

MEMORANDUM 2025-39
Equal Rights Amendment
(Staff Draft Final Recommendation and Case Update)

In 2022, the Legislature adopted Senate Concurrent Resolution 92 ([2022 Cal. Stat. ch. 150](#)) directing the Commission¹ to “undertake a comprehensive study of California law to identify any defects that prohibit compliance with the [Equal Rights Amendment.]” The Legislature specifically requested the Commission to study, report on, and prepare recommended legislation to revise California law to remedy defects related to (i) inclusion of discriminatory language on the basis of sex, and (ii) disparate impacts on the basis of sex.

At its June 26, 2025 meeting,² the Commission approved the issuance of a revised tentative recommendation on this study for public comment. The revised tentative recommendation requested comments be submitted to the Commission by July 31, 2025.³ As of this memorandum’s publication date, the Commission had not received any additional public comments.⁴

Attached for the Commission’s consideration is a draft of a final recommendation that incorporates various technical corrections and other minor revisions. Those changes are described in more detail below. This memorandum also presents a recent a Supreme Court case that does not impact the Commission’s recommendation.

Commissioners should review the attached draft and decide whether to approve the attached draft as a final recommendation (with or without revisions) for publication and submission to the Legislature and the Governor.

¹ Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

² Memorandum [2025-34](#), p. 4.

³ Memorandum [2025-28](#).

⁴ The Commission previously received public comment on its Tentative Recommendation, which is substantially the same as the Revised Tentative Recommendation, except that the Revised Tentative Recommendation contains two cross-references. See Memorandum [2025-28](#), pp. 1-2.

CASE UPDATE

Although it does not impact the Commission’s recommendation, the staff would like to share a recent Supreme Court case upholding a Tennessee law prohibiting certain medical interventions for transgender minors, *United States v. Skrametti*.⁵

In 2023, three transgender minors, their parents, and a healthcare provider sought preliminary injunctions against a Tennessee law restricting sex transition treatment for minors based on the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court held that the challenged law was based on the classifications of age and medical usage, not transgender status. As a result, the Court held that heightened scrutiny was not required and instead applied rational basis review.

This case’s fact pattern is analogized to *Geduldig v. Aiello*,⁶ which is discussed at length in the tentative recommendation’s discussion of intermediate scrutiny under the Equal Protection clause. *Geduldig v. Aiello* held that a California insurance program that excluded certain disabilities resulting from pregnancy from coverage did not discriminate on the basis of sex. The court determined that the policy “divided potential recipients into two groups: pregnant women and nonpregnant persons,” and because women fell into both categories, it wasn’t a sex-based classification.⁷

Similarly, the court ruled that the Tennessee bill at issue did not exclude any individual from medical treatments on the basis of transgender status. Rather, it “divides minors into two groups: those seeking puberty blockers or hormones to treat the excluded diagnoses [gender dysphoria, gender identity disorder, or gender incongruence], and those seeking puberty blockers or hormones to treat other conditions.”⁸ The court upheld the law on rational basis review as Tennessee’s laws conveyed reasonable facts in defense of the ban due to scientific uncertainty.

The staff concluded that it is not necessary to update the background portion of the draft recommendation because the case was not decided on the basis of sex and the staff believes it has no impact on the study. However, the Commission may direct staff to revise the background portion to include a brief reference to the case.

TECHNICAL CORRECTIONS AND MINOR REVISIONS

The staff made routine changes to convert the tentative recommendation into a draft of a final recommendation and made various formatting corrections and other technical

⁵ (2025) 605 U.S. ____ [at 17]

⁶ *Geduldig v. Aiello* (1974) 417 U.S. 484.

⁷ *Id.* at 496.

⁸ *United States v. Skrametti* (2025) 605 U.S. ____ [145 S. Ct. 1816, 1834].

revisions. The staff would like to specifically call the Commission's attention to the following clarifying changes to the Commission Comment on each sex equality provision proposed to be added across all codes. See, for example, the comment to proposed Section 14.3 of the Business and Professions Code:

Comment. Section 14.3 is added to reflect California's commitment to the equality of rights under the law. While this section applies specifically to the Business and Professions Code, there are sections identical to Section 14.3 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California's laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this ~~rule~~ section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California's laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

The first change, adding "and actions" conforms to the parallel language in subdivision (b)(3) that describes the scope of "sex discrimination." The second change replaces the term "rule," which although used throughout this study, is not the standard description for a Commission Comment and is replaced with "section."

The Commission needs to decide whether to approve the attached draft final recommendation, with or without revision, as a final recommendation in the study, for submission to the Legislature and publication in the Commission's official reports.

Respectfully submitted,

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

FINAL RECOMMENDATION

Equal Rights Amendment

September 2025

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

In 2022, the Legislature adopted Senate Concurrent Resolution 92 (2022 Cal. Stat. ch. 150) directing the Commission to “undertake a comprehensive study of California law to identify any defects that prohibit compliance with the [Equal Rights Amendment.]” The Legislature specifically requested the Commission to study, report on, and prepare recommended legislation to revise California law to remedy defects related to (i) inclusion of discriminatory language on the basis of sex, and (ii) disparate impacts on the basis of sex. In doing so, the Legislature directed the Commission to consult with experts and interested parties, including, but not limited to, members of the academic community and research organizations.

The Commission commenced work on this topic in 2022 in two stages: first, the Commission examined the possibility of enacting a provision in state law to achieve the effect of the Equal Rights Amendment, and second, the Commission used the sex equality provision to evaluate existing California law, to identify and remedy defects.

Following this study, the Commission is proposing a sex equality provision for each California code section that clarifies the existing definitions of sex discrimination. The Commission concluded there are no existing laws with discriminatory language or disparate impacts appropriate for revision at this time.

EQUAL RIGHTS AMENDMENT

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EQUAL RIGHTS AMENDMENT

BACKGROUND

LEGISLATIVE ASSIGNMENT

In 2022, the Legislature adopted [Senate Concurrent Resolution \(SCR\) 92](#) (2022 Cal. Stat. ch. 150) directing the Commission to “undertake a comprehensive study of California law to identify any defects that prohibit compliance with the [Equal Rights Amendment.]” More specifically:

[The] Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise California law (including common law, statutes of the state, and judicial decisions) to remedy defects related to (i) inclusion of discriminatory language on the basis of sex, and (ii) disparate impacts on the basis of sex upon enforcement thereof. In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, members of the academic community and research organizations. The commission’s report shall also include a list of further substantive issues that the commission identifies in the course of its work as topics for future examination....¹

The study’s underlying rationale was explained by the resolution’s co-sponsors² in SCR 92’s legislative policy committee analysis:

Californians have advocated tirelessly for women’s equal rights under the law. Indeed, California was among the earliest states to ratify the Equal Rights Amendment to the United States Constitution (ERA), doing so in the same year that Congress approved it—1972. The ERA states simply: “Equality of rights under the law shall not be denied or abridged, by the United States or any state on account of sex.”

Nationally, the fight for women’s equality is ongoing. Upon Virginia’s ratification of the ERA on January 27, 2020, the ERA satisfied the two requirements imposed by Article V of the U.S. Constitution to become an amendment: i) approval of two-thirds of each chamber of Congress and ii) ratification by three-fourths of the states. However, the U.S. Archivist, an appointed official, declined to certify and formally publish the ERA, citing a Department of Justice memo that advised a ratification timeline in the ERA’s preamble was binding. The final three states to ratify the ERA filed suit to require that the Archivist perform his ministerial duties. That case is now pending in a federal appellate court, where 16 distinguished constitutional law scholars have submitted an amicus brief that argues the timeline in the preamble does not render subsequent ratifications invalid. In

1. 2022 Cal. Stat. res. ch. 150 ([SCR 92](#), Leyva).

2. [California Women’s Law Center](#) and the [Feminist Majority Foundation](#).

1 addition, both chambers of the U.S. Congress introduced joint resolutions
2 in January 2021 to eliminate the ratification deadline noted in the preamble
3 of the ERA; the House resolution passed in March 2021.

4 This resolution seeks to ensure the principles of gender equality already
5 enshrined in the California Constitution, and soon to be reflected in the U.S.
6 Constitution, are not violated by the language or impact of California's
7 laws. At a moment when these principles remain contested in national
8 debate, this resolution clearly announces that the California legislature
9 upholds the legal rights and equal dignity of its citizens regardless of sex.³

The Legislature’s primary directive to the Commission was to ensure California’s laws align with the ERA. In doing so, the Legislature directed the Commission propose legislation that effectuates the ERA’s goals and suggest remedies for existing laws with discriminatory language or disparate impacts on the basis of sex. The Commission approached the study in two stages: first, the Commission examined the possibility of codifying a provision in state law to achieve the effect of the ERA (“the sex equality provision”), and second, the Commission would apply that codified provision to existing California law to remedy defects (i.e., provisions that have discriminatory language or disparate impacts).

19 DEFINING “SEX EQUALITY”

The Commission first determined the scope of the ERA’s guarantee in considering how to codify its effects. Section 1 of the ERA provides that “[e]quality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”⁴ Understanding the ERA’s effect required close analysis of the meaning of “equality of rights” and “on account of sex.”

3. Assembly Committee on Judiciary Analysis of [SCR 92](#) (August 4, 2022), pp. 6-7.

4. [H.J.Res. No. 208](#), 92nd Cong., 2d Sess. (1972) 86 Stat. 1523. The remainder of the ERA provides:

SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

SEC. 3. This amendment shall take effect two years after the date of ratification. See also [Congressional Research Service, The Proposed Equal Rights Amendment: Contemporary Ratification Issues](#) pp. 14-15, R42979 (Updated Dec. 23, 2019) (“CRS Report”), (reproducing text of [H.J.Res. No. 208](#), 92nd Cong., 2d Sess. (1972) 86 Stat. 1523).

EXPLORING “EQUALITY OF RIGHTS” THROUGH EQUAL PROTECTION LAW

The ERA’s guarantee of “[e]quality of rights under the law”⁵ is similar to the language in the state and federal constitutions’ equal protection clauses, which also promise equal protection of the laws.⁶

In assessing whether there has been a denial of equal protection, courts have developed different tests depending on the particular right or classification at issue.

In general, equal protection case law assesses equal protection claims using one of the following levels of scrutiny, listed in order from most to least stringent:

- *Strict scrutiny.* Strict scrutiny is used when a fundamental right or suspect classification is at issue in the case. Strict scrutiny requires that the law be necessary to satisfy a “compelling state interest” and that the law be “narrowly tailored” to achieve that interest.⁷
- *Intermediate scrutiny.* Intermediate scrutiny is used for certain protected classes that are not deemed suspect (in some cases, referred to as quasi-suspect). Intermediate scrutiny requires an “important government interest” and that the law further that interest by means “substantially related” to the interest.⁸
- *Rational basis review.* Rational basis review is used when no fundamental rights, suspect classes, or protected classes are at issue. To satisfy this test, the law must further a “legitimate state interest” and there must be a “rational connection” between the law and the interest.⁹

These distinctions are helpful to understand how courts scrutinize equal protection claims, although not all equal protection case law fits cleanly within these tiers.¹⁰

THE U.S. CONSTITUTION’S EQUAL PROTECTION CLAUSE

The Fourteenth Amendment of the U.S. Constitution provides, in part:

...[N]or shall any State ... deny to any person within its jurisdiction the

5. See *supra* fn. 4.

6. U.S. Const. [amend. XIV](#) (“No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”); Cal. Const. [art. I § 7](#) (“A person may not be ... denied equal protection of the laws....”).

7. See generally Cornell Law School Legal Information Institute, “[Strict scrutiny](#),” see also, e.g., *Adarand Constructors v. Peña* (1995) 515 U.S. 200.

8. See generally Cornell Law School Legal Information Institute, “[Intermediate scrutiny](#),” see also, e.g., *Craig v. Boren* (1976) 429 U.S. 190; *United States v. Virginia* (1996) 518 U.S. 515.

9. See generally Cornell Law School Legal Information Institute, “[Rational basis test](#).”

10. See generally, e.g., [J. Mitten et al., Equal Protection, 23 Geo. J. Gender & L. 267, 277–78 \(2022\)](#) (describing a fourth tier of “active” rational basis or rational basis “with bite,” as well as broad alternative understanding of the equal protection case law as involving a “fluid, fact-intensive standard”).

1 equal protection of the laws.¹¹

2 Under the U.S. Constitution equal protection case law, sex-based classifications
3 are subject to intermediate scrutiny.¹² To satisfy intermediate scrutiny, the law must
4 further an “important government interest” and do so by means that are
5 “substantially related to that interest.”¹³

6 The intermediate scrutiny test was described in the U.S. Supreme Court decision
7 in *Craig v. Boren*.¹⁴ That case involved a challenge to the different treatment of
8 males and females under an Oklahoma law that prohibited the sale of 3.2% beer to
9 males under 21 and females under 18.¹⁵ In summarizing the previous case law, the
10 decision set out an intermediate scrutiny standard:

11 To withstand constitutional challenge, previous cases establish that
12 classifications by gender must serve important governmental objectives and
13 must be substantially related to achievement of those objectives. Thus, in
14 *Reed*, the objectives of “reducing the workload on probate courts” and
15 “avoiding intrafamily controversy” were deemed of insufficient importance
16 to sustain use of an overt gender criterion in the appointment of
17 administrators of intestate decedents' estates. Decisions following *Reed*
18 similarly have rejected administrative ease and convenience as sufficiently
19 important objectives to justify gender-based classifications. And only two
20 Terms ago, *Stanton v. Stanton*..., expressly stating that *Reed v. Reed* was
21 “controlling” held that *Reed* required invalidation of a Utah differential age-
22 of-majority statute, notwithstanding the statute's coincidence with and
23 furtherance of the State's purpose of fostering “old notions” of role typing
24 and preparing boys for their expected performance in the economic and
25 political worlds.

26 *Reed v. Reed* has also provided the underpinning for decisions that have
27 invalidated statutes employing gender as an inaccurate proxy for other,
28 more germane bases of classification. Hence, “archaic and overbroad”
29 generalizations concerning the financial position of servicewomen and
30 working women could not justify use of a gender line in determining
31 eligibility for certain governmental entitlements. Similarly, increasingly
32 outdated misconceptions concerning the role of females in the home rather
33 than in the “marketplace and world of ideas” were rejected as loose-fitting
34 characterizations incapable of supporting state statutory schemes that were
35 premised upon their accuracy. In light of the weak congruence between
36 gender and the characteristic or trait that gender purported to represent, it

11. U.S. Const. [amend. XIV, § 1](#).

12. See generally *supra* fn. 10.

13. See *Craig v. Boren* (1976) 429 U.S. 190, 191-92.

14. 429 U.S. 190.

15. *Id.* at 191-92.

1 was necessary that the legislatures choose either to realign their substantive
2 laws in a gender-neutral fashion, or to adopt procedures for identifying
3 those instances where the sex-centered generalization actually comported
4 with fact.¹⁶

5 More recently, in *United States v. Virginia* (1996), the U.S. Supreme Court
6 considered a constitutional challenge to the Virginia Military Institute’s male-only
7 admissions policy.¹⁷ In that case, the majority opinion (drafted by former Justice
8 Ginsberg) applied what some have described as a more exacting level of
9 intermediate scrutiny (focusing on the requirement of an “exceedingly persuasive”
10 justification, from language in earlier Supreme Court case law¹⁸). Specifically, the
11 decision states:

12 Without equating gender classifications, for all purposes, to
13 classifications based on race or national origin, the Court, in post-*Reed*
14 decisions, has carefully inspected official action that closes a door or denies
15 opportunity to women (or to men). To summarize the Court's current
16 directions for cases of official classification based on gender: Focusing on
17 the differential treatment for denial of opportunity for which relief is sought,
18 the reviewing court must determine whether the proffered justification is
19 “exceedingly persuasive.” The burden of justification is demanding and it
20 rests entirely on the State. The State must show “at least that the
21 [challenged] classification serves ‘important governmental objectives and
22 that the discriminatory means employed’ are ‘substantially related to the
23 achievement of those objectives.’” The justification must be genuine, not
24 hypothesized or invented post hoc in response to litigation. And it must not
25 rely on overbroad generalizations about the different talents, capacities, or
26 preferences of males and females.

27 The heightened review standard our precedent establishes does not
28 make sex a proscribed classification. Supposed “inherent differences” are
29 no longer accepted as a ground for race or national origin classifications.
30 Physical differences between men and women, however, are enduring:
31 “[T]he two sexes are not fungible; a community made up exclusively of one
32 [sex] is different from a community composed of both.”

33 “Inherent differences” between men and women, we have come to
34 appreciate, remain cause for celebration, but not for denigration of the
35 members of either sex or for artificial constraints on an individual's
36 opportunity. Sex classifications may be used to compensate women “for
37 particular economic disabilities [they have] suffered,” to “promot[e] equal
38 employment opportunity,” to advance full development of the talent and

16. *Id.* at 197-99 (citations omitted).

17. *United States v. Virginia* (1996) 518 U.S. 515.

18. See *Miss. Univ. for Women v. Hogan* (1982) 458 U.S. 718, 724 (citing *Kirchberg v. Feenstra* (1981) 450 U.S. 455 and *Personnel Administrator of Mass. v. Feeney* (1979) 442 U.S. 256).

1 capacities of our Nation's people. But such classifications may not be used,
2 as they once were to create or perpetuate the legal, social, and economic
3 inferiority of women.¹⁹

4 In specifying that any sex-based distinction “must not rely on overbroad
5 generalizations about ... males and females,” the opinion suggests that distinctions
6 based on sex stereotypes would also be subject to intermediate scrutiny. And, in
7 noting situations where sex classifications would be permitted (e.g., to
8 “compensate...for particular economic disabilities” suffered by women), the
9 opinion implicitly rejects an anticlassification view of equal protection.

10 In a dissenting opinion in this case, former Justice Scalia suggested that this
11 decision applied a higher level of scrutiny to sex-based equal protection claims than
12 previous case law, and indicated that the better course would be to reduce the level
13 of scrutiny for sex-based classifications to rational basis review.²⁰ In a later
14 interview, Justice Scalia suggested that the U.S. Constitution does not prohibit sex
15 discrimination at all.²¹

16 In short, under the U.S. Constitution, sex- and gender- based equal protection
17 claims have been subject to an intermediate level of scrutiny, although the case law
18 indicates some disagreement about the precise contours of the intermediate scrutiny
19 test. While some on the Supreme Court have suggested that the level of scrutiny for
20 these claims should be increased, others have suggested the opposite. Finally, it is
21 worth noting that the U.S. Supreme Court, considering an equal protection claim
22 around the time that Congress passed the ERA, discussed how the ERA should be
23 understood to affect the level of scrutiny accorded to sex- and gender- based equal
24 protection claims.²² This decision came prior to the U.S. Supreme Court’s
25 application of the intermediate scrutiny test in *Craig v. Boren* (discussed above).

26 **Limitations on the Application of Intermediate Scrutiny under the Equal** 27 **Protection Clause**

28 The Equal Protection Clause does not include the word “sex,” and under equal
29 protection case law, many characteristics typically associated as within the scope of

19. *United States v. Virginia* (1996) 518 U.S. 515, 532-34 (citations and footnotes omitted).

20. See *United States v. Virginia* (1996) 518 U.S. 515, 574-75 (Scalia, J., dissenting) (“[I]f the question of the applicable standard of review for sex-based classifications were to be regarded as an appropriate subject for reconsideration, the stronger argument would be not for elevating the standard to strict scrutiny, but for reducing it to rational-basis review.”).

21. See Stephanie Condon, “[Scalia: Constitution Doesn’t Protect Women or Gays from Discrimination](#),” CBS News (Jan. 4, 2011), (Scalia is quoted as saying, “Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't.”).

22. See plurality and concurring opinions in *Frontiero v. Richardson* (1973) 411 U.S. 677.

1 “sex” have either been assessed using a lower level of scrutiny in the equal
2 protection jurisprudence or the U.S. Supreme Court has either not considered or not
3 clearly identified the level of scrutiny that would apply.

