



# Complaint to Sacramento County Superior Court

Per ADA Title II Regulations  
Sections 35.104, 35.107, 35.170(a)

Per Section 504 of the  
Rehabilitation Act of 1973

Per California Government  
Code Section 11135

Exhibit F

Government Code Section 11135  
Statute, Regulations, References


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## GOVERNMENT CODE - GOV

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]** ( Division 3 added by Stats. 1945, Ch. 111. )

**PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11895]** ( Part 1 added by Stats. 1945, Ch. 111. )

**CHAPTER 1. State Agencies [11000 - 11148.5]** ( Chapter 1 added by Stats. 1945, Ch. 111. )

**ARTICLE 9.5. Discrimination [11135 - 11139.8]** ( Article 9.5 added by Stats. 1977, Ch. 972. )

**11135.** (a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, 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. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) The protected bases referenced in this section have the same meanings as those terms are defined in Section 12926.

(d) The protected bases used in this section include a perception that a 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.

(Amended by Stats. 2016, Ch. 870, Sec. 4. (SB 1442) Effective January 1, 2017.)





**GOVERNMENT CODE - GOV**

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]** ( Division 3 added by Stats. 1945, Ch. 111. )

**PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900 - 12996]** ( Part 2.8 added by Stats. 1980, Ch. 992. )

**CHAPTER 5. Powers and Duties [12930 - 12935]** ( Chapter 5 added by Stats. 1980, Ch. 992. )

**ARTICLE 1. The Department [12930 - 12933]** ( Article 1 added by Stats. 1980, Ch. 992. )

**12930.** The department shall have the following functions, powers, and duties:

(a) To establish and maintain a principal office and any other offices within the state as are necessary to carry out the purposes of this part.

(b) To meet and function at any place within the state.

(c) To appoint attorneys, investigators, conciliators, mediators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies and, in addition, with respect to housing discrimination, of conciliation councils.

(e) To adopt, promulgate, amend, and rescind suitable procedural rules and regulations to carry out the investigation, prosecution, and dispute resolution functions and duties of the department pursuant to this part.

(f) (1) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Chapter 6 (commencing with Section 12940).

(2) To receive, investigate, conciliate, mediate, and prosecute complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(3) To receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions pursuant to Section 52.5 of the Civil Code for, a violation of Section 236.1 of the Penal Code. Damages awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the person harmed by the violation of Section 236.1 of the Penal Code. Costs and attorney's fees awarded in any action brought by the department pursuant to Section 52.5 of the Civil Code shall be awarded to the department. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(4) To receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful pursuant to Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, except for complaints relating to educational equity brought under Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of Title 1 of the Education Code and investigated pursuant to the procedures set forth in Subchapter 5.1 of Title 5 of the California Code of Regulations, and not otherwise within the jurisdiction of the department.

(A) Nothing in this part prevents the director or the director's authorized representative, in that person's discretion, from making, signing, and filing a complaint pursuant to Section 12960 or 12961 alleging practices made unlawful under Section 11135.

(B) Remedies available to the department in conciliating, mediating, and prosecuting complaints alleging these practices are the same as those available to the department in conciliating, mediating, and prosecuting complaints alleging violations of Article 1 (commencing with Section 12940) of Chapter 6.

(g) In connection with any matter under investigation or in question before the department pursuant to a complaint filed under Section 12960, 12961, or 12980:

- (1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.
  - (2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.
  - (3) To issue written interrogatories.
  - (4) To request the production for inspection and copying of books, records, documents, and physical materials.
  - (5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.
  - (h) To bring civil actions pursuant to Section 12965 or 12981 and to prosecute those civil actions before state and federal trial courts.
  - (i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, familial status, disability, genetic information, or sexual orientation.
  - (j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.
  - (k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.
  - (l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may end mediation at any time.
  - (m) The following shall apply with respect to any accusation pending before the former Fair Employment and Housing Commission on or after January 1, 2013:
    - (1) If an accusation issued under former Section 12965 includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, with the consent of the party accused of engaging in unlawful practices, the department may withdraw an accusation and bring a civil action in superior court.
    - (2) If an accusation was issued under former Section 12981, with the consent of the aggrieved party filing the complaint an aggrieved person on whose behalf a complaint is filed, or the party accused of engaging in unlawful practices, the department may withdraw the accusation and bring a civil action in superior court.
    - (3) Where removal to court is not feasible, the department shall retain the services of the Office of Administrative Hearings to adjudicate the administrative action pursuant to Sections 11370.3 and 11502.
  - (n) On any Section 1094.5 Code of Civil Procedure challenge to a decision of the former Fair Employment and Housing Commission pending on or after January 1, 2013, the director or the director's designee shall consult with the Attorney General regarding the defense of that writ petition.
- (Amended by Stats. 2017, Ch. 799, Sec. 4. (AB 1556) Effective January 1, 2018.)*

