

CIVIL RIGHTS DEPARTMENT

2022 LEGISLATIVE SUMMARY

In 2022, the following bills were passed by the California Legislature, signed by Governor Gavin Newsom, and chaptered into law. Each becomes effective January 1, 2023 unless stated otherwise.

ENFORCEMENT OF CIVIL RIGHTS LAWS

Department Name Change

Senate Bill 189 changed the name of the Department from the “Department of Fair Employment and Housing” to the “Civil Rights Department.” The bill also changed the name of the “Fair Employment and Housing Council” to the “Civil Rights Council.” These name changes were necessary to more accurately reflect the breadth of the Department’s enforcement work and of the Council’s rulemaking authority. The Department’s work is not limited to addressing violations of fair employment and housing laws, but also combats unlawful discrimination by public accommodations (businesses) and state-funded and state-administered programs and activities, as well as hate violence and human trafficking.

SB 189 took effect on July 1, 2022.

Bill Number and Title: SB 189: State Government

Author: Committee on Budget and Fiscal Review

Statutes of 2022 Chapter: 48

Code Section(s) Amended: (as relevant to CRD) Civil Code sections 51.7, 52, 54.3, 4225, and 6606; Education Code section 67380; Government Code sections 8310.7, 8310.8, 11136, 12804, 12901, 12903, 12907, 12925, 12935, 12940, 12940.3, 12944, 12945, 12965, 18720, 18720.2, 18720.3, 18720.4, 19704, and 50085.5; Health and Safety Code sections 1262.6 and 17008.5; Labor Code sections 107.5, 1156.3, 1424, 1429, 1429.5, 1430, 1684, 1697.5, 1700.50, 1700.52, 3073, and 3073.9; Penal Code sections 243.4, 422.92, and 679.10; Unemployment Code sections 1095 and 14034; Vehicle Code section 11216.2; and headings of Government Code, tit. 2, div. 3, part 2.8 and Government Code tit. 2, div. 3, part 2.8, ch. 5, art. 2.

Code Section(s) Added: (as relevant to CRD) None.

Code Section(s) Repealed: (as relevant to CRD) None.

Representation of Public Interest

Assembly Bill 2662 amends the Fair Employment and Housing Act (FEHA) to expressly state that the Civil Rights Department (CRD) serves the public interest when performing all of its functions and duties, including when CRD files a lawsuit on behalf of a complainant.

Bill Number and Title: AB 2662: Department of Fair Employment and Housing

Author: Kalra

Statutes of 2022 Chapter: 35

Code Section(s) Amended: Government Code sections 12930, 12965, and 12981.

Code Section(s) Added: None.

Code Section(s) Repealed: None.

Tolling of Right-to-Sue Notice and Technical Amendments

As relevant to CRD, Assembly Bill 2960 amends FEHA to clarify that the deadline for CRD to issue a right-to-sue notice in employment cases is tolled (paused) while a complaint is pending with CRD’s Dispute Resolution Division. In addition, AB 2960 replaces “citizen” with “person” in the two places the word “citizen” exists in FEHA, for greater inclusivity and to clarify that all person, regardless of immigration status, are protected by FEHA. Lastly, AB 2960 amends the provision of the FEHA concerning removal of unlawful restrictive covenants from property documents to include “genetic information” to the list of protected characteristics.

Bill Number and Title: AB 2960: Judiciary Omnibus

Author: Committee on Judiciary

Statutes of 2022 Chapter: 420

Code Section(s) Amended: (as relevant to CRD) Government Code sections 12931, 12935, 12956.2 and 12965.

Code Section(s) Added: (as relevant to CRD) None.

Code Section(s) Repealed: (as relevant to CRD) None.

EMPLOYMENT

Reproductive Health Decisionmaking

Senate Bill 523, the Contraceptive Equity Act of 2022, expands birth control access by requiring health plans to cover certain over-the-counter birth control without cost sharing. As relevant to CRD, SB 523 adds “reproductive health decisionmaking” as a protected characteristic under FEHA’s employment provisions. SB 523 defines “reproductive health decisionmaking” to include, but not be limited to, “a decision to use or access a particular drug, device, product, or medical service for reproductive health.” The bill clarifies that “sex” also covers some or all of what is covered by “reproductive health decisionmaking.”

Bill Number and Title: SB 523: Contraceptive Equity Act of 2022

Author: Leyva

Statutes of 2022 Chapter: 630

Code Section(s) Amended: (as relevant to CRD) Government Code sections 12920, 12921, 12926, 12931, 12940, 12944, and 12993.

Code Section(s) Added: (as relevant to CRD) None.

Code Section(s) Repealed: (as relevant to CRD) None.

