

**BOARD OF GOVERNORS OF THE
CALIFORNIA COMMUNITY COLLEGES
REVISIONS TO TITLE 5 REGULATIONS:
EQUAL EMPLOYMENT OPPORTUNITY**

1. Section 51010 of subchapter 1 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51010. Equal Employment Opportunity.

The governing board of a community college district shall:

- (a) adopt a district policy which describes its equal employment opportunity program and meets the requirements of section 53002;
- (b) develop and adopt a district equal employment opportunity plan which meets the requirements of section 53003;
- (c) ~~ensure that its employment patterns are annually surveyed~~ annually review the composition of the employee workforce in the manner required by section 53004;
- (d) ensure that a program of recruitment is carried out as required by section 53021;
- (e) ensure that screening and selection procedures are developed and used in accordance with section 53024;
- (f) ensure that, where necessary, additional steps are taken consistent with the requirements of section 53006;
- (g) ensure that the pattern of hiring and retention, when viewed over time, is consistent with the objectives established in the district's equal employment opportunity plan; and
- (h) substantially comply with the other provisions of subchapter 1 (commencing with section 53000) of chapter 4.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes 1988, ~~c~~Chapter 923, ~~s~~Section 4; ~~s~~Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~s~~Sections 11135-11139.5, Government Code.

2. Section 53000 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53000. Scope and Intent.

(a) This subchapter implements and should be read in conjunction with Government Code sections 11135-11139.5, Education Code sections 66010.2, 66030, and ~~c~~Chapter 4.5 of ~~p~~Part 40 of ~~t~~Title 3, commencing with section 66250; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101). Nothing in this subchapter shall be construed to conflict with or be

inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

(b) The regulations in this subchapter require steps to promote faculty and staff equal employment opportunity which are in addition to and consistent with the nondiscrimination requirements of state or federal law. Therefore, compliance with these regulations or approval of the district's equal employment opportunity plan pursuant to section 53003 does not imply and should not be construed to mean that a district has necessarily complied with its obligations under any other applicable laws or regulations. The Chancellor shall assist districts in identifying other applicable state or federal laws which may affect district equal employment opportunity or nondiscrimination policies.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135-11139.5, Government Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

3. Section 53001 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53001. Definitions.

As used in this subchapter:

(a) Adverse Impact. "Adverse impact" means that a statistical measure (such as those outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures") is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group protected from discrimination pursuant to Government Code section 12940. defined in terms of ethnic group identification, gender, or disability. A disparity identified in a given selection process will not be considered to constitute adverse impact if the numbers involved are too small to permit a meaningful comparison.

~~(b) Business Necessity. "Business necessity" means circumstances which justify an exception to the requirements of section 53021(b)(1) because compliance with that section would result in substantial additional financial cost to the district or pose a significant threat to human life or safety. Business necessity requires greater financial cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.~~

(b) Diversity. "Diversity" means a condition of broad inclusion in an employment environment that offers equal employment opportunity for all persons. It requires both the presence, and the respectful treatment, of individuals from a wide range of ethnic, racial, age, national origin, religious, gender, sexual orientation, disability and socio-economic backgrounds.

(c) Equal Employment Opportunity. "Equal employment opportunity" means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and to enjoy the benefits of employment with the district. Equal employment opportunity should exist at all levels ~~and in all job categories listed in section 53004(a).~~ in the seven job categories which include executive/administrative/managerial, faculty and other instructional staff, professional nonfaculty, secretarial/clerical, technical and paraprofessional, skilled crafts, and service and maintenance. Ensuring eEqual employment opportunity also involves:

(1) identifying and eliminating barriers to employment that are not job related; and
(2) creating an environment which fosters cooperation, acceptance, democracy, and free expression of ideas and is welcoming to men and women, persons with disabilities, and individuals from all ethnic and other groups protected from discrimination pursuant to Government Code section 12940. ~~by this subchapter.~~

(d) Equal Employment Opportunity Plan. An "equal employment opportunity plan" is a written document in which a district's work force is analyzed and specific plans and procedures are set forth for ensuring equal employment opportunity.

(e) Equal Employment Opportunity Programs. "Equal employment opportunity programs" means all the various methods by which equal employment opportunity is ensured. Such methods include, but are not limited to, using nondiscriminatory employment practices, actively recruiting, monitoring and taking additional steps consistent with the requirements of section 53006.

~~(f)(1) Ethnic Minorities. "Ethnic minorities" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks/African-Americans, and Hispanics/Latinos.~~

~~(2) Ethnic Group Identification. "Ethnic group identification" means an individual's identification in one or more of the ethnic groups reported to the Chancellor pursuant to section 53004. These groups shall be more specifically defined by the Chancellor consistent with state and federal law.~~

~~(g) Goals for Persons with Disabilities. "Goals for persons with disabilities" means a statement that the district will strive to attract and hire additional qualified persons with a disability in order to achieve the level of projected representation for that group by a target date established by taking into account the expected turnover in the work force and the availability of persons with disabilities who are qualified to perform a particular job. Goals are not "quotas" or rigid proportions.~~

~~(h)(g) In-house or Promotional Only Hiring. "In-house or promotional only" hiring means that only existing district employees are allowed to apply for a position.~~

~~(i)(h) Monitored Group. "Monitored group" means those groups identified in section 53004(b) for which monitoring and reporting is required pursuant to section 53004(a).~~

~~(j)(i) Person with a Disability. "Person with a disability" means any person who:~~
~~(1) has a physical or mental impairment as defined in Government Code section 12926 which limits one or more of such person's major life activities;~~
~~(2) has a record of such an impairment;~~ or
~~(3) is regarded as having such an impairment.~~

A person with a disability is "limited" if the condition makes the achievement of the major life activity difficult.