Disability Rights Advocates  
Attn: Paradise, Laurence W.  
2001 Center Street  
Third Floor  
Berkeley, CA 94704

Greenberg Traurig, LLP  
Attn: Hurley, Gregory F.  
3161 Michelson Drive,  
Suite 1000  
Irvine, CA 92612-\_\_\_\_\_

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**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

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Californians for Disability R  Plaintiff/Petitioner(s)  VS.  California Department of Tr  Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG08376549</u>  Order  Demurrer to the First Amended Complaint Overruled
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The Demurrer to the First Amended Complaint was set for hearing on 12/19/2008 at 02:00 PM in Department 20 before the Honorable Robert B. Freedman. The Tentative Ruling required that the parties appear, and the matter came on regularly for hearing.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The Demurrer of defendants California Dept. of Transportation and Will Kempton, in his official capacity ("Defendants") to the Complaint of plaintiffs Californians for Disability Rights, Inc., California Council for the Blind, Ben Rockwell and Dmitri Belser, on behalf of themselves, and on behalf of all others similarly situated ("Plaintiffs") is ruled on as follows:

**BACKGROUND:**

The operative complaint in this case (First Amended Complaint, filed on April 9, 2008, hereafter "Complaint") contains causes of action for 1) Violation of California Civil Code sections 54, et seq., 2) Violation of California Government Code sections 4450, et seq., 3) California Government Code sections 11135, et seq. [newly constructed or altered sidewalks, streets, roads and/or highways; maintenance; temporary routes during construction; information], 4) California Government Code section 11135(b) - Self-Evaluation and Transition Plan, and 5) Taxpayer's Action for Injunctive Relief, California Code of Civil Procedure section 526a.

Defendant's demur to the 4th cause of action only.

**SUMMARY OF DEFENDANTS' ARGUMENTS:**

First, Defendants argue that the 4th cause of action is barred by res judicata. These claims were already adjudicated in the related federal action between the same parties, entitled CDR v. Caltrans, Case No. C-06-5125 SBA ("Federal Action"), where the court found that there is no private right of action to enforce 28 CFR sections 35.105(a) & 35.150(d) ("self-evaluation and transition plan regulations").

Second, Defendants argue that the 4th cause of action is barred under the collateral estoppel doctrine. In Defendants' view, the issue of whether Plaintiffs have a private right of action to enforce the self-evaluation and transition plan regulations under California law (Government Code sections 11135(b) and 11139) is identical to the one already decided in the Federal Action.

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Order

Third, the 4th cause of action fails to state a claim because there is no private right of action to enforce the self-evaluation or transition regulations. Where state anti-discrimination law is modeled after federal law, courts rely on case law interpreting federal law to interpret state law. When the California Legislature incorporates a non-California statute, it is presumed to have acted with knowledge and in light of decisions interpreting the incorporated statute. (*Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 555-56.) Here, several federal courts, including the District Court in the Federal Action, have held that there is no private right of action under the ADA to enforce the self-evaluation and transition plan regulations. This court should thus interpret section 11135(b) in accordance with the federal courts' interpretations of the federal law that it incorporates.

Allowing enforcement under state law would create a conflict between federal and state law and frustrate the federal regulatory scheme. Any enforcement of the self-evaluation and transition plan regulations should be left to the U.S. Dept. of Justice.

#### SUMMARY OF PLAINTIFFS' ARGUMENTS:

The plain meaning of sections 11135(b) and 11139 unambiguously creates a private right under state law to enforce the self-evaluation and transition plan requirements, and federal case law interpreting the enforceability under federal law cannot be used to contradict that plain meaning. Where federal construction was rendered after the adoption of a statute by the state, it is not binding on state courts. (*Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387.)

→ Section 11135(b) was adopted in 1992, and in 1999 section 11139 was amended and clarified that there was a private right of action to enforce section 11135. It was not until 2004 (*Ability Center of Greater Toledo v. City of Sandusky* (6th Cir. 2004) 385 F.3d 901, 914) that enforceability truly came into question. The federal cases finding no private right of action all premised their analysis on *Alexander v. Sandoval*, 532 U.S. 275, which was not decided until 2001. Furthermore, federal courts remain divided on the question. (See, e.g., *Chaffin v. Kansas State Fair Bd.* (10th Cir. 2003) 348 F.3d 850, 858-59 and 861-62.)