4 For example, pregnancy discrimination has been scrutinized at a lower level in
5 equal protection case law. In the 1974 case *Geduldig v. Aiello*, the U.S. Supreme
6 Court declined to apply intermediate scrutiny to a claim involving the exclusion of
7 pregnancy-related disability from a disability insurance program, noting that:

8 [T]his case is thus a far cry from cases like *Reed v. Reed* [challenging a
9 law that gave preference to males to be named estate administrators] and
10 *Frontiero v. Richardson* [involving different standards for male and female
11 military spouses to be deemed dependents and receive benefits] involving
12 discrimination based upon gender as such. The California insurance
13 program does not exclude anyone from benefit eligibility because of gender
14 but merely removes one physical condition — pregnancy — from the list of
15 compensable disabilities. While it is true that only women can become
16 pregnant it does not follow that every legislative classification concerning
17 pregnancy is a sex-based classification like those considered in *Reed* and
18 *Frontiero*. Normal pregnancy is an objectively identifiable physical
19 condition with unique characteristics. Absent a showing that distinctions
20 involving pregnancy are mere pretexts designed to effect an invidious
21 discrimination against the members of one sex or the other, lawmakers are
22 constitutionally free to include or exclude pregnancy from the coverage of
23 legislation such as this on any reasonable basis, just as with respect to any
24 other physical condition.²³

25 It is worth noting, however, that the disability program at issue did not simply
26 exclude all sex-specific conditions.²⁴ More recent case law cites to *Geduldig* for the
27 proposition that equal protection claims involving pregnancy do not receive
28 heightened scrutiny.²⁵

29 Some Courts of Appeal have subjected equal protection claims related to sexual
30 orientation and gender identity to intermediate scrutiny, or a similar heightened

23. *Geduldig v. Aiello* (1974) 417 U.S. 484, 496 n. 20 (citations omitted).

24. *Geduldig*, 417 U.S. at 499-501 (Brennan, J., dissenting).

25. See, e.g., *Dobbs v. Jackson Women’s Health Org.* (2022) 597 U.S. 215, 236-237 (citing *Geduldig* for the proposition that “[t]he regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a ‘mere pretext[t] designed to effect an invidious discrimination against members of one sex or the other.’”).

scrutiny test.²⁶ The Supreme Court has yet to directly address the question of what level of scrutiny applies to such claims.²⁷

One important effect of ERA ratification would be increasing the level of scrutiny accorded to sex-based equal protection claims under the U.S. Constitution — often noted in materials discussing the ERA’s effects.²⁸ This effect was also acknowledged in the opinions in the U.S. Supreme Court’s 1973 case, *Frontiero v. Richardson*.²⁹

The ERA, however, is an entirely separate constitutional protection. While adjusting the treatment of sex-based equal protection claims may be a practical effect of the ERA, the ERA does not itself adjust the language of the U.S. Constitution’s Equal Protection Clause, nor should its effects be understood only in the context of changing the treatment of sex-based equal protection claims.

OTHER U.S. CONSTITUTIONAL PROTECTIONS RELEVANT TO SEX EQUALITY

Under the U.S. Constitution, the Equal Protection Clause is not the only provision that extends protections related to sex equality.

In general, although the U.S. Constitution does not contain express language about privacy, the constitutional case law has recognized that the Constitution

26. See, e.g., *Glenn v. Brumby* (11th Cir. 2011) 663 F.3d 1312; *Windsor v. United States* (2nd Cir. 2012) 699 F.3d 169, aff’d 570 U.S. 744; *SmithKline Beecham Corp. v. Abbott Laboratories* (9th Cir. 2014) 740 F.3d 471 (referring to the test as “heightened scrutiny”); see also J.P. Cole, Congressional Research Service, [Transgender Students and School Bathroom Policies: Equal Protection Challenges Divide Appellate Courts](#), LSB10902 (Jan. 17, 2023).

27. See *Windsor v. United States* (2013) 570 U.S. 744, 769-70 (finding that the Defense of Marriage Act violated equal protection without identifying level of scrutiny applied); *Lawrence v. Texas* (2003) 539 U.S. 558, 580 (O’Connor, J., concurring) (noting that the Court, in striking down laws that exhibit “a desire to harm a politically unpopular group,” has applied “a more searching form of rational basis review.”); *Romer v. Evans* (1996) 517 U.S. 620, 632 (concluding that a Colorado constitutional provision seeking to prohibit state or local government action to extend protections on the basis of sexual orientation would fail “even th[e] conventional inquiry [of rational basis review]” as it “lacks a rational relationship to legitimate state interests”).

28. See generally, e.g., R. Bleiweis, Center for American Progress, [The Equal Rights Amendment: What You Need to Know](#) (Jan. 29, 2020); K. Fossett, [What Would the ERA Change?](#) Politico (Feb. 4, 2022), J. Neuwirth, Equal Means Equal: [Why the Time for an Equal Rights Amendment is Now](#) (2015).

29. Compare *Frontiero v. Richardson* (1973) 411 U.S. 677, 688 (plurality opinion, citing to Congress’ passage of the ERA and other legal protections for sex, states “[w]ith these considerations in mind, we can only conclude that classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny.”) with id. at 692 (Powell, J., concurring) (opinion concurring in the judgment declines to apply strict scrutiny to the claim, noting “[t]here is another, and I find compelling, reason for deferring a general categorizing of sex classifications as invoking the strictest test of judicial scrutiny. The [ERA], which if adopted will resolve the substance of this precise question, has been approved by the Congress and submitted for ratification by the States.”).

1 provides some protection for autonomy privacy (i.e., the right of an individual to
2 make decisions about important personal matters free from government
3 interference).³⁰

4 The exact contours of this right are difficult to define. The U.S. Supreme Court’s
5 assessment of the relevant constitutional language for the privacy right, as well as
6 the scope of that right in practice, has changed over time. A decision in a 1965 case
7 involving the right to contraceptives discussed “specific guarantees in the Bill of
8 Rights hav[ing] penumbras, formed by emanations from those guarantees that help
9 give them life and substance. Various guarantees create zones of privacy.”³¹ The
10 constitutional privacy right is also discussed as an aspect of liberty protected by the
11 Due Process Clauses³² or a component of “substantive due process.”³³

12 Below is an excerpt from the 1973 U.S. Supreme Court decision in *Roe v. Wade*,
13 summarizing the prior case law on the constitutional privacy right.

14 The Constitution does not explicitly mention any right of privacy. In a
15 line of decisions, however, going back perhaps as far as [an 1891 case], the
16 Court has recognized that a right of personal privacy, or a guarantee of
17 certain areas or zones of privacy, does exist under the Constitution. In
18 varying contexts, the Court or individual Justices have, indeed, found at
19 least the roots of that right in the First Amendment; in the Fourth and Fifth
20 Amendments; in the penumbras of the Bill of Rights; in the Ninth
21 Amendment; or in the concept of liberty guaranteed by the first section of
22 the Fourteenth Amendment. These decisions make it clear that only
23 personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept
24 of ordered liberty,’ are included in this guarantee of personal privacy. They
25 also make it clear that the right has some extension to activities relating to
26 marriage; procreation; contraception; family relationships; and child rearing
27 and education.³⁴

28 The constitutional privacy right case law has addressed a variety of issues,

30. See generally Justia, “[Privacy Rights and Personal Autonomy Legally Protected by the Constitution](#),” last reviewed October 2024.

31. *Griswold v. Connecticut* (1965) 381 U.S. 479, 484.

32. See also U.S. Const. [amend. V, XIV](#).

33. “Substantive due process asks the question of whether the government’s deprivation of a person’s life, liberty or property is justified by a sufficient purpose. Procedural due process, by contrast, asks whether the government has followed the proper procedures when it takes away life, liberty or property. Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation.” E. Chemerinsky, [Substantive Due Process](#), 15 *Tuoro L. Rev.* 1501, 1501 (1999).

34. *Roe v. Wade* (1973) 410 U.S. 113, 152-54, overruled by *Dobbs v. Jackson Women's Health Org.* (2022) 597 U.S. 215, and holding modified by *Planned Parenthood of Se. Pennsylvania v. Casey* (1992) 505 U.S. 833.

including access to contraception,³⁵ access to abortion,³⁶ sexual privacy rights,³⁷ and the right to marry.³⁸

However, the U.S. Supreme Court’s 2022 decision in *Dobbs v. Jackson Women’s Health Organization* dramatically shifted the jurisprudence in this area, expressly overruling two cases involving abortion: *Roe v. Wade* and *Planned Parenthood v. Casey*.³⁹ In addition, a concurring opinion in that case called into question the constitutional privacy right protections more broadly. Specifically, the concurring opinion provided, in part:

The Court today declines to disturb substantive due process jurisprudence generally or the doctrine’s application in other, specific contexts. Cases like *Griswold v. Connecticut* (right of married persons to obtain contraceptives); *Lawrence v. Texas* (right to engage in private, consensual sexual acts); and *Obergefell v. Hodges* (right to same-sex marriage), are not at issue. The Court’s abortion cases are unique and no party has asked us to decide “whether our entire Fourteenth Amendment jurisprudence must be preserved or revised[.]” Thus, I agree that “[n]othing in [the Court’s] opinion should be understood to cast doubt on precedents that do not concern abortion.”

For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is “demonstrably erroneous,” we have a duty to “correct the error” established in those precedents. After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated.⁴⁰

CALIFORNIA CONSTITUTION’S EQUAL PROTECTION CLAUSE

California’s equal protection doctrine generally accords a higher level of scrutiny to sex-based equal protection claims.

California’s Constitution specifies: “A person may not be ... denied equal protection of the laws[.]”⁴¹

35. See, e.g., *Griswold v. Connecticut* (1965) 381 U.S. 479; *Eisenstadt v. Baird* (1972) 405 U.S. 438.

36. See, e.g., *Roe v. Wade* (1973) 410 U.S. 113; *Planned Parenthood of Se. Pennsylvania v. Casey* (1992) 505 U.S. 833; *Dobbs v. Jackson Women’s Health Org.* (2022) 597 U.S. 215.

37. See, e.g., *Bowers v. Hardwick* (1986) 478 U.S. 186; *Lawrence v. Texas* (2003) 539 U.S. 558.

38. See, e.g., *Loving v. Virginia* (1967) 388 U.S. 1; *Zablocki v. Redhail* (1978) 434 U.S. 374; *Obergefell v. Hodges* (2015) 576 U.S. 644.

39. (2022) 597 U.S. 215, 302. (“The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.”).

40. *Id.* at 332-333 (Thomas, J., concurring) (citations and footnote omitted).

41. Cal. Const. [art. I § 7\(a\)](#).

1 When evaluating equal protection claims under the state Constitution, California
2 courts have treated sex-based classifications as suspect classifications and subjected
3 such classifications to strict scrutiny.⁴²

4 In a 2008 California Supreme Court case involving the right to marry, the court
5 applied strict scrutiny to equal protection claims involving sexual orientation,
6 concluding that sexual orientation was itself a suspect classification for equal
7 protection purposes.⁴³

8 CALIFORNIA CONSTITUTIONAL PROTECTIONS RELEVANT TO SEX 9 EQUALITY

10 The California Constitution has multiple provisions relevant to the issue of sex
11 equality more broadly. Several such provisions are noted briefly below, presented
12 in the order that they are found in the California Constitution.

13 **Right to Privacy**

14 California's Constitution includes an express right to privacy, enacted in 1972
15 (Proposition 11).⁴⁴ That provision provides:

16 All people are by nature free and independent and have inalienable
17 rights. Among these are enjoying and defending life and liberty, acquiring,

42. See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 833 (“[T]he governing California cases long have established that statutes that discriminate on the basis of sex or gender are subject to strict scrutiny under the California Constitution....” (citations omitted)); *Molar v. Gates* (4th Dist. 1979) 98 Cal.App.3d 1, 13 (“In *Sail’er Inn, Inc. v. Kirby*, a female citizen challenged the constitutionality of a California law prohibiting women from tending bar unless they or their husbands held the liquor license on equal protection grounds. Our Supreme Court held that the bartending law was indeed unconstitutional under the equal protection clauses of the state and federal Constitutions and in doing so declared that ‘classifications based upon sex should be treated as suspect.’ *Sail’er Inn* thus clearly established the principle that gender-based differentials are to be treated as ‘suspect classifications’ which must be subjected to intense judicial scrutiny to determine if they violate the right to equal protection guaranteed by the state Constitution. The Supreme Court has consistently reaffirmed this principle. Thus, in *Arp v. Workers’ Comp. Appeals Bd.*, the court stated that ‘the strict scrutiny/compelling state interest test must govern sex discrimination challenges under Article I, section 7, of the California Constitution,’ and in *Hardy v. Stumpf*, the court acknowledged that ‘(c)lassifications predicated on gender are deemed suspect in California.’” (citations omitted)); *Boren v. Dep’t of Emp. Dev.* (3rd Dist. 1976) 59 Cal.App.3d 250, 255-256 (“According to California decisional law, a statute establishing ‘suspect classifications’ or trenching upon ‘fundamental interests’ is vulnerable to strict judicial scrutiny; it may be sustained by a showing of a compelling state interest which necessitates the distinction; a sex-based classification is treated as suspect.” (citations omitted)).

43. *In re Marriage Cases* (2008) 43 Cal.4th 757, 783-84 (“[W]e conclude that strict scrutiny nonetheless is applicable here because (1) the statutes in question properly must be understood as classifying or discriminating on the basis of sexual orientation, a characteristic that we conclude represents — like gender, race, and religion — a constitutionally suspect basis upon which to impose differential treatment, and (2) the differential treatment at issue impinges upon a same-sex couple's fundamental interest in having their family relationship accorded the same respect and dignity enjoyed by an opposite-sex couple.”).

44. See Cal. Const. [art. I § 1](#).

1 possessing, and protecting property, and pursuing and obtaining safety,
2 happiness, and privacy.⁴⁵

3 It is particularly important to note that California’s constitutional protection of
4 privacy is separate and distinct from any protection of privacy derived from the
5 federal constitution.⁴⁶ As one commentator described:

6 The California constitutional right to privacy is distinct from the federal
7 right. Like its federal counterpart, the state right to privacy extends to both
8 [] informational and autonomy privacy.⁴⁷ Yet the federal right is only
9 implied, while the California right is codified in the state constitution. The
10 California Supreme Court has taken this to suggest the state right should be
11 broader than its federal counterpart. As a result, in theory Californians have
12 privacy protections that extend beyond the “penumbral” protections under
13 the federal charter, in both liberty and informational privacy.⁴⁸

14 **Reproductive Freedom**

15 In the aftermath of the U.S. Supreme Court’s decision in *Dobbs*, California
16 enacted a constitutional provision in November 2022 to protect reproductive
17 freedom. That provision provides:

18 The state shall not deny or interfere with an individual’s reproductive
19 freedom in their most intimate decisions, which includes their fundamental
20 right to choose to have an abortion and their fundamental right to choose or
21 refuse contraceptives. This section is intended to further the constitutional
22 right to privacy guaranteed by Section 1, and the constitutional right to not
23 be denied equal protection guaranteed by Section 7. Nothing herein narrows
24 or limits the right to privacy or equal protection.⁴⁹

25 **Protection for Employment and Professions**

26 California’s Constitution protects the right to pursue employment and enter
27 professions. The provision expressly includes sex as a protected class:

45. Id.

46. See Cal. Const. [art. I § 24](#) (“Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.”); see also generally D.A. Carrillo et al., California Constitutional Law: Privacy, 59 San Diego L. Rev. 119 (2022).

47. Informational and autonomy privacy have been described as follows: Informational privacy involves “‘interests in precluding the dissemination or misuse of sensitive and confidential information;” and ‘autonomy privacy[]’ ... encompasses the ‘interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference.’” D.A. Carrillo et al., 59 San Diego L. Rev. at 136 (quoting Justice Lucas’ opinion in *Hill v. Nat’l Collegiate Athletic Ass’n* (1994) 7 Cal.4th 1).

48. R.R. Aquino, [California’s constitutional privacy guarantee needs a reset](#), SCOCAblog (Apr. 9, 2021).

49. Cal. Const. [art. I § 1.1](#); see also 2022 Cal. Stat. res. ch. 97 ([SCA 10](#), Atkins).

1 A person may not be disqualified from entering or pursuing a business,
2 profession, vocation, or employment because of sex, race, creed, color, or
3 national or ethnic origin.⁵⁰

4 This provision has been cited as an example of a state constitutional equal rights
5 amendment.⁵¹ However, it is important to note that the tailored scope of this
6 provision, focusing specifically on employment and professions, is significantly
7 different from the federal ERA, which addresses equal rights more generally.

8 **Prohibition on Discrimination or Preferential Treatment for Public** 9 **Employment, Public Education, and Public Contracting**

10 In 1996, California enacted Proposition 209. This provision provides in part:

11 The State shall not discriminate against, or grant preferential treatment
12 to, any individual or group on the basis of race, sex, color, ethnicity, or
13 national origin in the operation of public employment, public education, or
14 public contracting.⁵²

15 Proposition 209 effectively prohibits affirmative action programs in the areas
16 specified.⁵³ However, the Legislative Analyst’s Office noted that the measure
17 provides exceptions to the ban on preferential treatment in the following situations:

- 18 • To keep the state or local governments eligible to receive money from
19 the federal government.
- 20 • To comply with a court order in force as of the effective date of this
21 measure (the day after the election).
- 22 • To comply with federal law or the United States Constitution.
- 23 • To meet privacy and other considerations based on sex that are
24 reasonably necessary to the normal operation of public employment,
25 public education, or public contracting.⁵⁴

50. Cal. Const. [art. I § 8](#).

51. See generally, e.g., Brennan Center for Justice, “[State-Level Equal Rights Amendments](#),” last updated December 6, 2022.

52. Cal. Const. [art. I § 31\(a\)](#).

53. See Legislative Analyst’s Office Analysis of Proposition 209: [Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities](#) (Nov. 1996), (hereafter, “LAO Analysis of Prop 209”) (“This measure would eliminate state and local government affirmative action programs in the areas of public employment, public education, and public contracting to the extent these programs involve ‘preferential treatment’ based on race, sex, color, ethnicity, or national origin. The specific programs affected by the measure, however, would depend on such factors as (1) court rulings on what types of activities are considered ‘preferential treatment’ and (2) whether federal law requires the continuation of certain programs.”); see also, e.g., T. Watanabe, “[California banned affirmative action in 1996. Inside the UC struggle for diversity](#),” L.A. Times (Oct. 31, 2022).

Regarding the effects of Proposition 209 in California, see generally materials discussed at <https://www.ucop.edu/academic-affairs/prop-209/>.

54. See LAO Analysis of Prop 209, *supra* fn. 73.

1 *Admission to University of California*

2 The California Constitution includes a provision related to the University of
3 California that provides, in part, that: “[N]o person shall be debarred admission to
4 any department of the university on account of race, religion, ethnic heritage, or
5 sex.”⁵⁵

6 EXPLORING “ON ACCOUNT OF SEX”

7 Section 1 of the ERA provides that “[e]quality of rights under the law shall not be
8 denied or abridged by the United States or by any state on account of sex.”⁵⁶ This
9 portion of the report will explore the meaning of “on account of sex.”

10 TERMINOLOGY

11 Terminology relating to “sex” includes gender, sexual orientation, and sex or
12 gender stereotypes. While related, these terms are distinct concepts.

13 “Sex”

14 Traditionally in western cultures, “sex” has been understood as referring to
15 biological sex, which was regarded as a binary characteristic whereby an individual
16 would be classified as either male or female based on biological attributes.

17 The website for the U.S. Centers for Disease Control (“CDC”) currently provides
18 the following definition for “sex”: “[a]n individual’s biological status as male,
19 female, or something else. Sex is assigned at birth and associated with physical
20 attributes, such as anatomy and chromosomes.”⁵⁷

55. Cal Const. [art. IX § 9\(f\)](#).

56. [H.J.Res. No. 208](#), 92nd Cong., 2d Sess. (1972) 86 Stat. 1523. The remainder of the ERA provides:
SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this
article.

SEC. 3. This amendment shall take effect two years after the date of ratification.

See also Congressional Research Service, [The Proposed Equal Rights Amendment: Contemporary
Ratification Issues](#), pp. 14-15, R42979 (Updated Dec. 23, 2019) (“CRS Report”), (reproducing text of
[H.J.Res. No. 208](#), 92nd Cong., 2d Sess. (1972) 86 Stat. 1523).