~~(k)~~ Projected Representation. "Projected representation" means the percentage of persons from a monitored group determined by the Chancellor to be available and qualified to perform the work in question.

~~(j)~~(i) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the district to remove artificial or real barriers which prevent or limit the employment and upward mobility of persons with disabilities. "Reasonable accommodations" may include the items designated in section 53025. in compliance with Government Code section 12926.

~~(m)~~(k) Screening or Selection Procedure. "Screening or selection procedure" means any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques, including but not limited to, traditional paper and pencil tests, performance tests, and physical, educational, and work experience requirements, interviews, and review of application forms.

~~(n)~~(l) Significantly Underrepresented Group. "Significantly underrepresented group" means any monitored group for which the percentage of persons from that group employed by the district in any job category listed in section 53004(a) is below eighty percent (80%) of the projected representation for that group in the job category in question.

~~(o)~~ Target Date. "Target date" means a point in time by which the district plans to meet an established goal for persons with disabilities and thereby achieve projected representation in a particular job category.

~~(p)~~ Timetable. "Timetable" means a set of specific annual hiring objectives that will lead to meeting a goal for persons with a disability by a projected target date.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, Section 4; Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; Sections 11135-11139.5, 11092 and 12926, Government Code; title 29 C.F.R. Code of Federal Regulations sections 1602.48 (1981); and 29 C.F.R. 1607; title 29 U.S.C. United States Code section 793; title 41 C.F.R. Code of Federal Regulations section 60-741.2 (1980).

4. Section 53002 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53002. Policy Statement.

The governing board of each community college district shall adopt a policy statement setting forth the district's commitment to an equal employment opportunity program. This statement may also incorporate the nondiscrimination policy statement required pursuant to subchapter 5 (commencing with section 59300) of chapter 10 of this division, and other similar nondiscrimination or equal employment opportunity statements which may be required under other provisions of state and federal law.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, ~~§~~Section 4; ~~§~~Sections 66010.1, 66030, 66071, 66270 and 87360, Education Code; and ~~§~~Sections 11135-11139.5, Government Code.

5. Section 53003 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53003. District Plan.

(a) The governing board of each community college district shall develop and adopt a district-wide written equal employment opportunity plan to implement its equal employment opportunity program. Such plans ~~and revisions~~ shall be submitted to the Chancellor's Office. The Chancellor's Office retains the authority to review district plans on a case-by-case basis. ~~for review and approval.~~

(b) Each district shall review its EEO Plan. Such plans shall be reviewed at least once every three years and, if necessary, revised as determined necessary. Any revised EEO Plan shall be submitted to the Chancellor's Office, which retains the authority to review such revisions on a case-by-case basis. ~~and submitted to the Chancellor's Office for approval.~~ Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its plan.

(c) In particular, the plan shall include all of the following:

(1) the designation of the district employee or employees who have been delegated responsibility and authority for implementing the plan and assuring compliance with the requirements of this subchapter pursuant to section 53020;

(2) the procedure for filing complaints pursuant to section 53026 and the person with whom such complaints are to be filed;

(3) a process for notifying all district employees of the provisions of the plan and the policy statement required under section 53002;

(4) a process for ensuring that district employees who ~~are to~~ participate on screening or selection committees ~~shall receive appropriate training, prior to their participation.~~ Training shall include, but need not be limited to:

(A) ~~on~~ the requirements of this subchapter and of state and federal nondiscrimination laws;

(B) the educational benefits of workforce diversity;

(C) the elimination of bias in hiring decisions; and

(D) best practices in serving on a selection or screening committee;

(5) a process for providing annual written notice to appropriate community-based and professional organizations concerning the district's plan and the need for assistance from the community and such organizations in identifying qualified applicants. "Written" notice may include mailings and electronic communications;

(6) a process for gathering information and periodic, longitudinal ~~an~~ analysis of the district's employees and applicants, broken down by number of persons from monitored groups status, ~~who are employed in the district's work force and those who have~~

~~applied for employment~~ in each of the job categories listed in section 53004(a) to determine whether additional measures are required pursuant to section 53006 and to implement and evaluate the effectiveness of those measures. Each district, based on its size, demographics and other unique factors shall determine the appropriate time frame for periodic review, and reflect this in its EEO Plan;

(7) to the extent data regarding potential job applicants is provided by the State Chancellor, an analysis of the degree to which monitored groups are underrepresented in comparison to their representation in the field or job category in numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each such job category and whether or not the underrepresentation is significant;

(8) methods for addressing any underrepresentation identified pursuant to ~~sub~~paragraph (7) of this subdivision; and

~~(9) additional steps consistent with section 53006 to remedy any significant underrepresentation identified in the plan; and~~

~~(10)~~ (9) a process for developing and implementing strategies, any other measures as described in section 53024.1, necessary to further equal employment opportunity throughout the district. demonstrate on-going, institutional commitment to diversity and equal employment opportunity, as defined in sections 53001(c) and (e).

