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# Employment Practices

University of the Pacific, McGeorge School of Law

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# Employment Practices

## Employment Practices; discrimination

Labor Code §§1777.6, 3095, 3096 (amended).  
AB 909 (Hayes); STATS 1971, Ch 280

Section 1777.6 of the Labor Code provides that it is unlawful for an employer or labor union to refuse to accept an otherwise qualified prospective employee as an indentured apprentice on any public works, solely on the ground of race, religion, creed, color, national origin, ancestry, or sex. Section 3095 of the Labor Code makes such discrimination a misdemeanor punishable by a fine of up to \$1,000, imprisonment up to six months, or both.

Section 3096 of the Labor Code provides for the procedure involved in the reporting of such discrimination to the State Fair Employment Practice Commission.

Prior to this amendment, discrimination on the basis of sex was not prohibited by Labor Code §§1777.6, 3095, or 3096; discrimination on the basis of ancestry was not made a crime under Labor Code §3095 although it was prohibited under Labor Code §1777.6.

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### See Generally:

- 1) 48 OPS. ATT'Y GEN. 74 (1966); 42 OPS. ATT'Y GEN. 169 (1963).
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §12 (1963), (Supp. 1969); 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §154 (1963).
- 3) REVIEW OF 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 30.

## Employment Practices; restrictions on discharge of employees

Labor Code §§2929 (new); 96, 2922, 2924 (amended).  
SB 594 (Song); STATS 1971, Ch 1607

Section 2922 now provides that employment for an unspecified term may be terminated at the will of either party; §2924 provides that employment for a specified term may be terminated by the employer at any time in case of any willful breach of duty by the employee, habitual neglect of duty, or continued incapacity to perform his duty. These sections previously included provisions prohibiting discharge of an em-

ployee for garnishment of his wages under certain circumstances; these provisions are now consolidated and expanded in §2929.

Section 2929 prohibits discharge of an employee because garnishment of his wages has been threatened, or because his wages have been subjected to garnishment in satisfaction of one judgment. Provisions of employment contracts with less protection than is afforded by §2929 are void. Procedures are provided by which an employee wrongfully discharged may claim wages for a period up to 30 days or until reinstatement, whichever ever occurs first (REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 146). The section is intended to aid in the enforcement of the Consumer Credit Protection Act of 1958 (15 U.S.C. §§ 1671-1677).

Section 96, as amended, reflects the procedures outlined in §2929 allowing recovery of wages if wrongful termination of employment occurs. Section 96 also permits the Labor Commissioner to take assignments of claims for loss of wages as the result of discharge from employment for garnishment of wages.

#### COMMENT

Prior to the enactment of this chapter, an employee was protected from discharge only until a final order or judgment was entered against him. Prejudgment garnishment of wages is now prohibited by Code of Civil Procedure §690.6 and *McCallop v. Carberry*, 1 Cal. 3d 903 (1970). Section 2929 greatly expands protection afforded a wage earner-debtor by prohibiting discharge if garnishment is merely *threatened* before or after judgment, and after judgment, if the garnishment is in satisfaction of one judgment. If the garnishment is pursuant to more than one judgment, the employee could presumably be discharged without violating section 2929.

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**See Generally:**

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §§90, 94 (Supp. 1969).

#### **Employment Practices; certificated employees**

Education Code §§13403, 13404, 13404.5, 13405, 13406, 13407, 13408, 13409, 13410, 13412, 13439 (amended); 13413, 13414, Article 5.5 (commencing with §13485) of Chapter 2 of Division 10 (added); 13413, 13414, 13415, 13416, 13417, 13418, 13419, 13420, 13421, 13422, 13423, 13424, 13425, 13426, 13427, 13428,

13429, 13430, 13431, 13432, 13433, 13434, 13435, 13436, 13437, 13438, 13440, (repealed).

AB 293 (Stull); STATS 1971, Ch 361

Chapter 361 revises procedure regarding dismissal of permanent certificated employees. Dismissal procedures are to be conducted by a hearing officer or a commission on professional competence. Provisions relating to superior court jurisdiction and procedures are deleted, but provision for judicial review of administrative decisions on a petition of either the governing board or employee are continued. The governing board and the employee shall have the right to be represented by counsel. Provisions are made for payment of costs of a hearing and attorney's fees.

Chapter 361 also requires appointment of a three-member commission to recommend to the governing board action with reference to specified changes against an employee. The governing board is bound by such recommendations.

School districts are required to develop and adopt prescribed objective evaluation and assessment guidelines and procedures regarding certificated employees. Evaluation of the performance of each certificated employee, both prior to and after the granting of permanent status to the employee is required.

When an employee is performing his duties in an unsatisfactory manner provision is made for a written notice and counseling of such employee.

### **Employment Practices; discrimination**

Labor Code §§1777.6, 3095, 3096 (amended).

AB 909 (Hayes); STATS 1971, Ch 280

Section 1777.6 of the Labor Code provides that it is unlawful for an employer or labor union to refuse to accept an otherwise qualified prospective employee as an indentured apprentice on any public works, solely on the ground of race, religion, creed, color, national origin, ancestry, or sex. Section 3095 of the Labor Code makes such discrimination a misdemeanor punishable by a fine of up to \$1,000, or imprisonment up to six months, or both.

Section 3096 of the Labor Code establishes the procedure involved in the reporting of such discrimination to the State Fair Employment Practice Commission.

Prior to this amendment, discrimination on the basis of sex was not prohibited by Labor Code §§1777.6, 3095, or 3096 and discrimination on the basis of ancestry was not made a crime under §3095 although it was prohibited under §1777.6.

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See Generally:

- 1) 48 OPS. ATT'Y GEN. 74 (1966); 42 OPS. ATT'Y GEN. 169 (1963).
- 2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §12 (1963), (Supp. 1969); 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §154 (1963).
- 3) REVIEW OF 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 30, 171.

### Employment Practices; discharge from employment for garnishment of wages

Labor Code §§2922, 2924 (amended).  
AB 2324 (McAlister); STATS 1971, Ch 1580

Sections 2922 and 2924 of the Labor Code specify procedures for discharge of an employee for garnishment of his wages in employment having either specified or unspecified terms.

Chapter 1580 amends these sections to provide that no employee may discharge any employee by reason of the fact that his earnings have been subjected to garnishment *for any one indebtedness*.

Chapter 1580 also provides that the procedures specified in §§2922 and 2924 shall not apply to a discharge resulting in the commencement of a criminal prosecution against the employee for a violation of §304 of the Consumer Credit Protection Act of 1968 (15 U.S.C. §1674).

Prior to the enactment of this chapter, an employer could not discharge an employee whose earnings had been subjected to garnishment for one indebtedness *prior to a final order or judgment of a court* with regard to the indebtedness.

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See Generally:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §§89, 92 (7th ed. 1960), (Supp. 1969).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 146.