



## California Amends FEHA to Prohibit Discrimination or Harassment Based on Gender Perception or Identity

(August 6, 2003)

### Summary

On August 2, 2003, Governor Gray Davis signed into law a new bill prohibiting employment discrimination or harassment based on gender “perception” or “identity.” This new law appears to be primarily intended to prohibit discrimination and harassment against transgender and cross-dressing employees and applicants.

### Details

The new law ([AB 196](#)) amends California’s Fair Employment and Housing Act (FEHA) adding “gender” to its list of protected classifications. However, gender is defined more broadly than under federal law. The additional prohibition of gender discrimination (in addition to the existing prohibition of sex discrimination) is intended to prevent discrimination and harassment based on gender-related characteristics, such as transgender status. Specifically, the law now provides that gender-based discrimination occurs when a person is treated inappropriately because he or she looks or acts differently from what an employer considers to be “traditionally associated with the employee’s sex at birth.” For example, the law would now be violated if a qualified job seeker is refused work simply because he or she is transgender or dresses in a manner considered to be inconsistent with his or her gender.

Gender-based discrimination of the nature addressed by AB 196 is already prohibited in schools and is addressed in laws pertaining to sexual harassment and hate crimes. In fact, AB 196 amends the FEHA by using the existing definition of “gender” codified in those laws.

### What This Means

Obviously, employers should be careful not to discriminate against, or tolerate harassment of, any employee or applicant based on the perception of the individual’s gender-related characteristics. However, the new law also addresses employers’ grooming standards and dress codes. It specifically allows an employer to require its employees to adhere to reasonable workplace appearance, grooming and dress standards, *provided the employer allows its employees to appear or dress consistently with the employee’s own gender identity.* Therefore, employers that have dress/grooming codes or policies

need to consider modifying them to be consistent with this new pronouncement.

This E-Update was authored by Debora Buljat. If you have any questions about this E-Update, please contact the author or any PPS&C attorney at (619) 237-5200.

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