

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2021 LEGISLATIVE SUMMARY

The following bills were signed and chaptered into law by Governor Gavin Newsom in 2021 and become effective January 1, 2022, unless stated otherwise.

FAIR EMPLOYMENT AND HOUSING ACT

Enforcement of Civil Rights

SB 807 amends various procedures, timelines, and deadlines relating to administrative and civil actions brought under the Fair Employment and Housing Act (FEHA). These include increasing the minimum amount of time that an employer must retain employment records from two years to four years; clarifying the deadlines by which a complainant must file an administrative complaint with the Department; clarifying that the statute of limitations for filing a civil action under any law enforced by the Department is tolled pending the Department's investigation and while the matter is pending with the Department's dispute resolution division; permitting the Department to serve administrative complaints in any manner authorized by the Code of Civil Procedure, such as electronic service; authorizing appeals from superior court orders relating to Department investigative discovery; allowing the Department to file a civil action in any county where it has an office; and clarifying the deadline for the Department to issue a right-to-sue notice for group or class complaints.

Bill Number: SB 807 (Wieckowski) (Stats. 2021, ch. 278)

Code Section Amended: Government Code sections 12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981, and 12989.1

Code Section Added: None

Code Section Repealed: None

EMPLOYMENT

California Family Rights Act

The California Family Rights Act (CFRA) provides up to 12 weeks per 12-month period of job-protected leave to eligible employees to bond with a new child or to care for their own or certain family members' serious medical condition. Employers with at least 5 employees are covered by CFRA. AB 1578, in pertinent part, amends CFRA to clarify that an eligible employee may take leave to provide care for a "parent-in-law" with a serious health condition. AB 1578 amends the definition of "parent" in CFRA to include parents-in-law.

Bill Number: AB 1578 (Committee on Judiciary) (Stats. 2021, ch. 401)

Code Section Amended: Government Code section 12945.2

Code Section Added: None

Code Section Repealed: None

Small Employer Family Leave Mediation Pilot Program

AB 1867 (Stats. 2020, ch. 45) created the Department's small employer family leave mediation pilot program by which small employers (with 5 to 19 employees) and their employees may utilize the Department's mediation services to try to settle disputes about CFRA leave, prior to the filing of a civil complaint. AB 1033 revises this program so that, among other things, when an employee requests an immediate right-to-sue notice for an alleged CFRA violation by a small employer, the Department is required to notify the employee of the mediation program. Prior to filing a civil complaint, the employee must contact the Department's dispute resolution division to initiate the mediation process. After being contacted by the employee, the Department will notify the employer of the alleged violation and its right to mediation. If either the employee or the employer requests mediation, the matter will be mediated before the employee may file their civil complaint. A party who desires mediation must inform the Department within 30 days of receiving notice, and the Department shall begin the mediation within 60 days of receiving the request. The statute of limitation for the employee's claim (including for all related claims under CFRA and not under CFRA) is tolled from the date the employee contacts the Department's dispute resolution division until the date mediation is deemed complete or unsuccessful. Further, if an employer has not been notified of their right to mediation prior to the filing of a civil action, the employer may request a stay of such action until the mediation is deemed complete or unsuccessful.

Bill Number: AB 1033 (Bauer-Kahan) (Stats. 2021, ch. 327)

Code Section Amended: Government Code section 12945.21

Code Section Added: None

Code Section Repealed: None

Equal Pay Act

AB 1578 authorizes the Department's Fair Employment and Housing Council to adopt and amend regulations that interpret, implement, and apply what is referred to as the California Equal Pay Act (Labor Code section 1197.5). This authorization follows SB 973 (Stats. 2020, ch. 363), legislation authorizing the Department to enforce the Equal Pay Act, which prohibits an employer from paying employees at wage rates less than the rates paid to employees of another sex, race, or ethnicity for substantially similar work.

