

Delucias

**SUPPLEMENT TO THE 1978
FAIR EMPLOYMENT PRACTICE ACT
FAIR HOUSING LAW**

**Unruh Civil Rights Act
Ralph Civil Rights Act
and related California Statutes**

Amendments and additions to the January 1, 1978 compilation of laws under the jurisdiction of the FAIR EMPLOYMENT PRACTICE COMMISSION and the DIVISION OF FAIR EMPLOYMENT PRACTICES. Except where otherwise noted, all changes are effective January 1, 1979.

FOR USE IN 1979

**Fair Employment Practice Commission
David A. Garcia A., Executive & Legal Affairs Secretary**

**Division of Fair Employment Practices
Alice Lytle, Chief**

January 1, 1979

CHANGES TO THE CALIFORNIA FAIR EMPLOYMENT PRACTICE ACT:

1411. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general.

This part shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, and peace of the people of the State of California.

(Amended by Stats. 1978, Ch. 1361)

1412. The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age is hereby recognized as and declared to be a civil right.

(Amended by Stats. 1978, Ch. 1361)

1413. As used in this part, unless a different meaning clearly appears from the context:

(a) "Person" includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(c) "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(d) "Employer," except as hereinafter provided, includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly; the state or any political or civil subdivision thereof and cities.

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employee" does not include any individual employed by his parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(Amended by Stats. 1978, 1254)

1413.1. As used in this part, unless a different meaning clearly appears from the context:

(a) "Division" means the Division of Fair Employment Practices in the Department of Industrial Relations.

(b) "Chief" means the principal executive officer of the division.

(c) "Commission" means the State Fair Employment Practice Commission created by Section 1414.

(d) "Physical handicap" includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(e) "Medical condition" means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(f) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(g) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age.

(Amended by Stats. 1978, Ch. 1254)

1418. The commission shall have the following functions, powers and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply Sections 1411, 1420, 1420.1, 1420.2, 1431, 1432, and 1432.5, as well as any other section of this part pertaining to unlawful employment practices, affirmative action, and public work contracts, (2) to regulate the conduct of hearings held pursuant to Section 1424, and (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Section 1424.

(c) To establish and maintain a principal office within the state.

(d) To meet and function at any place within the state.

(e) To appoint an executive secretary, and such attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create such advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, and to foster through

community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(h) With respect to findings and orders made pursuant to Section 1424, to establish a system of published opinions which shall serve as precedent in interpreting and applying Sections 1420, 1420.1, and 1431, as well as of any other section of this part on which the commission is authorized to issue findings or orders.

(i) To issue publications and results of inquiries and research which in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. Such publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.

(Amended by Stats. 1978, Ch. 1361)

1419. The division shall have the following functions, powers and duties:

(a) To establish and maintain a principal office and such other offices within the state as are necessary to carry out the purposes of this part.

(b) To meet and function at any place within the state.

(c) To appoint attorneys, investigators, conciliators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies.

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the functions and duties of the division pursuant to this part.

(f) (1) To receive, investigate and conciliate complaints alleging discrimination in employment on the bases enumerated in this part.

(2) To receive, investigate, and conciliate complaints alleging a violation of Section 51 or 51.7 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(g) To subpoena witnesses, compel their attendance, administer oaths, examine any person under oath or by sworn interrogatory, and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the division.

(h) To issue accusations pursuant to Section 1422.2 and to prosecute such accusations before the commission.

(i) To issue such publications and such results of investigations and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination on the bases enumerated in this part.

(j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 1431.

(k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.

(Amended by Stats. 1978, Ch. 1254)

1419.7. The division may also provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, marital status, or ancestry which impair the rights of persons in such communities under the Constitution or laws of the United States or of this state. The services of the division may be made available in cases of such disputes, disagreements, or difficulties only when, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby. The division's services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty.

The assistance of the division pursuant to this section shall be limited to endeavors at investigation, conference, conciliation, and persuasion.