57. See CDC [Terminology](#). This webpage includes the following disclaimer:

Per a court order, HHS is required to restore this website as of 12:00 AM , January 29, 2025. Information
on this page may be modified and/or removed in the future subject to the terms of the court’s order and
implemented consistent with applicable law. Any information on this page promoting gender ideology is
extremely inaccurate and disconnected from truth. The Trump Administration rejects gender ideology due to
the harms and divisiveness it causes. This page does not reflect reality and therefore the Administration and
this Department reject it.

1 The “something else” in the CDC’s definition highlights the growing awareness
2 about the incomplete nature of the sex binary and the wider biological variation of
3 individuals, whose biological traits do not fully align with this binary.⁵⁸ “Intersex”
4 is an “umbrella term for differences in sex traits or reproductive anatomy.”⁵⁹

5 “Gender”

6 Very generally, while “sex” involves biological traits, “gender” involves social or
7 cultural characteristics or expectations, which can involve binary categories as
8 discussed above.⁶⁰ For instance, the World Health Organization defines gender as
9 “the characteristics of women, men, girls and boys that are socially constructed.
10 This includes norms, behaviors and roles associated with being a woman, man, girl
11 or boy, as well as relationships with each other.”⁶¹

12 Gender is also used in the context of gender identity and gender expression.
13 Gender identity refers to “One’s innermost concept of self as male, female, a blend
14 of both or neither – how individuals perceive themselves and what they call
15 themselves. One’s gender identity can be the same or different from their sex
16 assigned at birth.”⁶² This can include a wider range of options that may combine
17 different masculine and feminine characteristics, reject the binary notion of gender,
18 or encompasses multiple genders.⁶³ Gender expression is “[h]ow an individual
19 chooses to present their gender to others through physical appearance and behaviors,
20 such as style of hair or dress, voice, or movement.”⁶⁴ Gender expression can also

58. See generally interACT, “[What is intersex?](#)” last updated Jan. 26, 2021; C. Ainsworth, [Sex Redefined](#), Nature Magazine (Oct. 22, 2018) (article includes a spectrum with 9 categories of biological sex; the spectrum is bookended by the “typical male” and “typical female” categories); see also A.C. Edens Hurst, “[Differences of sex development](#),” Medline Plus, (defining “intersex” and identifying four intersex categories), reviewed March 12, 2024.

59. See interACT, “[What is intersex?](#)” last updated Jan. 26, 2021.

60. See, e.g., Becker T., Chin M., Bates N, ed., [Measuring Sex, Gender Identity, and Sexual Orientation](#), National Academies Press (2022).

61. World Health Organization, [Gender and health](#). This source also states:

Gender interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs. Gender and sex are related to but different from gender identity. Gender identity refers to a person’s deeply felt, internal and individual experience of gender, which may or may not correspond to the person’s physiology or designated sex at birth.

62. See Human Rights Campaign, Resources, [Sexual Orientation and Gender Identity Definitions](#).

63. See generally, e.g., Human Rights Campaign, Resources, [Glossary of Terms](#); PFLAG, [PFLAG National Glossary](#); It Gets Better, [Glossary](#); see also Laurel Wamsley, [A Guide to Gender Identity Terms](#), NPR (2021).

64. CDC, Adolescent and School Health, [Terminology](#); see also fn. 57, supra.

1 relate to gender stereotypes (i.e., when an individual’s gender expression is different
2 from the stereotypical expectations associated with gender).⁶⁵

3 “Cisgender” and “transgender” refer to the relationship between an individual’s
4 assigned sex and gender identity.⁶⁶ Different gender categories can recognize that a
5 person’s gender identity and gender expression may change over time and can
6 include an explicit rejection of the idea of a binary assignment.⁶⁷ And, some gender
7 identities are culture specific.⁶⁸

8 “Sexual Orientation”

9 Sexual orientation is defined as “the desire one has for emotional, romantic, and/or
10 sexual relationships with others based on their gender expression, gender identity,
11 and/or sex.”⁶⁹ “[S]exual orientation is usually discussed in terms of three categories:
12 heterosexual (having emotional, romantic or sexual attractions to members of the
13 other sex), gay/lesbian (having emotional, romantic or sexual attractions to
14 members of one’s own sex) and bisexual (having emotional, romantic or sexual
15 attractions to both men and women).”⁷⁰ But, as in the cases above, the traditional
16 (binary-focused) understanding of sexual orientation is expanding to encompass a
17 more diverse set of identities that reflect our growing understanding of the

65. See, e.g., id. (defining gender nonconforming as “[t]he state of one’s physical appearance or behaviors not aligning with societal expectations of their gender (a feminine boy, a masculine girl, etc.)”; see also *supra*, fn. 59).

66. See generally American Psychological Association (APA), APA Dictionary of Psychology, “[cisgender](#),” (defining “cisgender” as “having or relating to a gender identity that corresponds to the culturally determined gender roles for one’s birth sex”); “[transgender](#),” (defining “transgender” as “having or relating to a gender identity that differs from the culturally determined gender roles for one’s birth sex.”).

67. See, e.g., E. Matsuno et al., Am. Psychol. Ass’n Div. 44 (Soc’y for the Psychol. of Sexual Orientation and Gender Diversity), [Nonbinary Fact Sheet](#), (“The term nonbinary is used both as an umbrella term and a gender identity label to refer to people whose gender does not fall within the binary categories of man and woman. ... There are several different identity labels and experiences that fall under the nonbinary umbrella. For example, some people experience an absence of gender (e.g., agender, genderless), others experience a presence of multiple genders (e.g., bigender, pangender), others fluctuate between different genders (e.g., genderfluid, genderflux), or identify with third gender in-between or outside the gender binary (e.g., genderqueer, neutrois), and some partly identify with being a man or woman (e.g., demiboy, demigirl).”).

68. See generally J.A. Clarke, [They, Them, Theirs](#), 132 Harv. L. Rev. 894, 932 (Jan. 2019) (“Researchers highlight that nonbinary genders have existed ‘across time and place’ to challenge the view that humanity is naturally and inevitably divided into male and female categories. Historical and present-day examples include Indian Hijra, Thai Kathoey, Indonesian Waria, various Two-Spirit identities of First Nations tribes, and South American Machi identities, among others, each with a distinct meaning not reducible to man or woman.”); [A Map of Gender-Diverse Cultures](#), PBC Independent Lens, October 2023.

69. It Gets Better, [Glossary](#).

70. APA, [Understanding sexual orientation and homosexuality](#) (2008).

1 complexities of sex, gender, and orientation.⁷¹

2 “Sex or Gender Stereotypes”

3 Sex or gender stereotypes are cultural and societal expectations about attire,
4 behavior, and related matters that involve a person’s perceived sex or gender. Much
5 of the discussion of sex or gender stereotypes focuses on stereotypes connected to
6 the male/female binary.

7 The website of the United Nations Office of the High Commissioner for Human
8 Rights includes a discussion of gender stereotypes, which provides, in part:

9 A gender stereotype is a generalized view or preconception about
10 attributes or characteristics, or the roles that are or ought to be possessed by,
11 or performed by, women and men. A gender stereotype is harmful when it
12 limits women’s and men’s capacity to develop their personal abilities,
13 pursue their professional careers and/or make choices about their lives.

14 Whether overtly hostile (such as “women are irrational”) or seemingly
15 benign (“women are nurturing”), harmful stereotypes perpetuate
16 inequalities. For example, the traditional view of women as care givers
17 means that child care responsibilities often fall exclusively on women.

18 Further, gender stereotypes compounded and intersecting with other
19 stereotypes have a disproportionate negative impact on certain groups of
20 women, such as women from minority or indigenous groups, women with
21 disabilities, women from lower caste groups or with lower economic status,
22 migrant women, etc.

23 ...

24 Wrongful gender stereotyping is a frequent cause of discrimination
25 against women. It is a contributing factor in violations of a vast array of
26 rights such as the right to health, adequate standard of living, education,
27 marriage and family relations, work, freedom of expression, freedom of
28 movement, political participation and representation, effective remedy, and
freedom from gender-based violence.⁷²

29 Gender stereotypes can involve broad expectations about an individual’s societal
30 role and responsibilities based on gender but can also involve specific expectations
31 related to appearance and clothing choices.

32 FEDERAL STATUTES RELATED TO SEX DISCRIMINATION

33 Federal employment discrimination laws have a significant body of case law that
34 address many key issues as to the scope of “sex.”

71. See Becker T., Chin M., Bates N., ed. [Measuring Sex, Gender Identity, and Sexual Orientation](#), National Academies Press; APA style, [Sexual Orientation](#) (October 2024).

72. United Nations Human Rights, Office of the High Commissioner, [Gender stereotyping](#).

1 The history and development of Title IX of the Education Amendments of 1972
2 (“Title IX”), the federal Equal Pay Act of 1963, and the federal Civil Rights Act of
3 1964 (and amendments of that Act by the Pregnancy Discrimination Act of 1978)
4 provided a helpful context to inform the sex equality provision’s development.

5 **Title IX of the Education Amendments of 1972**

6 Title IX of the Education Amendments of 1972 (“Title IX”) provides protections
7 from discrimination based on sex “in education programs or activities that receive
8 federal financial assistance.”⁷³ On a national level, the law prohibits discrimination
9 against students based on sex, while providing various exceptions, including for
10 public educational institutions founded with a policy of admitting only students of
11 one sex.⁷⁴

12 **Equal Pay Act of 1963**

13 In 1963, Congress enacted the federal Equal Pay Act of 1963. Section 2 of the Act
14 declares its purpose is to correct wage differentials based on sex.⁷⁵ The Act provides,
15 in part,

16 No employer having employees subject to any provisions of this section
17 shall discriminate, within any establishment in which such employees are
18 employed, between employees on the basis of sex by paying wages to
19 employees in such establishment at a rate less than the rate at which he pays
20 wages to employees of the opposite sex in such establishment for equal
21 work on jobs the performance of which requires equal skill, effort, and
22 responsibility, and which are performed under similar working conditions,
23 except where such payment is made pursuant to (i) a seniority system; (ii) a
24 merit system; (iii) a system which measures earnings by quantity or quality
25 of production; or (iv) a differential based on any other factor other than sex:
26 Provided, That an employer who is paying a wage rate differential in
27 violation of this subsection shall not, in order to comply with the provisions
28 of this subsection, reduce the wage rate of any employee.⁷⁶

29 While this law was intended to be a sweeping remedy to address long-standing
30 inequities in pay based on an “ancient, but outmoded belief” relating to male and
31 female roles in society, the law’s practical effect has been more limited in scope.⁷⁷

73. See generally U.S. Department of Education, [Title IX and Sex Discrimination](#).

74. [20 U.S.C. 1681](#).

75. Pub. L. No. [88-38](#).

76. [29 U.S.C. § 206\(d\)\(1\)](#).

77. See generally Nat’l Womens L. Center, [Closing the “Factor Other than Sex” Loophole in the Equal Pay Act](#) (Apr. 11, 2011); American Bar Association, [The Paycheck Fairness Act](#).

1 One important way the Equal Pay Act’s effect has been blunted is the broad
2 interpretation that courts have accorded to the “factor other than sex” defense.
3 Courts have found that employers may consider prior salaries as a “factor other than
4 sex,” thereby perpetuating existing sex-based salary inequities.⁷⁸ Some courts have
5 even concluded that employers are not required to demonstrate that the “factor other
6 than sex” offered to justify disparate treatment is related to a legitimate business
7 purpose.⁷⁹

8 Since 1997, federal legislation to address these issues, as well as others, has been
9 introduced repeatedly, but has yet to become law.⁸⁰

10 **The Federal Civil Rights Act of 1964 (Title VII)**

11 Title VII of the federal Civil Rights Act of 1964 (“Title VII”) includes a provision
12 that protects against sex discrimination in employment. That provision provides, in
13 part:

14 It shall be an unlawful employment practice for an employer--

15 (1) to fail or refuse to hire or to discharge any individual, or otherwise to
16 discriminate against any individual with respect to his compensation,
17 terms, conditions, or privileges of employment, because of such
18 individual's race, color, religion, sex, or national origin...⁸¹

19 The scope of what constitutes “discriminat[ion] against any individual ... because
20 of ... sex” has been heavily litigated, and the case law helps clarify the definition.

21 Early on, courts and the Equal Employment Opportunity Commission (“EEOC”),
22 the federal agency created to enforce Title VII,⁸² considered the types of acts
23 constituting discrimination because of sex. Initially, the courts and EEOC took a
24 very narrow view, effectively finding that only rules treating the entire class of
25 women differently than the entire class of men would constitute prohibited
26 discrimination under the Act.

78. See generally Nat’l Womens L. Center, [Closing the “Factor Other than Sex” Loophole in the Equal Pay Act](#) (Apr. 11, 2011).

79. *Id.*

80. See American Bar Association, [The Paycheck Fairness Act](#); [Text and summary](#) of H.R. No. 7, 117th Cong., 1st Sess. (2021), Paycheck Fairness Act; H.R. No. 7, § 2(b)(4) (“The bona fide factor defense ... shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; (iii) is consistent with business necessity; and (iv) accounts for the entire differential in compensation at issue.”).

81. [42 U.S.C. § 2000-e2\(a\)](#).

82. See U.S. Equal Employment Opportunity Commission (EEOC), [Timeline of Important EEOC events](#).

1 For instance, “the EEOC officially opined that listing men’s positions and
2 women’s positions separately in job postings was simply helpful rather than
3 discriminatory.”⁸³

4 And, initially, courts found that rules discriminating against married women or
5 mothers did not constitute sex discrimination, as these classifications were
6 purportedly based on marital status or being a parent.⁸⁴

7 This narrow view of prohibited sex discrimination under Title VII was troubling
8 to many and prompted organizing related to civil rights for women, including the
9 founding of the National Organization for Women.⁸⁵

10 *2025 Executive Orders*

11 On January 20, 2025, a new federal administration was sworn into office and
12 issued a number of executive orders relevant to this study.⁸⁶ The staff concluded,

83. See *Bostock v. Clayton County* (2020) 590 U.S. 644, 678 citing C. Franklin, *Inventing the “Traditional Concept” of Sex Discrimination*, 125 Harv. L. Rev. 1307, 1340 (2012) (which, in turn, cites a Sept. 22, 1965 EEOC press release); see also National Organization for Women, [Founding](#).

84. See generally C. Franklin, *Living Textualism*, 2020 Sup. Ct. Rev. 119, 173-174. Compare, e.g., *Stroud v. Delta Air Lines, Inc.* (5th Cir. 1977) 544 F.2d 892, 893 (finding plaintiff suffered no sex discrimination being subject to a no marriage rule; “[C]ertain women stewardesses who are unmarried are favored over certain other women stewardesses who are married. As one of the all-female group of flight attendants employed by Delta, plaintiff suffered a discrimination, but it was based on marriage and not sex. Men were not favored over women; they simply were not involved in the functioning of the policy.”) with *Sprogis v. United Air Lines, Inc.* (7th Cir. 1971) 444 F.2d 1194, 1198, cert. denied 404 U.S. 991 (“It is irrelevant to this determination of discrimination that the no-marriage rule has been applied only to female employees falling into the single, narrowly drawn ‘occupational category’ of stewardess. Disparity of treatment violative of Section 703(a)(1) may exist whether it is universal throughout the company or confined to a particular position. Nor is the fact of discrimination negated by United’s claim that the female employees occupy a unique position so that there is no distinction between members of opposite sexes within the job category.”). See also Smithsonian National Air and Space Museum, [Meet the Flight Attendants Who Fought for Equality During the Civil Rights Era](#), (2021).

85. See National Organization for Women, [Founding](#).

86. Executive Order [14187](#), among other directives, defines “sex” as “an individual’s immutable biological classification as either male or female.” This executive order is subject to at least one legal challenge. See *Washington v. Trump* (U.S. W.D. Wash., 2025) Case No. 2:25-cv-00244-LK (granting in part a preliminary injunction).

[Executive Order 14173](#), entitled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, directs the Attorney General and the Secretary of Education to issue guidance to all institutions of higher learning, and state and local educational agencies receiving federal funds that they must comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) 600 U.S. 181. This order is subject to several legal challenges. See [National Association of Diversity Officers in Higher Education v. Trump](#), No. 25-333 (D. Md.); [National Association of Diversity Officers in Higher Education v. Trump](#), No. 25-1189 (4th Cir.); [National Urban League v. Trump](#), No. 25-471 (D.D.C.); and [Chicago Women In Trades v. Trump](#), No. 25-2005 (N. D. Ill.).

[Executive Order 14187](#), entitled *Protecting Children From Chemical and Surgical Mutilation*, among other items, states “it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called ‘transition’ of a child from one sex to another, and it will rigorously enforce all laws

however, these executive orders do not impact California law nor the staff’s analysis of state law or staff recommendations.⁸⁷

Sex-Plus Discrimination

In time, courts began to recognize that sex discrimination encompassed more than discrimination against the entire class of women and began to acknowledge nuances. For example, treating married women different from married men or mothers different from fathers could also constitute prohibited sex discrimination under Title VII. The shorthand term used to describe this type of discrimination against a distinct segment of women (e.g., mothers, married women) has been referred to as “sex-plus discrimination.” Initially, the theory was that sex-plus discrimination was not “sex discrimination.”⁸⁸

In *Phillips v. Martin Marietta Corporation*, the U.S. Supreme Court considered a case in which an employer implemented different hiring policies for women and men who had pre-school age children. The *per curiam* opinion stated:

Section 703(a) of the Civil Rights Act of 1964 requires that persons of like qualifications be given employment opportunities irrespective of their sex. The Court of Appeals therefore erred in reading this section as permitting one hiring policy for women and another for men—each having pre-school-age children. The existence of such conflicting family obligations, if demonstrably more relevant to job performance for a woman than for a man, could arguably be a basis for distinction under s 703(e) of the Act. But that is a matter of evidence tending to show that the condition in question ‘is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.’⁸⁹

While this decision acknowledged that a hiring policy that treated mothers

that prohibit or limit these destructive and life-altering procedures.” This order is subject to at two legal challenges. See *Washington v. Trump*, (U.S. W.D. Wash., 2025) Case No. 2:25-cv-00244-LK; *PFLAG Inc. v. Trump* (D. Md. 2025) [Case No. 1:25-cv-00337-BAH](#).

Executive Order [14201](#), “Keeping Men Out of Women’s Sports,” declared it the policy of the United States to rescind funding for educational programs “that deprive women and girls of fair athletic opportunities...” But see Educ. Code § [221.5\(f\)](#) which provides “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.” This executive order is subject to at least one legal challenge. See *Tirrell v. Edelbut* (U.S. D.N.H., 2025), [Case No. 1:24-cv-00251](#).

87. As a result of the Executive Orders, some, but not all, of the federal websites the previous memoranda for this study cited to have been changed, including removal of some content. When possible, the staff has found other sources for the information.

88. See B. Friedan, [Judge Carswell and the Sex Plus Doctrine](#), Testimony before the United States Senate Committee on the Judiciary (Jan. 29, 1970).

89. (1971) 400 U.S. 542, 544.

1 differently from fathers could run afoul of the law, it also left open the possibility
2 that the policy could be justified as a bona fide occupational qualification. Justice
3 Marshall’s concurring opinion addressed the bona fide occupational qualification
4 exception and the need for the exception to be construed narrowly:

5 ...I cannot agree with the Court's indication that a ‘bona fide
6 occupational qualification reasonably necessary to the normal operation of’
7 Martin Marietta's business could be established by a showing that some
8 women, even the vast majority, with pre-school-age children have family
9 responsibilities that interfere with job performance and that men do not
10 usually have such responsibilities. Certainly, an employer can require that
11 all of his employees, both men and women, meet minimum performance
12 standards, and he can try to insure compliance by requiring parents, both
13 mothers and fathers, to provide for the care of their children so that job
14 performance is not interfered with.

15 But the Court suggests that it would not require such uniform standards.
16 I fear that in this case, where the issue is not squarely before us, the Court
17 has fallen into the trap of assuming that the Act permits ancient canards
18 about the proper role of women to be a basis for discrimination. Congress,
19 however, sought just the opposite result.

