

# Legal Requirements and CSU/CSUN Policies and Procedures Related to Faculty Hiring

**CSUN**®

**Chairs and Deans Retreat**

*Monday, August 19, 2019*

# Encouraging Diversity While Complying With The Law



# Topics

- Cal. Government Code 12490 et seq.
  - Known as the Fair Employment and Housing Act
- California Constitution, Article 1, Section 31
  - Effectuated pursuant to Proposition 209

## Basic Principles

- California Fair Employment and Housing Act
  - An employer may not disadvantage anyone based on a protected characteristic.
- Prop 209:
  - The state may not give an advantage or disadvantage to anyone based on a protected characteristic (in employment, education, and contracting).



## In other words...

...Race, sex, color, ethnicity, and national origin, should not play a role in employment decisions, either positively or negatively.

(Note that there are additional categories of prohibited discrimination under FEHA.)

# California Fair Employment and Housing Act (Gov. Code § 12940(a))

It is an unlawful employment practice for an employer, because of the **race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status** of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

# California Fair Employment and Housing Act Overview

- Prohibits discrimination against job applicants and employees on the basis of:
  - Age
  - Race
  - Color
  - Religion
  - Sex (including pregnancy, childbirth, breastfeeding, and related medical conditions)
  - Gender (including gender identity and gender expression)
  - Sexual orientation
  - Marital status
  - National Origin
  - Ancestry
  - Mental/Physical Disability
  - Medical Conditions
  - Genetic Information
  - Military and Veteran Status

# California Fair Employment and Housing Act Overview

- Forbids directly discriminatory practices
- Forbids facially neutral practices that have a disproportionately negative effect on members of protected groups (unless the practices are for a legitimate business purpose)

# FEHA: Inquiries/Statements to Applicants

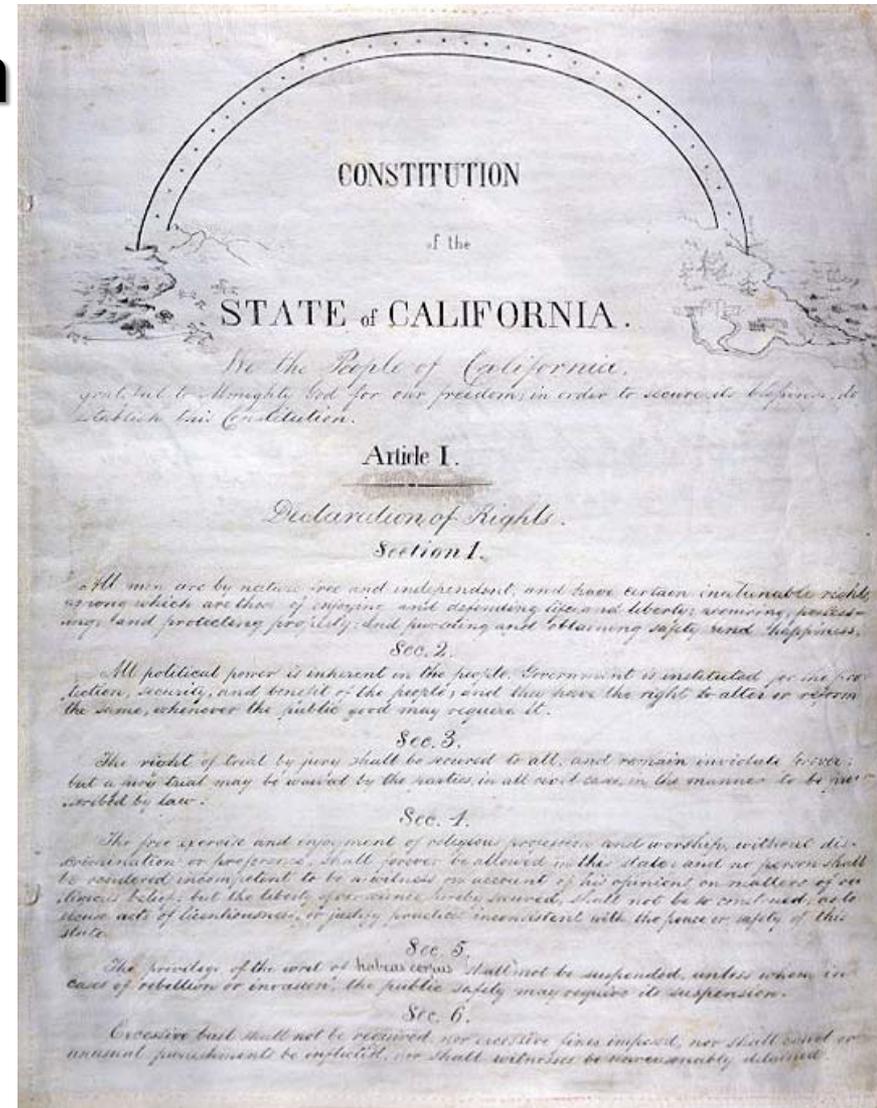
ACCEPTABLE	UNACCEPTABLE
Name	Maiden name
Statement that applicants must meet legal age requirements	Age, date of birth, dates of schooling
Verify legal right to work in U.S.	Birthplace
Languages (if relevant to position)	Nationality, ancestry
Identify regular working days	Religious holidays observed by applicant
Company policy about work for employees who are related	Sex, marital status, pregnancy, information about spouse
	Complexion, eye color, hair color
Questions about skills acquired during U.S. military service	Dates/types of discharge
Asking whether applicant can perform job-related functions	Asking about a medical condition or disability, or about general health