(Amended by Stats. 1978, Ch. 1361)

1419.9. (a) The Legislature recognizes that the avoidance of discriminatory practices in the employment of disabled persons is most effectively achieved through the ongoing efforts of state agencies involved in the vocational rehabilitation and job placement of the disabled. The division may utilize the efforts and experience of the Department of Rehabilitation in the development of job opportunities for the disabled by requesting the Department of Rehabilitation to foster good will and to conciliate on employment policies with employers who, in the judgment of the division, have employment practices or policies that discriminate against disabled persons. Nothing contained in this paragraph shall be construed to transfer any of the functions, powers, or duties from the division to the Department of Rehabilitation.

(b) The activities of the division in providing conciliation assistance shall be conducted in confidence and without publicity, and the division shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No employee of the division shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the division. Any employee of the division, who makes public in any manner whatever any information in violation of this subdivision, is guilty of a misdemeanor and, if a member of the state civil service, shall be subject to disciplinary action under the State Civil Service Act. When contacted by the

division, employers, labor organizations, or employment agencies shall be informed whether a particular discussion, or portion thereof, constitutes either: (1) endeavors at conference, conciliation and persuasion which may not be disclosed by the division or received in evidence in any formal hearing or court action; or (2) investigative processes, which are not so protected.

Amended by Stats. 1978, Ch. 1361)

1420. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ him or to refuse to select him for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his physical handicap, is unable to perform his duties, or he cannot perform such duties in a manner which would not endanger his health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of his medical condition, is unable to perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of his medical condition, is unable to perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of marital status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership such person, or to provide only second-class or

segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex, or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this part.

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(g) For the governing board of a school district to violate Section 44066 or 87402 of the Education Code.

(Amended by Stats. 1978, Ch. 1190)

1420.15. Every employer in this state, except a public agency, shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his employment beyond the normal retirement date contained in any private pension or retirement plan.

Such employment shall continue so long as the employee demonstrates his ability to perform the functions of the job

adequately, and the employer is satisfied with the quality of work performed.

This section shall not be construed to require any change in funding, benefit levels, or formulas of any existing retirement plan, or to require any employer to increase such employer's payments for the provision of insurance benefits contained in any existing employee benefit or insurance plan, by reason of such employee's continuation of employment beyond the normal retirement date, or to require any changes in any bona fide retirement or pension programs or existing collective-bargaining agreements during the life of the contract, or for two years after the effective date of this section, whichever occurs first.

Any employee indicating such desire and continuing such employment shall give the employer written notice in reasonable time, of intent to retire or terminate when such retirement or termination occurs after the employee's normal retirement date.

Nothing in this section or Section 1420.1 shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who is either:

(a) Serving under a contract of unlimited tenure, or similar arrangement providing for unlimited tenure at an institution of higher education as defined by Section 120(a) of the Federal Higher Education Act of 1965, or;

(b) For the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profitsharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$27,000.

(Amended by Stats. 1978, Ch. 1190)

1420.3. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing which has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, or physical handicap, unless such practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on such examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by such examination or by a license issued in reliance on such examination or qualification.

(b) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sex, or age, or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for.

(c) It is unlawful for a licensing board to discriminate against any person because such person has filed a complaint, testified, or assisted in any proceeding under this part.

(d) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of such applications.

(e) As used in this section, "licensing board" means any state board, agency, or authority in the Department of Consumer Affairs which has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Added by Stats. 1978, Ch. 1338)

1420.35. It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

(a) For any employer, because of the pregnancy, childbirth, or related medical condition of any female employee, to refuse to promote her, or to refuse to select her for a training program leading to promotion, provided she is able to complete the training program at least three months prior to the anticipated date of departure for her pregnancy leave, or to discharge her from employment or from a training program leading to promotion, or to discriminate against her in compensation or in terms, conditions, or privileges of employment.

