate with a member of, or with a person perceived to be a member of, a protected class.⁵⁴ The FEHA also prohibits harassment of persons applying for or occupying housing accommodations on any of the bases specified in the Act.⁵⁵

The FEHA and the Unruh Civil Rights Act can be enforced against any owner, lessor, sublessor, assignor, managing agent, real estate broker, salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent a housing accommodation.⁵⁶

The provisions of the FEHA are generally applicable to any real property that is occupied or intended to be occupied as a home, residence, or sleeping place by one or more families.⁵⁷ Only two categories of housing are expressly exempted. First, the FEHA does not apply to renting a portion of a single-family, owner-occupied house to one person.⁵⁸ Second, religious organizations which own or operate housing accommodations for non-commercial purposes, either directly or through a related non-profit institution or organization, may give a preference to persons of the same religion in the sale, rental, or occupancy of such accommodations.⁵⁹

The Unruh Act covers any form of housing which can be termed a “business establishment.” This term has been liberally construed by the courts to include virtually every type of housing accommodation. For example, the Act has been held to apply to operators of motels and hotels; real estate brokers and agents and others engaged in the sale or rental of real property; owners of triplexes, duplexes, non-owner occupied single-family dwellings, and publicly-assisted housing projects; operators of mobile home parks; and condominium homeowners' associations.

The following is a partial listing of housing practices prohibited by the FEHA and the Unruh Act.⁶⁰ It is unlawful:

- to make any inquiry concerning the race, color, religion, sex, national origin, ancestry, or other protected characteristic of the person seeking to rent, purchase, or lease any housing accommodation;

⁵⁴Government Code section 12955, subdivision (m); Civil Code section 51; *In re Cox* (1970) 3 Cal.3d 205.

⁵⁵Government Code section 12955, subdivision (a).

⁵⁶Government Code section 12927, subdivision (e).

⁵⁷Government Code section 12927, subdivision (d).

⁵⁸Government Code section 12927, subdivision (c)(2)(A).

⁵⁹Government Code section 12955.4.

⁶⁰See, for example, Government Code sections 12955, 12927 subd. (c)(1).

- to place an advertisement regarding the rental or sale of any housing accommodation which indicates any preference or limitation based upon race, color, religion, sex, national origin, ancestry, or any other characteristic protected by the FEHA or the Unruh Act;
- to discriminate against any loan applicant for a loan to purchase or construct housing on a prohibited basis;
- to harass, evict, or otherwise discriminate against any person who has filed a complaint with the DFEH or who has testified or assisted in any action brought pursuant to the FEHA;
- to aid, abet, incite, compel, or coerce the doing of any of the foregoing illegal practices;
- to refuse to sell, rent, or lease a housing accommodation on any prohibited basis;
- to refuse to negotiate for the sale, rental, or lease of a housing accommodation on any prohibited basis;
- to misrepresent the availability of a housing accommodation because the prospective buyer or lessee is a member of a class protected by either the FEHA or Unruh Act;
- to provide inferior terms, conditions, privileges, facilities, or services in connection with the sale or lease of a housing accommodation because the buyer or lessee is a member of any class protected by the Unruh Act or the FEHA;
- to cancel or terminate a sale or rental agreement because a person is a member of a class protected by either the FEHA or Unruh Act;
- to provide segregated housing accommodations.
- to harass someone in connection with housing accommodations.

Procedures to Follow and Remedies Available

You can enforce your rights under the FEHA or Unruh Act either by filing a claim with the DFEH⁶¹ or by filing a private lawsuit. By filing a complaint with the DFEH, you will be initiating an administrative process in essentially the same way you would when filing a complaint with that department for employment discrimination. Whether your housing claim is based upon the FEHA or the Unruh Act, you must file your complaint with the DFEH within one year after the alleged discriminatory act.⁶² Therefore, you should file your complaint immediately.

⁶¹DFEH offices are listed in the preceding chapter on employment discrimination.

⁶²Government Code section 12980, subdivision (b).

Whether your claim is based upon the Unruh Act or the FEHA, the DFEH will conduct an investigation to determine its validity and attempt to settle the matter. If it is unable to reach a settlement, and there is reasonable cause to believe that a violation has occurred or is about to occur, the DFEH will issue an accusation requiring the person or entity who violated your rights to answer your charges at an administrative hearing or, if either you or the party charged so elect, at a civil trial.⁶³

In order to bring your own FEHA or Unruh Act lawsuit, however, you *do not* have to file a complaint with the DFEH at all.⁶⁴ You should note that if you do file a private action, the DFEH will not act on any complaint you may have filed.

Remedies available from the Fair Employment and Housing Commission (FEHC) in administrative actions for housing discrimination include: orders requiring the sale or rental of the housing accommodation if it is still available; payment of actual damages; and payment of a civil penalty of up to \$50,000.⁶⁵ Remedies available in private actions brought to enforce your rights depend upon whether your claim is brought pursuant to the Unruh Act or the FEHA. Remedies available in private Unruh Act suits include actual damages, a penalty of up to three times the amount of actual damages, injunctive relief, and attorney's fees.⁶⁶ Remedies available in private FEHA actions, or in a civil trial elected in lieu of an administrative hearing before the FEHC, include actual, compensatory, and punitive damages, injunctive relief, and attorney's fees if you are represented by private counsel rather than by the DFEH.⁶⁷

Finally, it should be noted that under certain circumstances, the Attorney General, or your local district or city attorney, may bring actions to correct housing violations under the FEHA and/or the Unruh Civil Rights Act. While FEHA and Unruh Act housing violations ordinarily should be reported to the DFEH, if there is reasonable cause to believe that a person or group is engaged in a pattern or practice of violating the housing rights protected by the Unruh Act, you should report such activity to the Attorney General's Public Inquiry Unit or to your local district or city attorney. You can write the Public Inquiry Unit at the number and address provided at the beginning of this pamphlet.

⁶³Government Code sections 12981, subdivision (a), 12989, subdivision (a).

⁶⁴Government Code section 12989.1.

⁶⁵Government Code section 12987. The Supreme Court is reviewing the Commission's ability to award emotional distress damages in housing discrimination cases. (See *Konig v. Fair Employment and Housing Commission* 79 Cal.App.4th 10 (review granted on specified issues on June 28, 2000, S087843, opinion ordered partially published pending review).

⁶⁶Civil Code section 52.

⁶⁷Government Code section 12989.2.

To file a housing complaint with the DFEH, contact the following:

DFEH Web site: www.dfeh.ca.gov

DFEH Communication Center: (800) 884-1684 (Within California)
(916) 227-0551 (Outside California)
(800) 700-2320 TTY

FAX: (916) 227-2859

All housing complaints are filed in the DFEH Oakland office:

DFEH Oakland District Office:

Department of Fair Employment and Housing
Oakland Housing District Office
1515 Clay Street, Suite 701
Oakland, CA 94612-5212

Toll-free: (800) 233-3212

Miscellaneous State Statutes Prohibiting Discrimination in Housing

These additional state statutory references also concern unlawful housing discrimination.

1. **Civil Code sections 51.2 through 51.4, and 51.10 through 51.12** recognize the need for specially designed accessible housing for senior citizens, and establish age limitations and other qualifications for permissible senior citizen housing developments.
2. **Civil Code section 53** prohibits discriminatory provisions in written instruments which attempt to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of real property to any person on the basis of sex, race, color, religion, ancestry, national origin, or disability or which attempt to limit the use or occupation of real property by any person on such bases.
3. **Civil Code section 51.9** prohibits, among other things, the sexual harassment of a tenant by a landlord or property manager.
4. **Civil Code section 54.1 subdivisions (a)(6)(A), (B) and (C)(i)** declare that blind persons, other visually impaired persons, deaf persons, and other disabled persons are entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation, for both themselves and any guide, signal, or service dog whose services they use.