20 By adding the prohibition against job discrimination based on sex to the
21 1964 Civil Rights Act Congress intended to prevent employers from
22 refusing ‘to hire an individual based on stereotyped characterizations of the
23 sexes.’ Even characterizations of the proper domestic roles of the sexes
24 were not to serve as predicates for restricting employment opportunity. The
25 exception for a ‘bona fide occupational qualification’ was not intended to
26 swallow the rule.

27 That exception has been construed by the [EEOC], whose regulations
28 are entitled to ‘great deference,’ to be applicable only to job situations that
29 require specific physical characteristics necessarily possessed by only one
30 sex. Thus the exception would apply where necessary ‘for the purpose of
31 authenticity or genuineness’ in the employment of actors or actresses,
32 fashion models, and the like. If the exception is to be limited as Congress
33 intended, the Commission has given it the only possible construction.

34 When performance characteristics of an individual are involved, even
35 when parental roles are concerned, employment opportunity may be limited
36 only by employment criteria that are neutral as to the sex of the applicant.⁹⁰

37 The *Phillips* case is generally recognized as the beginning of courts recognizing
38 sex-plus discrimination as “sex discrimination” under Title VII.⁹¹ In a 2009 legal
39 journal article, the sex-plus doctrine under Title VII was summarized as follows:

90. Id. at 544-47 (Marshall, J., concurring) (citations omitted).

91. See, e.g., F. Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, [83 Calif. L. Rev. 1](#), 148 (1995).

Under Title VII, courts have recognized specific protections for some “sex-plus” plaintiffs, that is, employees who are classified on the basis of sex plus some ostensibly neutral characteristic. Minority women, married women, and women with young children receive special protection under the “sex-plus” doctrine but not all gender subclasses are protected. To prevail on a “sex-plus” claim, a plaintiff must demonstrate that individuals of the opposite sex who did not possess the plaintiff’s additional characteristic were treated more favorably.⁹²

The universe of characteristics constituting “plus” characteristics for the purposes of this doctrine remain unclear, however. Court decisions from the years following the *Phillips* decision declined to recognize certain “plus” considerations,⁹³ and a recent Supreme Court decision suggests a broad view of the types of characteristics that could be “plus” considerations.⁹⁴

Pregnancy Discrimination

The legal history of Title VII’s treatment of pregnancy has been more complicated, involving both litigation and legislation.

This complication seems to arise, at least in part, because pregnancy can only be experienced by certain workers.⁹⁵ As indicated below, courts seem to struggle to identify to whom a worker claiming pregnancy discrimination should be compared.⁹⁶ Viewed in one light, simply failing to address and accommodate pregnancy in the workplace could be, as in the material quoted below, described as facially nondiscriminatory, as the rule applies equally to everyone, but this ignores the very real practical consequences that such a rule will fall entirely on pregnant workers, a class that is necessarily circumscribed based on sex-based reproductive traits.

92. L.C. Bornstein, Title VII of the Civil Rights Act of 1964, 10 Geo. J. Gender & L. 639, 643 (2009) (footnotes omitted). The example cited for a gender subclass that is not protected is men with long hair. *Id.* at n. 31 (citing *Willingham v. Macon Tel. Publ'g Co.* (5th Cir. 1975) 507 F.2d 1084, 1092).

93. See, e.g., *Smith v. Liberty Mut. Ins. Co.* (5th Cir. 1978) 569 F.2d 325, 327 (declining to find sex discrimination where “the claim is not that Smith was discriminated against because he was a male, but because as a male, he was thought to have those attributes more generally characteristic of females and epitomized in the descriptive ‘effeminate’”).

94. See, e.g., *Bostock v. Clayton County* (2020) 590 U.S. 644, 140 S.Ct. 1731, 1742 (“Nor does it matter that, when an employer treats one employee worse because of that individual’s sex, other factors may contribute to the decision. Consider an employer with a policy of firing any woman he discovers to be a Yankees fan. Carrying out that rule because an employee is a woman and a fan of the Yankees is a firing “because of sex” if the employer would have tolerated the same allegiance in a male employee.”).

95. See generally C.M. Cahill, [The New Maternity](#), 133 Harv. L. Rev. 2221, 2284-88 (May 2020).

96. See generally W.W. Williams, [Equality’s Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate](#), 13 N.Y.U. Rev. of L. & Social Change 325 (1984-85).

1 In 1976, the U.S. Supreme Court considered whether an employer’s exclusion of
2 pregnancy-related disabilities from its disability insurance “package” constituted
3 sex discrimination under Title VII. The Court found, contrary to EEOC guidelines,
4 that this exclusion was not sex discrimination:

5 The “package” ... is facially nondiscriminatory in the sense that “(t)here
6 is no risk from which men are protected and women are not. Likewise, there
7 is no risk from which women are protected and men are not.” ... For all that
8 appears, pregnancy-related disabilities constitute an additional risk, unique
9 to women, and the failure to compensate them for this risk does not destroy
10 the presumed parity of the benefits, accruing to men and women alike,
11 which results from the facially evenhanded inclusion of risks.⁹⁷

12 Not long after that decision, Congress amended Title VII by enacting the
13 Pregnancy Discrimination Act of 1978.⁹⁸ That Act included a provision that
14 expressly defined sex to include pregnancy. Specifically, the act added the following
15 language to the law:

16 The terms “because of sex” or “on the basis of sex” include, but are not
17 limited to, because of or on the basis of pregnancy, childbirth, or related
18 medical conditions; and women affected by pregnancy, childbirth, or
19 related medical conditions shall be treated the same for all employment-
20 related purposes, including receipt of benefits under fringe benefit
21 programs, as other persons not so affected but similar in their ability or
22 inability to work.....⁹⁹

23 Although this law now makes clear that pregnancy discrimination is sex
24 discrimination for the purposes of Title VII,¹⁰⁰ this law did not fully resolve the
25 obligations of employers with respect to pregnant employees, as can be seen in later
26 case law. In particular, courts were asked to consider the responsibility of an
27 employer, under this law, to provide accommodations to pregnant workers in their
28 workplace (e.g., a stool to avoid extended periods of standing) or assignments (e.g.,

97. *General Electric Co. v. Gilbert* (1976) 429 U.S. 125, 138-39 (citations omitted).

98. See [Pub. L. 95-555](#) (1978).

99. [42 U.S.C. § 2000e\(k\)](#).

100. See J.C. Suk, [Justice Ginsberg’s Cautious Legacy for the Equal Rights Amendment](#), 110 Geo. L. J. 1391, 1410-11 (2022) (“In the years following the ERA’s adoption by Congress, the number of women elected to Congress doubled, and they formed a bipartisan Congresswomen’s Caucus in 1977, which organized efforts to advance legislation on women’s issues, including pregnancy discrimination and the ERA deadline extension. Congress overruled *Gilbert v. General Electric* by adopting the Pregnancy Discrimination Act in 1978, in the same month that it voted to extend the ERA deadline. The statute provided that discrimination because of sex under Title VII encompassed discrimination because of pregnancy, childbirth, or related medical conditions. But the statutory intervention did not change the status of pregnancy discrimination under the Equal Protection Clause.” (citations omitted)).

1 light duty assignment to avoid heavy lifting).

2 In 2015, the U.S. Supreme Court considered a pregnancy discrimination claim
3 based on the employer’s failure to offer an accommodation to a pregnant employee.
4 In *Young v. United Parcel Service (UPS)*, the pregnant employee, a UPS driver, was
5 directed by medical practitioners not to lift more than 20 pounds, due to
6 pregnancy.¹⁰¹ This limitation conflicted with a general requirement of UPS that
7 drivers be able to lift 70 pounds.¹⁰² Rather than offer an accommodation (e.g., a
8 temporary light duty assignment), UPS simply told Young that she could not work
9 while under a lifting restriction.¹⁰³ In assessing whether UPS’s practice of granting
10 accommodations to certain classes of workers (i.e., those injured on the job, those
11 with a disability covered by the Americans with Disabilities Act,¹⁰⁴ those who lost
12 their Department of Transportation certification), but not pregnant workers was
13 discriminatory,¹⁰⁵ the court stated:

14 In our view, the [Civil Rights] Act requires courts to consider the extent
15 to which an employer's policy treats pregnant workers less favorably than it
16 treats nonpregnant workers similar in their ability or inability to work. And
17 here — as in all cases in which an individual plaintiff seeks to show
18 disparate treatment through indirect evidence — it requires courts to
19 consider any legitimate, nondiscriminatory, nonpretextual justification for
20 these differences in treatment. Ultimately the court must determine whether
21 the nature of the employer's policy and the way in which it burdens pregnant
22 women shows that the employer has engaged in intentional

101. *Young v. United Parcel Serv.* (2015) 575 U.S. 206, 211.

102. *Id.*

103. *Id.*

104. The decision indicates that the Americans with Disabilities Act (“ADA”) was amended in a manner that could affect the treatment of pregnancy-related disabilities. See *id.* at 218 (ADA “then protected only those with permanent disabilities”), 218-19 (“We note that statutory changes made after the time of Young’s pregnancy may limit the future significance of our interpretation of the Act. In 2008, Congress expanded the definition of ‘disability’ under the ADA to make clear that ‘physical or mental impairment[s] that substantially limi[t]’ an individual’s ability to lift, stand, or bend are ADA-covered disabilities. As interpreted by the EEOC, the new statutory definition requires employers to accommodate employees whose temporary lifting restrictions originate off the job.” (citation omitted)).

Later commentary (and enactment of the Pregnant Workers Fairness Act) indicates that, in practice, these 2008 ADA changes did not sufficiently address the law governing pregnancy-related accommodation. See A Better Balance, [The Pregnant Workers Fairness Act Legal Background](#) (updated Jan. 12, 2023), (“[E]ven though Congress expanded the ADA in 2008 and in theory it should provide accommodations for workers with pregnancy-related disabilities, courts have interpreted the ADA Amendments Act in a way that did little to expand coverage even for those pregnant workers with serious health complications.

As one court recently concluded in 2018, “Although the 2008 amendments broadened the ADA’s definition of disability, these changes only have had a modest impact when applied to pregnancy-related conditions.” (citation omitted)).

105. *Young*, 575 U.S. at 211-212.

1 discrimination.¹⁰⁶

2 The decision indicates that the lower courts considered whether, as a pregnant
3 worker, Young was similarly situated to the workers granted accommodation under
4 UPS policy versus other injured workers who would not be granted
5 accommodation.¹⁰⁷ While commentary indicates that the *Young v. UPS* decision was
6 an important step forward for pregnant workers because the decision indicates that
7 pregnancy accommodations may be required in some circumstances, the decision's
8 multi-step balancing test for assessing when such accommodations must be
9 extended to pregnant employees left many questions unanswered.¹⁰⁸

10 The federal Pregnant Workers Fairness Act was enacted in 2022,¹⁰⁹ which
11 provided more clarity as to when employers are obligated to provide
12 accommodations to pregnant workers. Specifically, the Pregnant Workers Fairness
13 Act provides an employer must “make reasonable accommodations to the known
14 limitations [of an employee] related to the pregnancy, childbirth, or related medical
15 conditions...unless...the accommodation would impose an undue hardship on the”
16 employer's business operations.¹¹⁰

17 *Harassment*

18 In describing the legal history regarding Title VII sex discrimination claims based
19 on harassment, Professor Reva B. Siegel wrote:

20 At first, courts simply refused to acknowledge that sexual harassment

106. *Id.* at 210-11 (emphasis added and citation omitted).

107. *Id.* at 217-18 (summarizing the Fourth Circuit opinion and conclusions regarding to whom Young should be compared as follows:

[I]t believed that Young was different from those workers who were “disabled under the ADA” (which then protected only those with permanent disabilities) because Young was “not disabled”; her lifting limitation was only “temporary and not a significant restriction on her ability to perform major life activities.” Young was also different from those workers who had lost their DOT certifications because “no legal obstacle stands between her and her work” and because many with lost DOT certifications retained physical (i.e., lifting) capacity that Young lacked. And Young was different from those “injured on the job because, quite simply, her inability to work [did] not arise from an on-the-job injury.” Rather, Young more closely resembled “an employee who injured his back while picking up his infant child or ... an employee whose lifting limitation arose from her off-the-job work as a volunteer firefighter,” neither of whom would have been eligible for accommodation under UPS’ policies (citations omitted).)

108. Nat’l Women’s Law Center, [The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job](#) (Aug. 2021); see also [Nat’l Partnership for Women and Families, The Pregnant Workers Fairness Act Factsheet](#) (Mar. 2021) ; see also L. Prine, L. Morris, & G. deFiebre, [Helping Pregnant Women Keep Their Jobs](#), 94 Am. Family Physician 494 (Sept. 15, 2016).

109. Pregnant Workers Fairness Act, enacted as part of H.R. 2617, 117th Cong. (2022), [Pub. L. No. 117-328](#); see also J.L. Grossman, [The Pregnant Workers Fairness Act: A Long-Awaited Victory for Pregnant Workers](#), Verdict from Justia (Jan. 6, 2023).

110. Public Law Number [117-328](#), § 103.

1 had anything to do with employment discrimination on the basis of sex.
2 Sexual harassment was rejected as a personal matter having nothing to do
3 with work or a sexual assault that just happened to occur at work.
4 Alternatively, judges reasoned that sexual harassment was natural and
5 inevitable and nothing that law could reasonably expect to eradicate from
6 work. But the central ground on which courts resisted recognizing the claim
7 was simply that sexual harassment was not discrimination “on the basis of
8 sex.” It could happen to a man or woman or both; even if its harms were
9 inflicted on women only, they were not inflicted on all women, only those
10 who refused their supervisors’ advances.¹¹¹

11 This initial reluctance of courts to recognize harassment as sex discrimination is
12 similar to the issues discussed above (and relies on similar objections to those for
13 sex-plus discrimination claims, i.e., the harassment only affects a subclass of
14 women).

15 In the mid-1980s, U.S. Supreme Court case law recognized that, consistent with
16 EEOC guidelines, sexual harassment was a form of prohibited sex discrimination
17 under Title VII.¹¹² The decision describes the history leading up to the court’s
18 determination:

19 [I]n 1980 the EEOC issued Guidelines specifying that “sexual
20 harassment,” as there defined, is a form of sex discrimination prohibited by
21 Title VII. ... The EEOC Guidelines fully support the view that harassment
22 leading to noneconomic injury can violate Title VII.

23 In defining “sexual harassment,” the Guidelines first describe the kinds
24 of workplace conduct that may be actionable under Title VII. These include
25 “[u]nwelcome sexual advances, requests for sexual favors, and other verbal
26 or physical conduct of a sexual nature.” Relevant to the charges at issue in
27 this case, the Guidelines provide that such sexual misconduct constitutes
28 prohibited “sexual harassment,” whether or not it is directly linked to the
29 grant or denial of an economic quid pro quo, where “such conduct has the
30 purpose or effect of unreasonably interfering with an individual’s work
31 performance or creating an intimidating, hostile, or offensive working
32 environment.”

33 In concluding that so-called “hostile environment” (i.e., non quid pro
34 quo) harassment violates Title VII, the EEOC drew upon a substantial body
35 of judicial decisions and EEOC precedent holding that Title VII affords
36 employees the right to work in an environment free from discriminatory
37 intimidation, ridicule, and insult. ...

38 Since the Guidelines were issued, courts have uniformly held, and we
39 agree, that a plaintiff may establish a violation of Title VII by proving that

111. R.B. Siegel, [A Short History of Sexual Harassment](#), Introduction to C.A. MacKinnon & R.B. Siegel, eds., *Directions in Sexual Harassment Law*, at 11 (2003) (citations omitted).

112. See *Meritor Sav. Bank v. Vinson* (1986) 477 U.S. 57.

1 discrimination based on sex has created a hostile or abusive work
2 environment.¹¹³

3 In more recent cases, the U.S. Supreme Court provided more detail as to what
4 harassment is actionable under Title VII, as well as addressing liability questions.¹¹⁴

5 In *Oncale v. Sundowner Offshore Services, Inc.*, the Court concluded that same-
6 sex sexual harassment claims are covered by Title VII's sex discrimination
7 prohibition.¹¹⁵ The decision provides some additional explanation as to what forms
8 of harassment could be sex discrimination:

9 Courts and juries have found the inference of discrimination easy to
10 draw in most male-female sexual harassment situations, because the
11 challenged conduct typically involves explicit or implicit proposals of
12 sexual activity; it is reasonable to assume those proposals would not have
13 been made to someone of the same sex. The same chain of inference would
14 be available to a plaintiff alleging same-sex harassment, if there were
15 credible evidence that the harasser was homosexual. But harassing conduct
16 need not be motivated by sexual desire to support an inference of
17 discrimination on the basis of sex. A trier of fact might reasonably find such
18 discrimination, for example, if a female victim is harassed in such sex-
19 specific and derogatory terms by another woman as to make it clear that the
20 harasser is motivated by general hostility to the presence of women in the
21 workplace. A same-sex harassment plaintiff may also, of course, offer direct
22 comparative evidence about how the alleged harasser treated members of
23 both sexes in a mixed-sex workplace. Whatever evidentiary route the
24 plaintiff chooses to follow, he or she must always prove that the conduct at
25 issue was not merely tinged with offensive sexual connotations, but actually
26 constituted "discrimina[tion] ... because of ... sex."¹¹⁶

27 *Sex/Gender Stereotype Discrimination*

28 Another important legal development in employment discrimination law was the
29 U.S. Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, a case
30 involving a claim of sex discrimination based on the imposition of sex or gender
31 stereotypes. As indicated below, these stereotypes can involve differentiated
32 behavior expectations or dress and grooming standards for employees.

113. Id. at 65-66 (citations omitted).

114. See, e.g., *Harris v. Forklift Sys., Inc.* (1993) 510 U.S. 17; *Burlington Industries, Inc. v. Ellerth* (1998) 524 U.S. 742.

115. *Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75.

116. Id. at 80-81.

1 In *Price Waterhouse v. Hopkins*, the Court found that Title VII’s prohibition on
2 sex discrimination covered discrimination due to failure to conform to sex
3 stereotypes.¹¹⁷

4 In that case, the plaintiff, Ms. Hopkins, had been advised to “walk more
5 femininely, talk more femininely, dress more femininely, wear make-up, have her
6 hair styled, and wear jewelry” to improve her chances for partnership.¹¹⁸ The
7 plurality opinion stated:

8 It takes no special training to discern sex stereotyping in a description
9 of an aggressive female employee as requiring “a course at charm school.”
10 Nor, turning to Thomas Beyer’s memorable advice to Hopkins, does it
11 require expertise in psychology to know that, if an employee’s flawed
12 “interpersonal skills” can be corrected by a soft-hued suit or a new shade of
13 lipstick, perhaps it is the employee’s sex and not her interpersonal skills that
14 has drawn the criticism.

15 ...

16 The District Judge acknowledged that Hopkins’ conduct justified
17 complaints about her behavior as a senior manager. But he also concluded
18 that the reactions of at least some of the partners were reactions to her as a
19 woman manager. Where an evaluation is based on a subjective assessment
20 of a person’s strengths and weaknesses, it is simply not true that each
21 evaluator will focus on, or even mention, the same weaknesses. Thus, even
22 if we knew that Hopkins had “personality problems,” this would not tell us
23 that the partners who cast their evaluations of Hopkins in sex-based terms
24 would have criticized her as sharply (or criticized her at all) if she had been
25 a man. It is not our job to review the evidence and decide that the negative
26 reactions to Hopkins were based on reality; our perception of Hopkins’
27 character is irrelevant. We sit not to determine whether Ms. Hopkins is nice,
28 but to decide whether the partners reacted negatively to her personality
29 because she is a woman.¹¹⁹

30 Later cases applying the reasoning in *Price Waterhouse* concluded Title VII’s sex
31 discrimination protection should be understood to encompass gender and sexual
32 orientation discrimination, as these forms of discrimination involve a failure to
33 conform to expectations and stereotypes based on sex.¹²⁰ In a more recent U.S.

117. (1989) 490 U.S. 228.