(b) For any employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions either:

(1) To receive the same benefits or privileges of employment granted by that employer to other persons not so affected who are similar in their ability or inability to work, including to take disability or sick leave or any other accrued leave which is made available by the employer to temporarily disabled employees. For purposes of this section, pregnancy, childbirth, and related medical conditions are treated as any other temporary disability. However, no employer shall be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical

condition for a period exceeding six weeks. Nothing in this section shall be construed to require an employer to provide his or her employees with health insurance coverage for the medical costs of pregnancy, childbirth, or related medical conditions. The inclusion in any such health insurance coverage of any provisions or coverage relating to medical costs of pregnancy, childbirth, or related medical conditions shall not be construed to require the inclusion of any other provisions or coverage, nor shall coverage of any related medical conditions be required by virtue of coverage of any medical costs of pregnancy, childbirth, or other related medical conditions.

(2) To take a leave on account of pregnancy for a reasonable period of time; provided, such period shall not exceed four months. Such employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions. Nothing herein shall be construed to limit the provisions of paragraph (1) of subdivision (b) of this section.

An employer may require any employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date such leave shall commence and the estimated duration of such leave.

(c) (1) For an employer who has a policy, practice, or collective-bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(2) For any employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where such transfer can be reasonably accommodated, provided, however, that no employer shall be required by this section to create additional employment which the employer would not otherwise have created, nor shall such employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(d) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy.

Added by Stats. 1978, Ch. 1321)

NOTE: Stats. 1978, Ch. 1321 also contain the following provisions:

SEC. 4. In the event Congress enacts legislation amending Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, the provisions of this act, except paragraph (2) of subdivision (b) of Section 1420.35 of the Labor Code, shall be inapplicable to any employer subject to such federal law, except that this section shall not pertain to complaints filed prior to the effective date of this act.

1420.4. It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after such records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain such records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all such records and files until such complaint is fully and finally disposed of and all appeals or related proceedings terminated. The commission shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the division, pursuant to its powers under Section 1429.1, may seek temporary or preliminary judicial relief to enforce this section.

(Section 1430.1 amended and renumbered by Stats. 1978, Ch. 1254)

1420.6. It shall not be an unlawful practice under this part for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature for its employees or members who are responsible for minor children.

(Added by Stats. 1978, 1361)

1420.8. It shall be an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by Section 51 or 51.7 of the Civil Code.

(Amended by Stats. 1978, Ch. 1361)

1421. The division is empowered to prevent practices made unlawful under this part. Any person claiming to be aggrieved by an alleged unlawful practice may file with the division a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the division. The chief or his authorized representative may in like manner, on his own motion, make, sign and file such complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this part may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred; except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person

allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice after the expiration of one year from the date of their occurrence.

Complaints alleging a violation of subdivision (c) of Section 1420 shall be filed as provided in Section 3096.

(Amended by Stats. 1978, Ch. 1361)

1421.1. Where an unlawful practice alleged in a verified complaint adversely affects, in a similar manner, a group or class of persons of which the aggrieved person filing the complaint is a member, or where such an unlawful practice raises questions of law or fact which are common to such a group or class, the aggrieved person or the chief may file the complaint on behalf and as representative of such a group or class. Any complaint so filed may be investigated as a group or class complaint, and, if in the judgment of the chief circumstances warrant, shall be treated as such for purposes of conciliation and accusation. Where an accusation is issued as a group or class accusation, the case shall be treated as a group or class case for all other purposes of this part, including, but not limited to, hearing, determination, reconsideration, and judicial proceedings.

(Amended by Stats. 1978, Ch. 1361)

1421.2. The division shall cause any verified complaint filed under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of. Service shall be made at the time of initial contact with such person, employer, labor organization, or employment agency or the agents thereof, or within 45 days, whichever first occurs. At the discretion of the chief, the complaint may not contain the name of the complaining party unless such complaint is filed by the chief or his authorized representative.

(Amended by Stats. 1978, Ch. 1361)

1422.1. Any agreement entered into by conference, conciliation and persuasion shall be reduced to writing, signed by all parties, and approved by the chief or the authorized representative of the chief. Within one year of the effective date of every such agreement, the division shall conduct a compliance review to determine whether such agreement has been fully obeyed and implemented. Whenever the division believes, on the basis of evidence presented to it, that any person is violating or about to violate any such agreement, the division may bring an action in the appropriate superior court of the State of California in the same manner as actions may be brought under Section 1429. In resolving allegedly unlawful practices through conciliation such resolutions may be in the nature of, but are not limited to, types of remedies that might be ordered after accusation and hearing.