~~(d) The plan shall include any goals for hiring persons with disabilities that are required by section 53025.~~

~~(e)~~ (d) The plans submitted to the Chancellor shall be public records.

~~(f)~~ (e) Each community college district shall make a continuous good faith effort to comply with the requirements of the plan required under this section.

~~(g) In developing the availability data called for in subsection (c)(7), the Chancellor shall work through the established Consultation Process.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~s~~Section 11138, Government Code. Reference: Statutes of 1988, cChapter 923, ~~s~~Section 4; ~~s~~Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~s~~Sections 11135-11139.5, Government Code.

6. Section 53004 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53004. District Evaluation and Report to Chancellor.

(a) Each district shall annually ~~collect survey its~~ collect survey its employee ~~demographic data~~ and shall monitor applicants for employment on an ongoing basis in order to evaluate the implementation of its equal employment opportunity plan and to provide data needed for the analyses required by sections 53003, 53006, 53023, and 53024. Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, this data for the results of its annual survey of employees at each college in the district. Each employee shall be reported so that he or she may be identified as belonging to one of the following seven job categories:

- (1) executive/administrative/managerial;
- (2) faculty and other instructional staff;
- (3) professional nonfaculty;
- (4) secretarial/clerical;
- (5) technical and paraprofessional;
- (6) skilled crafts; and
- (7) service and maintenance.

(b) For purposes of the data collection survey and report required pursuant to ~~subdivision subsection~~ (a) of this section, each applicant or employee shall be afforded the opportunity to identify his or her gender, ethnic group identification and, if applicable, his or her disability. A person may designate multiple ethnic groups with which he or she identifies, but shall be counted in only one ethnic group for reporting purposes. Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians are to be counted and reported as part of the Asian/Pacific Islander group as well as in separate subcategories. However, in determining whether additional steps are necessary to ensure that monitored groups have not been excluded on an impermissible basis, analysis of the separate subgroups is not necessary.

Note: Authority cited: Sections 66271.1, 66700, 70901 and, 87105, Education Code; and sSection 11138, Government Code. Reference: Statutes of 1988, cChapter 923, sSection 4; sSections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sSections 8310.5 and 11135-11139.5, Government Code.

7. Section 53005 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53005. Advisory Committee.

Each community college district shall establish an Equal Employment Opportunity Advisory Committee to assist the district in developing and implementing the plan required under section 53003. This advisory committee shall include a diverse membership whenever possible.

This advisory committee shall receive training in all of the following:

(a) the requirements of this subchapter and of state and federal nondiscrimination laws;

(b) identification and elimination of bias in hiring;

(c) the educational benefits of workforce diversity; and

(d) the role of the advisory committee in carrying out the District's EEO plan.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and sSection 11138, Government Code. Reference: Statutes of 1988, cChapter 923, sSection 4; sSections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sSections 11135-11139.5, Government Code.

8. Section 53006 of article 1 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53006. Additional ~~Steps~~ Measures to Support Diversity and Ensure Equal Employment Opportunity.

~~(a) If a district determines that a particular monitored group is significantly underrepresented with respect to one or more job categories, the district shall take additional steps consistent with this section. At a minimum, the district shall:~~

(a) Districts shall review the information gathered pursuant to section 53003, subdivision(c)(6) to determine if significant underrepresentation of a monitored group may be the result of non job-related factors in the employment process. For the purposes of this subdivision, the phases of the employment process include but are not limited to recruitment, hiring, retention and promotion. The information to be reviewed shall include, but need not be limited to:

(1) longitudinal analysis of data regarding job applicants, gathered pursuant to section 53003(c)(6), to identify whether over multiple job searches, a monitored group is disproportionately failing to move from the initial applicant pool, to the qualified applicant pool;

(2) analysis of data regarding potential job applicants, to the extent provided by the State Chancellor, which may indicate significant underrepresentation of a monitored group; and

(3) analysis pursuant to section 53003(c)(7) to determine whether the group is significantly underrepresented.

(b) Where the review described in subdivision (a) identifies that significant underrepresentation of a monitored group may be the result of non-job related factors in the employment process, districts shall implement additional measures designed to address the specific area of concern. These additional measures shall include the following:

(1) review its recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group;

(2) consider various other means of reducing the significant underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective;

(3) determine whether the group is still significantly underrepresented in the category or categories in question after the measures described in (1) and (2) have been in place a reasonable period of time; and

~~(4) if significant underrepresentation persists, the staffing rate for the significantly underrepresented group in the specified job category or categories shall be monitored on an ongoing basis until the projected representation has been achieved for that group in the category or categories in question.~~

~~(b) If a reasonable period of time passes and significant underrepresentation persists for a particular group in the job category in question, the district shall:~~

~~(1)(4)~~ review each locally established "required," "desired" or "preferred" qualification being used to screen applicants for positions in the job category to determine if it is job-related and consistent with: ~~business necessity through a process meeting the~~

~~(A) any requirements of federal law; and or is among those~~

~~(B) qualifications which the Board of Governors has found to be job-related and consistent with business necessity throughout the community college system, including the requirement that applicants for academic and administrative positions demonstrate sensitivity to the diversity of community college students; or~~

~~(2)(5) discontinue the use of any locally established qualification that has not been found to satisfy the requirements set forth in paragraph (1)(4) of this subdivision; and~~

~~(3)(6) continue using qualification standards meeting the requirements of paragraph (1)(4) of this subdivision only where no alternative qualification standard is reasonably available which would select for the same characteristics, meet the requirements of paragraph (1)(4) and be expected to have a less exclusionary effect; and~~

~~(7) consider the implementation of additional measures designed to promote diversity that are reasonably calculated to address the area of specific need.~~

(c) For purposes of this section, "a reasonable period of time" means three years, or such longer period as the Chancellor may approve, upon the request of the equal employment opportunity advisory committee and the chief executive officer, where the district has not filled enough positions to appreciably affect its work force in the job category in question.

