

AMENDED IN ASSEMBLY MARCH 30, 2022

AMENDED IN ASSEMBLY MARCH 17, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2448

Introduced by Assembly Member Ting
(Coauthor: Senator Min)

February 17, 2022

An act to add Sections 51.15, 51.16, and 51.17 to the Civil Code, and to amend Section 12935 of the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2448, as amended, Ting. Civil rights: businesses: discrimination and ~~harassment~~. *harassment: customers: third parties.*

Existing law, the Unruh Civil Rights Act, provides that all persons within the jurisdiction of this state are entitled to full and equal accommodations in all business establishments regardless of specified characteristics, including sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. Existing law, the Ralph Civil Rights Act of 1976, provides that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of position in a labor dispute, or any of the specified characteristics listed above, or because another person perceives them to have one or more of those characteristics. Existing law provides civil remedies for violations of those provisions.

Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Department of Fair Employment and Housing within the Business, Consumer Services, and Housing Agency and sets forth its powers and duties relating to enforcement of civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status. Existing law prohibits an employer and other specified entities from harassing an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract, 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 veteran or military status, if the entity, or its agents or supervisors, knows or should have known of that conduct and failed to take immediate and appropriate corrective action.

This bill would require a business *to* address the harassment, defined as words, gestures, or actions directed at a specific person without the consent of the person on account of any characteristics listed in the Unruh Civil Rights Act, of customers on its premises, including harassment by a third party, by, among other things, posting a sign provided by the department that informs customers of their rights at a business and how to report incidents of harassment.

This bill would require the department to submit, as specified, to the Legislature and Governor, and publish on its internet website, a report summarizing data on harassment at businesses in the state, including data related to harassment at businesses reported to the department by a member of the public, and data related to harassment at businesses collected by businesses, as specified.

This bill would require the department to develop or procure online training courses regarding bias-based discrimination and harassment, as defined, and make those courses available on the department's internet website. The bill would provide for different training requirements for supervisory and nonsupervisory employees and *would* require the training to include information on laws related to bias-based discrimination and harassment and how to identify bias-based discrimination and harassment. The bill would require the department to provide employees with a certificate of completion of the ~~training~~ *training, which the bill would require* to be portable across employers. The bill would require businesses to provide that training by January

1, 2025, to all their employees in the state who interact with members of the public, as specified. The bill would authorize the department to initiate the adoption of rules, regulations, or standards implementing these provisions by January 1, 2024, or seek an order requiring a business to comply with the training’s requirements.

This bill would require the department to establish a pilot program to recognize businesses that create environments free from bias-based discrimination and harassment, ~~and establish criteria for that recognition.~~ *as specified.*

This bill would provide that the department’s council has the power to adopt, promulgate, amend, and rescind suitable rules, regulations, and standards to interpret, implement, and apply the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) All persons in the state are entitled to the full and equal
4 accommodations, advantages, facilities, privileges, or services in
5 businesses, regardless of their sex, race, color, religion, ancestry,
6 national origin, disability, medical condition, genetic information,
7 marital status, sexual orientation, citizenship, ~~primary language~~
8 *language*, or immigration status.

9 (b) Discrimination and harassment on any of these bases, by
10 any person, interferes with a person’s ability to exercise this right.
11 This interference has grave consequences for a person’s freedom
12 of movement, physical and mental health and well-being, and
13 ability to care for themselves and their families.

14 (c) ~~According to Stop AAPI Hate, nearly 5,000 hate incidents~~
15 ~~against Asian Americans and Pacific Islanders (AAPIs) have been~~
16 ~~reported in California since~~ *Since the start of the COVID-19*
17 ~~pandemic, the Stop AAPI Hate coalition has received~~
18 *more than 4,100 reports of hate incidents against Asian Americans*
19 *and Pacific Islanders (AAPIs) in California.* More than one-quarter
20 of ~~the incidents occur~~ *occurred* in businesses like retail and service
21 establishments. Many incidents ~~involve~~ *involved* the racialized,
22 and often gender-based, verbal harassment of AAPI customers by
23 other customers.

1 (d) AAPIs experiencing racism are more stressed by hate than
2 the pandemic, and have reported heightened food insecurity due
3 to fears of leaving home to buy food.

4 (e) AAPIs are not alone in experiencing racialized harassment
5 in businesses. For example, Black customers have long reported
6 unfair treatment while shopping, according to more than two
7 decades of Gallup polling.