5. **Civil Code sections 782 and 782.5** void discriminatory provisions in deeds and other written instruments relating to title to real property which purport to restrict the right of any person to sell, buy, lease, rent, use, or occupy such property on the basis of race, color, nationality, or ethnicity.
6. **Government Code section 12956.1** provides that a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a real estate document to any person shall place a cover page or stamp on the first page of the document stating, in specified language, in at least 14-point boldface type, that any unlawful restrictive covenant contained in the document is void and may be removed, and that lawful restrictions on age of occupants in senior housing shall not be construed as restrictions based on familial status.
7. **Government Code section 12956.1, subdivision (c)**, provides that any person who holds an ownership interest in property that he or she believes is the subject of a restrictive covenant may file an application with the DFEH requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. The applicant may strike the void restrictive covenant identified by the department.
8. **Health and Safety Code section 33050** is a legislative declaration of policy against discrimination in the undertaking of community redevelopment projects based on race, color, religion, sex, marital status, national origin, or ancestry.
9. **Health and Safety Code section 33769** requires that any residence constructed with funds obtained through, or with the assistance of, a redevelopment agency be made available without regard to race, color, religion, national origin, or ancestry.
10. **Health and Safety Code section 37923** requires that residences acquired, constructed, or rehabilitated with community development funds be open to all without discrimination on the basis of race, color, religion, national origin, or ancestry.

FEDERAL LAWS

The Federal Fair Housing Act and 42 U.S.C. § 1982

Title VIII of the Civil Rights Act of 1968, the Federal Fair Housing Act (FFHA) (42 U.S.C. § 3601 et seq.), also reaffirms and protects your rights to fair housing. The FFHA prohibits discrimination in the selling or rental of housing accommodations on the basis of race, color, religion, sex, familial status (families with children), handicap, or national origin.⁶⁸ The FFHA applies to most dwellings, private or public, except for owner-occupied dwellings with four units or less. For example, the FFHA is applicable to all dwellings owned and operated by the federal government and dwellings financed in whole or in part through loans or grants made by the federal government or secured by

⁶⁸42 U.S.C. § 3604.

the credit of the federal government.⁶⁹ Religious institutions operating non-commercial housing may limit the sale or rental of such housing to persons of the same religion, however, and housing specifically designed for older persons is also permitted.⁷⁰

Additionally, the FFHA prohibits discrimination by financial institutions in the making of commercial real estate loans, and prohibits anyone from discriminating in the provision of real estate brokerage or appraisal services.⁷¹

The authority and responsibility for administering the provisions of the FFHA lies with the United States Secretary of Housing and Urban Development. For more information concerning your rights and remedies under the FFHA, you should contact your local office of the Department of Housing and Urban Development (HUD). You should note that if you believe that you have a claim under the FFHA, you must file a written complaint within one year after the alleged discriminatory act occurred or terminated, if you would like HUD's assistance in resolving the claim. HUD will investigate your complaint, attempt to resolve it by conciliation, and, if necessary, proceed to have the matter heard either in court or in an administrative hearing. After an administrative hearing, actual damages and injunctive relief may be awarded as well as a civil penalty of up to \$50,000.⁷²

Alternatively, you may also file an action directly in court, without first filing with HUD. Any such court action must be filed within two years after the alleged discriminatory act. If you prevail, you may recover actual and punitive damages, injunctive relief, and reasonable attorney's fees.⁷³

In addition to the FFHA, 42 U.S.C. § 1982 also prohibits discrimination in the area of housing. Section 1982 states: "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Thus, section 1982 bars *all* racial discrimination, private as well as public, in the sale or rental of property.⁷⁴

Although section 1982 and the FFHA share the same goals, the two federal remedies do differ in a few significant respects. First, section 1982 only prohibits discrimination based upon color or race, whereas the FFHA applies more broadly. Second, section 1982 is enforceable only through private action, while the FFHA establishes an administrative scheme. Lastly, while section 1982 is generally limited to discrimination in the sale or rental of property, the FFHA extends to other related areas, such as discrimination in the provision of brokerage services. A section 1982 action,

⁶⁹42 U.S.C. § 3603.

⁷⁰42 U.S.C. § 3607.

⁷¹42 U.S.C. § 3605.

⁷²42 U.S.C. §§ 3610, 3612.

⁷³42 U.S.C. § 3613.

⁷⁴*Jones v. Alfred H. Mayer Co.* (1968) 392 U.S. 409.

like a 42 U.S.C. § 1981 claim, can be brought in either state or federal court, and you do not need to file an FFHA claim before you file a section 1982 court action.⁷⁵

To file a housing discrimination claim with HUD, contact the following:

HUD Web site: <http://www.hud.gov/>

HUD Toll-Free Number: 1-800-669-9777

HUD California Office: U.S. Department of Housing and Urban Development
Phillip Burton Federal Building
and U.S. Courthouse
450 Golden Gate Avenue
San Francisco, California 94102-3448
(415) 436-8400
1-800-347-3739
TTY (415) 436-6594

⁷⁵ *Id.*

CHAPTER IV

PUBLIC ACCOMMODATIONS, BUSINESSES AND SERVICES

The Unruh Civil Rights Act

The Unruh Civil Rights Act⁷⁶, or Unruh Act, as discussed in the housing chapter of this publication, applies to all business establishments of every kind whatsoever which provide services, goods, or accommodations to the public. Businesses subject to the Unruh Act include bookstores, gymnasiums, shopping centers, mobile home parks, bars and restaurants, schools, medical and dental offices, hotels and motels, and condominium homeowners associations.⁷⁷ The Unruh Act prohibits all types of arbitrary discrimination, and not just discrimination based on sex, race, color, religion, ancestry, national origin, age, disability or medical condition.⁷⁸ The Unruh Act also prohibits discrimination based on personal characteristics, geographical origin, physical attributes, and individual beliefs. For example, the arbitrary exclusion of individuals from a restaurant based on their sexual orientation is prohibited.⁷⁹

You can pursue an Unruh Act claim by filing a verified complaint with the Department of Fair Employment and Housing (DFEH) or a private lawsuit. If a business establishment is engaging in a pattern or practice of discrimination, you can refer the matter to the Attorney General's Office or to your local district or city attorney. Please refer to the housing chapter of this publication for the procedures to follow and remedies available in redressing your claim for a public accommodation's violation of the Unruh Act.

Protection Under California's Disabled Access Laws

In addition to the protections against arbitrary discrimination afforded to disabled individuals pursuant to the Unruh Civil Rights Act, the Legislature has enacted specific laws that protect the right of physically and mentally disabled individuals to obtain full and equal access to public accommodations, public transportation, telephone facilities, lodging, and entertainment. For a detailed analysis of the legal rights of disabled individuals, please refer to the Office of the Attorney General's publication, *Legal Rights of Persons With Disabilities, Second Edition* (1997).

Listed below are some of the key statutory provisions which prohibit discrimination by public accommodations against disabled individuals:

⁷⁶Civil Code sections 51 to 53, inclusive.

⁷⁷ For a more detailed analysis, please see Chapter 3, Housing.

⁷⁸ The Unruh Civil Rights Act does not apply to an employer's discrimination against an employee. (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493.) However, see Chapter 2, Employment, for laws applicable in the employment context.

⁷⁹ *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289.

1. **Civil Code section 54** articulates California's public policy that disabled individuals have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, and public buildings, facilities, and places. This section defines a disability as a physical or mental impairment that substantially limits one or more of the major activities of the individual, a record of such impairment, or being regarded as having such an impairment. A violation of the right of a disabled individual under the American with Disabilities Act of 1990 (ADA)⁸⁰ also constitutes a violation of this section. Aggrieved persons may recover up to three times the actual damages or a minimum of \$1,000, injunctive relief, and reasonable attorney's fees.

You can pursue a claim under this section by filing a complaint with the DFEH or a private lawsuit. If you believe you have an ADA complaint, call (800) 514-0301 or (800) 514-0383 (TDD) to obtain answers to general and technical questions about the ADA and to order technical assistance materials.⁸¹

2. **Civil Code section 54.1** provides specific protections to disabled individuals in attaining full and equal access to all public accommodations and their advantages, facilities, and privileges; to places of public accommodation, amusement, or resort; and to other places to which the general public is invited, including public modes of transportation, private schools, hotels, hospitals, and public buildings. Aggrieved persons may recover up to three times the actual damages or a minimum of \$1,000, injunctive relief, and reasonable attorney's fees.

You can pursue claim under this Section by filing a complaint with the DFEH, or a private lawsuit. The Attorney General, the Department of Rehabilitation, or your district or city attorney may bring an action to enjoin any violation of Civil Code section 54.1.