118. Id. at 235.

119. Id. at 256-58.

120. See, e.g., *Schwenck v. Hartford* (9th Cir. 2000) 204 F.3d 1187, 1202 (“Thus, under *Price Waterhouse*, ‘sex’ under Title VII encompasses both sex — that is, the biological differences between men and women — and gender. Discrimination because one fails to act in the way expected of a man or woman is forbidden under Title VII.”); *Glenn v. Brumby* (11th Cir. 2011) 663 F.3d 1312, 1317 (“Accordingly, discrimination against a transgender individual because of her gender-nonconformity is sex discrimination,

1 Supreme Court case, discussed below, the Court determined that sexual orientation
2 and gender discrimination are “sex discrimination” for the purposes of Title VII.

3 *Sexual Orientation and Gender Identity Discrimination*

4 In 2020, the U.S. Supreme Court considered three consolidated cases involving
5 claims of employment discrimination on the basis of sexual orientation and gender
6 identity.¹²¹ In *Bostock v. Clayton County*, the Court concluded that such
7 discrimination was prohibited sex discrimination under Title VII.

8 The statute's message for our cases is equally simple and momentous:
9 An individual's homosexuality or transgender status is not relevant to
10 employment decisions. That's because it is impossible to discriminate
11 against a person for being homosexual or transgender without
12 discriminating against that individual based on sex. Consider, for example,
13 an employer with two employees, both of whom are attracted to men. The
14 two individuals are, to the employer's mind, materially identical in all
15 respects, except that one is a man and the other a woman. If the employer
16 fires the male employee for no reason other than the fact he is attracted to
17 men, the employer discriminates against him for traits or actions it tolerates
18 in his female colleague. Put differently, the employer intentionally singles
19 out an employee to fire based in part on the employee's sex, and the affected
20 employee's sex is a but-for cause of his discharge. Or take an employer who
21 fires a transgender person who was identified as a male at birth but who
22 now identifies as a female. If the employer retains an otherwise identical
23 employee who was identified as female at birth, the employer intentionally

whether it's described as being on the basis of sex or gender. Indeed, several circuits have so held. ... These instances of discrimination against plaintiffs because they fail to act according to socially prescribed gender roles constitute discrimination under Title VII according to the rationale of *Price Waterhouse*.”); *Macy v. Holder* (April 20, 2012) EEOC Appeal No. 0120120821, 2012 WL 1435995, at *7 (“Since *Price Waterhouse*, courts have widely recognized the availability of the sex stereotyping theory as a valid method of establishing discrimination ‘on the basis of sex’ in many scenarios involving individuals who act or appear in gender-nonconforming ways. And since *Price Waterhouse*, courts also have widely recognized the availability of the sex stereotyping theory as a valid method of establishing discrimination ‘on the basis of sex’ in scenarios involving transgender individuals.” (footnote omitted)); *Baldwin v. Fox* (July 16, 2015) EEOC Appeal No. 0120133080, 2015 WL 4397641, at *7–8 (“Sexual orientation discrimination also is sex discrimination because it necessarily involves discrimination based on gender stereotypes. In the wake of *Price Waterhouse*, courts and the Commission have recognized that lesbian, gay, and bisexual individuals can bring claims of gender stereotyping under Title VII if such individuals demonstrate that they were treated adversely because they were viewed — based on their appearance, mannerisms, or conduct — as insufficiently ‘masculine’ or ‘feminine.’ But as the Commission and a number of federal courts have concluded in cases dating from 2002 onwards, discrimination against people who are lesbian, gay, or bisexual on the basis of gender stereotypes often involves far more than assumptions about overt masculine or feminine behavior.

Sexual orientation discrimination and harassment ‘[are] often, if not always, motivated by a desire to enforce heterosexually defined gender norms.’” (footnotes omitted)).

See also generally S. Buchert, Alliance for Justice Blog Post, [Price Waterhouse v. Hopkins at Thirty](#) (May 1, 2019).

121. *Bostock v. Clayton County* (2020) 590 U.S. 644.

1 penalizes a person identified as male at birth for traits or actions that it
2 tolerates in an employee identified as female at birth. Again, the individual
3 employee's sex plays an unmistakable and impermissible role in the
4 discharge decision.¹²²

5 Prior to and since the *Bostock* decision, there have been efforts to amend Title VII
6 to expressly list sexual orientation and gender identity as prohibited grounds for
7 discrimination.¹²³

8 In early 2021, after the *Bostock* decision, former President Biden issued an
9 executive order addressing SOGI discrimination. That order provided, in part:

10 All persons should receive equal treatment under the law, no matter their
11 gender identity or sexual orientation.

12 These principles are reflected in the Constitution, which promises equal
13 protection of the laws. These principles are also enshrined in our Nation's
14 anti-discrimination laws, among them Title VII of the Civil Rights Act of
15 1964, as amended. In *Bostock v. Clayton County*, the Supreme Court held
16 that Title VII's prohibition on discrimination "because of . . . sex" covers
17 discrimination on the basis of gender identity and sexual orientation. Under
18 *Bostock's* reasoning, laws that prohibit sex discrimination — including Title
19 IX of the Education Amendments of 1972, as amended, the Fair Housing
20 Act, as amended, and section 412 of the Immigration and Nationality Act,
21 as amended, along with their respective implementing regulations —
22 prohibit discrimination on the basis of gender identity or sexual orientation,
23 so long as the laws do not contain sufficient indications to the contrary.

24 Discrimination on the basis of gender identity or sexual orientation
25 manifests differently for different individuals, and it often overlaps with
26 other forms of prohibited discrimination, including discrimination on the
27 basis of race or disability. For example, transgender Black Americans face
28 unconscionably high levels of workplace discrimination, homelessness, and
29 violence, including fatal violence.

30 It is the policy of my Administration to prevent and combat
31 discrimination on the basis of gender identity or sexual orientation, and to
32 fully enforce Title VII and other laws that prohibit discrimination on the
33 basis of gender identity or sexual orientation. It is also the policy of my
34 Administration to address overlapping forms of discrimination.¹²⁴

35 The order directed federal agencies to review agency actions (including
36 regulations and policies) to "fully implement statutes that prohibit sex
37 discrimination and the policy set forth in section 1 of this order [reproduced, in part,

122. (2020) 590 U.S. 644 at 660.

123. See generally Federal Register, [Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#), (Jan. 20, 2021).

124. Exec. Order No. [13988](#), § 1, 86 Fed. Reg. 7023 (Jan. 20, 2021).

above].”¹²⁵

CALIFORNIA STATUTES RELATED TO SEX DISCRIMINATION

California broadly prohibits sex discrimination, and this is reflected through the passage of various bills that expressly protect “sex” and related categories. For instance, Assembly Bill 887 (Atkins 2011) made changes across several codes (Government, Civil, Labor, and Insurance Codes) regarding the scope of certain anti-discrimination protections to make clear that these protections covered gender identity and gender expression.

California law use inconsistent terms in identifying the scope of the protection, though. For instance, the Education Code includes provisions governing “sex-segregated” activities and “single gender” schools.

Despite various smaller differences across its anti-discrimination provisions, California law in general, broadly extends protections for sex and gender. California’s commitment can be seen across two decades of efforts expressly including and defining language to extend the widest level of protections.

Gender Nondiscrimination Act (AB 887, Atkins)

In 2011, the Legislature enacted Assembly Bill 887, the Gender Nondiscrimination Act.¹²⁶ This bill amended numerous provisions in the California Codes requiring equal rights and opportunities in various areas, including education, housing, and employment, regardless of gender and prohibit discrimination based on specified characteristics, including sex and gender.¹²⁷ The bill defined “gender” to mean a person’s gender identity and gender expression.¹²⁸ AB 887 also amended prohibitions on discrimination to expressly include gender, gender identity, and gender expression among the enumerated protected characteristics.¹²⁹

125. Id. § 2(b). For examples of agency actions consistent with this directive, see, e.g., U.S. Dep’t of Justice Memorandum from Principal Deputy Assistant Attorney General Pamela S. Karlan, [re Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972](#) (Mar. 26, 2021); U.S. Dep’t of Food and Ag. Food and Nutrition Serv. Policy Memo CRD 01-2022, [Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update](#) (May 5, 2022).

126. [2011 Cal. Stat. ch. 719](#) (AB 887, Atkins); see also [Senate Judiciary Committee Analysis](#) of AB 887 (Jun. 13, 2011), p. 6 (quoting bill author).

127. [2011 Cal. Stat. ch. 719](#) (AB 886, Atkins).

128. The bill also defined “gender expression” to mean “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” See, e.g., [2011 Cal. Stat. ch. 719](#), § 1 (AB 886, Atkins) (amending Civ. Code § 51).

129. Id.

1 For example, the Gender Nondiscrimination Act amended the Unruh Civil Rights
2 Act¹³⁰ to clarify that “sex” includes “gender” and that “gender,” in turn, includes a
3 “person’s gender identity and gender expression.”¹³¹

4 The goal of the Gender Nondiscrimination Act, as described by the bill’s author,
5 then-Assembly Member Toni Atkins, was to reduce uncertainty and ambiguity
6 about the scope of the protections of California’s anti-discrimination laws by
7 expressly protecting gender identity and gender expression.¹³² An analysis of the bill
8 noted that “[w]hile the Unruh Act and other similar anti-discrimination statutes
9 protect non-enumerated classifications such as transgender[] Californians, this fact
10 is not always known by those the law was intended to protect, or by employers,
11 housing authorities, and others vested with the responsibility of ensuring that current
12 anti-discrimination laws are enforced.”¹³³

13 Thus, this legislation clarifies that “gender identity” and “gender expression” are
14 expressly protected categories under the Unruh Civil Rights Act and other anti-
15 discrimination statutes in California,¹³⁴ some of which are discussed individually
16 below.

17 **Fair Employment and Housing Act**

18 In general, California’s Fair Employment and Housing Act (“FEHA”) prohibits
19 employment discrimination on the basis of “sex, gender, gender identity, gender
20 expression...and sexual orientation.”¹³⁵ The Act also prohibits the owner of any
21 housing accommodation from discriminating or harassing any person based on

130. Civ. Code § [51](#).

131. Civ. Code § [51](#), as amended by [2011 Cal. Stat. ch. 719](#), § 1 (AB 887, Atkins). “Gender expression” is also defined to mean “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Id.

132. See [Assembly Floor Analysis](#) of AB 887 (Aug. 31, 2011), pp. 2-3 (quoting bill author).

133. Id. at p. 2.

134. See Lab. Code § [3600\(c\)](#) in which the addition of AB 887 clarified that in the scope of conditions for workers’ compensation liability “no personal connection can be deemed to exist between the employee and the third party based solely on the third party’s personal belief relating to their perception of the employee’s ... sex, gender, gender identity, gender expression, or sexual orientation”; see also Ins. Code §§ [676.10](#), [10140](#), [10140.2](#), and [12693.28](#) in which AB 887 amended provisions that define “gender,” including Section 10140 which states that “no admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation.”

135. Gov’t Code § [12940](#); see also id. § [12940\(j\)\(1\)](#) (noting that in addition to prohibiting discrimination, the FEHA also prohibits harassment because of these characteristics); [42 U.S.C. § 2000e](#) (describing similar protections under federal law).

those traits.¹³⁶

General Protections under FEHA Relating to Scope of “Sex” and “Gender”

When the FEHA was enacted, it prohibited discrimination because of sex,¹³⁷ but did not define the term sex.¹³⁸ Subsequent amendments added a definition of sex that included pregnancy and related issues¹³⁹ and amended the protection against discrimination to expressly cover sexual orientation and added a definition of sexual orientation.¹⁴⁰

In 2003, Assembly Bill 196 clarified that the scope of sex discrimination and harassment prohibited under the FEHA includes discrimination and harassment based on the person’s gender. Specifically, AB 196 expanded “the prohibition on sexual discrimination and harassment by including gender, as defined, in the definition of sex.”¹⁴¹

AB 196’s author, Assembly Member Mark Leno, noted the importance of this bill given the effect that gender-based discrimination has on one’s ability to obtain housing and employment. Assembly Member Leno also stated that the intention of this bill was to protect transgender individuals, as well as those who do not “possess traits or project conduct stereotypically associated with his or her sex.”¹⁴²

Importantly, AB 887, the Gender Nondiscrimination Act, also requires an employer to allow an employee to appear or dress “consistently with the employee’s gender expression.”¹⁴³ This contrasts with previous statutory language requiring “consisten[cy] with the employee’s gender identity.”¹⁴⁴

Pregnancy-Related Protections

As indicated above, FEHA offers protections against discrimination for pregnancy

136. Gov’t Code § [12955](#).

137. The law also prohibited discrimination because of “race, religious creed, color, national origin, ancestry, physical handicap, medical condition, [and] marital status.” See, e.g., Gov’t Code § [12940](#), as added by 1980 Cal. Stat. ch. 992, § 4.

138. See, e.g., Gov’t Code §§ [12925-12928](#) (definitions); [12940](#) (governing employment discrimination); [12955](#) (governing housing discrimination); see also Gov’t Code § [12945](#) (providing employment protections for pregnancy, childbirth, and related medical conditions).

139. [1990 Cal. Stat. ch. 15](#), § 1 (SB 1027, Petris).

140. [1999 Cal. Stat. ch. 592](#), §§ 3.7, 7.5 (AB 1001, Villaraigosa).

141. [Legislative Counsel’s Digest](#) for AB 196.

142. [Assembly Committee on Labor and Employment Analysis](#) of AB 196 (Mar. 18, 2003), p. B (quoting bill author).

143. [Legislative Counsel’s Digest](#) for AB 887.

144. Id.

1 and related conditions. Originally, some of these pregnancy protections used
2 gender-specific language (e.g., referring to a pregnant “female employee”).¹⁴⁵

3 In 2017, FEHA was amended to use more inclusive language for the pregnancy-
4 related provisions. Assembly Bill 1556 revised the FEHA provisions for pregnancy-
5 related employment protections by deleting gender-specific personal pronouns and
6 making these provisions gender neutral. More specifically, the bill deleted
7 references to “female person” and “female employee,” replacing them with
8 “person” and “employee.”¹⁴⁶

9 The bill’s author, Assembly Member Mark Stone, noted that AB 1556 was
10 consistent with “previous legislative efforts to remove gender-specific terms from
11 California’s Codes, and is consistent with the FEHA’s goals of ensuring that the Act
12 is broadly construed.”¹⁴⁷ The analysis also notes that, without AB 1556, the FEHA
13 would be inconsistent with California’s Unruh Civil Rights Act. Prior to AB 1556,
14 the FEHA protected pregnant individuals through gender-specific language, despite
15 the fact that the Unruh Act prohibits discrimination based on gender identity. Given
16 the broader policy considerations supporting the use of gender-neutral terms in the
17 FEHA generally, the bill analysis notes that “it makes sense to apply that change
18 across the breadth of the Act, rather than merely limiting that change to a few
19 provisions of the Act.”¹⁴⁸ Thus, this bill replaced *all* gender-specific references in
20 the FEHA with gender-neutral language.

21 Along these lines, a later bill analysis notes that “California is moving toward
22 greater recognition that a rigid, fixed, and binary conception of gender neither
23 describes reality well nor promotes the truest and fullest expressions of
24 ourselves.”¹⁴⁹ This changing understanding is reflected in California’s civil rights
25 laws that prohibit discrimination on the grounds of gender identity.¹⁵⁰ With these
26 amendments, the FEHA would be consistent with this approach by ensuring the
27 statutory language does not “in and of itself exclude people who are not, or do not

145. See, e.g., Gov’t Code § [12945](#), as amended by [2011 Cal. Stat. ch. 678](#), § 1.5 (AB 592, Lara).

146. [2017 Cal. Stat. ch. 799](#) (AB 1556, Stone).

147. [Assembly Floor Analysis](#) of AB 1556 (Aug. 31, 2017), p. 1 (quoting bill author).

148. [Senate Committee on Judiciary Analysis](#) of AB 1556 (Jun. 12, 2017), p. 5 (noting how the bill author agreed to accept amendments in Committee that replaced all gender-specific references in FEHA with gender-neutral language).

149. [Senate Floor Analysis](#) of AB 1556 (Jun. 21, 2017), p. 2.

150. *Id.* (describing the importance of the bill in remedying previous inconsistency in California’s civil rights laws that prohibited discrimination on the grounds of gender identity but only expressly extended workplace protection against discrimination to “female” employees who were pregnant).

identity, as male or female,” thereby producing “a more inclusive and respectful civil rights statute.”¹⁵¹

Educational Equity

California protections against discrimination in education are found in the “Educational Equity” chapter of the Education Code.¹⁵² Section 220 specifically provides:

[n]o person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression ... or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code ... in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.¹⁵³

Protection of Gender

As indicated above, the discrimination protections in Education Code Section 220 expressly apply to gender, which is defined to mean in part, sex. In the Education Code provisions, “gender” seems to be the more commonly used term, but different provisions may also refer to “sex.”

Prior to 2007, Education Code Section 220 expressly prohibited discrimination on the basis of sex.¹⁵⁴

In 2007, Senate Bill 777 (Kuehl) revised the list of prohibited bases of discrimination. Most notable for the Commission’s work is that this legislation removed the term “sex” and added the term “gender.”¹⁵⁵ The bill also added a

151. Id.

152. Educ. Code §§ [220-270](#). Federal Title IX has protections that may also apply to California educational institutions if they receive federal funding. In addition, California law mandates school districts adopt policies prohibiting discrimination, harassment, intimidation and bullying based on the above categories at school or in any other school activity. See Educ. Code § [234.1](#).

153. Although the language of this provision does not include the term “sex,” Educ. Code § [210.7](#) defines “gender” to mean “sex.”

The referenced Penal Code provision includes actual or perceived gender and sexual orientation. See Pen. Code § [422.55\(a\)\(2\), \(6\)](#).

Discrimination also includes harassment. See Educ. Code § [231.5](#) (“[P]ursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.”).

154. Educ. Code § [220](#), as amended by [2004 Cal. Stat. ch. 700](#), § 3 (SB 1234, Kuehl).

155. [2007 Cal. Stat. ch. 569](#), § 11 (SB 777, Kuehl).

The bill also made other terminology changes related to educational equity. For instance, the bill modified the terminology related to disabled individuals, replacing references to “handicapped pupils” with references to “pupils with disabilities.” See [Legislative Counsel’s Digest](#) of SB 777.

1 definition of the term “gender” to mean “sex, and include[] a person’s gender
2 identity and gender related appearance and behavior whether or not stereotypically
3 associated with the person’s assigned sex at birth.”¹⁵⁶

4 The bill analysis indicates that these changes were needed to provide “better
5 guidance by creating consistency among the statutes prohibiting various forms of
6 discrimination by revising the list of prohibited bases of discrimination” in the
7 Education Code.¹⁵⁷ Another reason cited for the changes was to ensure consistency
8 with the protected characteristics identified in the hate crimes statute.¹⁵⁸

9 In addition to amending lists of protected characteristics to include “gender,” SB
10 777 also expressly included “sexual orientation,” which it defined as
11 “heterosexuality, homosexuality, or bisexuality.”¹⁵⁹ The inclusion of a definition for
12 “sexual orientation” also made the language consistent with the hate crimes
13 statute.¹⁶⁰

14 In 2011, AB 887, the Gender Nondiscrimination Act, further amended Education
15 Code Section 220 (and a number of other related provisions)¹⁶¹ to expressly include
16 gender identity and gender expression as protected categories.¹⁶² This bill also
17 amended the definition of “gender” in Education Code Section 210.7 to expressly
18 include “gender expression” and to define “gender expression” as “a person’s
19 gender-related appearance and behavior whether or not stereotypically associated
20 with the person’s assigned sex at birth.”¹⁶³

21 Thus, within the Education Code, California has supported its goals of extending
22 broad protections by amending statutory language to include “gender” and to
23 expressly include gender identity, gender expression, and sexual orientation as
24 protected characteristics.

156. [2007 Cal. Stat. ch. 569](#), § 4 (SB 777, Kuehl) (adding Educ. Code § 210.7).

157. [Assembly Floor Analysis](#) of SB 777 (Sept. 7, 2007), p. 2 (describing the effect of the bill).

158. Id.; see also Pen. Code § [422.55](#).

159. [2007 Cal. Stat. ch. 569](#), § 9 (SB 777, Kuehl) (adding definition of “sexual orientation”), § 11 (amending Educ. Code § 220 to include sexual orientation).