Cannabis Use and Drug Screening

Assembly Bill 2188 adds a new section to FEHA that prohibits employers from penalizing an applicant or employee based on the person's use of cannabis off the job and away from the workplace, or a drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. The bill does not apply to employees in the building or construction trades. Further, the bill does not prohibit employers from testing for nonpsychoactive cannabis metabolites, provided the employer does not take an adverse action based on a positive result. Nor does the bill interfere with an employer's ability to maintain a drug-and-alcohol-free workplace, conduct drug screenings where required under state or federal law, or penalize or discriminate in hiring or employment based on an applicant or employee screening positive for THC. The bill does not authorize an applicant or employee to possess, use, or be impaired by cannabis at the workplace.

The bill becomes operative on January 1, 2024.

Bill Number and Title: AB 2188: Discrimination in Employment—Use of Cannabis

Author: Quirk

Statutes of 2022 Chapter: 392

Code Section(s) Amended: None.

Code Section(s) Added: Government Code section 12954.

Code Section(s) Repealed: None.

Pay Data Reporting

Senate Bill 1162 enhances the pay data reporting program run by CRD and increases pay transparency in job postings. The bill requires a private employer of at least 100 employees to file a California pay data report regardless of whether the employer files a federal EEO-1 report. A private employer of at least 100 employees that were hired through labor contractors is required by SB 1162 to submit a separate report covering the contracted employees; the labor contractor is required to supply all necessary pay data to the employer submitting the report. The bill also requires employers submitting pay data reports to including median and mean hourly rates of employee groupings by job category, race/ethnicity, sex, and establishment if the employer has more than one establishment. SB 1162 also changes the annual deadline for submitting reports to the second Wednesday of each May. It authorizes CRD to obtain

penalties against employers that fail to timely file their pay data reports, as well as against labor contractors that fail to provide data to client employers who must complete contracted-employee reports.

Bill Number and Title: SB 1162: Employment—Salaries and Wages

Author: Limón

Statutes of 2022 Chapter: 559

Code Section(s) Amended: Government Code section 12999 and Labor Code section 432.3.

Code Section(s) Added: None.

Code Section(s) Repealed: None.

California Family Rights Act

The California Family Rights Act (CFRA), which is part of FEHA, 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. Prior to the passage of Assembly Bill 1041, employees could use CFRA leave to care for their child (minor and adult), spouse, domestic partner, parent (including parents-in-law), grandparent, grandchild, or sibling. Employers with at least 5 employees are covered by CFRA.

AB 1041 expands the list of individuals for whom an employee can take CFRA leave to include at least one "designated person" who is related to the employee by blood or whose association with the employee is the equivalent of a family relationship.

As is the case with other CFRA claims, immediate right-to-sue complaints alleging a violation of CFRA, as amended by AB 1041, would be subject to CRD's small employer family leave mediation pilot program. This program facilitates the ability of small employers (with 5 to 19 employees) and their employees to utilize the Department's mediation services to try to settle disputes about CFRA leave, prior to the filing of a civil complaint.

Bill Number and Title: AB 1041: Employment—Leave

Author: Wicks

Statutes of 2022 Chapter: 748

Code Section(s) Amended: Government Code section 12945.2 and Labor Code section 245.5.

Code Section(s) Added: None.

Code Section(s) Repealed: None.

Bereavement Leave

Assembly Bill 1949 adds a new section to FEHA that provides eligible employees with up to five days of job-protected leave for the death of a child, spouse, domestic partner, parent, grandparent, grandchild, or sibling, to be taken within three months of the death. Bereavement leave is separate and distinct from the leave provided under CFRA or the Pregnancy Disability Leave Law. Immediate right-to-sue complaints alleging a violation of bereavement leave entitlements would be subject to CRD's small employer family leave mediation pilot program.

Previously, the Government Code entitled certain state employees to three days of bereavement leave with pay and an additional two days without pay if the death occurred outside the state. AB 1949 also removes the requirement that the death must have occurred outside of the state in order for the employee to be entitled to the two additional unpaid days of bereavement leave.

Bill Number and Title: AB 1949: Employees—bereavement leave

Author: Low

Statutes of 2022 Chapter: Ch. 767

Code Section(s) Amended: Government Code sections 12945.21 and 19859.3.

Code Section(s) Added: Government Code section 12945.7.

Code Section(s) Repealed: None.

HOUSING

Local Tenant Preference

Senate Bill 649 allows local governments to institute a local anti-displacement tenant preference in affordable housing projects and to utilize tax credits and tax-exempt bonds to finance those projects. The bill also provides that any local tenant preference is subject to FEHA, the Unruh Act, and other existing state and federal fair housing laws.

SB 649 sunsets on January 1, 2033.