3. **Government Code section 4450 et seq.** requires buildings and facilities remodeled after 1968 or built with state, county, or municipal funds to be accessible to the disabled and comply with accessibility standards adopted by the State Architect.⁸² Complaints that facilities that are being maintained in violation of state disabled access laws should be filed with your local building department. Government Code section 4452, as interpreted by the

⁸⁰See Title 42 of the United States Code, section 12101 et. seq. The ADA prohibits discrimination on the basis of disability in employment, programs and services provided to the public by state and local governments, and goods and services provided by private companies and commercial facilities. It contains requirements for new construction, for alterations or renovations to buildings and facilities, and for improving full and equal access to the existing facilities of private companies providing goods or services to the public. In addition, the ADA requires effective communication with disabled individuals and modifications of discriminatory policies and practices.

⁸¹You may also visit the United States Department of Justice's ADA Web site at <<http://www.usdoj.gov/crt/ada/adahom1.htm>> (as of June 4, 2001).

⁸² See Title 24 of the California Code of Regulations.

Attorney General,⁸³ requires the local building department to reach a final resolution of a complaint within 90 days of its filing. If violations are found, the building department must state how it will require the full compliance of the public accommodation or facility with California disabled access laws and regulations. Upon the request of the complainant, the Attorney General will review the local agency's final resolution of a complaint for abuse of discretion. If abuse of discretion is found, the Attorney General's Office will take action against the local building department, such as requesting it to reconsider its final resolution or by taking legal action against the local agency. The Attorney General or your district or city attorney may bring an action to enjoin any violation of Government Code section 4450 et seq.

4. **Government Code section 4500 et seq.** requires that, in awarding contracts for operations, equipment, or structures, every state agency, board, and department, local governmental subdivision, district, public, and quasi-public corporation, local public agency and service corporation, and city, county, and municipal corporation, whether incorporated, chartered or not, must require that all fixed-route transit equipment and public transit structures be built so that disabled individuals have ready access to, from, and in such equipment and structures. Further, all public transit facilities and operations must meet the standards of the ADA⁸⁴ and its regulations.⁸⁵ Where California law sets a higher standard than the ADA for public transit facilities and operations, then those higher standards must be met.
5. **Health and Safety Code section 19955 et seq.** requires that places of public accommodation remodeled after July 1, 1970, or constructed with private funds must comply with accessibility standards adopted by the State Architect. See Government Code section 4450 et seq. for remedies.

Protection Under California's Insurance Laws

Insurance companies are businesses and public accommodations subject to the provisions of the Unruh Civil Rights Act.⁸⁶ Thus, prospective and actual insureds subjected to arbitrary discrimination by insurance companies can pursue Unruh Act claims as described above. In addition, the Legislature has enacted specific laws prohibiting discriminatory practices which may occur in the insurance business. Listed below are some of the key statutory provisions which prohibit discrimination in the area of insurance. The Insurance Commissioner has the primary responsibility for enforcing these laws.

1. **Insurance Code section 679.71** makes it unlawful for an insurer to fail or refuse to accept an insurance application; to refuse to issue an insurance policy; to cancel insurance on

⁸³ 93 Ops.Cal.Atty.Gen. 203 (July 14, 1993).

⁸⁴ See Title 42 of the United States Code, section 12101 et seq.

⁸⁵ See Title 28 of the Code of Federal Regulations, part 35.

⁸⁶ Insurance Code section 1861.03, subdivision (a).

conditions less favorable than those applied to all individuals in comparable cases; or to charge a higher rate or premium on the basis of a prospective or actual insured's marital status, sex, race, color, national origin, religion, or ancestry. This section does not apply to automobile or workers' compensation insurance policies

2. **Insurance Code sections 679.72, 10141, and 10142** make it unlawful for an insurance policy application, investigation, or report used to determine insurance eligibility to carry or require the identification of an applicant's race, color, religion, national origin, or ancestry. These sections do not apply to automobile or workers' compensation insurance policies.
3. **Insurance Code section 790.10** authorizes the Insurance Commissioner to issue regulations interpreting the Insurance Code. Pursuant to this authorization, the Commissioner issued a regulation, section 2560.3 of Title 10 of the California Code of Regulations, which prohibits any person or entity engaged in the insurance business in California from refusing to issue; canceling; declining to renew; or restricting, modifying, or excluding the amount of benefits payable or the terms, conditions, or type of coverage on any insurance contract because of the sex, marital status, or sexual orientation of the insured or prospective insured.
4. **Insurance Code section 10123.2** requires that a self-insured employee welfare benefit plan providing coverage for hospital, medical, or surgical expenses must offer coverage to physically disabled individuals for expenses incurred under the same terms and conditions normally provided by the insurer to a non-physically disabled insured. Every self-insured welfare benefit plan shall communicate the availability of such coverage to all members and prospective members. However, the self-insured welfare benefit plan shall not be required to cover hospital, medical, or surgical expenses arising as a direct result of a physically disabled person's disability.
5. **Insurance Code sections 10123.3 and 10143** make it unlawful for any life or disability insurer or self-insured employee welfare benefit plan providing hospital, medical, or surgical coverage to refuse to issue, sell, or renew insurance to any person solely because the person carries a gene which may be associated with a disability in that person's offspring, but which causes no adverse effects on the carrier.
6. **Insurance Code section 10140** makes it unlawful for a life or disability insurer to fail or refuse to accept an insurance application from, to refuse to issue a policy to, or to charge a higher rate or premium to an individual or to cancel insurance on conditions less favorable than those applied to all individuals in comparable cases on the basis of the individual's race, color, religion, national origin, ancestry, sexual orientation, or genetic characteristic.
7. **Insurance Code section 10144** makes it unlawful for an insurer providing, issuing, or administering life, annuity, or disability insurance benefits to charge a different rate for the same coverage offered to others or to refuse to insure, refuse to continue to insure, or limit the coverage available to an individual solely because of his or her physical or mental

impairment, unless the refusal, limitation, or rate differential is based upon sound actuarial principles or related to actual and reasonably anticipated experience.

8. **Insurance Code section 10144.1** requires disability insurers that provide hospital, medical, or surgical coverage which deny coverage to a terminally ill claimant for an experimental medical procedure or plan of treatment to provide written notification detailing the specific medical and scientific reasons for the denial, specific references to the policy provisions upon which the denial is based, a description of alternative medical procedures covered by the policy, and a description of the process available to appeal the denial of coverage or to review the information provided to the insured. The appeal of the insurer's denial of coverage or the review of the insured's information must occur within 30 days following the receipt of the insured's request for review.
9. **Insurance Code sections 10144.2 and 10144.3** prohibit life and disability insurers covering hospital, medical, or surgical expenses to charge a different rate for the same coverage offered to others or to refuse to insure, refuse to continue to insure, or limit the coverage available to an individual on the basis that she or he is, has been, or may be a victim of domestic violence. Further, disability insurers are prohibited from considering as a medical condition and a basis for underwriting coverage that an individual is, has been, or may be the subject of domestic violence.
10. **Insurance Code section 10145** makes it unlawful for insurers providing life, annuity, or disability benefits to charge a different rate for the same coverage offered to others or to refuse to insure, to refuse to continue to insure, or to limit the coverage available to an individual solely because of his or her blindness or partial blindness.
11. **Insurance Code sections 11628 and 11628.5** make it unlawful for motor vehicle liability insurers to refuse to insure, refuse to continue to insure, limit the coverage available to, or charge a different rate for the same coverage offered to others on the basis of an individual's race, language, color, religion, national origin, ancestry, disability, or geographical area of residence.
12. **Insurance Code section 11628.7** prohibits motor vehicle liability insurers from discriminating against blind motor vehicles owners in the issuance of insurance and from charging a higher rate of insurance based upon the frequent change of drivers of the insured vehicle.
13. **Insurance Code section 12095** prohibits insurers issuing surety insurance from refusing to accept an application for a contractor's performance bond, refusing to issue such a bond to an applicant, canceling such a bond, or charging a different rate for the same coverage because of the applicant's race, color, gender, religion, national origin, ancestry, or geographical area of residence.
14. **Insurance Code sections 799.03, 799.05, 799.07, 799.10, and 799.20** prohibit life and disability insurers from testing applicants for HIV or the presence of HIV antibodies as a condition of insurance, unless the insurer obtains the applicant's written informed consent.

Further, life and disability insurers are prohibited from considering the applicant's marital status or known or suspected homosexuality or bisexuality as a basis for determining whether

to require that the applicant submit to an HIV antibody test. Any person whose rights are violated may apply to any court for appropriate equitable relief.