Because federal law has no analog to section 11139, the reasoning of *Sandoval* is not applicable here. (*Darensberg v. Metropolitan Transportation Commission* (2008 N.D. Cal.) 2008 WL 3915349 (Slip Copy).

Private enforcement would supplement, not impede, public enforcement. No conflict is created.

*Res judicata* does not apply because there has been no final judgment on the merits in the Federal Action. Furthermore, since the District Court was deprived of its jurisdiction over Plaintiffs' state law claims due to Defendants' assertion of sovereign immunity, *res judicata* does not bar Plaintiffs from bringing their claims under section 11135(b) in this court.

Collateral estoppel does not apply because the issues are not identical.

#### DISCUSSION:

The Court is not persuaded by Defendants' arguments with respect to the applicability of the principles of *res judicata* and/or the collateral estoppel doctrine. Whether or not the Court were to treat the District Court's ruling on the unavailability of a private right of action to enforce the self-evaluation and transition plan regulations under federal law as a "final judgment" as to those claims in the Federal Action, the manner in which the state law claims were eliminated from the Federal Action would preclude a finding of *res judicata*. As to collateral estoppel, Plaintiffs' assertion that their claims in the this case are not identical to the claims in the Federal Action is correct. The District Court did not decide any issues regarding sections 11135(b) or 11139.

With respect to whether a private right of action to enforce the self-evaluation and transition plan regulations exists under California law, Defendants have not convinced the Court that the plain language of section 11139 should, in effect, be ignored in this instance. As pointed out by Plaintiffs, the federal authority on the existence of a private right of action under the ADA was, for the most part, developed after sections 11135(b) and 11139 in their current iterations had taken effect, and as such have no real bearing on what the California Legislature had in mind at the time. Recognizing that the

administered by the state or by any state agency.” 2001 Cal. Stat. ch. 708 (A.B. 677), §1. Thus, the Legislature expanded the reach of Section 11135 to apply to the state, and eliminated procedural obstacles to its full implementation.

The Legislature has continually broadened the scope of Section 11135 to include discrimination against a wider range of protected classes. In 1992, the Legislature amended the statute to incorporate broader coverage for persons with disabilities, and expanded the definition of disabled persons. See 1992 Cal. Stat. ch. 913, §18. In 2002, the Legislature amended Section 11135 to prohibit discrimination based upon race and national origin. 2002 Cal. Stat. ch. 1102 (S.B. 105). Four years later, the Legislature added “sexual orientation” as a protected class. 2006 Cal. Stat. ch. 182 (S.B. 1441), §1. That same year, it also inserted subsection (f), which prohibits discrimination based on the mere perception that a person has any of the characteristics associated with a protected class or that the person is associated with a person who has or is perceived to have any of those characteristics. 2006 Cal. Stat. ch. 182 (S.B. 1441), §1.

Finally, in 2005, the Legislature rejected a restrictive reading of the statute that would have exempted California State University from its ambit. See *Garcia v. California State University*, 131 Cal. App. 4th 1283, ordered





**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**  
**FAIR EMPLOYMENT & HOUSING COUNCIL**  
2218 KAUSEN DRIVE, SUITE 100, ELK GROVE, CA 95758  
(916) 478-7248 | www.dfeh.ca.gov | e-mail: fehCouncil@dfeh.ca.gov

DIRECTOR KEVIN KISH

## **FAIR EMPLOYMENT AND HOUSING COUNCIL**

Meeting of March 30, 2017, 10:00am

### **Minutes**

State Capitol  
Room 127  
Sacramento, CA 95814

#### **Councilmembers Present**

Chaya Mandelbaum, Chairperson  
Dale Brodsky, Councilmember  
Mark Harris, Councilmember  
Tim Iglesias, Councilmember  
Dara Schur, Councilmember  
Kevin Kish, DFEH Director and Ex Officio member

#### **DFEH Staff Present**

Joan Keegan, DFEH Chief Deputy Director  
Holly Thomas, DFEH Deputy Director of Executive Programs  
Brian Sperber, DFEH Legislative and Regulatory Counsel  
Paul Kennedy, DFEH Associate Business Management Analyst  
Christopher Moores, DFEH Civil Rights Fellow