Bill Number and Title: SB 649: Local governments—affordable housing: local tenant preference

Author: Cortese

Statutes of 2022 Chapter: 660

Code Section(s) Amended: None.

Code Section(s) Added: Government Code sections 7061, 7061.1, and 7061.2 (all under the newly added Chapter 12.76 to Division 7 of Title 1 of the Government Code).

Code Section(s) Repealed: None.

EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Assembly Bill 1766 requires the Department of Motor Vehicles, by no later than July 1, 2027, to issue restricted ID cards to eligible undocumented Californians who submit satisfactory proof of identity and California residency. As relevant to CRD, this bill prohibits businesses, employers, housing providers, state-funded or administered programs, and others from discriminating based on a person holding or presenting this type of identification card. It states that such discrimination violates FEHA as well as the Unruh Act.

Bill Number and Title: AB 1766: Department of Motor Vehicles—driver’s licenses and identification cards

Author: Stone

Statutes of 2022 Chapter: 482

Code Section(s) Amended: (as relevant to CRD) Government Code section 12926; Vehicle Code section 12801.5.

Code Section(s) Added: (as relevant to CRD) None.

Code Section(s) Repealed: (as relevant to CRD) None.

HATE INCIDENTS

Assembly Bill 2448 requires CRD to establish a pilot program on or before January 1, 2025, to recognize businesses that create safe and welcoming environments free from discrimination and harassment of customers. On or before January 1, 2028, CRD must evaluate the effectiveness of the program.

Bill Number and Title: AB 2448: Civil rights—businesses—discrimination and harassment of customers—pilot program

Author: Ting

Statutes of 2022 Chapter: 315

Code Section(s) Amended: None.

Code Section(s) Added: Civil Code section 51.17.

Code Section(s) Repealed: None.

RELATED STATUTES NOT ENFORCED BY CRD

Fast Food Council

Assembly Bill 257 creates the Fast Food Council, which will be housed within the Department of Industrial Relations. This Council is charged with setting sector-wide standards related to the working conditions of fast food workers who work for employers with at least 100 fast food restaurants throughout the United States. Among other standards, the Council has the ability to establish a minimum wage for fast food workers of up to \$22, which it can increase up to a specified amount each year. The Council becomes inoperative on January 1, 2029.

Bill Number and Title: AB 257: Food facilities and employment

Author: Holden

Statutes of 2022 Chapter: 246

Code Section(s) Amended: Labor Code section 96.

Code Section(s) Added: Labor Code Division 2 Part 4.5.5; Labor Code sections 1470, 1471, 1472, and 1473 (all under the newly added Part 4.5.5 of Division 2 of the Labor Code).

Code Section(s) Repealed: None.

Restroom Access at Businesses for Individual with Certain Medical Conditions

Assembly Bill 1632 requires businesses that are open to the public for the sale of goods to allow individuals with certain disabilities to use restrooms on the premises, even if those restrooms are generally unavailable for public use. A business may require the individual requesting restroom access to provide reasonable evidence that they either use an ostomy device or have a qualifying medical condition that necessitates immediate access to a toilet facility. This requirement applies where at least three employees are working onsite at the time the request to access the restroom is made; the use of the restroom does not create a health or safety risk to the requesting individual; and no public restroom is immediately accessible to the individual. A business is only liable for violating this requirement if the violation is willful or grossly negligent. This bill shall only be implemented to the extent that it does not conflict with or narrow the rights provided under other civil rights laws, including the Unruh Act and the federal Americans with Disabilities Act.

Bill Number and Title: AB 1632: Restroom access: medical conditions

Author: Weber

Statutes of 2022 Chapter: 893

Code Section(s) Amended: None

Code Section(s) Added: Health and Safety Code sections 118700, 118701, 118702, and 118703 (all under the newly added Article 6 to Chapter 2 of Part 15 of Division 104 of the Health and Safety Code).

Code Section(s) Repealed: None.

Street Harassment

Senate Bill 1161 requires the Mineta Transportation Institute at San Jose State University, on or before December 31, 2023, to develop and publish online a survey seeking information related to public transit riders and their experiences using public transit, including experiences with safety and street harassment. "Street harassment" constitutes harassment in a public place because of a person's sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. The survey must include questions relating to riders' demographic information and information regarding riders' experiences with and perceptions of safety, including street harassment, both while waiting at public transit stops and while riding public transit. The survey must also seek information about the impact of street harassment on riders and their use of transit.

Bill Number and Title: SB 1161: Transit operators: street harassment survey

Author: Min

Statutes of 2022 Chapter: 318

Code Section(s) Amended: None.

Code Section(s) Added: Public Utilities Code section 99177.

Code Section(s) Repealed: None.