If an insurance company or a health or life insurance plan discriminates against you, you may file a complaint with the California Department of Insurance:

California Department of Insurance
Consumer Communications Bureau
300 South Spring Street, South Tower
Los Angeles, CA 90013

Telephones: (800) 927 - HELP (4357) (Inside California)
(213) 897 - 8921 (Outside California & Los Angeles)

TDD: (800) 482 - 4833
Web Site: www.insurance.ca.gov

If a health maintenance organization discriminates against you, you may file a complaint with the following:

State Department of Health Services, Medical Managed Care Division
Office of the Ombudsman
714 P Street, Room 650, P.O. Box 942732
Sacramento, CA 94234-7320

Telephone: (916) 654-8076
Web Site: www.dhs.mmcd.ca.gov

Protection Against Discrimination by Persons Licensed to Render Services

Business and Professions Code section 125.6 provides that any person who holds a license pursuant to the Business and Professions Code⁸⁷ is subject to disciplinary action if that person discriminates

⁸⁷ Professions and vocations covered include physicians, surgeons, chiropractors, dentists, dental hygienists, clinical laboratory technologists and bioanalysts, podiatrists, midwives, physical therapists, speech pathologists, optometrists, dispensing opticians, nurses, psychologists, hearing aid dispensers, pharmacists, psychiatric technicians, veterinarians, accountants, outdoor advertisers, architects, attorneys, barbers, engineers, collection agencies, building contractors, those engaged in the selling or hiring of guide dogs, cosmetologists, private detectives, funeral directors, cemeteries, embalmers, geologists and geophysicists, shorthand reporters, structural pest control operators, social workers, construction inspectors, dry cleaners, electronic and appliance repairers, automobile mechanics, tax reporters, real estate brokers and salespersons, and holders of most liquor licenses.

in, restricts the performance of, or refuses to perform the licensed activity because of a consumer's race, color, sex, religion, ancestry, disability, marital status, or national origin.

In addition, Business and Professions Code section 726 bars the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for persons holding certain professional licenses.

Moreover, Business and Professions Code section 23438 prohibits certain private clubs and organizations which hold liquor licenses from discriminating against certain groups. It also provides that expenditures at restrictive clubs are not tax-deductible.⁸⁸

If you believe you have been discriminated against by a state-licensed individual or entity, you should file a complaint with the state licensing board which regulates the profession, vocation, or business involved. For information regarding what board has jurisdiction over a particular licensee contact:

California Department of Consumer Affairs
401 R Street
Sacramento, CA 95814

Telephone: (800) 952-5210

TDD: (916) 322-1700

Web Site: www.dca.ca.gov

Protection Against Discrimination by Banking, Credit, and Lending Institutions

Financial institutions, such as banks, credit, and lending institutions, are subject to the Unruh Civil Rights Act (Unruh Act). The Unruh Act prohibits all types of arbitrary discriminatory practices by business establishments, including discrimination based upon sex, race, color, religion, ancestry, national origin, age, or disability. For example, a financial institution violates the Unruh Act if it denies you an automobile loan application solely because of your sexual orientation.

As explained in the housing chapter of this publication, you can remedy an Unruh Act violation through the DFEH or by filing a private lawsuit. If the financial institution's discriminatory actions amount to a pattern or practice, you may file a referral for possible action with the Attorney General's Office, or your local district or city attorney.

⁸⁸ The California Constitution also authorizes the Department of Alcoholic Beverage Control to revoke a licensee's liquor license on the basis of its discriminatory conduct. (70 Ops.Cal.Atty.Gen. 75 (1987).)

In addition to the Unruh Act, the Housing Financial Discrimination Act, also known as the Holden Act (HFDA),⁸⁹ prohibits financial institutions from discriminating in the provision or availability of financial assistance for housing accommodations on the basis, in whole or in part, of the applicant's race, color, religion, sex, marital status, national origin, or ancestry. Further, financial institutions are prohibited from considering the racial, ethnic, religious, or national origin composition of a neighborhood or geographic area surrounding a particular housing accommodation to determine whether to extend or deny financial assistance, or to prescribe the terms and conditions of such financial assistance.⁹⁰

Complaint of a financial institution's Holden Act violations may be filed with the California Secretary of Business, Transportation and Housing, who must investigate Holden Act complaints and take remedial action as required by law. You may file complaints or inquiries regarding the Holden Act at the offices listed below.

State-Licensed Savings and Loan Associations, State Licensed Savings Banks, State-Chartered Banks, and State Credit Unions

California Department of Financial Institutions

111 Pine Street, Suite 1100, San Francisco, CA 94111-5613
300 S. Spring Street, Suite 15513, Los Angeles, CA 90013-1204
801 K Street, Suite 2124, Sacramento, CA 95814
9609 Naples Street, Suite 100, San Diego, CA 92121

Telephone: (800) 622-0620

Web Site: www.dfi.ca.gov

Mortgage Brokers

California Department of Real Estate
2201 Broadway, P. O. Box 187000
Sacramento, CA 95818
Telephone: (916) 227-0864

Web Site: www.dre.ca.gov

⁸⁹ See Health and Safety Code section 35800 et seq.

⁹⁰ The Holden Act's coverage is further defined by administrative regulations known as California's Fair Lending Regulations. For further information regarding the Holden Act's coverage, consult section 7107 of Title 21 of the California Code of Regulations.

Institutions not listed above

California Department of Consumer Affairs
401 R Street
Sacramento CA 95814
Telephone: (800) 952-5210

TDD: (916) 322-1700

Web Site: www.dca.ca.gov

In addition to the Holden Act, it is unlawful under the Fair Employment and Housing Act (FEHA) for any person, bank, mortgage company, or financial institution that provides financial assistance for housing accommodations to discriminate in the terms, conditions, or privileges related to obtaining or using financial assistance against any person because of his or her race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. To enforce your FEHA⁹¹ rights, you should file a claim with the DFEH and follow the procedures outlined in the housing chapter of this publication.

Listed below are other statutory provisions which prohibit discrimination by financial institutions:

- **Civil Code section 1812.30 et seq.** makes it unlawful for lenders and credit sellers to discriminate against an applicant on the basis of his or her sex or marital status and gives a person the right not to be denied credit in his or her own name even if the person is married. Aggrieved persons may bring a private lawsuit against the lender or credit seller to recover actual and punitive damages, attorney's fees, costs, and injunctive relief to enjoin an ongoing or potential violation. A person may also notify the Attorney General, county counsel, district attorney, or city attorney about the violation.
- **Civil Code section 1747.80** protects you from discrimination in the issuance of credit cards and prohibits credit card issuers from refusing to issue a credit card to any person solely because of that person's race, religion, creed, color, national origin, ancestry, or sex. Aggrieved persons may bring a private lawsuit against the credit card issuer and recover actual damages and a \$250 fine. In addition, the court may order the card issuer to issue you a credit card on the same terms that are normally required for other individuals.
- **The Equal Credit Opportunity Act (ECOA), 15 U.S.C. §1691 et seq.** makes it unlawful for a creditor to discriminate against any applicant in any aspect of a credit transaction on the basis of the applicant's race, color, religion, national origin, sex, marital status, or age. Aggrieved persons may file a complaint with the federal agency enforcing the ECOA for the particular class of creditor.⁹² Below is a listing of federal agencies which regulate federal financial institutions.

⁹¹ See Government Code section 12980 et seq.

⁹² See Title 12 of the Code of Federal Regulations, section 202, Regulation B.

Complaints against National Banks

Office of the Comptroller of the Currency, Customer Assistance Group
1301 McKenney Street, Suite 3750
Houston, Texas 77010
Telephone: (800) 613-6743
TDD: (415) 545-5976

Complaints against Federally Chartered Savings and Loan Associations

Office of Thrift Supervision
P.O. Box 7165
San Francisco, CA 94120
Telephone: (800) 842-6929 or (415) 616-1500

Web Site: www.ots.treas.gov

Complaints against Federal Credit Unions

National Credit Union Administration
2300 Claxton Road, Suite 1350
Concord, CA 94520
Telephone: (925) 363-6200

Web Site: www.ncua.gov

Miscellaneous State Statutes Dealing with Discrimination in Public Accommodations, Businesses, and Services

Other statutes deal with discrimination in the areas of business, services, and public accommodations and include the following:

1. **Business and Professions Code section 7071.14** prohibits the denial of a contractor's license bond solely on the basis of the applicant's or licensee's race, religious creed, color, national origin, ancestry, or sex. The penalty for such discrimination is actual damages plus \$250.
2. **Business and Professions Code sections 16721 and 16721.5** make it unlawful to exclude a person from entering into a business transaction or from pursuing a business, profession, vocation, or employment. It also makes it unlawful to discriminate in the transfer of funds or credit on the basis of sex, race, religion, color, or national or ethnic origin. Such discrimination violates the Cartwright Act, California's antitrust law. (Bus. & Prof. Code, § 16700 et seq.) Aggrieved persons may file a private lawsuit and recover triple damages, injunctive relief, and reasonable attorney's fees.