(d) Nothing in this subchapter shall be construed to prohibit a district from taking any other steps it concludes are necessary to ensure equal employment opportunity, provided that such actions are consistent with the requirements of federal and state constitutional and statutory nondiscrimination law.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes of 1988, Chapter 923, ~~§~~Section 4; ~~§~~Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~§~~Sections 11135-11139.5, Government Code.

9. Section 53020 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53020. Responsibility; Delegation of Authority; Complaints.

(a) The governing board of each community college district is ultimately responsible for proper implementation of this subchapter at all levels of district and college operation and for making measurable progress toward equal employment opportunity by the methods described in the district's equal employment opportunity plan. In carrying out this responsibility, the governing board, upon the recommendation of the chief executive officer, shall ensure that an equal employment opportunity officer is designated to oversee the day-to-day implementation of the requirements set forth in this subchapter.

(b) The administrative structure created by any delegation of authority to the equal employment opportunity officer or others shall be described in the district's equal employment opportunity plan submitted pursuant to section 53003 and shall be designed in such a manner so as to ensure prompt and effective implementation of the requirements of this subchapter. The plan shall also designate a single officer, who may be the equal employment opportunity officer, who shall be given authority and responsibility for receiving complaints filed pursuant to section 53026, for ensuring that such complaints are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored as required by sections 53023 and 53024.

(c) Any organization or individual, whether or not an employee of the district, who acts on behalf of the governing board with regard to the recruitment and screening of personnel is an agent of the district and is subject to all of the requirements of this subchapter.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~Section~~ 11138, Government Code. Reference: Statutes of 1988, ~~Chapter~~ 923, ~~Section~~ 4; ~~Sections~~ 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~Sections~~ 11135-11139.5, Government Code.

10. Section 53021 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53021. Recruitment.

(a) Except as otherwise provided in this section, community college districts shall actively recruit from both within and outside the district work force to attract qualified applicants for all ~~new openings~~ vacancies. This shall include outreach designed to ensure that all persons, ~~including persons from monitored groups~~, are provided the opportunity to seek employment with the district. The requirement of open recruitment shall apply to all ~~new~~ full-time and part-time ~~openings~~ vacancies in all job categories and classifications, including, but not limited to, faculty, classified employees, categorically funded positions, ~~the chief executive officer~~, and all ~~other~~ executive/administrative/managerial positions. Recruitment for full-time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry and posting job announcements with the Registry. Recruitment for part-time faculty positions may be conducted separately for each ~~new opening~~ vacancy or by annually establishing a pool of eligible candidates, but in either case full and open recruitment is required consistent with this section.

(b)(1) "In-house or promotional only" recruitment shall not be used to fill any ~~new opening~~ vacancy for any position described in subdivision (a) except when the position is being filled on an interim basis for the minimum time necessary to allow for full and open recruitment; provided however, that no interim appointment or series of interim appointments exceeds one two years in duration. ~~The Chancellor may approve an~~

~~extension of up to one additional year if the district demonstrates "business necessity" as defined in section 53001(b).~~

~~(2) If a district believes justification exists for use of the exception listed in subsection (b)(1), it shall so notify the Equal Employment Opportunity Advisory Committee established pursuant to section 53005 and the Chancellor at least ten (10) working days prior to offering the position to a candidate.~~

~~(3)(2) Where in-house or promotional only recruitment is permitted, utilized to fill a position on an interim basis pursuant to subdivision (b)(1), the district shall comply with its established hiring procedures and all district employees shall be afforded the opportunity to apply and demonstrate that they are qualified.~~

~~(4)(3) The job announcement for the interim position shall comply with section 53022 and the selection process shall be consistent with the requirements of this subchapter.~~

(c) For purposes of this section, a vacancy new opening is not created, and the requirements of subdivisions (a) and (b) do not apply, when:

(1) there is a reorganization that does not result in a net increase in the number of employees;

(2) one or more lateral transfers are made and there is no net increase in the number of employees;

(3) a position which is currently occupied by an incumbent is upgraded, reclassified, or renamed without significantly altering the duties being performed by the individual;

(4) the faculty in a division or department elect one faculty member to serve as a chairperson for a prescribed limited term;

(5) the position is filled by a temporary, short-term, or substitute employee appointed pursuant to Education Code sections 87422, 87480, 87482.5(b), 88003, 88106 or 88109;

(6) a part-time faculty member is assigned to teach the same or fewer hours he or she has previously taught in the same discipline without a substantial break in service. For purposes of this section, "a substantial break in service" means more than one calendar year or such different period as may be defined by a collective bargaining agreement; or

(7) an individual not currently employed by the district, who is specially trained, experienced, and competent to serve as an administrator, and who satisfies the minimum qualifications applicable to the position, is engaged to serve as an administrator through a professional services contract. No appointment or series of appointments pursuant to this provision may exceed a period of one two years.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and sSection 11138, Government Code. Reference: Statutes of 1988, cChapter 923, sSection 4; sSections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sSections 11135-11139.5, Government Code.