Bill Number: AB 1578 (Committee on Judiciary) (Stats. 2021, ch. 401)

Code Section Amended: Government Code section 12935(a)(1)

Code Section Added: None

Code Section Repealed: None

EMPLOYMENT AND HOUSING

Separation and Settlement Agreements

SB 331 amends Government Code section 12964.5 to prohibit an employer or former employer from including within a separation agreement with an employee or former employee any provision that prohibits the disclosure of information about unlawful acts in the workplace, expanding upon an existing rule that covers employment agreements. As amended by SB 331, Government Code section 12964.5 requires that any non-disparagement or other provision restricting an employee's ability to disclose workplace conditions also include language explaining that the provision does not prevent disclosures related to acts in the workplace that the employee knows or reasonably believes to be unlawful. This section does not apply to negotiated settlement agreements. This section does not prohibit severance

agreements with general releases or waivers of claims. This section permits provisions in severance agreements that prohibit the disclosure of the amount paid. This section does not prohibit an employer from protecting the employer’s trade secrets, proprietary information, or confidential information that does not involve unlawful acts in the workplace. SB 331 also requires an employer to notify an employee or former employee that they have a reasonable time period of at least five days to consult an attorney regarding a separation agreement.

In addition, SB 331 amends Code of Civil Procedure section 1001 to expand an existing prohibition against settlement agreements that prevent the disclosure of factual information related to a claim of sex-based harassment, discrimination, or retaliation at work or by a housing provider. SB 331 bans any provision in a settlement agreement that prevents or restricts the disclosure of factual information related to a claim of harassment, discrimination, or retaliation related to any protected characteristic (rather than only those that are “sex-based”).

Bill Number: SB 331 (Leyva) (Stats. 2021, ch. 638)

Code Section Amended: Government Code section 12964.5; Code of Civil Procedure section 1001

Code Section Added: None

Code Section Repealed: None

HOUSING

Discriminatory Restrictive Covenants

AB 1466 revises the procedures for removing unlawful, discriminatory covenants or restrictive language from real property documents by, among other things, requiring a title or escrow company, a real estate broker or agent, or association, to provide to a person acquiring or holding a property a “Restrictive Covenant Modification form” and, beginning July 1, 2022, if the title or escrow company or real estate broker or agent has actual knowledge of a possible unlawfully restrictive covenant attached to the property, to notify that person of the same. AB 1466 exempts the filing of this modification form from any recording fees and requires each county to establish a restrictive covenant program in order to assist in these efforts.

Bill Number: AB 1466 (McCarty) (Stats. 2021, ch. 359)

Code Section Amended: Government Code sections 12956.1, 12956.2, 27282, and 27388.1

Code Section Added: Government Code sections 12956.3 and 27388.2

Code Section Repealed: None

RELATED STATUTES NOT ENFORCED BY DFEH

Open Meetings of State and Local Agencies

AB 361 adds provisions to the Bagley-Keene Open Meeting Act to authorize, until January 31, 2022, a state body to hold public meetings through teleconferencing and make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and address the state body if certain requirements are met. Until then, various physical presence requirements of the act are suspended. AB 361 also authorizes, until January 1, 2024, a local agency to use teleconferencing without complying with the Ralph M. Brown Act teleconferencing requirements during a declared state of emergency under certain conditions. The bill requires the legislative body of a local

agency that holds these teleconference meetings to comply with various notice, agenda, and public comment requirements. AB 361 was an urgency measure that went into immediate effect.

Bill Number: AB 361 (Rivas) (Stats. 2021, ch. 165)

Code Section Amended: Government Code section 54953

Code Section Added: Education Code section 89305.6; Government Code sections 11133 and 54953

Code Section Repealed: None

Minimum Wages for Persons with Disabilities

SB 639 phases out the issuance of subminimum wage special licenses, by which the Industrial Welfare Commission authorizes licensed employers to pay certain individuals with disabilities below the minimum wage. Beginning on January 1, 2022, no new special licenses will be issued, and license renewals will be issued only to employers who have reached certain benchmarks. SB 639 requires that the State Council on Developmental Disabilities work with stakeholders to develop and implement a phase-out plan by January 1, 2023. Beginning on January 1, 2025, or the date that the phase-out plan is released, whichever is later, no licenses will be issued or renewed, and employers will be prohibited from paying employees with disabilities below the minimum wage.