3. **Civil Code section 51.5** prohibits business establishments from discriminating against, boycotting, blacklisting, or refusing to buy from, sell to, contract with, or trade with a person because of the actual or perceived race, creed, religion, color, national origin, sex, or disability of that person; the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers; or because of that person's association with a person who has or is perceived to have any of these characteristics. A person, as defined in this section, is a person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.
4. **Civil Code section 51.6**, the Gender Tax Repeal Act of 1995, prohibits business establishments from discriminating in the price charged for similar or like services against a person because of the person's gender.
5. **Civil Code section 51.8** prohibits franchisors from discriminating in the granting of franchises solely because of the race, color, religion, sex, national origin, or disability of the franchisee, and the racial, ethnic, religious, national origin, or disability composition of a neighborhood or geographic area where the franchise would be located.
6. **Civil Code section 51.9** prohibits an individual who enters into a business, service, or professional relationship with a client, patient, tenant, or student (or a substantially similar type of relationship) from making pervasive or severe unwelcome sexual advances, solicitations, sexual requests, or demands for sexual compliance, or from engaging in conduct of a sexual or hostile nature based on gender.
7. **Civil Code section 80 et seq.**, the California Fair Dealership Law, prohibits a grantor who sells, leases or transfers a dealership granting rights to distribute goods or services or to use a trade name, trademark, or other commercial symbol from refusing to grant, renew or transfer a dealership to any person because of that person's race, color, religion, national origin, ancestry, or sex.
8. **Civil Code section 798.20** prohibits a person from being denied membership in any private club or organization on the basis of that person's race, color, religion, sex, national origin, ancestry, or marital status, when such membership is a condition for tenancy in a mobile home park.
9. **Government Code section 11135** prohibits any program or activity funded by or receiving financial assistance from the State from discriminating against or unlawfully denying benefits to a person on the basis of that person's ethnic group identification, religion, age, sex, color, or disability.
10. **Government Code section 12948** makes it an unlawful practice under the FEHA⁹³ for a person to deny or to aid, incite, or conspire in the denial of the rights created by the Unruh Civil Rights Act, Civil Code section 51, and the rights protected by Civil Code sections 51.5, 51.7, 54, 54.1, or 54.2.

⁹³ See Government Code section 12900 et seq.

11. **Government Code sections 54091 and 54092** prohibit cities, counties and other local agencies which own, operate, or control any public beach or property providing access to it from discriminating against a person by preventing that person's use of the beach on the basis of that person's color, race, religion, ancestry, sex, national origin, or residence.
12. **Government Code section 54961** prohibits all local agencies from conducting meetings, conferences, or other functions in any facility that is inaccessible to a disabled person or that prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry, or sex.
13. **Health and Safety Code sections 33435, 33436, and 33724** require that the owners, leasees, and purchasers of real property acquired or improved as part of a redevelopment agency project to rent, sell, or lease the property without discriminating on the basis of race, color, religion, sex, marital status, ancestry, or national origin.
14. **Health and Safety Code section 33769** requires that all contracts, subcontracts, and employment for residential construction financed by a publicly-financed redevelopment plan be offered and awarded without discriminating as to race, sex, martial status, color, religion, race, national origin, or ancestry.
15. **Public Resources Code section 5080.34** prohibits parties contracting for a concession on a state park, monument, or public land to discriminate against any person because of the race, color, religion, sex, marital status, national origin, or ancestry of that person.
16. **Public Resources Code section 5162** requires any beach or seashore recreation area owned, leased, operated, controlled, maintained, or managed by a city or county that is open to the use of local, city, or county residents to be accessible to all members of the public upon the same terms, fees, charges, and conditions.

CHAPTER V

PUBLIC ASSISTANCE/GOVERNMENT BENEFITS

In California, people who apply for or receive public assistance have specific rights which protect them from discrimination in the administration of such programs. California Welfare and Institutions Code section 10000 states that aid shall be administered and services provided without discrimination on account of race, national origin or ancestry, religion, sex, marital status, or political affiliation.⁹⁴

This code section pertains to persons applying for or receiving public assistance through any of the following programs:

- Aid to Families with Dependent Children (AFDC)
- California Medical Assistance (Medi-Cal)
- County Medical Services Program
- Food Stamps
- In-Home Supportive Service (IHSS)
- Multipurpose Senior Service Program
- Social Services
- SSI/SSP Special Circumstances Payments
- Women, Infants and Children Program

When you apply for or receive public assistance, the right provided you by Welfare and Institutions Code section 10000 must be respected by every person and organization you come into contact with in connection with public assistance, including, for example, county welfare departments, boarding homes and institutions, day nurseries, work or training programs, hospitals, nursing homes, doctors, dentists, and druggists.

If you believe you have been discriminated against, you may file a complaint with your county welfare department's civil rights representative. Such a complaint must be filed within 180 days of the alleged discriminatory act unless the agency extends the time period. If the representative is unable to resolve your complaint, you may request an investigation. The county is then required to investigate the complaint and inform you of the outcome. If you are dissatisfied with the result of this investigation, you have 30 days to appeal the county's action to the appropriate federal agency.

You have the right not to be retaliated against for either filing a discrimination complaint or for testifying, assisting or otherwise participating in the processing of a complaint. Any retaliation should be reported in the same manner as the original discrimination complaint.

In connection with all of the previously listed public assistance programs, except for the Medi-Cal program, you may also file a discrimination complaint with:

⁹⁴Welfare and Institutions Code section 10001.5 excludes illegal aliens from public social services. (Added by Initiative Measure (Prop. 187, § 5, approved November 8, 1994).)

Department of Social Services
Civil Rights Bureau
744 P Street, MS 15-70
Sacramento, CA 95814
(916) 654-2107

Web Site: <http://www.dss.cahwnet.gov/civilrights/>

In connection with the Medi-Cal program, you may also file a discrimination complaint with:

Department of Health Services
Office of Civil Rights
714 P Street, Room 1050
Sacramento, CA 95814
General Information (916) 445-4171
TDD Only (916) 657-2861
AIDS (916) 445-0553

Web Site: <http://www.dhs.cahwnet.gov/>

Furthermore, you may also file a discrimination complaint with the following federal agency:

U.S. Department of Health and Human Services, Region IX
Office for Civil Rights
50 United Nations Plaza, Room 322
San Francisco, CA 94102
Voice Phone (415) 437-8310
FAX (415) 437-8329
TDD (415) 437-8311

Web Site: <http://www.hhs.gov/ocr/regmail.html#regoff>

If your complaint involves the Food Stamp Program, contact:

U.S. Department of Agriculture
14th & Independence Ave., SW
Washington, D.C. 20250
Telephone: (202) 720-2791
Food Stamp Information: (800) 221-5689
California Hotline: (800) 952-5253

E-Mail: fsphq-web@fns.usda.gov

Web Site: <http://www.usda.gov/da/>

If you apply for or receive aid for aged, blind or disabled persons through the Supplemental Income/State Supplementary Program, you have rights similar to those stated above. Discrimination complaints concerning this program must be addressed to the Social Security Office nearest you since the Social Security Administration is the agency which handles discrimination complaints for this program.

In addition, California has a general statute prohibiting unlawful discrimination in the administration of any program funded partially or fully by the State.⁹⁵ Government Code section 11135, subdivision (a), states:

“No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.”

If you have a discrimination problem which you believe is covered by Government Code section 11135, you can file a complaint with the particular state agency that provided state funds to the entity which acted in an alleged discriminatory fashion. Any person, including interested third parties, can file the complaint. The complaint must be filed within one year of the alleged unlawful discrimination. However, if you do not discover facts about an unlawful practice until after the expiration of the one-year filing period, you have an additional 90 days to file a complaint.

⁹⁵ Congress has enacted a similar federal law, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), which prohibits discrimination in any program or activity receiving federal financial assistance when such discrimination is based on race, color or national origin. For information regarding your rights and remedies under federal law, you should contact the federal agency providing the financial assistance or an attorney. The Civil Rights Restoration Act of 1987, 20 U.S.C. section 1681 et seq., also requires recipients of federal funds to comply with federal laws forbidding discrimination based on sex or blindness.