11. Section 53021.5 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 53021.5. Waiver of Limitation on Term of Administrative Contracts.~~

~~The Chancellor may waive the one-year limit on the length of an appointment or series of appointments to an administrative position accomplished by means of a professional services contract pursuant to subdivision (c)(7) of section 53021 with respect to appointments made by the Lassen Community College District if the Chancellor determines that all of the following requirements are satisfied:~~

~~(a) the district is on probationary status with the Accrediting Commission for Community and Junior Colleges (ACCJC);~~

~~(b) the Chancellor has appointed a special trustee to manage the district pursuant to section 58312;~~

~~(c) the district requests a waiver of the limitation on the length of an appointment or series of appointments to an administrative position imposed by subdivision (c)(7) of section 53021 and demonstrates that the delay and disruption associated with full and open recruitment for the administrative position may jeopardize the fiscal stability of the district or its ability to satisfy conditions for removal from probation which have been established by ACCJC;~~

~~(d) the special trustee assigned to the district recommends granting the waiver;~~

~~(e) the total length of the appointment or series of appointments to the administrative position will not exceed three years; and~~

~~(f) all other requirements of this subchapter are satisfied with respect to the appointment.~~

~~Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.~~

12. Section 53022 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53022. Job Announcements and Qualifications.

Job announcements shall state clearly job specifications setting forth the knowledge, skills, and abilities necessary to job performance. For faculty and administrative positions, job requirements shall include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, gender identity, sexual orientation, and ethnic backgrounds of community college students. Job specifications, including any "required," "desired" or "preferred" qualifications beyond the state minimum qualifications (set forth in subchapter 4, commencing with section 53400 of this chapter) which the district wishes to utilize, shall be reviewed before the position is announced, to ensure conformity with the requirements of this subchapter and state and federal nondiscrimination laws.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and §Section 11138, Government Code. Reference: Statutes of 1988, cChapter 923-973, §Section 4; §Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and §Sections 11135-11139.5, Government Code.

13. Section 53023 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53023. Applicant Pool Review.

(a) The application for employment shall ~~afford each applicant an opportunity to voluntarily provide for self-identification of the applicant's~~ identify his or her gender, ethnic group identification and, if applicable, his or her disability. This information shall be kept confidential and shall be used only in research, ~~validation,~~ monitoring, evaluating the effectiveness of the district's equal employment opportunity program, or any other purpose specifically authorized in this subchapter, or by any applicable statute or regulation.

(b) After the application deadline has passed, the composition of the initial applicant pool shall be recorded and reviewed by the Chief Human Resources Officer or designee. ~~analyzed to ensure that any failure to obtain projected representation for any monitored group is not due to discriminatory recruitment procedures. If necessary, the application deadline shall be extended and additional recruitment shall be conducted that eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants. When recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile, applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement.~~

All initial applications shall be screened to determine which candidates satisfy job specifications set forth in the job announcement. The group of candidates who meet the job specifications shall constitute the "qualified applicant pool."

(c) ~~Before the selection process continues, the~~ The composition of the qualified applicant pool shall be ~~analyzed~~ reviewed and compared to the composition of the initial applicant pool. If the Chief Human Resources Officer or designee finds that the composition of the qualified applicant pool may have been influenced by factors which are not job related, appropriate action will be taken. This applicant pool data shall be reviewed in conducting the analysis described in section 53006(a). ~~to ensure that no monitored group is adversely impacted pursuant to section 53001(a). If adverse impact is found to exist, the chief executive officer or his or her designee shall take effective steps to address the adverse impact before the selection process continues. Such steps may include, but are not limited to:~~

(1) ~~extending the deadline and undertaking inclusive outreach efforts to ensure that members of the adversely impacted group have equal opportunity to seek employment with the district;~~

(2) ~~including all applicants who were screened out on the basis of any locally established qualifications beyond state minimum qualifications which have not been specifically demonstrated to be job related and consistent with business necessity through a process meeting the requirements of federal law or which are not among those which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system.~~

~~(d) If adverse impact persists after taking steps required under subdivision (c), the selection process may proceed only if:~~

~~(1) the job announcement does not require qualifications beyond the statewide minimum qualifications; or~~

~~(2) locally established qualifications beyond state minimum qualifications, if any, are demonstrated to be job related and consistent with business necessity through a process meeting the requirements of federal law and suitable alternative selection procedures to reduce the adverse impact were unavailable; or~~

~~(3) the particular qualification beyond statewide minimum qualifications which are used in the job announcement are among those which the Board of Governors has found to be job related and consistent with business necessity throughout the community college system.~~

~~(e) The district may not advertise or utilize in future hiring processes for the same position or a substantially similar position any locally established qualifications beyond state minimum qualifications that the district was unable to verify under subsection (b)(2) unless such qualifications are so verified in advance of commencing any such future hiring process.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and §Section 11138, Government Code. Reference: Statutes of 1988, cChapter 923, §Section 4; §Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and §Sections 11135-11139.5, Government Code.

