2025 California FEHA Amendments Summary

In effect as of
October 1, 2025

APPLICABILITY

The amendments to the California Fair Employment and Housing Act (FEHA) regulations apply to employers, employment agencies, labor organizations, apprenticeship programs, and other covered entities. As a general rule, any California employer regularly employing five or more individuals is covered with limited exemptions (see exemptions below).

These rules govern the use of automated-decision systems (ADS) or selection criteria (i.e., a qualification standard, employment test, or proxy) in employment-related decisions and prohibit discrimination based on protected characteristics unless it is job-related, consistent with business necessity, a bona fide occupational requirement, and/or there is no less discriminatory standard, test, or other selection criteria that serves the employer's goals as effectively as the challenged standard, test, or other selection criteria. These definitions cover tools and methods that aid employment decision-making, such as:

- Resume screeners
- Online assessments and games
- Video interview analysis
- Personality or behavioral profiling
- Targeted job advertising
- Third party data analysis
- Automated ranking or scoring

Note: Duty Not to Discriminate. Any employer or other covered entity engaged in recruitment activity shall recruit in a non-discriminatory manner. However, nothing in these regulations shall preclude affirmative efforts to utilize recruitment practices to attract an individual who is a member of an underrepresented protected class covered by the Act.

The protected characteristics include:

- Sex
- National origin
- Pregnancy or perceived pregnancy
- Marital status
- Religion
- Disability
- Age
- Reproductive health
- Genetic information
- Immigration status
- Citizenship status
- English proficiency (e.g., language skills, accent)
- Possession of a driver's license issued under section 12801.9 of the Vehicle Code

KEY DEFINITIONS

Agent: Any person or entity authorized to act on behalf of an employer, which may include applicant recruitment, applicant screening, hiring, promotion, or decisions regarding pay, benefits, or leave.

Applicant: Any individual who files a written application or otherwise indicates a specific desire to an employer or other covered entity is considered for employment. This does not include an individual who willingly withdraws their application prior to being interviewed.

Automated-Decision System (ADS): A computational process that makes or supports human employment decision making and may be derived from and/or use artificial intelligence, machine learning, algorithms, statistics, and/or other data processing techniques. It can perform tasks such as:

- Using computer-based assessments or tests to:
  - Make predictive assessments about an applicant or employee;
  - Measure an applicant's or employee's skills, dexterity, reaction-time, and/or other abilities or characteristics;
  - Measure an applicant's or employee's personality traits, aptitude, attitude, and/or cultural fit; and/or
  - Screen, evaluate, categorize, and/or recommend applicants or employees.
- Directing job advertisements or other recruiting materials to targeted groups
- Screening resumes for particular terms or patterns
- Analyzing facial expression, word choice, and/or voice in online interviews
- Analyzing employee or applicant data acquired from third parties

It excludes word processing software, spreadsheet software, map navigation systems, web hosting, domain registration, networking, caching, website-loading, data storage, firewalls, anti-virus, anti-malware, spam and robocall filtering, spellchecking, calculators, database, or similar technologies, provided that these technologies do not make a decision regarding an employment benefit.

Algorithm: A set of rules or instructions a computer follows to perform calculations or other problem-solving operations (e.g., detect patterns in datasets and automate decision-making based on those patterns and datasets).

Artificial Intelligence: A machine-based system that infers, from the input it receives, how to generate outputs (e.g., predictions, content, recommendations, or decisions).

Automated-Decision System Data: Includes any data used in or resulting from the application of an ADS (e.g., data provided by or about individual applicants or employees, or data reflecting employment decisions or outcomes) and/or used to develop or customize an ADS for use by a particular employer or other covered entity.

Machine Learning: A system's ability to use and learn from its own analysis of data or experience and apply this learning automatically to future calculations or tasks.

Proxy: A characteristic or category closely correlated with a basis protected by the Act.

Employer: Any person or entity employing five or more employees, including the state or any political or civil subdivision regardless of how many employees it has.

Employment Agency: Any person or entity regularly undertaking, for compensation, the procurement of job applicants, employees or opportunities to work, including those through the use of an ADS.

IMPACT ASSESSMENT REQUIREMENTS

While the regulations do not require an "impact assessment," the regulations stipulate:

- Anti-bias testing or similar proactive efforts can be used to defend against a claim of unlawful discrimination. This includes:
  - Consideration of whether an ADS or selection criteria have an adverse impact on protected groups (as adopted from the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607 (1978)).
  - Documentation/evidence of the quality, efficacy, recency, and scope of such effort, the results of such testing or other effort, and the response to the results.

NOTICE REQUIREMENTS

Employers must:

- Notify applicants if an ADS is used in hiring or employment decisions.
- Provide applicants with the opportunity to respond to adverse decisions based on criminal history, including the right to submit evidence of rehabilitation or mitigating circumstances.
- Disclose disqualifying convictions and provide a copy of the conviction history report.

PUBLISHING & RECORDKEEPING REQUIREMENTS

There are no publishing requirements stipulated in the amendments, but several recordkeeping requirements were explicitly noted. Employers are required to:

- Maintain records of ADS use, including selection criteria, ADS data, and outcomes.
- Collect and retain applicant identification records, including data regarding the race, sex, and national origin of each applicant and for the job for which they applied for a period of 4 years.
- Separate demographic data from personnel files.
- Preserve all relevant records upon notice of a complaint.

OTHER REQUIREMENTS

- Employers must ensure ADS does not result in unlawful discrimination based on race, sex, disability, religion, national origin, age, or other protected characteristics.
- Reasonable accommodations must be provided where an ADS, that measures, for example, an applicant's skill, dexterity, or reaction time, or tone of voice, facial expressions, or other physical characteristics or behavior, may discriminate against individuals based on race, national origin, gender, disability, or other protected characteristics.
- Employers must conduct individualized assessments before denying employment based on criminal history.

EXEMPTIONS

- Employees located outside of California are not themselves covered by the protections of the Act if the allegedly unlawful conduct did not occur in California, or the allegedly unlawful conduct was not ratified by decision makers or participants in unlawful conduct located in California.
- Certain positions are exempt from criminal history restrictions (e.g., law enforcement, positions requiring background checks by law).
- Employers complying with federal or state laws mandating specific screening processes may have a rebuttable defense.
- A religious association or religious corporation not organized for private profit is not an employer under the meaning of this Act; any non-profit religious organization exempt from federal and state income tax as a non-profit religious organization is presumed not to be an employer under this Act. Notwithstanding such status, any portion of such tax exempt religious association or religious corporation subject to state or federal income taxes as an unrelated business and regularly employing five or more individuals is an employer.

ENFORCEMENT

- Enforced by the California Civil Rights Department.
- Applicants and employees may file complaints or obtain right-to-sue notices.
- Violations may result in legal action and penalties.

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