CHAPTER VI

EDUCATION

State Laws

The right to a public education in California is a fundamental right fully guaranteed and protected by the California Constitution.⁹⁶ Recognizing the central role that education plays in our society, the California Legislature has enacted numerous laws designed to promote equality in educational opportunities and to safeguard students against discriminatory practices in public schools providing educational services.

For example, public school teachers are prohibited from giving instruction, and school districts are prohibited from sponsoring any activity which adversely reflects upon persons because of their race, sex, color, creed, handicap, national origin, or ancestry.⁹⁷ Instructional material used in public schools must not include matter which is discriminatory on the basis of race, sex, color, creed, handicap, national origin or ancestry.⁹⁸ Scholarships, loans and grants must be awarded in a nondiscriminatory manner.⁹⁹ Discrimination based upon sex is also prohibited in athletic programs provided by public schools or supported by public funds.¹⁰⁰ Also, the general prohibition against discrimination by any program receiving state funds applies to public schools.¹⁰¹

The legislative prohibitions against discrimination in education cover all aspects of the educational process, including teaching, course materials, financing, extracurricular activities and other matters. Violations of any of these laws should be brought to the attention of the governing body of the school, college, or university.

The following miscellaneous California statutory provisions prohibit unlawful discrimination in education:

1. **Business and Professions Code section 1000-8**¹⁰² prohibits chiropractic schools from denying admission to blind persons solely on the basis of their blindness, and further

⁹⁶ *Serrano v. Priest* (1971) 5 Cal.3d 584.

⁹⁷ Education Code section 51500.

⁹⁸ Education Code section 51501.

⁹⁹ Education Code section 35316.

¹⁰⁰ Education Code sections 41, 49023, and 66016.

¹⁰¹ Government Code section 11135 et seq.

¹⁰² Business and Professions Code section 1000-8 (West) (Stats. 1971, ch. 1755, § 7) was enacted pursuant to voter initiative and is an uncodified statute. West provides the code section number for ease of reference.

provides that blind persons shall not be denied admission into any examination for a state license.

2. **Business and Professions Code section 4992.6** prohibits denying blind persons admission to training in social work or denying a license to a clinical social worker on the basis of blindness.
3. **Education Code section 200 et seq.** is a comprehensive statutory scheme which prohibits sex, ethnic group identification, race, national origin, religion, and mental or physical disability discrimination in education. Section 200 et seq. also bars discrimination of any basis that is contained in the prohibition of hate crimes under Penal Code section 422.6, subdivision (a). The provisions of this law are applicable to all educational institutions located in California which receive or benefit from state financial assistance or enroll students who receive state financial aid. Therefore, many private educational institutions are subject to the requirements of this legislation. Pursuant to this legislation, any form of sexual harassment or other sex discrimination in any academic, athletic, extracurricular, research or financial aid program or activity is prohibited. Furthermore, any sexual harassment or other sex discrimination in educational institutions against students or nonstudents is prohibited. This prohibition of sexual harassment and discrimination extends to both academic and nonacademic personnel in employment as well.
 - a. **Education Code section 221.5** prohibits class enrollment in public schools based on sex. In addition, career guidance and counseling based upon sexual stereotypes are also forbidden.
 - b. **Education Code section 221.7** provides that no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities.
 - c. **Education Code section 220** prohibits discrimination based on sex, ethnic group identification, race, national origin, religion, color, mental or physical disability in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.
 - d. **Education Code section 224.5** establishes a gender equity train-the trainer grant program for the award of grants to school districts and county offices of education of up to \$130,000 per year for the purpose of training K-12 teachers to enhance the self-image of female pupils in subjects such as math, science and technology.
 - e. **Education Code section 231.5** requires each educational institution to have a written policy on sexual harassment and provides that such policy be disseminated to students, faculty and staff.

- f. **Education Code section 233** provides that the State Board of Education shall adopt policies, guidelines and curricula toward creating a school environment free from discriminatory attitudes, practices, and acts of hate violence. It further requires the State Board of Education to revise the school curriculum to include human relations education, with an aim to fostering an appreciation of the diversity of California's population and discouraging the development of discriminatory attitudes and practices.
 - g. **Education Code section 233.5** provides that each teacher shall endeavor to impress upon the minds of pupils the principles of moral justice free from discriminatory attitudes, practices, events or activities in order to prevent acts of hate violence.
 - h. **Education Code section 233.8** requires the State Department of Education, subject to available funding, to provide training to school district personnel in identifying and determining hate violence on school campuses. Pupils and teachers may participate in a grant program focused on fostering ethnic sensitivity, overcoming racism and prejudice, and countering hatred and intolerance, subject to available funding.
 - i. **Education Code section 235** prohibits racial, sex or ethnic discrimination in any aspect of the operation of alternative schools, charter schools, or the Demonstration Scholarship Program.
 - j. **Education Code sections 250-253** require educational institutions to submit assurances of compliance reports and to conduct compliance reviews pursuant to receipt of state financial assistance or state student financial aid.
 - k. **Education Code sections 260, 261, and 262.3** along with **Education Code sections 66292-66292.2** provide for remedies for discrimination and harassment which occur in educational institutions. These include freedom from discrimination, procedures for filing discrimination complaints, appeals and civil law remedies.
4. **Education Code section 13000 et seq.** enacted the California Civil Liberties Public Education Act. This Act sponsors public educational activities and the development of educational materials to ensure that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry during World War II will be remembered, and so that the causes and circumstance of this and similar events may be illuminated and understood.
5. **Education Code section 32228** provides that public schools should have access to supplemental resources to combat bias on the bases contained in Government Code section 12926 of the Fair Employment and Housing Act, and to prevent and respond to acts of hate violence.

6. **Education Code section 32228.1** requires school districts that receive funds under the School Safety and Violence Prevention Act to certify that funds will be used for one or more of a variety of purposes, including, but not limited to, preventing and responding to acts of hate violence and bias-related incidents.
7. **Education Code section 35351** Prohibits a public school from requiring a student to attend a particular school because of his race, creed, or color.
8. **Education Code section 44253.3** adds course work in human relations to the curriculum for a certificate to provide certain services to limited-English-proficient pupils.
9. **Education Code section 51500** prohibits teachers and school districts from instructing or sponsoring any activity which reflects adversely upon persons because of their race, sex, color, creed, heredity, national origin, or ancestry.
10. **Education Code sections 51501 and 60044** prohibit the State Board of Education and local school boards from adopting any instructional material for use in schools which contains any matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex, handicap, or occupation.
11. **Education Code section 56000 et seq.** mandates the provision of free appropriate public education, including special education facilities and classes, to persons with exceptional needs.
12. **Education Code 66252** California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, harassment and other forms of bias, and a responsibility to provide equal educational opportunity.
13. **Education Code section 66607** states that California State Universities and Colleges are to remain free from political and sectarian influences, and are not to deny admission on account of sex.
14. **Education Code section 66030** provides that it is the responsibility of the governing boards of institutions of higher education to ensure and maintain multicultural learning environments free from all forms of discrimination and harassment, in accordance with state and federal law.
15. **Education Code section 72011** states that community colleges must provide their services and classes without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.
16. **Education Code section 72012** requires compliance by community colleges with the nondiscrimination provisions of Education Code sections 221.5, 221.7 and 66016.

17. **Education Code section 72014** states that funds under the control of a community college district shall not be used toward payment to any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin.
18. **Education Code sections 89240** states that it is the intent of the Legislature that opportunities for participation in athletics in the California State University system be provided on as nearly an equal basis as practicable to male and female students, along with comparable incentives, encouragement, and allocation of funds.
19. **Government Code section 12940, subdivision (j)**, imposes personal liability on an employee who engages in unlawful harassment in employment pursuant to the Fair Employment and Housing Act.
20. **Labor Code section 3095** states that discrimination on the basis of race, religious creed, color, national origin, ancestry, or sex in any recruitment or apprenticeship program constitutes a misdemeanor.
21. **Penal Code sections 628, 628.1, 628.2, and 628.5** require the Department of Education to report on hate-motivated incidents and hate crimes which take place in public schools.

Federal Laws

Title IV of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, 42 U.S.C. section 2000c et seq., also provide protection against discrimination in education on the basis of race, sex, color, religion, or national origin. Title IV and Title IX are applicable to public schools. The term “public schools” includes any elementary, secondary, or higher educational institution which receives federal financial assistance.