#### **Others Present**

Michelle Hill, Inland Fair Housing and Medical Board  
Heidi Palutke, California Apartment Association  
Whitney Prout, California Apartment Association  
Sanjay Wagle, California Association of Realtors  
Jonathan Young, California Association of Realtors  
Christopher Ogata, Disability Rights California  
Liza Cristol-Deman, Brancart & Brancart  
Ely Cristol-Deman, Student  
Noah Lebowitz, California Employment Lawyers Association  
Ashley Werner, Leadership Council for Justice and Accountability  
Patricia Leal, Leadership Council for Justice and Accountability  
Birhanu Adenew, California Department of Corrections and Rehabilitation  
Carl Borden, California Farm Bureau  
Ilene Jacobs, California Rural Legal Assistance  
Madeline Howard, Western Center for Law and Poverty  
Jon Smock, Apartment Association of Orange County  
Sarah Steinheimer, Legal Services of Northern California  
Alan Moody

CHAYA MANDELBAUM  
CHAIRPERSON

DALE BRODSKY  
COUNCILMEMBER

MARK T HARRIS  
COUNCILMEMBER

TIM IGLESIAS  
COUNCILMEMBER

JOSEPH ORTIZ  
COUNCILMEMBER

DARA L SCHUR  
COUNCILMEMBER



Enedina Cardenas, Seyfarth Shaw  
Dan Firestone, CICreports.com  
Justin Paddock, California Association of Realtors  
Emma Regidor, California Department of Corrections and Rehabilitation  
Ron Kingston, California Political Consulting Group  
Karen Challe, Atkinson Baker  
Kevin Baker, American Civil Liberties Union  
Marjorie Murray, Center for California Homeowner Association Law

## **I. Call to Order and Roll Call**

Chair Mandelbaum called the meeting to order at 10:07 a.m. and Brian Sperber conducted roll call. All Councilmembers were present except Councilmember Ortiz.

## **II. Welcome and Introduction of Guests**

Chair Mandelbaum introduced the Council and invited the guests in attendance to introduce themselves. Chair Mandelbaum stated that the Council meeting is livestreamed on the Council's website and reminded guests viewing remotely that they could participate in the meeting by emailing the Council and could find the Attachments on the website. Chair Mandelbaum introduced and welcomed new Councilmember Mark Harris. Chair Mandelbaum also thanked former Councilmember Schneiderman for his contributions to the Council. Chair Mandelbaum reminded the guests in attendance that hard copies of the Attachments were available in the meeting room.

## **III. Review of the Agenda**

Chair Mandelbaum highlighted and reviewed the topics for the day's agenda.

Chair Mandelbaum reviewed the Agenda and invited the guests to comment on subjects addressed by the Council throughout the day.

## **IV. Approval of the Minutes**

Attachment A: Minutes from the January 10, 2017 Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the January 10, 2017 meeting. During that meeting, the Council considered proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals; considered Additional Modifications to Text of Regulations Regarding Transgender Identity and Expression; heard a presentation by Councilmember Iglesias regarding residential occupancy standards; and considered Nonsubstantial Modifications to Text of Consideration of Criminal History in Employment Decisions Regulations. The Council approved the minutes unanimously, with Councilmember Harris abstaining from the vote.

## **V. Councilmembers' Reports**

Chair Mandelbaum noted that the criminal history in employment decisions regulations were recently approved by the Office of Administrative Law and will become effective on July 1, 2017. Chair Mandelbaum then invited the Council to report on any updates.

Councilmember Iglesias mentioned that the City of Santa Monica adopted an ordinance banning source of income discrimination and the ordinance was approved by a court. He also noted that banking scandals associated with fair housing were still occurring, as Wells Fargo was reported to have engaged in a pattern of discriminatory practices and as a result had its CRA rating lowered.

Councilmember Schur discussed her upcoming speaking engagement at the state bar real property section symposium on fair housing and public accommodations on April 13. Director Kish will also be speaking at the same event as the keynote speaker.

Councilmember Harris introduced himself. He was the chief counsel and consultant to then chairman of the assembly judiciary committee Elihu Harris, who eventually became a two term mayor of Oakland. Since then, he has been appointed by President Bill Clinton as his deputy chief of staff at the Department of Commerce under the late Ron Brown. He was the Undersecretary of California's Business, Transportation and Housing Agency under Governor Gray Davis. For the past 16 years he has been teaching at universities in California and China. He also has a law practice headquartered in Sacramento that serves clients throughout the state.

## **VI. Department of Fair Employment and Housing Report**

Director Kish reported that more than 40% of DFEH employees are currently eligible for retirement. This is a problem universal to state service. 62% of DFEH's employment investigators have been hired since Director Kish was appointed two years ago. 50% of those were hired within the last year. In the housing context, 37% were hired within the past year. As a side note, Director Kish noted that now is a great time to begin a career in state service. Additionally, DFEH has hired staff to fill its training unit since last year's budget contained two full time, ongoing training positions at the DFEH. They are conducting investigator academies for newly hired investigators as well as scheduling ongoing trainings on legal doctrines and investigative processes.