14. Section 53024 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53024. Screening ~~or~~ and Selection Procedures.

(a) All screening ~~or~~ and selection techniques, including the procedure for developing interview questions, and the selection process as a whole, shall be:

(1) provided to the Chancellor upon request;

(2) designed to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, gender identity, sexual orientation, and ethnic backgrounds of community college students. “Meaningful consideration” means that candidates shall be required to demonstrate sensitivity to diversity in ways relevant to the specific position;

(3) based solely on job-related criteria; and

(4) designed to avoid an adverse impact, as defined in section 53001(a), and monitored by means consistent with this section to detect and address any adverse impact which does occur for any monitored group.

~~(b) If monitoring pursuant to subsection (a)(4) reveals that any selection technique or procedure has adversely impacted any such group, the chief executive officer or his/her designee shall suspend the selection process and timely and effective steps shall be taken to remedy the problem before the selection process resumes. The equal~~

~~employment opportunity officer, or other official charged with responsibility for monitoring selection procedures, may assist the screening committee by discussing the overall composition of the applicant pool and the screening criteria or procedures which have produced an adverse impact, provided that confidential information about individual candidates is not disclosed. If adverse impact results from locally established qualifications beyond state minimum qualifications that have not been verified as described in section 53023(c)(2) or replaced with suitable alternatives having a lesser adverse impact, the use of such qualifications shall be immediately discontinued and any applicant eliminated on the basis of that qualification shall be continued in the hiring process. Where necessary, the position may be re-opened at any time and a new selection process initiated in a way designed to avoid adverse impact.~~

~~(e)(b)~~ A district may not designate or set aside particular positions to be filled by members of any group defined in terms of ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry or sexual orientation, or engage in any other practice which would result in discriminatory or preferential treatment prohibited by state or federal law. Nor may a district apply the district's equal employment opportunity plan in a rigid manner which has the purpose or effect of so discriminating.

~~(d)(c)~~ Seniority or length of service may be taken into consideration only to the extent it is job related, is not the sole criterion, and is included in the job announcement consistent with the requirements of section 53022.

~~(e)(d)~~ Selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures."

~~(f)(e)~~ Whenever possible, screening committees shall include a diverse membership which will bring a variety of perspectives to the assessment of applicant qualifications.

~~(g)(f)~~ Notwithstanding any other provision of this division, the governing board or its designee shall have the authority to make all final hiring decisions based upon careful review of the candidate or candidates recommended by a screening committee. This includes the right to reject all candidates and to order further review by the screening committee or to reopen the position where necessary to further achievement of the objectives of the equal employment opportunity plan or to ensure equal employment opportunity. However, a consistent pattern of not hiring qualified candidates from a monitored group who are recommended by screening committees may give rise to an inference that the selections are not consistent with the objectives of equal employment opportunity that are required by this subchapter.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and sSection 11138, Government Code. Reference: Statutes of 1988, cChapter 923, sSection 4; sSections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sSections 11135-11139.5, Government Code.

15. Section 53024.1 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is added to read:

§ 53024.1. Developing and Maintaining Institutional Commitment to Diversity.

Establishing and maintaining a richly diverse workforce is an on-going process that requires continued institutionalized effort. Districts shall locally develop, and implement on a continuing basis, indicators of institutional commitment to diversity. Such indicators may include, but are not limited to the examples listed in this section. Appropriate steps will depend on the unique circumstances of each institution, and not every example listed in this section is appropriate for every institution. Nothing in this list is mandatory, unless a district is directed to adopt specific measures by the Chancellor pursuant to section 53024.2(b)(2).

(a) The district conducts surveys of campus climate on a regular basis, and implements concrete measures that utilize the information drawn from the surveys.

(b) The district conducts exit interviews with employees who voluntarily leave the district, maintains a data base of exit interviews, analyzes the data for patterns impacting particular monitored groups, and implements concrete measures that utilize this information.

(c) The district provides training on elimination of bias in hiring and employment.

(d) The district provides cultural awareness training to members of the campus community.

(e) The district maintains a variety of programs to support newly-hired employees such as mentoring, professional development, and leadership opportunities.

(f) The district has audited and/or maintains updated job descriptions and/or job announcements.

(g) The district's board of trustees receives training on the elimination of bias in hiring and employment at least once every election cycle.

(h) The district timely and thoroughly investigates all complaints filed under this chapter, and all harassment and discrimination complaints filed under subchapter 5 (commencing with section 59300) of chapter 10 of this division, and takes appropriate corrective action in all instances where a violation is found.

(i) The district timely complies with the requirements of Government Code section 12950.1 (Stats. 2004, ch. 933 [AB1825]), and includes all forms of harassment and discrimination in the training.

(j) The district's publications and website convey its diversity and commitment to equal employment opportunity.

(k) The district's mission statement conveys its commitment to diversity and inclusion, and recognition that a diverse and inclusive workforce promotes its educational goals and values.

(l) The district's hiring procedures require applicants for all positions to demonstrate sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, gender identity, sexual orientation, and ethnic backgrounds of community college students in a manner specific to the position.

(m) District staff members serve as resources, consultants, mentors and/or leaders to colleagues at other districts in the areas of EEO and diversity enhancement.

(n) The district maintains updated curricula, texts, and/or course descriptions to expand the global perspective of the particular course, readings or discipline.