The Office for Civil Rights (OCR) enforces five federal statutes that prohibit discrimination in programs and activities that receive federal financial assistance from the Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972, 42 U.S.C. § 2000c et seq; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990; and age discrimination is prohibited by the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107). Furthermore, any private institution receiving federal funds must provide equal educational opportunities, pursuant to the Civil Rights Restoration Act of 1987, 20 U.S.C. § 1681 et seq.

The civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal financial assistance from the U.S. Department of Education. Programs and activities that receive these federal funds must be operated in a non-discriminatory manner. Such programs or activities may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and

services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment.

Who may file?

Anyone who believes that an educational institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age may file a complaint. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group.

Those who wish to file a formal complaint with OCR should do so in writing within 180 days of the alleged discrimination with the following information in a letter or on the Discrimination Complaint Form available from OCR enforcement offices:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required).
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required).
- The name and location of the institution that committed the alleged discriminatory act(s) and a description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, or age).

For further information, the OCR office for California is located at:

U.S. Department of Education
Office for Civil Rights
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102

Telephone: (415) 556-4275
FAX: (415) 437-7783; TDD: (415) 437-7786
Email: OCR_SanFrancisco@ed.gov

The OCR national headquarters is located at:

U.S. Department of Education
Office for Civil Rights
Customer Service Team
Mary E. Switzer Building
330 C Street, S.W.
Washington, DC 20202

Telephone: (800) 421-3481
FAX: (202) 205-9862; TDD: (877) 521-2172
Email: OCR@ed.gov

Web Site: <http://www.ed.gov/offices/OCR/>

CHAPTER VII

MEDICAL AND HEALTH CARE

Recognizing the primary role that medical and health care plays in all of our lives, the Legislature has enacted several laws to ensure that medical and health care is delivered in a nondiscriminatory manner. Any health care and/or medical program receiving any form of funding or financial assistance from the State is prohibited from denying services based on ethnic group identification, religion, age, sex, color, or disability.¹⁰³ Moreover, as previously discussed in Chapter V, providers of medical services under the Medi-Cal program are prohibited from discriminating on the basis of race, national origin, ancestry, religion, sex, marital status, or political affiliation in providing services to their Medi-Cal patients. This prohibition against discrimination applies to many different kinds of providers of health care services, including doctors, dentists, therapists, hospitals, rest homes, and rehabilitation centers. Medi-Cal recipients who choose to enroll in prepaid health plans are also protected. Prepaid health plans cannot discriminate against Medi-Cal enrollees on the basis of race, sex, age, religion, creed, color, national origin or ancestry.¹⁰⁴ If you believe you have been discriminated against by a Medi-Cal provider, a prepaid health plan funded by Medi-Cal, or by any other health care provider which receives state funds, you should follow the procedures outlined in the Public Assistance/Government Benefits chapter of this publication.

The right to receive medical care and treatment in a nondiscriminatory manner is not limited to medical treatment and services paid for or funded by the government. Private business establishments which provide health care or medical services are also prohibited by the Unruh Civil Rights Act from denying such services based on arbitrary classifications such as sex, color, race, national origin, religion, ancestry, disability or medical condition.¹⁰⁵ The Americans with Disabilities Act (ADA) makes it unlawful for places of public accommodation, including medical and dental providers, to discriminate on the basis of disability.¹⁰⁶ Any violation of the ADA is also a violation of the Unruh Civil Rights Act.¹⁰⁷ Health care providers cannot refuse to provide services on the basis of HIV infection unless to do so would pose a “direct threat to the health or safety of others.” “Direct threat” means “a significant risk to the health or safety of others that cannot be

¹⁰³ Government Code section 11135.

¹⁰⁴ Welfare and Institutions Code section 14200.1.

¹⁰⁵ The Unruh Civil Rights Act has also been interpreted to prohibit discrimination on the basis of sexual orientation. (See *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289 and *Hubert v. Williams* (1982) 133 Cal.App.3d Supp.1.) For a more complete discussion of the type of classifications prohibited by the Unruh Civil Rights Act and of the remedies available under that Act, see chapter III and chapter IV in this publication.

¹⁰⁶ 42 U.S.C. § 12182.

¹⁰⁷ Civil Code section 51.

eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services.”¹⁰⁸ Routine medical and dental care is unlikely to pose such a threat.¹⁰⁹

Most licensed individuals and private business establishments which provide health care or medical services are prohibited from unlawfully discriminating against patients as a condition of maintaining their licenses to operate. Therefore, licensed individuals and business establishments which discriminate against you should be promptly reported to their respective licensing boards. Furthermore, if the provider of your health services is a licensed health facility such as a hospital, nursing home, or clinic, and you believe that your provider has discriminated against you, you should contact the nearest office of the Licensing and Certification Division of the State Department of Health Services, or the office listed below, to file your complaint or to ask any questions that you may have:

Office of Civil Rights
State Department of Health Services
714 P Street, Room 1050
Sacramento, CA 95814
(916) 657-1411

Web Site: <http://www.dhs.cahwnet.gov/>

The Legislature has also recognized that certain groups, because of their unique medical and health needs, warrant legislation specially designed to meet their needs. One such group consists of developmentally-disabled children and adults who reside in our communities. In order to meet the needs of this group and to allow them to live more independent and useful lives, the Legislature enacted the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code section 4500 et seq.

Section 4502 of the Act affirms that people do not give up their constitutional or statutory rights by virtue of having a developmental disability. The same section contains a prohibition against denying an otherwise qualified person with a developmental disability participation in, or the benefits of, any program or activity which receives public funds. It also enumerates rights that persons with developmental disabilities have, including rights “to treatment and habilitation services . . . to dignity, privacy and humane care . . . to participate in an appropriate level of publicly supported education . . . to prompt medical care and treatment . . . [and] to be free from harm . . . [and] hazardous procedures.”

Section 4503 of this Act acknowledges that persons who are housed in state hospitals and in other residential settings such as community care facilities are vulnerable to abuse and exploitation. To prohibit the continuation or recurrence of abuses, this section states that persons placed in such facilities shall have certain rights that can only be denied or withdrawn under specified conditions. These rights include the right to the use of money, the right to personal possessions and private

¹⁰⁸ 42 U.S.C. § 12182(3).

¹⁰⁹ See *Abbott v. Bragdon* (1st Cir.1998) 163 F.3d 87, cert. den. (1999) 526 U.S. 1131.

storage space, the right to communicate with others outside the facility by telephone, mail, or visits, and the right to refuse certain treatment procedures.

Section 4503 also requires that these rights be posted prominently in English, Spanish and other appropriate languages in all residential facilities. Further, section 4504 states that such facilities may only deny any of these rights for good cause, and that any denial shall be entered into the person's treatment record.¹¹⁰

The Department of Developmental Services, which oversees most programs and health facilities providing health and medical services to the developmentally disabled, maintains an office which can respond to complaints or answer questions regarding discrimination against the developmentally disabled or the rights afforded such individuals. You can reach this office at the following address and telephone number:

Office of Human Rights
Department of Developmental Services
1600 9th Street, Room 340
Sacramento, California 95814
(916) 654-1888

Web Site: <http://www.dds.cahwnet.gov/>

In recognition of the needs of its elderly, California has established the Long-Term Care Ombudsman Program, Welfare & Institutions Code section 9710 et seq. The Ombudsman Program is set up to investigate and resolve complaints made by or on behalf of the elderly in long-term care facilities and to assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights. If you have a complaint or desire more information on the Ombudsman Program in your area, call:

(800) 510-2020 (within California only)

In the alternative, you may contact the following office:

California Department of Aging
1600 K Street
Sacramento, California 95814

(916) 322-3887
FAX (916) 324-4989

Web Site: <http://www.aging.state.ca.us/>

¹¹⁰The Lanterman-Petris-Shore Act (Welf. & Inst. Code, § 5000 et seq.) guarantees similar rights to persons institutionalized as a result of mental disability. (See Welf. & Inst. Code, §§ 5325 and 5325.1.) For further information, see *Legal Rights of Persons with Disabilities*, California Department of Justice, March 1997 (with July 1998 revisions).