160. Id.; see also Pen. Code §§ [422.55\(a\)\(6\)](#), [422.56\(h\)](#).

161. See Educ. Code §§ [200](#), [210.2](#), [210.7](#), [220](#), [47605.6](#), [51007](#), [66260.6](#), [66260.7](#), and [66270](#); see also id. § [47605\(e\)\(1\)](#) (prohibiting charter schools from discriminating on student’s actual or perceived sex, gender, sexual orientation, and gender identity or expression).

162. [2011 Cal. Stat. ch. 719](#) (AB 887, Atkins)

163. [2011 Cal. Stat. ch. 719](#), § 4 (AB 887, Atkins) The pre-existing definition of “gender” from [SB 777](#) (2007) expressly included gender identity. See Educ. Code § [210.7](#), as added by [2007 Cal. Stat. ch. 569](#), § 4 (SB 777, Kuehl).

Sex-Segregated and Single-Gender Schools

As noted above, different Education Code provisions vary in their use of the terms “sex” and “gender.” For instance, the Education Code includes provisions on both sex-segregated and single-gender schools.

Education Code Section 221.5 notes that general state policy is that “elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.”¹⁶⁴

Education Code Section 232.2, added by AB 23 in 2017, permits Los Angeles Unified School District¹⁶⁵ to maintain existing single-gender schools and classes for enrollment, consistent with Title IX rules.¹⁶⁶ AB 23 was sought by the Los Angeles Unified School District after the District was denied a waiver from the State Board of Education to operate an all-girl school focused on STEM classes (to address under-enrollment of girls in STEM).¹⁶⁷ However, the provisions authorizing single-gender schools and classes to continue are set to repeal January 1, 2031, by their own terms.¹⁶⁸

As compared to other anti-discrimination laws, the Education Code provisions are somewhat unusual in that they more commonly use the term “gender,” as a replacement for the term “sex.”

Athletics and School Facilities

Concerns about sex and gender equity in schools extend include extracurricular activities, in particular, school athletics, and access to facilities (e.g., bathrooms and locker rooms). Although equity in athletics and facilities has been a concern for some time, especially involving opportunities for girls and young women to

164. Educ. Code § [221.5\(a\)](#).

165. By its terms, Educ. Code § [232.2](#) currently applies to “a school district with an average daily attendance of 250,000 or more pupils.” The legislative history of this provision indicates that the only school district that would meet the specified attendance threshold is Los Angeles Unified. See [Senate Judiciary Committee Analysis of AB 23](#) (Jul. 17, 2017), p. 6. (describing attendance threshold of 400,000 and presenting data that show that “this bill’s provisions would only apply to the Los Angeles Unified School District for the foreseeable future.”); [Senate Floor Analysis](#) of SB 913 (Aug. 22, 2022), p. 6 (“Los Angeles Unified School District (LAUSD) is the only school district in the state with an ADA of 250,000 or more. As mentioned in the author’s statement, LAUSD’s ADA has declined and has dropped below 400,000; therefore it is necessary to adjust the ADA threshold in certain statutes to maintain LAUSD’s use of flexibility provided by those statutes.”); see also [2022 Cal. Stat. ch. 920](#) (SB 913, Hertzberg).

166. [2017 Cal. Stat. ch. 654](#) (AB 23, Ridley-Thomas).

167. See [Assembly Committee on Education Analysis](#) of AB 23 (Mar. 13, 2017), p. 2.

168. Educ. Code § [232.6](#).

participate in school sports,¹⁶⁹ much of the recent attention on school athletics and facilities has focused specifically on transgender students.

Education Code Section 221.5 requires a student be permitted to “participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on the student’s records.”¹⁷⁰ This provision was added by Assembly Bill 1266 (Ammiano) in 2013.¹⁷¹ Assembly Member Ammiano described the need for this legislation:

Although current California law already protects students from discrimination in education based on sex and gender identity, many school districts do not understand and are not presently in compliance with their obligations to treat transgender students the same as all other students in the specific areas addressed by this bill. As a result, some school districts are excluding transgender students from sex-segregated programs, activities and facilities. Other school districts struggle to deal with these issues on an ad hoc basis. Current law is deficient in that it does not provide specific guidance about how to apply the mandate of non-discrimination in sex-segregated programs, activities and facilities.

The Education Code also includes several other provisions relating to equal access to athletics or facilities, but these provisions have been largely unchanged since the late 1970s or early 1980s.¹⁷² The terminology used in these older provisions (i.e., using the terms “sex” or “male” and “female” students) is notably different from other Education Code provisions that expressly refer to “gender.”

Pregnancy and Childbirth

Education Code Section 221.51 provides for the treatment of pregnant and parenting pupils:

(a) A local educational agency shall not apply any rule concerning a

169. See generally U.S. Government Accountability Office, [Report on K-12 Education: High School Sports Access and Participation](#), GAO-17-754R, p. 1 (Sept. 14, 2017), (“Organized sports have long been a part of the American high school experience for boys. However, the same has not been historically true for girls, who began playing high school sports in large numbers only after the passage of Title IX of the 1972 Education Amendments (Title IX).”); U.S. Government Accountability Office, [Intercollegiate Athletics: Status of Efforts to Promote Gender Equity](#), GAO/HEHS-97-10, p. 1 (Oct. 1997) (“More than 100,000 American women now participate in intercollegiate athletics each year. This is a four-fold increase since enactment of title IX of the Education Amendments of 1972.”).

170. Educ. Code § [221.5\(f\)](#).

171. [2013 Cal. Stat. ch. 85](#), § 1 (AB 1266, Ammiano).

172. See, e.g., Educ. Code § [231](#) (allowing separate bathroom, locker room, and living facilities for different sexes, so long as the facilities are comparable); see also id. §§ [221.7](#), [230](#).

pupil’s actual or potential parental, family, or marital status that treats pupils differently on the basis of sex.

(b) A local educational agency shall not exclude nor deny any pupil from any educational program or activity, including class or extracurricular activity, solely on the basis of the pupil’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

Education Code Section 221.51 was added by Assembly Bill 2289 (Weber 2018). In addition to the provisions above related to equal treatment and access, the bill declares that “pregnant and parenting pupils are entitled to accommodations that provide them with the opportunity to succeed academically while protecting their health and the health of their children.”¹⁷³ The bill’s authors noted that this bill, consistent with the protections of Title IX and California’s Sex Equity in Education Act, would help to ensure all students’ rights to equal and educational opportunities, regardless of sex.¹⁷⁴ AB 2289 “codifies federal and state regulations that outline specific sex discrimination prohibitions in the context of pregnant and parenting students,” thereby helping to provide more consistent protections for these students.¹⁷⁵

Unruh Civil Rights Act

In addition to the protections for employment, housing, and education, California law also includes anti-discrimination provisions applicable to business establishments.

Civil Code Section 51, also known as the Unruh Civil Rights Act, provides, in part, that:

[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.¹⁷⁶

As indicated above, this provision expressly prohibits discrimination on the bases of both sex and sexual orientation. “Sex,” under this Act, is defined as including, but not limited to, “pregnancy, childbirth, or medical conditions related to

173. [Legislative Counsel’s Digest](#) for AB 2289.

174. [Assembly Floor Analysis](#) of AB 2289 (May 26, 2018), p. 3 (quoting bill author).

175. [Senate Floor Analysis](#) of AB 2289 (Aug. 27, 2018), p. 6 (noting the importance of this bill in how it creates more consistent protections for pregnant individuals across California).

176. Civ. Code § [51\(b\)](#). Federal law has similar general protections. See [42 U.S.C. §2000a](#).

pregnancy or childbirth,” as well as “a person’s gender.”¹⁷⁷ “Gender” is, in turn, defined to include “a person’s gender identity and gender expression.”¹⁷⁸ “Sexual orientation” is defined, by reference to the definition in the FEHA (discussed previously), to mean “heterosexuality, homosexuality, and bisexuality.”¹⁷⁹

For the purpose of the Act, the protections for the listed categories (e.g., sex and sexual orientation) include protections from different treatment due to a “perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.”¹⁸⁰

Hate Crimes

Penal Code Section 422.55 defines “hate crime” for purposes of both the title of the Penal Code that contains it and “all other state law unless an explicit provision of law or the context clearly requires a different meaning.”

Section 422.55 defines hate crimes to be criminal acts “committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim.”¹⁸¹ The listed characteristics include gender, sexual orientation and “association with a person or group with one or more of these actual or perceived characteristics.”¹⁸²

Consistent with the other reforms discussed above, AB 887, the Gender Nondiscrimination Act, amended Penal Code Section 422.56 to clarify the definition of “gender.” As amended by AB 887, the definition of “gender” includes sex and includes a person’s gender identity and gender expression.¹⁸³ “Gender expression” is defined as “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”¹⁸⁴

AB 887 also amended other provisions of the Penal Code to include these same terms.¹⁸⁵ One such provision is Penal Code Section 186.21, which contains a legislative declaration “that it is the right of every person, regardless of ... gender,

177. Civ. Code § [51\(e\)\(5\)](#).

178. Id. This definition was added by the Gender Nondiscrimination Act, [2011 Cal. Stat. ch. 719](#), § 1.5 (AB 887, Atkins).

179. Civ. Code § [51\(e\)\(7\)](#) (referencing the definition in Gov’t Code § [12926\(s\)](#)).

180. Id. § [51\(e\)\(6\)](#).

181. Pen. Code § [422.55\(a\)](#).

182. Id. § [422.55\(a\)\(2\), \(6\), \(7\)](#).

183. Id. § [422.56\(c\)](#).

184. Id.

185. See also, e.g., id. §§ [422.85](#), [3053.4](#), [11410](#).

gender identity, gender expression, ... [or] sexual orientation ... to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.”

PROPOSED SEX EQUITY PROVISION

SCR 92 directed the Commission to study California law to “undertake a comprehensive study of California law to identify any defects that prohibit compliance with the [Equal Rights Amendment.]”¹⁸⁶

Based on the foregoing review, California law generally appears to be aligned with the ERA. California’s Constitution currently contains several provisions related to sex equality¹⁸⁷ and its equal protection doctrine subjects sex-based claims to strict scrutiny.¹⁸⁸

Additionally, California’s statutory anti-discrimination laws (related to employment, housing, education, and state action) expressly protect against discrimination based on pregnancy, sexual orientation, and gender identity.¹⁸⁹

Taken together, these provisions provide for significant sex equality protections.

186. [2022 Cal. Stat. res. Ch. 150](#) (SCR 92, Leyva).

187. See e.g., Cal. Const. [art. I](#), §§ [1](#), [1.1](#), [7](#), [8](#), and [31](#). See also discussion of “Status of State Constitutional Amendments” in Memorandum [2023-40](#), p. 10 and discussion of “California Constitution” in Memorandum [2023-17](#), pp. 16-19.

188. See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 833 (“[T]he governing California cases long have established that statutes that discriminate on the basis of sex or gender are subject to strict scrutiny under the California Constitution...” (citations omitted)); *Catholic Charities of Sacramento v. Superior Court* (2004) 32 Cal.4th 527, 564 (indicating that the Women’s Contraceptive Equity Act “serves the compelling state interest of eliminating gender discrimination” and that gender discrimination “violates the equal protection clause of the California Constitution and triggers the highest level of scrutiny” (citation omitted)); *Molar v. Gates* (4th Dist. 1979) 98 Cal.App.3d. 1, 13 (“*In Sail’er Inn, Inc. v. Kirby*, a female citizen challenged the constitutionality of a California law prohibiting women from tending bar unless they or their husbands held the liquor license on equal protection grounds. Our Supreme Court held that the bartending law was indeed unconstitutional under the equal protection clauses of the state and federal Constitutions and in doing so declared that ‘classifications based upon sex should be treated as suspect.’ *Sail’er Inn* thus clearly established the principle that gender-based differentials are to be treated as ‘suspect classifications’ which must be subjected to intense judicial scrutiny to determine if they violate the right to equal protection guaranteed by the state Constitution. The Supreme Court has consistently reaffirmed this principle. Thus, in *Arp v. Workers’ Comp. Appeals Bd.*, the court stated that ‘the strict scrutiny/compelling state interest test must govern sex discrimination challenges under Article I, section 7, of the California Constitution,’ and in *Hardy v. Stumpf*, the court acknowledged that ‘[c]lassifications predicated on gender are deemed suspect in California.’”(citations omitted)); *Boren v. Dep’t of Emp. Dev.* (3rd Dist. 1976) 59 Cal.App.3d 250, 255-256 (“According to California decisional law, a statute establishing ‘suspect classifications’ or trenching upon ‘fundamental interests’ is vulnerable to strict judicial scrutiny; it may be sustained by a showing of a compelling state interest which necessitates the distinction; a sex-based classification is treated as suspect.” (citations omitted)).

189. See Memorandum [2023-21](#); see also, e.g., Gov’t Code §§ [11135\(a\)](#) (No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification,

1 While California’s broad discrimination prohibitions contain significant detail as
2 to the scope of those rules, not all of California’s anti-discrimination laws contain
3 the same level of detail. California law includes a number of discrimination
4 prohibitions that apply in other, often narrower and more specific, contexts.¹⁹⁰ These
5 provisions often include less detail regarding the scope of protected characteristics
6 encompassed by sex discrimination, although some may incorporate definitions and
7 characteristics from California’s broader anti-discrimination laws by reference.¹⁹¹

8 Because these similar, but not exact, definitions of sex discrimination could cause
9 confusion, the Commission decided to propose a rule that clarified and united the
10 scope of California’s sex discrimination prohibitions to help ensure a uniform
11 understanding of California laws governing sex discrimination.

12 The Commission considered a variety of options for integrating the rule into
13 California law. The Commission first deliberated pursuing a state constitutional
14 amendment but ultimately decided against it.¹⁹² Left with placing a traditional
15 statute, the Commission determined an uncodified provision would be too difficult
16 to find and a single provision applying to all code sections was not only
17 unprecedented, but would also be challenging to uncover.¹⁹³ Given these constraints,
18 the Commission decided to place an identical statutory rule in each code section and
19 cross reference to the major civil rights statutes.¹⁹⁴

age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”); [12926\(r\)](#) (defining “sex” to include pregnancy, childbirth, breastfeeding, and gender, which, in turn, includes gender identity and gender expression).

190. See, e.g., Bus. & Prof. Code §§ [23425-23438](#) (related to alcohol licenses for various clubs and associations, many provisions contain an anti-discrimination rule); Health & Safety Code § [1586.7](#) (adult day health care centers), and Pub. Util. Code § [40121](#) (labor contracts for Orange County Transit District).

California law also includes provisions that describe a right to be free from discrimination on specified grounds. See, e.g., Health & Safety Code § [1562.01\(h\)\(2\)\(C\)](#).

191. See, e.g., Lab. Code § [1156.3\(h\)\(1\)](#) (incorporating definitions and characteristics from the California Fair Employment and Housing Act by reference).

192. Memorandum [2023-44](#), pp. 18-19. The Commission does not have the capability of stewarding a constitutional amendment through the enactment process, nor is it likely the Legislature anticipated a constitutional amendment as the outcome when they assigned the study to the Commission.

193. Memorandum [2024-6](#), pp. 7-8.

194. The recommendation proposes to add a code section to the Educ. Code in the area relating to educational equity, and add a cross reference to the new code in Civ. Code § [51](#), the Unruh Civil Rights Act, and Gov’t Code § [12926](#) related to the Civil Rights Department in deference to Cal. Const. [art. IV, § 9](#), which establishes statutory amendment guidelines.

1 This “sex equity provision,” is proposed to be codified in all codes. In each case,
2 the provision would specify that the rule applies broadly to the entire code (i.e., the
3 provision specifies that the rule is “for the purposes of [the] code”). However, the
4 provision is not intended to exhaustively define the scope of sex discrimination.
5 Rather, it is crafted to make clear that discrimination on certain grounds constitutes
6 sex discrimination under the law, while not foreclosing the possibility that sex
7 discrimination may also encompass characteristics that are not listed.

8 The draft of the proposed amendments to each code appears at the end of this draft
9 Revised Tentative Recommendation. The draft comment language notes that there
10 are identical sections in all other codes to provide consistency across all California
11 laws governing sex discrimination.

12 IDENTIFYING AND REMEDYING SPECIFIC 13 DEFECTS

14 SCR 92 further directs the Commission to remedy defects related to (i) inclusion
15 of discriminatory language on the basis of sex, and (ii) disparate impacts on the
16 basis of sex upon enforcement thereof. For the second phase of the study, the
17 Commission examined existing California laws to ensure they comply with the sex
18 equality provision’s nondiscrimination goals.

19 DISCRIMINATORY LANGUAGE

20 SCR 92 directs the Commission to address “defects ... related to the inclusion of
21 discriminatory language” in California law. The staff understands “discriminatory
22 language” as words and phrases that foster stereotypes of individuals or groups of
23 people, predominately in ways that demean or ignore them.¹⁹⁵ Gender biased
24 language is a type of discriminatory language that “either implicitly or explicitly
25 favors one gender over another.”¹⁹⁶ Examples of gender biased language are terms
26 such as “he” or “she” or “husband” and “wife.”¹⁹⁷

195. See, e.g., European Institute for Gender Equality, [Gender-sensitive communication](#).

196. Id.

197. See, e.g., Fam. Code § 11 (“A reference to ‘husband’ and ‘wife,’ ‘spouses,’ or ‘married persons,’ or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as appropriate under the circumstances of the particular case.”).

When proposing a new Family Code, the Commission recommended to the Legislature adding the terms “spouses” and “married persons” to this code section, but the terms “husband” and “wife” remain. [1994 Family Code](#), 23 Cal. L. Revision Comm’n Reports 1 (1993).

1 The Legislature is continually making efforts to remove gender biased language
2 through specific legislation¹⁹⁸ and general bill drafting policies,¹⁹⁹ and the
3 Commission determined no additional work was appropriate in this area at this
4 time.²⁰⁰ However, stakeholders presented an example of discriminatory language in
5 the California Department of Corrections and Rehabilitation’s (CDCR) Operation
6 Manual that could be clarified, and the Commission notes it in this report for the
7 Legislature’s consideration.

8 CDCR’S OPERATIONS MANUAL

9 The ACLU of Southern California (ACLU) suggested that the California
10 Department of Corrections and Rehabilitation’s (CDCR) Operations Manual should
11 be updated and clarified. Although current law acknowledges gender as female,
12 male or nonbinary²⁰¹ and a person’s gender may be different from an individual’s
13 sex assigned at birth,²⁰² CDCR’s Operations Manual uses the term “biological sex”
14 interchangeably with “gender” and does not include “nonbinary” in its definition of
15 “gender identity.”

16 For example, the Operations Manual’s definitions include the following:

- 17 • Cross-Gender: Of the opposite biological sex. Example: Male Custody
18 Staff patting down female inmates is cross-gender searching.
- 19 • Gender Identity: Distinct from sexual orientation and refers to a

198. See, e.g., [2016 Cal. Stat. ch. 50](#) (SB 1005, Jackson) (replacing references to a “husband” or “wife” with references to a “spouse”) and [2013 Cal. Stat. ch. 510](#) (AB 1403, Committee on Judiciary), (updating statutory terms within the Uniform Parentage Act to replace “father” and “mother” with “parent,” among other amendments).

The Legislature also placed Proposition 11, Miscellaneous Language Changes Regarding Gender, on the ballot in 1974. This proposition amended the California Constitution to recast masculine gendered terms to instead refer to the “person” or individual referred to. It [passed successfully](#) with 50.43% of the vote.

199. See [Chapter 190, Statutes of 2019](#) (ACR 260, Low), which encouraged the Legislature to engage in a coordinated effort to revise existing statutes and introduce new legislation with inclusive language by using gender-neutral pronouns or reusing nouns to avoid the use of gendered pronouns. Bills with content not otherwise related to sex and gender typically contain technical amendments to update terms such as “he or she.” See e.g., Chapter 109, Statutes of 2024 ([AB 2582](#), Pellerin), the Elections Omnibus Bill of 2024, which changes references to “he or she” with “the voter,” among other amendments.

200. [Minutes](#) of Commission Meeting on May 2, 2024, p. 5 (“In light of the Office of Legislative Counsel efforts, consistent with [Chapter 190, Statutes of 2019](#) (ACR 260, Low), to revise existing statutes and introduce new legislation with inclusive language, the Commission did not direct staff to move forward with a proposal to remove and replace these terms in the codes.”)