(o) The district addresses issues of inclusion/exclusion in a transparent and collaborative fashion.

(p) The district attempts to gather information from applicants who decline job offers to find out why, records this information, and utilizes it.

(q) The district conducts longitudinal analysis of various employment events by monitored group status such as: hiring, promotion, retention, voluntary resignation, termination, and discipline.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and sections 11138 and 12950.1, Government Code. Reference: Statutes 1988, chapter 923, section 4; sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and sections 11135-11139.5, Government Code.

16. Section 53024.2 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is added to read:

§ 53024.2. Accountability and Corrective Action.

(a) Districts shall certify annually to the State Chancellor that they have timely complied with all of the following:

(1) recorded, reviewed and reported the data required regarding qualified applicant pools;

(2) reviewed and updated, as needed, the Strategies Component of the district's EEO Plan;

(3) investigated and appropriately responded to formal harassment or discrimination complaints filed pursuant to subchapter 5 (commencing with section 59300) of chapter 10 of this division.

(b) Upon review of a district's certification, data reports, or any complaint filed under this subchapter, the State Chancellor may review a district's EEO Plan and Strategies Component pursuant to section 53024.1 for the required indicia of institutionalized and on-going efforts to support diversity and/or a district's compliance with section 53006. Where the State Chancellor finds that a district's efforts have been insufficient, he/she will inform the district of his/her specific area(s) of concern, and direct the district to submit a revised EEO Plan within 120 days. Upon review of the revised EEO plan, the State Chancellor will either:

(1) determine the revisions are sufficient, and provide a deadline by which the district must provide proof that the new measures have been implemented; or

(2) if the Chancellor finds that the revised plan is still lacking, he/she will direct the district to implement specific measures from those listed in section 53024.1, and provide a timeline for doing so.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and section 11138, Government Code. Reference: Statutes 1988, chapter 923, section 4; sections

66010.2, 66030, 66071, 66270 and 87360, Education Code; and sections 11135-11139.5, Government Code.

17. Section 53025 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53025. Persons with Disabilities.

(a) Districts shall ensure that applicants and employees with disabilities receive reasonable accommodations consistent with the requirements of Government Code sections 11135 et seq. and 12940(m), section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Such accommodations may include, but are not limited to, job site modifications, job restructuring, part-time work schedules, flexible scheduling, reassignment to a reasonably equivalent vacant position, adaptive equipment, and auxiliary aids such as readers, interpreters, and notetakers. Such accommodations may be paid for with funds provided pursuant to article 3 (commencing with section 53030) of this subchapter.

~~(b) If a district established a goal for persons with disabilities prior to the effective date of this subsection and if significant underrepresentation still exists, it shall update that goal, set a new target date for achieving projected representation in the category or categories in question, and concurrently comply with subsections (a)(1), (a)(2) and (b) of section 53006 with respect to persons with disabilities.~~

~~(c) Where persons with disabilities are found to be significantly underrepresented, measures required under subsections (a)(1) and (a)(2) of section 53006 shall be implemented concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where the underrepresentation was found to exist. Goals shall remain in effect only until projected representation has been achieved for that group in the category or categories in question. Until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category, an aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force. The district may also concurrently take other additional steps which take disability into account, so long as such measures are discontinued when projected representation is achieved for persons with disabilities in the category or categories in question.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes of 1988, cChapter 923, ~~§~~Section 4; ~~§~~Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~§~~Sections 11135-11139.5, Government Code; title 29 U.S.C.—United States Code section 794, and title 42 U.S.C.—United States Code §Sections 12101, et seq.

18. Section 53026 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53026. Complaints.

Each community college district shall establish a process permitting any person to file a complaint alleging that the requirements of this subchapter have been violated. A copy of the complaint shall immediately be forwarded to the Chancellor who may require that the district provide a written investigative report within ninety (90) days. Complaints which also allege discrimination prohibited by Government Code sections 11135 et seq. shall be processed according to the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes of 1988, ~~c~~Chapter 923, ~~s~~Section 4; ~~s~~Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and ~~s~~Sections 11135-11139.5, Government Code.

19. Section 53027 of article 2 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53027. Applicability to Districts Operating on the Merit System.

Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 3 (commencing with section 88060) of chapter 4 of part 51 of the Education Code which apply to districts operating a merit system for classified employees.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and ~~§~~Section 11138, Government Code. Reference: Statutes of 1988, ~~c~~Chapter 923, ~~s~~Section 4; ~~s~~Sections 66010.2, 66030, 66071, 66270, 87360 and 88060 et seq., Education Code; and ~~s~~Sections 11135-11139.5, Government Code.

20. Section 53030 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53030. Equal Employment Opportunity Fund Allocation.

Resources provided to the Board of Governors for the purpose of promoting equal employment opportunity in hiring and promotion within the system shall be placed in an Equal Employment Opportunity Fund and shall be allocated consistent with the following;

(a) A portion of the fund, but not more than 25 percent, shall be set aside to provide technical assistance, service, monitoring, and compliance functions.

(b) That portion of the funds not allocated pursuant to ~~subdivision section~~ (a) may be allocated to the districts in the following categories:

(1) an amount proportional to the full-time equivalent students of each district to the total full-time equivalent students for all districts;

- (2) an equal dollar amount to each district;
 - (3) an amount related to success in promoting equal employment opportunity.
- Multiple methods of measuring success shall be identified by the Chancellor working through the established Consultation Process.

