

AMENDED IN ASSEMBLY MARCH 11, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1122

Introduced by Assembly ~~Member~~ Members Cristina Garcia and Holden

February 18, 2021

An act to add Section 12940.2 to the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1122, as amended, Cristina Garcia. ~~Workforce diversity. Employment discrimination.~~

Existing law, the California Fair Employment and Housing Act, Act (FEHA), protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, mental condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

~~This bill would state the intent of the Legislature to enact legislation that would encourage employers to develop and implement personnel policies that incorporate workforce diversity.~~

This bill would provide that, under FEHA, it is not a violation of the rights of any individual who is not chosen for an employer to hire or promote a member of a protected group, if the employer determines that the individual hired or promoted is qualified for the job and the individual hired or promoted is a member of a protected group that is underrepresented in the type of job in question in the relevant general workforce. Under the bill, the violation exemption would not apply if

the individual hired or promoted is a member of a protected group that, prior to the selection of the individual, was overrepresented in the type of job in the employer’s workforce or an individual challenging the hire or promotion decision is a member of a protected group that is underrepresented in the type of job in the relevant general workforce and there is substantial evidence that the individual’s protected status was a substantial factor in the hire or promotion decision. The bill would define terms for its purpose.

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

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

1 SECTION 1. Section 12940.2 is added to the Government Code,
 2 to read:
 3 12940.2. (a) As used in this section:
 4 (1) “Protected group” means membership in a subgroup of a
 5 category listed in subdivision (a) of Section 12940.
 6 (2) “Overrepresented” means the protected group constitutes
 7 a higher percentage of the type of job in question in the employer’s
 8 workforce than the percent of the protected group in the type of
 9 job in the relevant general workforce.
 10 (3) “Underrepresented” means the protected group, to a
 11 statistically significant degree, constitutes a lower percentage of
 12 the type of job in the relevant general workforce than would be
 13 expected by the percentage of the protected group in the general
 14 population.
 15 (b) Under this chapter, it is not a violation of the rights of any
 16 individual who is not chosen for an employer to hire or promote
 17 a member of a protected group, if both of the following apply:
 18 (1) The employer determines that the individual hired or
 19 promoted is qualified for the job.
 20 (2) The individual hired or promoted is a member of a protected
 21 group that is underrepresented in the type of job in question in the
 22 relevant general workforce.
 23 (c) Subdivision (b) shall not apply if either of the following
 24 apply:
 25 (1) The individual hired or promoted is a member of a protected
 26 group that, prior to the selection of the individual, was
 27 overrepresented in the type of job in the employer’s workforce.

1 (2) *An individual challenging the hire or promotion decision is*
2 *a member of a protected group that is meaningfully*
3 *underrepresented in the type of job in the relevant general*
4 *workforce and there is substantial evidence that the individual's*
5 *protected status was a substantial factor in the hire or promotion*
6 *decision.*

7 ~~SECTION 1. It is the intent of the Legislature to enact~~
8 ~~legislation that would encourage employers to develop and~~
9 ~~implement personnel policies that incorporate workforce diversity.~~