201. See, e.g., [2017 Cal. Stat. ch. 853](#) (SB 179, Atkins) and Penal Code § [2605](#).

202. California Civil Rights Department, [The Rights of Employees Who are Transgender or Gender Nonconforming: Fact Sheet](#) p. 3, (November 2022). Gender identity is defined as “each person’s internal understanding of their gender, such as being male, female, a combination of male and female, neither male nor female, and/or nonbinary. A person may have a gender identity different from the sex the person was assigned at birth.” See also [2017 Cal. Stat. ch 853](#) (SB 179, Atkins).

1 person's internal, deeply felt sense of being male or female.²⁰³

2 ACLU recommends the Operations Manual be updated to reflect current laws
3 by adding a definition for “nonbinary,”²⁰⁴ amending its definitions as follows, and
4 conforming the manual's provisions accordingly:

- 5 • Cross-Gender: Of ~~the opposite biological sex~~ a different gender.
6 Example: Male-identifying Custody Staff patting down female-
7 identifying inmates is cross-gender searching.
- 8 • Gender Identity: Distinct from sexual orientation and refers to a
9 person's internal, deeply felt sense of being male, ~~or~~ female, or
10 nonbinary.

11 DISPARATE IMPACT

12 SCR 92 also directs the Commission to address “defects related to ... disparate
13 impacts” in California law.

14 Disparate impact theory is primarily used to challenge practices based on state
15 and federal employment and housing discrimination laws. Generally, a “disparate
16 impact” occurs when a facially neutral law disproportionately adversely affects
17 members of a protected class. A law fails the disparate impact legal test when there
18 is no legitimate business reason for the law or policy and no less discriminatory
19 means are available to achieve the law's purpose.

20 State and Federal Employment Laws on Disparate Impact

21 California's Fair Employment and Housing Act (“FEHA”)²⁰⁵ declares it a civil
22 right for an individual to seek, obtain, and hold employment without discrimination
23 because of “race, religious creed, color, national origin, ancestry, physical disability,
24 mental disability, medical condition, genetic information, marital status, sex,
25 gender, gender identity, gender expression, age, sexual orientation, reproductive

203. State of California, California Department of Corrections and Rehabilitation, Adult Institutions, Programs, and Parole, Operations Manual, § [54040.3](#), p. 478, (updated through January 1, 2021).

204. Email from Amanda Goad, November 8, 2024. ACLU recommends using the definition of “nonbinary” from the Federal Racial and Identity Profiling Act of 2015 Regulations ([11 CCR 999.226](#)) which states: “a person with a gender identity that falls somewhere outside of the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not identify as transgender, may or may not have been born with intersex traits, may or may not use gender-neutral pronouns, and may or may not use more specific terms to describe their genders, such as agender, genderqueer, gender fluid, Two Spirit, bigender, pangender, gender nonconforming, or gender variant.”

205. Gov't Code §§ [12900 - 12999](#).

1 health decisionmaking, or veteran or military status.”²⁰⁶

2 Title VII of the federal Civil Rights Act of 1964 prohibits employment
3 discrimination based on race, color, religion, sex, or national origin.²⁰⁷

4 FEHA regulations describe the process to prove unlawful employment
5 discrimination based on disparate impact. First, the policy being challenged must be
6 facially neutral.²⁰⁸ Following an allegation of disparate impact based on that policy,
7 an employer can provide an affirmative defense that the policy is necessary for the
8 safe and efficient operation of the business and the policy effectively fulfills its
9 intended business purpose.²⁰⁹ This is known as the “business necessity” defense.
10 However, the policy may still be impermissible if an alternative practice is shown
11 to exist that would accomplish the business purpose equally well with a less
12 discriminatory impact.²¹⁰ Both state and federal law follow similar disparate impact
13 tests.

14 **Disparate Impact Theory**

15 *Griggs v. Duke Power Company*

16 Disparate impact theory was developed by the U.S. Supreme Court in *Griggs v.*
17 *Duke Power Company*,²¹¹ an employment discrimination case. This was a class
18 action by Black individuals who alleged that Duke Power Company (“Duke”)
19 violated their civil rights by requiring irrelevant preconditions to employment. The
20 requirements, completing high school and passing an aptitude test,
21 disproportionately impeded Black individuals’ employment opportunities.²¹² The
22 Court of Appeals considered Duke’s subjective intent in establishing the
23 requirements and found no discriminatory purpose. The Appeals Court thus
24 determined that there was no civil rights violation.

25 In its decision, the Supreme Court noted that Duke did not study whether the
26 requirements were positively related to job performance prior to imposing them. A
27 company executive testified that the requirements were instituted with the idea that

206. Gov’t Code § [12921\(a\)](#). The characteristics noted above includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. Id. § [12926\(o\)](#).

207. 42 U.S.C.A. § [2000e-2](#).

208. 2 Cal. Code Regs. § [11010\(b\)](#).

209. Id.

210. Id.

211. *Griggs v. Duke Power Company* (1971) 401 U.S. 424.

212. Id. at 425-426.

1 they “generally would improve the overall quality of the work force.”²¹³ In fact, the
2 education and testing requirements were shown to have no relation to successful job
3 performance.²¹⁴ Individuals who lacked these credentials and held their jobs prior
4 to the requirements continued to perform well. The Supreme Court acknowledged
5 that Duke Power Company seemed to lack intent to discriminate but decided that
6 their mindset was irrelevant. Instead, it was the impact of the requirements that
7 mattered.

8 ... Congress directed the thrust of the [Civil Rights] Act to the
9 consequences of employment practices, not simply the motivation. More
10 than that, Congress has placed on the employer the burden of showing that
11 any given requirement must have a manifest relationship to the employment
12 in question.²¹⁵

13 The Court found Duke in violation of the Civil Rights Act for imposing
14 requirements that were unnecessary and did not fulfill their intended purpose,
15 disproportionately harming a protected class. Disparate impact theory was born.

16 *Mahler v. Judicial Council of California*

17 Employment law cases under FEHA follow this approach. A recent disparate
18 impact case, *Mahler v. Judicial Council of California*,²¹⁶ highlights the importance
19 of providing evidence that the policy at issue caused a statistically significant
20 adverse effect on a protected group. This case was brought by retired superior court
21 judges alleging age discrimination in the Temporary Assigned Judges Program
22 (“TAJP”). In their complaint, the plaintiffs claimed that changes to the case
23 assignment policy based on numbers of days worked (the “1320 limit”)²¹⁷
24 disproportionately impacted judges over age 70, resulting in fewer assigned cases.
25 Although the policy allowed for exceptions, the plaintiffs alleged that younger, more
26 recently retired judges would not have to get an exception to participate in the TAJ
27 program and the assignments given to individuals granted an exception were less
28 desirable.²¹⁸ However, the Appeals Court found the plaintiffs failed to present
29 sufficient data to establish a prima facie case.

213. Id. at 431.

214. Id.

215. Id. at 432.

216. *Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82.

217. Individuals with more than 1,320 days’ experience in the TAJ will not get assignments unless they receive an exception to the policy. Id. at 114.

218. Id. at 113-114.

[T]he complaint must allege facts or statistical evidence demonstrating a causal connection between the challenged policy and a significant disparate impact on the allegedly protected group.... There are, for example, no specifics as to the total number of participants in the TAJ, or the number of participants allegedly adversely impacted by the challenged changes to the program, or even the age “group” allegedly adversely impacted. Nor are there any “basic allegations” of statistical methods and comparison, or even any anecdotal information of a significant age-based disparity.²¹⁹

The Appeals Court remanded the case and allowed the plaintiffs to amend their complaint.

The plaintiffs' amended claim presented an expert report to bolster their allegations. However, the Court found the report deficient in several ways. First, it failed to include the impact of another aspect of the case assignment policy that resulted in the plaintiffs rejecting offered assignments.

The reallocation policy [also] changed the geography of the TAJ by reducing or halting assignments to counties with well-staffed courts, which formerly used a high share of the TAJ resources, and increased assignments to counties with a deficit of active judges.... Notably, when Plaintiffs were offered assignments in understaffed courts, including San Bernardino and Riverside, they declined to serve, reducing their days worked. [The expert report] did not control for the geographic assignment differences after 2019. Given this analytical gap, it cannot be said that but for the 1320 limit, participants over age 70 would necessarily have enjoyed more opportunities to serve and would have worked more days.²²⁰

Second, it failed to establish a case for the plaintiffs' age-discrimination claim. While the report showed the 1320 limit's impact on TAJ participants over 70 who met the limit, it did not show the limit's impact on participants under 70, or those over 70 who had not met the limit. The Court noted that the analysis “does not allow an inference of discrimination based on age, i.e., that Defendants' enforcement of the 1320 limit has a significant disparate impact on TAJ participants over 70 as compared to participating judges under 70.”²²¹ When the Court analyzed the figures, it found “the 1320 limit had no effect on a supermajority of participants over age 70.”²²²

219. Id. at 115.

220. *Mahler v. Judicial Council of California* (2024) No. CGC-19-575842 (Super. Ct. San Francisco Cty., Cal.), at 5-6.

221. Id. at 6.

222. Id. at 7.

1 The Superior Court dismissed the case, granting summary judgment to the
2 defendants.²²³ Thus, although allegations may facially appear to present a disparate
3 impact case, it is vital to assess the full picture.

4 **State and Federal Housing Laws on Disparate Impact**

5 FEHA²²⁴ declares it a civil right for an individual to seek, obtain, and hold housing
6 without discrimination because of race, religion, color, national origin, ancestry,
7 disability, medical condition, genetic information, source of income, marital status,
8 sex,²²⁵ veteran or military status, primary language, citizenship, or immigration
9 status.²²⁶

10 FEHA prohibits housing practices that have a discriminatory effect without a
11 legally sufficient justification.²²⁷ “Practices” are defined to include written and
12 unwritten policies, acts, or failures to act.²²⁸

13 A practice has a discriminatory effect where it actually or predictably
14 results in a disparate impact on a group of individuals, or creates, increases,
15 reinforces, or perpetuates segregated housing patterns, based on
16 membership in a protected class. A practice predictably results in a disparate
17 impact when there is evidence that the practice will result in a disparate
18 impact even through the practice has not yet been implemented.²²⁹

19 FEHA regulations establish the burdens of proof in disparate impact cases.²³⁰ First,
20 the complainant has the burden of proving a challenged practice caused or
21 predictably will cause a discriminatory effect.²³¹ The burden then shifts to the
22 defendant to show the practice is justified despite the discriminatory effect. This
23 justification must show that the practice is necessary to achieve one or more
24 substantial, legitimate, and nondiscriminatory business interests. Second, the

223. Id.

224. Gov’t Code §§ [12900 -12999](#).

225. For the purposes of this section, “sex” includes gender, gender identity, gender expression, sexual orientation, and reproductive decision making. Gov’t Code § [12921\(b\)](#).

226. Id. Any of the characteristics mentioned above also includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. Gov’t Code § [12955\(m\)](#) and Civ. Code § [51\(e\)\(6\)](#).

227. 2 Cal. Code Regs. § [12060](#). “Discriminatory effect” has the same meaning as disparate impact and the codes use the terms interchangeably. California law permits exemptions for certain circumstances, such as an individual sharing living areas in a single dwelling unit expressing a sex preference for a roommate, or a person stating an age-based preference for senior housing. See 2 Cal. Code Regs. § [12051](#).

228. 2 Cal. Code Regs. § [12005\(x\)](#).

229. 2 Cal. Code Regs. § [12060\(b\)](#).

230. 2 Cal. Code Regs. §§ [12061](#) - [12062](#).

231. 2 Cal. Code Regs. § [12061](#).

1 defendant must show the practice effectively carries out the identified business
2 interest. Finally, the defendant must prove there is no feasible alternative that would
3 equally or better accomplish the identified purpose with less discriminatory
4 effect.²³² This is similar to the structure of disparate impact in employment claims.

5 The federal Fair Housing Act (“FHA”) prohibits housing providers from
6 discriminating based on race, color, religion, sex, national origin, familial status, or
7 disability,²³³ similar to FEHA.

8 *Texas Department of Housing and Community Affairs v. Inclusive Communities*
9 *Project*

10 The U.S. Supreme Court affirmed that disparate impact claims may be brought
11 under the federal FHA in *Texas Department of Housing and Community Affairs v.*
12 *Inclusive Communities Project*.²³⁴ In this case, a Texas nonprofit that helps low-
13 income individuals obtain housing sued the Texas Department of Housing and
14 Community Affairs (“TDHCA”) for perpetuating housing segregation by allocating
15 a disproportionate number of federal housing credits in predominantly Black inner-
16 city areas. Relying on *Griggs*, the Supreme Court held that disparate impact claims
17 are cognizable under the FHA:

18 Just as an employer may maintain a workplace requirement that causes
19 a disparate impact if that requirement is a ‘reasonable measure[ment] of job
20 performance,’ [citations omitted] so too must housing authorities and
21 private developers be allowed to maintain a policy if they can prove it is
22 necessary to achieve a valid interest. To be sure, the [Civil Rights Act] Title
23 VII framework may not transfer exactly to the fair-housing context, but the
24 comparison suffices for present purposes.²³⁵

25 On remand to the Northern District of Texas,²³⁶ however, the Court found that
26 Inclusive Communities Project (“ICP”) failed to prove a prima facie case for
27 disparate impact. Through a detailed analysis of the TDHCA’s point system for
28 awarding tax credits, the Court found that ICP was arguing that TDHCA was
29 abusing its discretion in awarding the federal tax credits. However, exercising
30 discretion is not a specific, facially neutral policy for purposes of a disparate impact

232. 2 Cal. Code Regs. § [12062](#).

233. 42 U.S.C. §§ [3601 - 3619](#).

234. *Tex. Dep’t of Hous. and Cmty. Affairs v. Inclusive Cmty. Project* (2015) 576 U.S. 519.

235. *Id.* at 541.

236. *Inclusive Cmty. Project v. Tex. Dep’t of Hous. And Cmty. Affairs, et al.* (N.D. Tex. 2016) No. 3:2008cv00546 - Document 271.

1 claim.²³⁷

2 ...regardless of the label ICP places on its claim, it is actually
3 complaining about disparate treatment, not disparate impact. The purpose
4 of disparate impact liability is to root out a facially neutral policy that has
5 an unintended discriminatory result. But a claim for intentional
6 discrimination is evaluated under the disparate treatment framework, which
7 requires a showing of targeted discrimination. Where the plaintiff
8 establishes that a subjective policy, such as the use of discretion, has been
9 used to achieve a racial disparity, the plaintiff has shown disparate
10 treatment. ...

11 If ICP were challenging the existence of TDHCA's discretion rather
12 than how the discretion is used, ICP would seek to enjoin that discretion
13 and to mandate a points-only system or another wholly objective method of
14 awarding tax credits. Instead, ICP maintains that TDHCA's exercise of
15 discretion should be the means to achieve a specific end: to provide
16 increased opportunities for desegregated low-income housing.²³⁸

17 The Court also determined that ICP failed to prove it was TDHCA's exercise of
18 discretion, and not other factors such as local zoning rules, community preferences,
19 or developers' choices, caused the statistical disparity.²³⁹ The Court dismissed the
20 case.

21 *Martinez v. City of Clovis*

22 A California appellate decision under FEHA, *Martinez v. City of Clovis*, provides
23 an example of a successful case for disparate impact theory under FEHA.²⁴⁰ In this
24 case, a resident sued the City of Clovis for failing to zone for low-income housing,
25 resulting in disparate impacts for people of color.²⁴¹ The Appeals Court noted that
26 FEHA makes it unlawful for the city "to discriminate through public ... land use
27 practices, decisions, and authorizations,"²⁴² because of protected characteristics
28 including race. The law further states that discrimination includes zoning laws "that
29 make housing opportunities unavailable." Previously, the trial court determined that
30 "[f]ailing to meet the [Regional Housing Needs Allocation] obligation for zoning
31 does not make a housing opportunity 'unavailable' in any material sense."²⁴³ The

237. Id. at 16.

238. Id. at 16-17 (citations omitted), 18.

239. Id. at 20.

240. *Martinez v. City of Clovis* (5th Dist. 2019) 90 Cal.App.5th 193.

241. Id. at 253.

242. Gov't Code § [12955\(l\)](#).

243. 90 Cal.App.5th at 271.

1 Appeals Court disagreed and determined that the City’s failure to zone for low-
2 income housing did make housing opportunities unavailable for purposes of the
3 law.²⁴⁴ The Appeals Court remanded for further action and the parties eventually
4 settled out of court.²⁴⁵

5 As noted in the cases above, the analysis for disparate impact is a heavily fact-
6 based inquiry. The Commission reached out to stakeholders for assistance in
7 identifying California laws with uneven burdens and did not find any appropriate
8 for Commission action.

9 CONCLUSION

10 Based on the foregoing review, the Commission concluded that California law is
11 aligned with the ERA. California’s Constitution contains several provisions related
12 to sex equality²⁴⁶ and its equal protection doctrine subjects sex-based claims to strict
13 scrutiny.²⁴⁷ Further, its statutory laws provide extensive protections for individuals
14 based on a broad array of sex characteristics.

244. *Id.* at 271.

245. The City of Clovis and the plaintiff, Desiree Martinez, came to a [settlement](#) agreement on Feb. 20, 2024. The City agreed to comprehensively plan for affordable housing options and, among other items, would establish a Local Housing Trust Fund, dedicate city-owned lots for the development of affordable housing, and require that up to 10% of units in new housing projects will be affordable to low-income families.

246. See e.g., Cal. Const. [art. I, §§ 1, 1.1, 7, 8, and 31](#). See also discussion of “Status of State Constitutional Amendments” in Memorandum [2023-40](#), p. 10 and discussion of “California Constitution” in Memorandum [2023-17](#), pp. 16-19.

247. See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 833 (“[T]he governing California cases long have established that statutes that discriminate on the basis of sex or gender are subject to strict scrutiny under the California Constitution...” (citations omitted)); *Catholic Charities of Sacramento v. Superior Court* (2004) 32 Cal.4th 527, 564 (indicating that the Women’s Contraceptive Equity Act “serves the compelling state interest of eliminating gender discrimination” and that gender discrimination “violates the equal protection clause of the California Constitution and triggers the highest level of scrutiny” (citation omitted)); *Molar v. Gates* (4th Dist. 1979) 98 Cal.App.3d 1, 13 (“*In Sail’er Inn, Inc. v. Kirby*, a female citizen challenged the constitutionality of a California law prohibiting women from tending bar unless they or their husbands held the liquor license on equal protection grounds. Our Supreme Court held that the bartending law was indeed unconstitutional under the equal protection clauses of the state and federal Constitutions and in doing so declared that ‘classifications based upon sex should be treated as suspect.’ *Sail’er Inn* thus clearly established the principle that gender-based differentials are to be treated as ‘suspect classifications’ which must be subjected to intense judicial scrutiny to determine if they violate the right to equal protection guaranteed by the state Constitution. The Supreme Court has consistently reaffirmed this principle. Thus, in *Arp v. Workers’ Comp. Appeals Bd.*, the court stated that ‘the strict scrutiny/compelling state interest test must govern sex discrimination challenges under Article I, section 7, of the California Constitution,’ and in *Hardy v. Stumpf*, the court acknowledged that ‘[c]lassifications predicated on gender are deemed suspect in California.’” (citations omitted)); *Boren v. Dep’t of Emp. Dev.* (3rd Dist. 1976) 59 Cal.App.3d 250, 255-256 (“According to California decisional law, a statute establishing ‘suspect classifications’ or trenching upon ‘fundamental interests’ is vulnerable to strict judicial scrutiny; it may be sustained by a showing of a compelling state interest which necessitates the distinction; a sex-based classification is treated as suspect.” (citations omitted)).

1 However, not all of California’s anti-discrimination laws contain the same level
2 of detail, so the Commission is proposing a sex equality provision that clarifies the
3 scope of California’s sex discrimination prohibitions to help ensure a uniform
4 understanding of the scope of California laws governing sex discrimination across
5 all codes. The Commission also determined there were no laws ripe for revision due
6 to discriminatory language or disparate impacts on the basis of sex.