8 (f) Nor are AAPIs the only community experiencing heightened
9 racialized harassment during the COVID-19 pandemic. A survey
10 by Pew Research Center reveals that 4 in 10 Black and Asian
11 adults, and one-quarter of Hispanic adults, report adverse
12 experiences due to their race or ethnicity since the pandemic began,
13 compared to 13 percent of White adults. Asian and Black adults
14 are more likely to say they have been the subject of slurs or jokes
15 or feared being physically attacked or threatened due to their race
16 or ethnicity.

17 (g) Existing law prohibits businesses from discriminating against
18 customers because of a protected characteristic. Existing law also
19 requires businesses, as employers, to maintain worksites free from
20 prohibited discrimination and harassment, including by
21 nonemployees.

22 (h) Existing law does not explicitly require businesses to protect
23 customers from fellow customers or other third parties engaging
24 in harassment because of a protected characteristic.

25 (i) The Legislature affirms that all customers, regardless of their
26 race or other protected characteristics, should be free to shop for
27 and buy groceries, medicine, and other goods and services without
28 being targeted for their personal characteristics.

29 (j) It is the intent of the Legislature to provide additional ~~civil~~
30 ~~rights~~ ~~protections~~ ~~to~~ *for the civil rights* of customers in businesses
31 where bias-motivated harassment takes place, and to protect a
32 person’s right to full and equal accommodations, advantages,
33 facilities, privileges, and services in businesses.

34 SEC. 2. Section 51.15 is added to the Civil Code, to read:

35 51.15. (a) For purposes of this section:

36 (1) “Harassment” means words, gestures, or actions directed at
37 a specific person without the consent of the person on account of
38 any characteristics listed or defined in subdivision (b) or (e) of
39 Section 51, or because the person is perceived to have one or more
40 of those characteristics, or because the person is associated with

1 a person who has or is perceived to have one or more of those
2 characteristics.

3 (2) “Business” means any private enterprise with a physical
4 presence in the state that is open to members of the public and has
5 a total of 100 or more employees working in the state, including,
6 but not limited to, restaurants, grocery stores, retail stores, gas
7 stations, banks, and gymnasiums.

8 (3) “Premises” means both of the following:

9 (A) Any area inside~~the~~ a building that is under the business’s
10 possession, management, or control.

11 (B) Any other area outside of~~the~~ a building that is under the
12 business’s possession, management, or control, including, but not
13 limited to, outdoor eating areas and parking lots.

14 (4) “Department” refers to the Department of Fair Employment
15 and Housing.

16 (b) It is the intent of the Legislature that all persons within the
17 jurisdiction of this state have the right to be free from harassment
18 at a business because of a characteristic listed or defined in the
19 Unruh Civil Rights Act, or because the person is perceived to have
20 one or more of those characteristics, or because the person is
21 associated with a person who has or is perceived to have one or
22 more of those characteristics.

23 (c) A business shall address the harassment of customers on its
24 premises, including harassment by a third party who is not affiliated
25 with the business, by doing all of the following:

26 (1) Posting the sign made available pursuant to subdivision (d)
27 in a visible and conspicuous place notifying customers of their
28 rights at a business and how to report harassment.

29 (2) Ensuring that employees are trained in accordance with
30 Section 51.16.

31 (3) Having a policy regarding how the business collects and
32 maintains data related to incidents of harassment by a third party,
33 *collecting and maintaining the data in accordance with this policy*,
34 notifying employees of this policy, and submitting this data to the
35 department upon the department’s request.

36 (d) The department shall develop and publish on its internet
37 website a sign that informs customers of their rights at a business
38 and how to report incidents of harassment, including by a third
39 party, to the business or the department.

1 (e) ~~By December 31, 2023, and December 31~~ *Notwithstanding*
2 *Section 10231.5 of the Government Code, by January 1, 2024, and*
3 *January 1* of each year thereafter, the department shall annually
4 submit to the Legislature and the Governor, and shall publish on
5 its internet website, a report summarizing data on harassment at
6 businesses in the state. The report shall include data related to
7 harassment at businesses reported to the department by a member
8 of the public, and data related to harassment at businesses collected
9 by businesses pursuant to paragraph (3) of subdivision (c). The
10 report shall exclude any personally identifiable information of any
11 individual. The report may be combined with other reporting
12 required of the department.