Bill Number: SB 639 (Durazo) (Stats. 2021, ch. 339)

Code Section Amended: Labor Code sections 1191 and 1191.5

Code Section Added: None

Code Section Repealed: None

Emotional Support Animals

AB 468 requires a business or person who sells or provides an emotional support dog to notify the recipient in writing that (1) the dog does not have special training qualifying it as a guide, signal, or service dog and therefore is not entitled to the rights and privileges accorded to a guide, signal, or service dog and that (2) fraudulently representing oneself to own a guide, signal, or service dog is a misdemeanor. The bill further requires a business or person who provides certain items (i.e., a certificate, identification, tag, vest, leash, or harness) for use with an emotional support animal to notify the recipient in writing that (1) the provided items do not entitle an emotional support animal the rights and privileges accorded to a guide, signal, or service dog and that (2) fraudulently representing oneself to own a guide, signal, or service dog is a misdemeanor. AB 468 also prohibits a healthcare provider from providing documentation relating to a patient's need for an emotional support dog unless the provider complies with various requirements. A business or person is subject to a civil penalty if they either (1) violate the notice requirement set forth in the bill, or (2) knowingly and fraudulently represent that an emotional support dog being offered for sale by that business or person is entitled to the rights or privileges accorded to a guide, signal, or service dog.

Bill Number: AB 468 (Friedman) (Stats. 2021, ch. 168)

Code Section Amended: None

Code Section Added: Health and Safety Code Article 4 (commencing with Section 122317) of Chapter 5 of Part 6 of Division 105

Code Section Repealed: None

Equal Access to Common Areas in Mixed-Income Multifamily Structures

AB 491 adds language to the State Housing Law clarifying that existing law requires occupants of affordable housing units within mixed-income multifamily structures to be provided the same access to common entrances, common areas, and other amenities as is provided to occupants of market-rate units in those structures. The bill further clarifies that existing law prohibits mixed-income multifamily structures from isolating affordable housing units to a specific floor or area.

Bill Number: AB 491 (Ward) (Stats. 2021, ch. 345)

Code Section Amended: none

Code Section Added: Health and Safety Code section 17929

Code Section Repealed: None

Gender-neutral retail departments

AB 1084 requires retail department stores with 500 or more employees across the state that sell childcare items or toys to maintain a gender-neutral section or area. This section or area shall display a reasonable selection of the childcare items and toys for sale, regardless of whether they have been traditionally marketed for either girls or for boys. The bill authorizes, beginning on January 1, 2024, the Attorney General, district attorney, or city attorney to bring a civil action to assess a civil penalty against a retail department store that fails to comply with the bill's requirements.

Bill Number: AB 1084 (Low) (Stats. 2021, ch. 750)

Code Section Amended: None

Code Section Added: Civil Code sections 55.7 and 55.8

Code Section Repealed: None

Commission on the State of Hate

AB 1126 would establish, contingent upon an appropriation for this purpose, a nine-member Commission on the State of Hate. The bill requires the Commission on the State of Hate to annually host and coordinate four community forums on the state of hate and issue an annual report that provides a comprehensive accounting of hate crime activity statewide and report on relevant national hate crime trends and statistics. AB 1126 sunsets on January 1, 2027.

Bill Number: AB 1126 (Bloom) (Stats. 2021, ch. 712)

Code Section Amended: None

Code Section Added: Government Code Chapter 1.1 (commencing with Section 8010) to Division 1 of Title 2

Code Section Repealed: None