The DFEH has proposed updates to its procedural regulations. Those were noticed on March 10, 2017, and the public comment period closes on April 24, 2017. For anyone unfamiliar, this process is not done through the Council. Commenters must submit comments directly to the DFEH for consideration. Director Kish invited the public and the Council to comment on those practices.

The Department is also hosting two fair housing month events. Holly Thomas, Deputy Director of Executive Programs, provided an update on the Los Angeles event. On April 26, 2017, the DFEH will host an event covering (1) the housing laws that DFEH enforces, the complaint process, and settlement, mediation and dispute resolution services and (2) the Ralph Civil Rights Act. The event will be held at the California Endowment Center for Healthy Communities building. More information about that event can be found on the DFEH's website. On April 19, 2017, at the California Museum, DFEH is partnering with the Legislative Black Caucus for a screening of a documentary titled "Fair Legislation: The Byron Rumford Story."

Authority to enforce Gov. Code § 11135 et seq. was given to the DFEH on Jan 1, 2017. This statute prohibits discrimination in any state funded program or activity. DFEH has created complaint forms and has begun receiving complaints under this statute. DFEH has conducted a statewide survey on what state departments and agencies have done in the past to ensure compliance with section 11135. This new enforcement authority also creates some urgency on the Council to amend the section 11135 regulations.

The DFEH also filed a national origin lawsuit against Forever 21 in San Francisco based on an English only policy, a type of national origin discrimination being discussed by the Council in its regulations today.

## **VII. Public Hearing: Proposed Housing Regulations Regarding Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Information**

CHAYA MANDELBAUM  
CHAIRPERSON

DALE BRODSKY  
COUNCILMEMBER

MARK T HARRIS  
COUNCILMEMBER

TIM IGLESIAS  
COUNCILMEMBER

JOSEPH ORTIZ  
COUNCILMEMBER

DARA L SCHUR  
COUNCILMEMBER



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## California Government Code Section 11135-11139.8

California Government Code Sections 11135 through 11139.8 provides protection from discrimination from any program or activity that is conducted, funded directly by, or receives any financial assistance from the State. This section brings into State law the protection of [Title II of the ADA](#) which ensures accessibility to government programs and also requires State government to follow accessibility requirements standards of [Section 508 of the Rehabilitation Act](#), which ensures the accessibility of electronic and information technology.

### Full text of the law:

#### CALIFORNIA GOVERNMENT CODE SECTION 11135-11139

Because of the design of the "Official California Legislative Information" web page, we cannot give you a direct link to the correct section. To locate the section you're looking for, go to the "[California Law](#)" page. Check the box next to the appropriate code, and at the bottom, type in the code numbers in the search box and select "Search."

### Resources

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Voice mail: 202-305-8304

TTY mail: 202-353-8944

Facsimile: (202) 307-1198

For website accessibility by persons with disabilities.

The [Web Access Initiative of the World Wide Web Consortium](#).

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**§ 10012. Director's Complaints.**

2 CA ADC § 10012

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Title 2. Administration

Division 4.1. Department of Fair Employment and Housing

Chapter 1. Procedures of the Department of Fair Employment and Housing

Subchapter 1. Employment, Unruh Civil Rights Act (CIV. Code, § 51 et seq.), Ralph Civil Rights Act (CIV. Code, § 51.7), and Disabled Persons Act (CIV. Code, § 54 et seq.) Complaints

2 CCR § 10012

**§ 10012. Director's Complaints.**

(a) The director, in his or her discretion, may make, sign, and file a complaint for investigation that satisfies all the requirements of section 12960 of the Government Code.

(b) The director, in his or her discretion, may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by a practice made unlawful by a law the department enforces.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors for determining whether to file a director's complaint include, but are not limited to:

(1) whether the respondent employs a large workforce that may be affected by the alleged unlawful practice, such that the anticipated remedy would impact a large number of persons or an entire industry; and/or

(2) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law; and/or

(3) whether resolution of the complaint would impact civil rights in a manner consistent with the department's mission.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b) and 12961, Government Code.

**HISTORY**

1. New section filed 9-7-2011; operative 10-7-2011 (Register 2011, No. 36).

2. Amendment of subsection (a) filed 10-27-2014 as an emergency; operative 10-27-2014 (Register 2014, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-27-2015 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 10-27-2014 order transmitted to OAL 4-20-2015 and filed 6-2-2015 (Register 2015, No. 23).

This database is current through 7/6/18 Register 2018, No. 27

2 CCR § 10012, 2 CA ADC § 10012

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