13 ~~(f) (1) The requirement for submitting a report imposed under~~
14 ~~subdivision (e) is inoperative on January 1, 2027, pursuant to~~
15 ~~Section 10231.5 of the Government Code.~~

16 ~~(2)~~

17 (f) A report to be submitted pursuant to subdivision (e) shall be
18 submitted in compliance with Section 9795 of the Government
19 Code.

20 (g) (1) This section shall not be construed to require an
21 employee of a business to intervene in the harassment of customers
22 on the business's premises by a third party.

23 (2) A business, or any person acting on behalf of the business,
24 shall not retaliate against an employee for any actions taken, or
25 not taken, pursuant to this section.

26 (3) An employee of a business is not personally liable for any
27 violations of this section.

28 (h) This section shall not be construed to override or supersede
29 a business establishment's duties as required by this part or the
30 California Fair Employment and Housing Act (Part 2.8
31 commencing with Section 12900) of Division 3 of Title 2 of the
32 Government Code).

33 SEC. 3. Section 51.16 is added to the Civil Code, to read:

34 51.16. (a) For purposes of this section:

35 (1) "Bias-based discrimination and harassment" means
36 discrimination and other conduct prohibited under Sections 51,
37 51.5, and 51.7, and harassment as defined in Section 51.15.

38 (2) "Business" ~~shall have~~ *has* the same meaning as defined in
39 Section 51.15.

1 (3) “Department” refers to the Department of Fair Employment
2 and Housing.

3 (b) (1) No later than June 30, 2024, the department shall develop
4 or procure, and make available on its internet website, two online
5 training courses, one for supervisory employees and one for
6 nonsupervisory employees, regarding bias-based discrimination
7 and harassment at businesses. The training shall be at least two
8 hours for supervisory employees and at least one hour for
9 nonsupervisory employees.

10 (2) The training shall include, but not be limited to, the following
11 information:

12 (A) Summaries of federal and state statutes relating to bias-based
13 discrimination and harassment against customers at businesses,
14 including, but not limited to, Sections 51, 51.5, 51.7, and 51.15,
15 the duties of a business or its employees pursuant to these sections,
16 how to report those acts to the department, and remedies available
17 to victims.

18 (B) How to identify bias-based discrimination and harassment,
19 including examples of bias-based discrimination and harassment,
20 examples ~~where in which~~ the perpetrator is an ~~employee and~~
21 ~~employee~~, examples ~~where in which~~ the perpetrator is a third party
22 who is not the business or its employees, and examples that address
23 the intersection of race and gender.

24 (3) The training shall include an interactive feature that requires
25 a viewer to respond to a question periodically in order for the
26 course to continue to play.

27 (4) The department shall provide a method for employees who
28 have completed the training to save electronically and print a
29 certificate of completion, which shall be portable across employers.

30 (c) (1) No later than January 1, 2025, a business shall provide
31 the training made available pursuant to subdivision (b) to all its
32 employees in the state who interact with members of the public.

33 ~~After~~

34 (2) ~~After~~ January 1, 2025, the business shall provide *the* training
35 required by this section ~~once as follows~~:

36 (A) ~~Subject to subparagraph (B), once every two years to all its~~
37 ~~employees in the state who interact with members of the public,~~
38 ~~and shall provide that training to new employees who interact with~~
39 ~~members of the public within six public.~~

1 (B) Six months from the date of ~~their~~ *an employee's* hire or
2 ~~promotion~~: *promotion, unless the employee has received the*
3 *training from a previous employer pursuant to this section within*
4 *the two years preceding their hire.*

5 (d) ~~(1)~~The training required by this section shall take place
6 during regularly scheduled work hours, on paid time, and at a time
7 dedicated solely to the training.

8 ~~(2) For new employees who have received training from a~~
9 ~~previous employer in compliance with this section, the~~
10 ~~requirements of subdivision (e) with respect to new hires shall be~~
11 ~~considered met and the employee shall be placed on a two-year~~
12 ~~training schedule.~~

13 (e) The department may seek an order requiring a business to
14 comply with this section.

15 (f) The department may adopt rules, regulations, or standards
16 to implement this section, and, if the department elects to do so,
17 the rules, regulations, or standards shall be initiated no later than
18 January 1, 2024.

19 (g) A business's failure to comply with this section *may be*
20 *relevant to, but* shall not alone create liability ~~for~~ *for*, violating
21 Section 51, 51.5, or 51.7.

22 (h) It is the intent of the Legislature that the training required
23 by this section establishes a minimum threshold and should not
24 discourage or relieve any employer from providing for longer,
25 more frequent, or more elaborate training regarding bias-based
26 discrimination and harassment.