(c) funds provided pursuant to this section may be used for:

- (1) outreach and recruitment;
- (2) in-service training on equal employment opportunity;
- (3) accommodations for applicants and employees with disabilities pursuant to section 53025; and
- (4) other activities to promote equal employment opportunity.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and §Section 11138, Government Code. Reference: Statutes of 1988, §Chapter 923, §Section 4; §Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and §Sections 11135-11139.5, Government Code.

21. Section 53033 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53033. Failure to Report.

Any district failing to provide the data required under §Section 53004 is not in compliance with this subchapter. Equal Employment Opportunity funds for any given fiscal year, other than those under section 53030(a), shall not be granted unless the district provides the data no later than March 31st of the preceding fiscal year or receives an extension of the deadline from the Chancellor.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and §Section 11138, Government Code. Reference: Statutes of 1988, §Chapter 923, §Section 4; §Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and §Sections 11135-11139.5, Government Code.

22. Section 53034 of article 3 of subchapter 1 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53034. Required Report.

Districts shall submit a report on the use of Equal Employment Opportunity funds to the Chancellor's Office no later than September 30th of the fiscal year following the use of the funds. Until such time as a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required under section 53004, districts will report that rate by a separate survey conducted, as directed by the Chancellor's Office.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and §Section 11138, Government Code. Reference: Statutes of 1988, §Chapter 923, §Section 4; §Sections 66010.2, 66030, 66071, 66270 and 87360, Education Code; and §Sections 11135-11139.5, Government Code.

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Division 6. California Community Colleges

Chapter 10. Community College Administration

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

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§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex or gender, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135-11139.5, Government Code; Sections 422.6 and 422.55, Penal Code; Title 20, United States Code, Section 1681; Title 29, United States Code, Section 794; and Title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1-4, Sections 59300-59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and Note filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and Note filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and Note filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
5. Amendment of section and Note filed 3-15-2006; operative 4-14-2006. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2006, No. 17).
6. Amendment filed 8-5-2008; operative 9-4-2008. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2008, No. 34).

This database is current through 2/5/16 Register 2016, No. 6

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GOVERNMENT CODE

SECTION 12940

12940. It is 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 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. 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 the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) 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.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the 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 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the 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, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any

employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

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

(i) 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.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or

supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(1) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to

employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans

for purposes of awarding a veteran's preference as permitted by law.

12940.1. For the purposes of paragraph (1) of subdivision (a) of Section 12940, it shall be presumed that an individual with heart trouble, as referred to in Section 3212 of the Labor Code, applying for either a firefighter position or participation in an apprenticeship training program leading to employment in that position, where the actual duties require physical, active fire suppression, or a law enforcement position, the principal duties of which clearly consist of active law enforcement, could not perform his or her duties in a manner which would not endanger his or her health or safety or the health or safety of others. This presumption may be overcome by the applicant or the department proving, by a preponderance of the evidence, that the applicant would be able to safely perform the job. Law enforcement, for the purposes of this section, means police officer, deputy sheriff, or sheriff whose principal duties consist of active law enforcement service.

12940.3. Prior to January 1, 1996, a study or survey of the costs, including litigation and reasonable accommodation expenses and other impacts on California employers of 15 or more employees, resulting from compliance with Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), shall be undertaken jointly by the California Chamber of Commerce, the Department of Fair Employment and Housing, Protection and Advocacy, Inc., and the State Department of Rehabilitation. The study shall also include an analysis of the benefits of the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) to persons with disabilities. The results of the study shall be submitted to the Commission on Special Education for their review and recommendations. The study shall provide a basis for a recommendation to the Legislature and the Governor concerning whether the hardships imposed upon businesses outweigh the benefits to persons with disabilities when the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) are extended to California employers of 5 to 14, inclusive, employees by amending the Fair Employment and Housing Act to include people with mental disabilities as a protected class. In conducting the study and making a recommendation, the parties shall consider whether the additional requirements or consequences of being subject to the additional requirements will impose a significant hardship on employers of 5 to 14, inclusive, employees.

It is the intent to the Legislature that if, at the conclusion of the study and report to the Legislature, it is determined that employers of between 5 and 14 employees would not have a significant hardship in implementing the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), legislation should be introduced to require that employers with between 5 and 14 employees are covered by the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Legislature intends that all employers, including employers of

5 to 14, inclusive, employees, voluntarily comply with the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) so that persons with mental disabilities can participate fully in the employment opportunities provided to all Californians. However, it is the intent of the Legislature that existing employment discrimination provisions covering employers of 5 to 14, inclusive, employees shall not be altered by amendments to this part that become effective on January 1, 1993.

CA ED Code §87106.

(a) The board of governors shall develop systemwide strategies for encouraging community college students to become qualified for, and seek, employment as community college faculty or administrators.

(b) The board of governors shall develop and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following:

(1) Compliance with the regulations adopted by the board of governors to implement this article.

(2) Compliance with the other applicable state and federal nondiscrimination statutes.

(3) Implementation of the best practices for improving the equality of opportunity.

(4) Encouragement of districts to take steps reasonably calculated to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education authorized by Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 and to participate in other programs developed by the board of governors pursuant to subdivision (a).