(Amended by Stats. 1978, Ch. 1361)

1422.2. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation or persuasion, or in advance thereof if circumstances warrant, the chief in his or her discretion may cause to be issued in the name of the division a written accusation. The accusation shall contain the name of the person, employer, labor organization or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing. An accusation shall be issued, if at all, within one year after the filing of a complaint.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the division earlier determines that no accusation will issue, the division shall promptly notify, in writing, the person claiming to be aggrieved. Such notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization or employment agency named in the verified complaint within one year from the date of such notice. The superior courts of the State of California shall have jurisdiction of such actions. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to such practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any such county, such an action may be brought within the county of defendant's residence or principal office. Such actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where such persons have filed a civil class action in the federal courts alleging a comparable claim of unlawful discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney fees and costs except where such action is filed by a public agency or a public official, acting in an official capacity.

(Amended by Stats. 1978, Ch. 1361)

1422.5. Where the division issues an accusation, or is about to do so, and the respondent accused of engaging in unlawful practices under this part is a state contractor or is a supplier of goods and services to the state, the chief shall send a written notice of the issuance of the accusation and a copy of the accusation to the appropriate awarding agency and request a report of any action which the awarding agency takes in response to the division's notification and issuance of accusation.

(Added by Stats. 1978, Ch. 1254)

1425.5. The case in support of the accusation shall be presented before the commission by the attorneys or agents of the division. Any commissioner who, in regard to a particular case, shall have previously been assigned to engage in investigation or conciliation endeavors or shall otherwise have been or be personally or professionally connected with the parties or factual situation of the original complaint upon which the accusation is based, shall not participate in the hearing except as a witness and shall not give his or her opinion of the merits of the case, nor shall he or she participate in the deliberations of the commission in such case. In connection with complaints initiated by the chief, the personal or professional association of the commissioners with the chief shall not prohibit the commissioners from participating in the deliberations of such cases. In any hearing, the content of discussions or endeavors at conciliation shall not be received in evidence.

(Added by Stats. 1978, Ch. 1361)

1426. (a) If the commission finds that a respondent has engaged in any unlawful practice under this part, it shall state its findings of fact and determination and shall issue and cause to be served on the parties an order requiring such respondent to cease and desist from such unlawful practice and to take such action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, as, in the judgment of the commission, will effectuate the purposes of this part, and including a requirement for report of the manner of compliance.

(b) If the commission finds the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the commission shall provide the licensing or privilege granting agency with a copy of its decision or order.

(c) If the commission finds that a respondent has not engaged in any such unlawful practice, the commission shall state its findings of fact and determination and shall issue and cause to be served on the parties an order dismissing such accusation as to such respondent.

(d) Any findings and determination made or any order issued pursuant to this section shall be written and shall indicate the identity of the members of the commission who participated herein.

(e) Any order issued by the commission shall have printed on its face references to the rights of appeal of any party to the proceeding to whose position the order is adverse.

(Amended by Stats. 1978, Ch. 1254)

1430. Any person who shall willfully resist, prevent, impede or interfere with any member of the division or the commission or any of its agents or employees in the performance of duties pursuant to this part, or who shall in any manner willfully violate an order of the commission, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding five hundred dollars (\$500), or both.

(Amended by Stats. 1978, Ch. 1361)

Section 1430.1 of the Labor Code is amended and renumbered to Section 1420.4. (Amended and renumbered by Stats. 1978, Ch. 1254)

1430.3. Any person who willfully violates Section 1420.4 concerning recordkeeping shall be guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding five hundred dollars (\$500), or both.

(Added by Stats. 1978, Ch. 1254)

1431. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part and to the nondiscrimination requirements of this section and any rules and regulations which implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the division for approval and certification and may be required to submit periodic reports of its compliance with such a program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under such clause to labor organizations with which they have a collective bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced.