27 SEC. 4. Section 51.17 is added to the Civil Code, to read:

28 51.17. (a) For purposes of this section:

29 (1) "Bias-based discrimination and harassment" has the same
30 meaning as defined in Section 51.16.

31 (2) "Business" shall have the same meaning as defined in
32 Section 51.15.

33 (3) "Department" refers to the Department of Fair Employment
34 and Housing.

35 (b) (1) The department shall establish a pilot program that
36 recognizes businesses for creating safe and welcoming
37 environments free from bias-based discrimination and harassment
38 of customers.

1 (2) To qualify for recognition under the pilot program, a business
2 ~~must~~ *shall* meet *the* criteria set out by the department, which may
3 include, but not be limited to, the following:

4 (A) Meeting the requirements of Sections 51, 51.5, 51.7, 51.15,
5 and 51.16.

6 (B) Offering additional training to educate and inform employees
7 or build skills.

8 (C) Informing the public of their rights to be free from
9 bias-based discrimination and harassment and how to report
10 violations.

11 (D) Outlining a code of conduct for the public that encourages
12 respectful and civil behavior.

13 (E) Any other actions designed to prevent and respond to
14 bias-based discrimination and harassment regardless of the identity
15 of the perpetrator.

16 (3) The department shall provide a certificate to qualifying
17 businesses that may be prominently displayed on site, and publish
18 on its internet website a database of businesses receiving that
19 certificate.

20 (4) The department shall develop criteria to evaluate whether
21 that recognition is effective, including whether it affects customer
22 behavior, incentivizes compliance among businesses, or reduces
23 the incidence of bias-based discrimination and harassment at
24 businesses.

25 SEC. 5. Section 12935 of the Government Code is amended
26 to read:

27 12935. The council shall have the following functions, powers,
28 and duties:

29 (a) To adopt, promulgate, amend, and rescind suitable rules,
30 regulations, and standards that do either of the following:

31 (1) Interpret, implement, and apply all provisions of this part,
32 Article 9.5 (commencing with Section 11135) of Chapter 1 of Part
33 1 of Division 3 of Title 2 of this code, Sections 51, 51.5, 51.7,
34 51.15, 51.16, 51.17, 54, 54.1, and 54.2 of the Civil Code, and
35 Section 1197.5 of the Labor Code.

36 (A) As of January 1, 2017, Chapter 1 (commencing with Section
37 98000), Chapter 2 (commencing with Section 98100), and Chapter
38 3 (commencing with Section 98200) of Division 8 of Title 22 of
39 the California Code of Regulations shall be transferred from the
40 portion of the California Code of Regulations that is under the

1 authority of the California Health and Human Services Agency to
2 the portion of the California Code of Regulations that is under the
3 authority of the department, and upon transfer shall be deemed
4 adopted by the council.

5 (B) The council shall, within existing resources and pursuant
6 to Chapter 3.5 (commencing with Section 11340), adopt additional
7 regulations, as necessary, and amend or repeal, as necessary,
8 regulations transferred to the department from the California Health
9 and Human Services Agency relating to Article 9.5 (commencing
10 with Section 11135) of Chapter 1 of Part 1.

11 (2) Carry out all other functions and duties of the council
12 pursuant to this part.

13 (b) To meet at any place within the state and function in any
14 office of the department.

15 (c) To create or provide technical assistance to any advisory
16 agencies and conciliation councils, local or otherwise, as in its
17 judgment will aid in effectuating the purposes of this part, and to
18 empower them to study the problems of discrimination in all or
19 specific fields of human relationships or in particular instances of
20 employment discrimination on the bases enumerated in this part
21 or in specific instances of housing discrimination on the bases
22 enumerated in this part and to foster, through community effort or
23 otherwise, good will, cooperation, and conciliation among the
24 groups and elements of the population of the state and to make
25 recommendations to the Fair Employment and Housing Council
26 for the development of policies and procedures in general except
27 for procedural rules and regulations that carry out the investigation,
28 prosecution, and dispute resolution functions and duties of the
29 department. These advisory agencies and conciliation councils
30 shall be composed of representative citizens, serving without pay.

31 (d) To hold hearings, issue publications, results of inquiries and
32 research, and reports to the Governor and the Legislature that, in
33 its judgment, will tend to aid in effectuating the purpose of this
34 part, promote good will, cooperation, and conciliation, and
35 minimize or eliminate unlawful discrimination, or advance civil
36 rights in the State of California.

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