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PROPOSED LEGISLATION

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 14.3 (added). Scope of sex discrimination

SEC. _____. Section 14.3 is added to the Business and Professions Code, to read:

14.3. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 14.3 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Business and Professions Code, there are sections identical to Section 14.3 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code),

- 1 California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division
- 2 1 of Title 1 of the Education Code).
- 3

CIVIL CODE

Civ. Code § 14.1 (added). Scope of sex discrimination

SEC. ____ . Section 14.1 is added to the Civil Code, to read:

14.1. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 14.1 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Civil Code, there are sections identical to Section 14.1 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

CIVIL CODE

Civ. Code § 51 (amended). Personal Rights

SEC. ____ . Section 51 of the Civil Code is amended to read:

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, or immigration status, or to persons regardless of their genetic information.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) (A) “Genetic information” means, with respect to any individual, information about any of the following:

(i) The individual’s genetic tests.

(ii) The genetic tests of family members of the individual.

(iii) The manifestation of a disease or disorder in family members of the individual.

(B) “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(C) “Genetic information” does not include information about the sex or age of any individual.

(3) “Medical condition” has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.

(4) “Race” is inclusive of traits associated with race, including, but not limited to, hair texture and protective hairstyles. “Protective hairstyles” includes, but is not limited to, such hairstyles as braids, locs, and twists.

(5) “Religion” includes all aspects of religious belief, observance, and practice.

(6) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, and any actual or perceived characteristic in Section 14.1(b)(3). “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s

gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(7) “Sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status” includes any of the following:

(A) Any combination of those characteristics.

(B) A perception that the person has any particular characteristic or characteristics within the listed categories or any combination of those characteristics.

(C) A perception that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics, or any combination of characteristics, within the listed categories.

(8) “Sexual orientation” has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

(g) Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section.

(h) Nothing in this section shall be construed to require the provision of services or documents in a language other than English, beyond that which is otherwise required by other provisions of federal, state, or local law, including Section 1632.

Comment. Paragraph (6) of subdivision (e) of Section 51 is amended to reflect California’s commitment to the equality of rights under the law. This amendment conforms with Section 14.1, which is added to the Civil Code, and there are sections identical to Section 14.1 in each of the other California Codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 17.5 (added). Scope of sex discrimination

SEC. ____ . Section 17.5 is added to the Code of Civil Procedure, to read:

17.5. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 17.5 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Code of Civil Procedure, there are sections identical to Section 17.5 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

COMMERCIAL CODE

Com. Code § 36.5 (added). Scope of sex discrimination

SEC. ____ . Section 36.5 is added to the Commercial Code, to read:

36.5. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 36.5 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Commercial Code, there are sections identical to Section 36.5 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

CORPORATIONS CODE

Corp. Code § 12.4 (added). Scope of sex discrimination

SEC. ____ . Section 12.4 is added to the Corporations Code, to read:

12.4. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 12.4 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Corporations Code, there are sections identical to Section 12.4 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

EDUCATION CODE

Educ. Code § 212.4 (added). Scope of sex discrimination

SEC. ____ . Section 212.4 is added to the Education Code, to read:

212.4. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 212.4 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Education Code, there are sections identical to Section 212.4 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

ELECTIONS CODE

Elec. Code § 353.7 (added). Scope of sex discrimination

SEC. ____ . Section 353.7 is added to the Elections Code, to read:

353.7. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 353.7 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Elections Code, there are sections identical to Section 353.7 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

EVIDENCE CODE

Evid. Code § 212 (added). Scope of sex discrimination

SEC. ____ . Section 212 is added to the Evidence Code, to read:

212. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 212 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Evidence Code, there are sections identical to Section 212 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

FAMILY CODE

Fam. Code § 136 (added). Scope of sex discrimination

SEC. ____ . Section 136 is added to the Family Code, to read:

136. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 136 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Family Code, there are sections identical to Section 136 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

FINANCIAL CODE

Fin. Code § 23 (added). Scope of sex discrimination

SEC. ____ . Section 23 is added to the Financial Code, to read:

23. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 23 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Financial Code, there are sections identical to Section 23 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

FISH AND GAME CODE

Fish & Game Code § 9.4 (added). Scope of sex discrimination

SEC. ____ . Section 9.4 is added to the Fish and Game Code, to read:

9.4. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 9.4 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Fish and Game Code, there are sections identical to Section 9.4 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

FOOD AND AGRICULTURE CODE

Food & Agric. Code § 52 (added). Scope of sex discrimination

SEC. ____ . Section 52 is added to the Food and Agriculture Code to read:

51. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 52 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Food and Agriculture Code, there are sections identical to Section 52 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

GOVERNMENT CODE

Gov't Code § 27 (added). Scope of sex discrimination

SEC. ____ . Section 27 is added to the Government Code, to read:

27. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 27 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Government Code, there are sections identical to Section 27 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

GOVERNMENT CODE

Gov't Code § 12926 (amended). Definitions

SEC. ____ . Section 12926 in the Government Code is amended to read:

As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) “Age” refers to the chronological age of any individual who has reached a 40th birthday.

(c) Except as provided by Section 12926.05, “employee” does not include any individual employed by that person’s parent, spouse, or child or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

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

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired based on expertise or the ability to perform a particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer’s judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

1 (g) (1) “Genetic information” means, with respect to any individual, information about any of
2 the following:

3 (A) The individual’s genetic tests.

4 (B) The genetic tests of family members of the individual.

5 (C) The manifestation of a disease or disorder in family members of the individual.

6 (2) “Genetic information” includes any request for, or receipt of, genetic services, or
7 participation in clinical research that includes genetic services, by an individual or any family
8 member of the individual.

9 (3) “Genetic information” does not include information about the sex or age of any individual.

10 (h) “Labor organization” includes any organization that exists and is constituted for the purpose,
11 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
12 terms or conditions of employment, or of other mutual aid or protection.

13 (i) “Medical condition” means either of the following:

14 (1) Any health impairment related to or associated with a diagnosis of cancer or a record or
15 history of cancer.

16 (2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either
17 of the following:

18 (A) Any scientifically or medically identifiable gene or chromosome, or combination or
19 alteration thereof, that is known to be a cause of a disease or disorder in a person or that person’s
20 offspring, or that is determined to be associated with a statistically increased risk of development
21 of a disease or disorder, and that is presently not associated with any symptoms of any disease or
22 disorder.

23 (B) Inherited characteristics that may derive from the individual or family member, that are
24 known to be a cause of a disease or disorder in a person or that person’s offspring, or that are
25 determined to be associated with a statistically increased risk of development of a disease or
26 disorder, and that are presently not associated with any symptoms of any disease or disorder.

27 (j) “Mental disability” includes, but is not limited to, all of the following:

28 (1) Having any mental or psychological disorder or condition, such as intellectual disability,
29 organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a
30 major life activity. For purposes of this section:

31 (A) “Limits” shall be determined without regard to mitigating measures, such as medications,
32 assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a
33 major life activity.

34 (B) A mental or psychological disorder or condition limits a major life activity if it makes the
35 achievement of the major life activity difficult.

36 (C) “Major life activities” shall be broadly construed and shall include physical, mental, and
37 social activities and working.

38 (2) Any other mental or psychological disorder or condition not described in paragraph (1) that
39 requires special education or related services.

40 (3) Having a record or history of a mental or psychological disorder or condition described in
41 paragraph (1) or (2), which is known to the employer or other entity covered by this part.

42 (4) Being regarded or treated by the employer or other entity covered by this part as having, or
43 having had, any mental condition that makes achievement of a major life activity difficult.

1 (5) Being regarded or treated by the employer or other entity covered by this part as having, or
2 having had, a mental or psychological disorder or condition that has no present disabling effect,
3 but that may become a mental disability as described in paragraph (1) or (2).

4 “Mental disability” does not include sexual behavior disorders, compulsive gambling,
5 kleptomania, pyromania, or psychoactive substance use disorders resulting from the current
6 unlawful use of controlled substances or other drugs.

7 (k) “Veteran or military status” means a member or veteran of the United States Armed Forces,
8 United States Armed Forces Reserve, the United States National Guard, and the California
9 National Guard.

10 (l) “On the bases enumerated in this part” means or refers to discrimination on the basis of one
11 or more of the following: race, religious creed, color, national origin, ancestry, physical disability,
12 mental disability, medical condition, genetic information, marital status, sex, age, sexual
13 orientation, reproductive health decisionmaking, or veteran or military status.

14 (m) “Physical disability” includes, but is not limited to, all of the following:

15 (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or
16 anatomical loss that does both of the following:

17 (A) Affects one or more of the following body systems: neurological, immunological,
18 musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular,
19 reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

20 (B) Limits a major life activity. For purposes of this section:

21 (i) “Limits” shall be determined without regard to mitigating measures such as medications,
22 assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself
23 limits a major life activity.

24 (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss
25 limits a major life activity if it makes the achievement of the major life activity difficult.

26 (iii) “Major life activities” shall be broadly construed and includes physical, mental, and social
27 activities and working.

28 (2) Any other health impairment not described in paragraph (1) that requires special education
29 or related services.

30 (3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement,
31 anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the
32 employer or other entity covered by this part.

33 (4) Being regarded or treated by the employer or other entity covered by this part as having, or
34 having had, any physical condition that makes achievement of a major life activity difficult.

35 (5) Being regarded or treated by the employer or other entity covered by this part as having, or
36 having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health
37 impairment that has no present disabling effect but may become a physical disability as described
38 in paragraph (1) or (2).

39 (6) “Physical disability” does not include sexual behavior disorders, compulsive gambling,
40 kleptomania, pyromania, or psychoactive substance use disorders resulting from the current
41 unlawful use of controlled substances or other drugs.

42 (n) Notwithstanding subdivisions (j) and (m), if the definition of “disability” used in the federal
43 Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection

1 of the civil rights of individuals with a mental disability or physical disability, as defined in
2 subdivision (j) or (m), or would include any medical condition not included within those
3 definitions, then that broader protection or coverage shall be deemed incorporated by reference
4 into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (m).

5 (o) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability,
6 medical condition, genetic information, marital status, sex, age, sexual orientation, reproductive
7 health decisionmaking, or veteran or military status” includes any of the following:

8 (1) Any combination of those characteristics.

9 (2) A perception that the person has any of those characteristics or any combination of those
10 characteristics.

11 (3) A perception that the person is associated with a person who has, or is perceived to have,
12 any of those characteristics or any combination of those characteristics.

13 (p) “Reasonable accommodation” may include either of the following:

14 (1) Making existing facilities used by employees readily accessible to, and usable by, individuals
15 with disabilities.

16 (2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position,
17 acquisition or modification of equipment or devices, adjustment or modifications of examinations,
18 training materials or policies, the provision of qualified readers or interpreters, and other similar
19 accommodations for individuals with disabilities.

20 (q) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include
21 all aspects of religious belief, observance, and practice, including religious dress and grooming
22 practices. “Religious dress practice” shall be construed broadly to include the wearing or carrying
23 of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of
24 an individual observing a religious creed. “Religious grooming practice” shall be construed
25 broadly to include all forms of head, facial, and body hair that are part of an individual observing
26 a religious creed.

27 (r) (1) “Sex” includes, but is not limited to, the following:

28 (A) Pregnancy or medical conditions related to pregnancy.

29 (B) Childbirth or medical conditions related to childbirth.

30 (C) Breastfeeding or medical conditions related to breastfeeding.

31 (2) “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and
32 includes a person’s gender identity and gender expression. “Gender expression” means a person’s
33 gender-related appearance and behavior whether or not stereotypically associated with the person’s
34 assigned sex at birth.

35 (3) “Sex” also includes any actual or perceived characteristics listed in Section 27(b)(3).

36 (s) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

37 (t) “Supervisor” means any individual having the authority, in the interest of the employer, to
38 hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other
39 employees, or the responsibility to direct them, or to adjust their grievances, or effectively to
40 recommend that action, if, in connection with the foregoing, the exercise of that authority is not of
41 a merely routine or clerical nature, but requires the use of independent judgment.

42 (u) “Undue hardship” means an action requiring significant difficulty or expense, when
43 considered in light of the following factors:

1 (1) The nature and cost of the accommodation needed.

2 (2) The overall financial resources of the facilities involved in the provision of the reasonable
3 accommodations, the number of persons employed at the facility, and the effect on expenses and
4 resources or the impact otherwise of these accommodations upon the operation of the facility.

5 (3) The overall financial resources of the covered entity, the overall size of the business of a
6 covered entity with respect to the number of employees, and the number, type, and location of its
7 facilities.

8 (4) The type of operations, including the composition, structure, and functions of the workforce
9 of the entity.

10 (5) The geographic separateness or administrative or fiscal relationship of the facility or
11 facilities.

12 (v) “National origin” discrimination includes, but is not limited to, discrimination on the basis
13 of possessing a driver’s license or identification card granted under Section 12801.9 of the Vehicle
14 Code.

15 (w) “Race” is inclusive of traits associated with race, including, but not limited to, hair texture
16 and protective hairstyles.

17 (x) “Protective hairstyles” includes, but is not limited to, such hairstyles as braids, locs, and
18 twists.

19 (y) “Reproductive health decisionmaking” includes, but is not limited to, a decision to use or
20 access a particular drug, device, product, or medical service for reproductive health. This
21 subdivision and other provisions in this part relating to “reproductive health decisionmaking” shall
22 not be construed to mean that subdivision (r) of this section and other provisions in this part related
23 to “sex” do not include reproductive health decisionmaking.

24 **Comment.** Paragraph (3) of subdivision (r) of Section 12926 is amended to reflect California’s
25 commitment to the equality of rights under the law. This amendment conforms with Section 27, which is
26 added to the Government Code, and there are sections identical to Section 27 in each of the other California
27 Codes to clarify and provide consistency across all California laws governing sex discrimination.

28 This section is derived from existing California constitutional protections, but not by way of limitation,
29 and intended to provide express language confirming that California’s laws prohibiting and protecting
30 against sex discrimination address, at a minimum, discrimination based on the listed characteristics and
31 actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in
32 the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing
33 Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code),
34 California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division
35 1 of Title 1 of the Education Code).

HARBORS AND NAVIGATION CODE

Harb. and Nav. Code § 26 (added). Scope of sex discrimination

SEC. ____ . Section 26 is added to the Harbors and Navigation Code, to read:

26. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 26 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Harbors and Navigation, there are sections identical to Section 26 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

HEALTH AND SAFETY CODE

Health & Safety Code § 29 (added). Scope of sex discrimination

SEC. ____ . Section 29 is added to the Health and Safety Code, to read:

29. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 29 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Health and Safety Code, there are sections identical to Section 29 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

INSURANCE CODE

Ins. Code § 49 (added). Scope of sex discrimination

SEC. ____ . Section 49 is added to the Insurance Code, to read:

49. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 49 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Insurance Code, there are sections identical to Section 49 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

LABOR CODE

Lab. Code § 12.3 (added). Scope of sex discrimination

SEC. ____ . Section 12.3 is added to the Labor Code, to read:

12.3. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 12.3 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Labor Code, there are sections identical to Section 12.3 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

MILITARY AND VETERANS CODE

Mil. & Vet. Code § 20 (added). Scope of sex discrimination

SEC. ____ . Section 20 is added to the Military and Veterans Code, to read:

20. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 20 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Military and Veterans Code, there are sections identical to Section 20 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

PENAL CODE

Penal Code § 5.5 (added). Scope of sex discrimination

SEC. ____ . Section 5.5 is added to the Penal Code, to read:

5.5. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 5.5 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Penal Code, there are sections identical to Section 5.5 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

PROBATE CODE

Prob. Code § 71 (added). Scope of sex discrimination

SEC. ____ . Section 71 is added to the Probate Code, to read:

71. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 71 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Probate Code, there are sections identical to Section 71 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

PUBLIC CONTRACT CODE

Pub. Cont. Code § 1105 (added). Scope of sex discrimination

SEC. ____ . Section 1105 is added to the Public Contract Code, to read:

1105. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 1105 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Public Contract Code, there are sections identical to Section 1105 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

PUBLIC RESOURCES CODE

Pub. Res. Code § 19 (added). Scope of sex discrimination

SEC. ____ . Section 19 is added to the Public Resources Code, to read:

19. (a)(1) Any provisions that prohibit discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 19 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Public Resources Code, there are sections identical to Section 19 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

PUBLIC UTILITIES CODE

Pub. Util. Code § 23 (added). Scope of sex discrimination

SEC. ____ . Section 23 is added to the Public Utilities Code, to read:

23. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 23 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Public Utilities Code, there are sections identical to Section 23 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

REVENUE AND TAXATION CODE

Rev. & Tax. Code § 12.3 (added). Scope of sex discrimination

SEC. ____ . Section 12.3 is added to the Revenue and Taxation Code, to read:

12.3. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 12.3 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Revenue and Taxation Code, there are sections identical to Section 12.3 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

STREETS AND HIGHWAYS CODE

Sts. and Hy. Code § 37 (added). Scope of sex discrimination

SEC. ____ . Section 37 is added to the Streets and Highways Code, to read:

37. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 37 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Streets and Highways Code, there are sections identical to Section 37 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

UNEMPLOYMENT INSURANCE CODE

Unemp. Ins. Code § 22 (added). Scope of sex discrimination

SEC. ____ . Section 22 is added to the Unemployment Insurance Code, to read:

22. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 22 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Unemployment Insurance Code, there are sections identical to Section 22 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

VEHICLE CODE

Veh. Code § 552 (added). Scope of sex discrimination

SEC. ____ . Section 552 is added to the Vehicle Code, to read:

552. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 552 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Vehicle Code, there are sections identical to Section 552 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

WATER CODE

Water. Code § 27 (added). Scope of sex discrimination

SEC. ____ . Section 27 is added to the Water Code, to read:

27. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 27 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Water Code, there are sections identical to Section 27 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 28 (added). Scope of sex discrimination

SEC. ____ . Section 28 is added to the Welfare and Institutions Code, to read:

28. (a)(1) Any provision that prohibits discrimination on the basis of sex, discrimination on the basis of gender, or similar discrimination shall also be interpreted as prohibiting “sex discrimination,” as defined in paragraph (3) of subdivision (b).

(2) In case of a conflict between the provisions of this section and other provisions of this code that set forth the scope of “sex discrimination,” the provisions of this section shall prevail over provisions with a narrower scope.

(b) For the purposes of this section, the following definitions apply:

(1) “Discrimination” includes, but is not limited to, harassment.

(2) “Pregnancy or related medical conditions” includes, but is not limited to, childbirth, abortion, lactation, miscarriage, fertility, and contraception.

(3) “Sex discrimination” includes, but is not limited to, discrimination based on any of the following actual or perceived characteristics or actions:

(A) Assigned sex or gender category, including female, male, or nonbinary.

(B) Degree of conformity to sex or gender stereotypes.

(C) Gender, including gender identity, gender expression, and access to, and use of, gender affirming care and other related health care.

(D) Pregnancy or related medical conditions.

(E) Decision-making, access to care, or potential or actual use of a drug, device, product, or service relating to pregnancy or related medical conditions.

(F) Sexual orientation.

(G) Variations in sex characteristics, including intersex traits or differences in sex development.

(c) This section reflects the existing protections of Sections 1, 1.1, 7, and 8 of Article I of the California Constitution recognizing the individual rights to pursue and obtain safety, happiness, and privacy, ensuring equal protection of the laws, protecting the ability to enter or pursue a business, profession, vocation, or employment, and protecting an individual’s reproductive freedom. This section shall be liberally construed to effectuate the purposes of these constitutional protections.

Comment. Section 28 is added to reflect California’s commitment to the equality of rights under the law. While this section applies specifically to the Welfare and Institutions Code, there are sections identical to Section 28 in each of the other California codes to clarify and provide consistency across all California laws governing sex discrimination.

This section is derived from existing California constitutional protections, but not by way of limitation, and intended to provide express language confirming that California’s laws prohibiting and protecting against sex discrimination address, at a minimum, discrimination based on the listed characteristics and actions. The scope of this section is consistent with the broad scope of anti-discrimination protections in the Unruh Civil Rights Act (Section 51 of the Civil Code), the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), California’s laws on Educational Equity (Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code).