(d) The division shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the commission for consideration and adoption in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of the Government Code. Such rules and regulations shall describe and include, but not be limited to:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the division in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the division, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the division or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and approval by the division or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county which requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with such agency.

(f) Where the division determines and certifies that the provisions of this section or its implementing rules and regulations are violated or where the commission, after hearing an accusation pursuant to Section 1424, determines a contractor or subcontractor is engaging in practices made unlawful under this part, the division or the commission may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

(Section 1431 repealed and new Section 1431 added by Stats. 1978, Ch. 1254. Effective July 1, 1979)

NOTE: Stats. 1978, Ch. 1254 also contain the following provisions:

SEC. 20. It is the intention of the Legislature that Sections 16 and 17 of this act, which repeal and add Section 1431 to the Labor Code, shall not become operative until July 1, 1979. Prior to that time, however, the division is authorized and directed to develop and submit implementing rules and regulations to the commission,

before April 1, 1979, and the commission is authorized and directed to consider and propose implementing rules and regulations which have an effective date of no earlier than July 1, 1979. It is the further intention of the Legislature that Section 17 of this act, adding Section 1431 to the Labor Code, shall not be interpreted in such a manner as to frustrate its purpose and shall not be interpreted in such a manner as to adversely effect otherwise lawful state or federal programs which benefit the physically handicapped, the aged, low-income individuals, minorities, or women.

1432. (a) The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination on the bases enumerated in this part.

(b) Nothing contained in this part relating to discrimination on account of sex or medical condition shall be deemed to affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, provided such terms or conditions are in accordance with customary and reasonable or actuarially sound underwriting practices.

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 of the Civil Code.

(Amended by Stats. 1978, Ch. 1254)

SECTION 1. A chapter heading is added immediately preceding Section 1411 of the Labor Code, to read:

CHAPTER 1. PURPOSE AND DECLARATION OF CIVIL RIGHTS

SEC. 2. A chapter heading is added immediately preceding Section 1413 of the Labor Code, to read:

CHAPTER 2. DEFINITIONS

SEC. 5. A chapter heading is added immediately preceding Section 1414 of the Labor Code, to read:

CHAPTER 3. THE COMMISSION

SEC. 6. A chapter heading is added immediately preceding Section 1419 of the Labor Code, to read:

CHAPTER 4. THE DIVISION

SEC. 8. A chapter heading is added immediately preceding Section 1420 of the Labor Code, to read:

CHAPTER 5. UNLAWFUL PRACTICES, GENERALLY

SEC. 9. A chapter heading is added immediately preceding Section 1421 of the Labor Code, to read:

CHAPTER 6. ENFORCEMENT AND HEARING PROCEDURES

SEC. 15. A chapter heading is added immediately preceding Section 1431 of the Labor Code, to read:

CHAPTER 7. NONDISCRIMINATION AND COMPLIANCE PROGRAMS

SEC. 18. A chapter heading is added immediately preceding Section 1432 of the Labor Code, to read:

CHAPTER 8. MISCELLANEOUS

CHANGES TO THE UNRUH AND RALPH CIVIL RIGHTS ACTS:

SECTION 1. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, or who aids, or incites such denial, or whoever makes any discrimination, distinction or restriction on account of sex, color, race, religion, ancestry, or national origin contrary to the provisions of Section 51 or 51.5 of this code, is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than two hundred fifty dollars (\$250), and such attorney's fees as may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5 of this code.

(b) Whoever denies the right provided by Section 51.7, or whoever aids, incites, or conspires in such denial, is liable for each and every such offense for the actual damages, and ten thousand dollars (\$10,000) in addition thereto, suffered by any person denied such right. In the case of multiple offenders, such ten-thousand-dollar (\$10,000) fine shall be prorated between them.

(c) Whenever the Attorney General or any district attorney or city attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights hereby secured, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General or any district attorney or city attorney may bring a civil action in the appropriate court by filing with it a complaint (1) signed by such officer (or in his or her absence the individual acting on behalf of such officer), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, or national origin, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in such action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In such action the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

(Amended by Stats. 1978, Ch. 1212)