Miscellaneous State Health Care Statutes Forbidding Discrimination

1. **Welfare and Institutions Code section 5006** prevents an individual who is mentally disordered, developmentally disabled, or impaired by chronic alcoholism from being denied the right to treatment by spiritual means such as prayer when he or she is involuntarily detained for evaluation or treatment under the provisions of the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.
2. **Welfare and Institutions Code section 16509** permits a child, absent a specific danger to his or her physical or emotional safety, to be raised according to cultural and religious practices and beliefs which differ from general community standards. This section also specifies that raising a child in such a fashion shall not create a need for child welfare services.
3. **Health and Safety Code sections 1232, 1258, 1459, and 32128.10** provide that health facilities, clinics, county hospitals, and hospitals formed by hospital districts which permit sterilization operations for contraceptive purposes cannot discriminate on the basis of age, marital status, or number of natural children in performing such operations.
4. **Health and Safety Code section 1317** prohibits discrimination in the provision of emergency services and care based on a person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay, except to the extent that a person's age, sex, preexisting medical condition, or physical or mental handicap are medically significant.

CHAPTER VIII

MISCELLANEOUS ANTI-DISCRIMINATION STATUTES

Listed below are additional civil rights provisions that you may find helpful.

Jury Selection

1. **Code of Civil Procedure section 203, subdivision (a)(6)**, provides that persons are not unqualified to be jurors solely because of loss of sight or hearing or any other disability which impedes the person's ability to communicate or interferes with the person's mobility.
2. **Code of Civil Procedure section 204** prohibits any person from being excluded from jury service because of occupation, race, color, religion, sex, national origin, or economic status.

Military

1. **Military and Veterans Code section 130** prohibits the segregation of members of the state militia on the basis of race, national origin, ancestry, or color. Moreover, discrimination on these bases is also prohibited in enlistments, promotions, or commissions.
2. **Military and Veterans Code section 394** makes it a misdemeanor for any person or public official or employee to discriminate against a member of the armed forces because he or she is a member of the armed forces. In addition, no person, public official, employer, corporate officer or agent, or company can discriminate against a member of the armed forces with respect to employment. Furthermore, no public place of entertainment or amusement can refuse entrance to a member of the armed services because that member is wearing a uniform. Finally, no employer of any company or corporation, or any other person, can discharge from employment any military person because he or she is required to perform military service, or hinder or prevent that military person from performing any ordered service. This statute also provides for monetary damages and attorney's fees, and violators may be guilty of a misdemeanor.

Political Activities/Voting

1. **Education Code section 7052** makes it unlawful to place any restriction upon the political activities of any officer or employee of a local school agency.
2. **Government Code section 3203** makes it unlawful to place any restriction upon the political activities of any officer or employee of a state or local agency.
3. **Labor Code section 1101** prohibits an employer from making, adopting, or enforcing any rule or policy forbidding or preventing employees from participating in politics. In addition, an employer cannot control or direct the political activities or affiliations of its employees.

4. **Labor Code section 1102** prohibits an employer from coercing or influencing the political activities of employees.
5. **Elections Code section 2110** states that no county elections official may refuse to deputize any person to register voters because of race, creed, color, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or age.
6. **Elections Code section 18540** prohibits the use of all types of intimidation to induce any person to vote or refrain from voting, or to vote or refrain from voting for any particular person or measure.

Public Utilities

Public Utilities Code section 453 prohibits a public utility from engaging in any form of discriminatory rates, deposit amounts, charges, service and facilities because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status or change in marital status.

State and Local Governmental Conduct

42 U.S.C. section 1983 creates a private right of action to redress deprivations under color of state law of any federal rights, privileges or immunities. The purpose of section 1983, according to the United States Supreme Court, was “to interpose the federal courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law, ‘whether that action be executive, legislative, or judicial.’” (*Mitchum v. Foster* (1972) 407 U.S. 225, 242.)

The challenged conduct must constitute governmental action. In other words, rather than regulating purely private actions, section 1983 regulates state and local governmental conduct. Thus, if you have been discriminated against by some form of government action in a manner depriving you of your federal rights, then a section 1983 action may be appropriate. For more information regarding a section 1983 action, you should contact any attorney as soon as possible after the alleged unlawful act has occurred.

Finally, a few important points concerning section 1983 should be considered. First, section 1983 permits relief in the form of nominal, compensatory, and punitive damages, and/or injunctive relief, depending upon the circumstances. Second, attorney’s fees can be recovered by the prevailing party in a section 1983 action. Third, no federal statute of limitations applies to section 1983, so state statutes of limitation will generally control section 1983 suits. In California, there is a one-year period to file section 1983 actions.¹¹¹ Many cities have adopted their own ordinances to supplement state laws forbidding discrimination. You should contact your city attorney or a private attorney to see if your city has adopted such ordinances, and, if so, the procedures you must follow to assert your rights.

¹¹¹*Ricotta v. California* (S.D.Cal. 1998) 4 F.Supp.2d 961, 980, affd. (9th Cir. 1999) 173 F.3d 861, cert. den. (1999) 528 U.S. 864.

CHAPTER IX

PEACE OFFICER MISCONDUCT OR ABUSE

A governmental authority, agent or person acting on behalf of a governmental authority is prohibited from engaging in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by state or federal law. The Attorney General may bring a civil action for equitable or declaratory relief to eliminate the unlawful pattern or practice.¹¹²

Penal Code section 832.5 requires each department or agency which employs peace officers to establish a procedure for investigating citizens' complaints against such officers. Each department or agency is required to make available to the public a written description of the procedure it uses. Complaints, reports, or findings must be retained for a period of at least five years.

It is the policy of the California Department of Justice that local government will be primarily responsible for citizen complaints against law enforcement agencies and their employees, and that appropriate local resources (e.g., sheriff or police department, district attorney, citizens' review commission and/or grand jury) be utilized for resolution of such complaints prior to a request for intervention by the Attorney General. All complaints filed with the California Department of Justice will be processed and reviewed by the Attorney General's Public Inquiry Unit to determine whether all local remedies have been exhausted. Complaints meeting this criterion are then forwarded to and reviewed by the Attorney General's Criminal Law Division and Civil Rights Enforcement Section. If the complaint alleges that the local district attorney wrongfully declined to criminally prosecute the officer-involved, the Criminal Law Division may review the matter to determine whether the district attorney abused his or her discretion in declining to bring criminal charges and take whatever other action that the Attorney General may deem appropriate. Complaints that raise alleged patterns or practices of the violation of civil rights by a local law enforcement agency may be reviewed by the Civil Rights Enforcement Section for whatever action that the Attorney General may deem appropriate. You may contact:

California Department of Justice
Office of the Attorney General
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone (800) 952-5225 Toll Free (in California)
(916) 322-3360
(800) 952-5549 Toll Free TTD (in California)
(916) 324-5564 TTD

Web Site: <http://caag.state.ca.us/>

¹¹²Legislation effective January 1, 2001. (Civ. Code, § 52.3.)

Civil Code sections 52.3, and 52.1, and the **California Constitution, article V, section 13**, provide civil remedies under which the California Attorney General may redress patterns or practices.

Penal Code section 13519.4, effective January 1, 2001, prohibits “racial profiling” by law enforcement officers. “Racial profiling” is the practice of detaining a suspect for no reason other than the color of that person’s skin or apparent nationality or ethnicity. Racial profiling violates the Due Process and Equal Protection clauses and the prohibition against unlawful searches and seizures embodied in the state and federal constitutions. Every law enforcement officer is required to participate in training on racial and cultural diversity, which includes, but is not limited to, gender and sexual orientation issues.

42 U.S.C. 14141 is the federal law prohibiting any governmental authority, agent, or person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. To file a section 14141 complaint, contact:

U.S. Department of Justice
Civil Rights Division
Special Litigation Section
P.O. Box 66400,
Washington, D.C. 20035-6400
Telephone: (202) 514-6255
Fax: (202) 514-0212

Web site: <http://www.usdoj.gov/crt/split/pppmp.htm>

In addition, there are other state and federal penal statutes that address peace officer misconduct. Those cases are prosecuted under state statutes by district attorneys and city attorneys, and under federal statutes by U.S. Attorneys and/or the U.S. Department of Justice.

Individuals may also seek other civil and tort remedies under state and federal law. Local and state bar associations may be contacted for private attorney referrals. Contact the California State Bar at:

The State Bar of California
San Francisco (Main Office)
180 Howard Street
San Francisco, CA 94105-1639
Telephone: (415) 538-2000

Los Angeles
1149 South Hill Street
Los Angeles, CA 90015-2299
Telephone: (213) 765-1000

Web Site: <http://www.calbar.org/>

California Department of Justice
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