# Proposition 209

- Also known as the California Civil Rights Initiative
- Became law in 1997
- Amended the California Constitution

# California Constitution

The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Art. 1, § 31.)



# Proposition 209 Overview

- Prohibits public entities from granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin.
- Intended to end so-called “government-sponsored discrimination” meant to remedy past discrimination.
- Withstood several legal challenges

# What is “Preferential Treatment?”

- The giving of priority or advantage to one person over others.

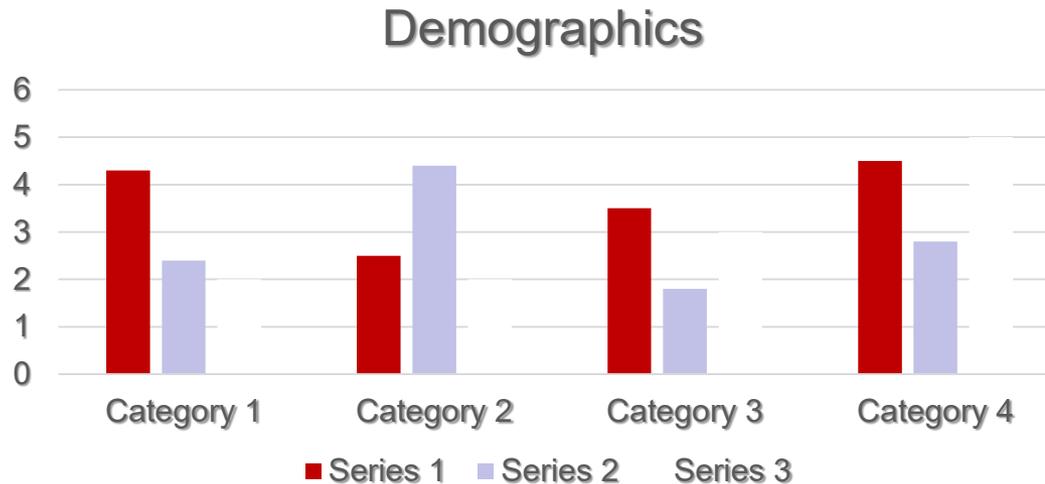


## Prop 209 Does Not Prohibit All Targeted Programs

- **Still** permissible to promulgate programs that, although race- and gender-conscious, do not involve preferential treatment.
- A program passes Proposition 209 muster if it:
  - Does not discriminate among individuals based on race, sex, etc.; **and**
  - Does not impose any burden or confer any benefit on any particular group(s) categorized by race, sex, etc.
- Public employers are still required to remove barriers to employment

## Examples of permissible diversity policies/programs:

- Collecting and reporting demographical data concerning the participation of particular groups;
- Using demographical information to restructure selection processes to ensure that no groups are unfairly excluded;



## Examples of permissible diversity policies/programs:

- Providing mentoring and professional development programs open to all;
- Offering job preparation workshops (resume writing, interview training) advertised to organizations that serve underrepresented groups and the public;



## Examples of permissible diversity policies/programs:

- Attending recruitment fairs or receptions sponsored by underrepresented groups, in addition to attending similar non-targeted events; and
- Working with local groups and organizations that target underrepresented groups, as well as the general public, to facilitate recruitment.



# Advertising and Outreach



- It is permissible to target various forums to attract a diverse pool, as long as it is done as part of a broad outreach effort not limited to particular groups.
- Do not advertise solely to organizations devoted to one particular race/gender to the exclusion of all other groups.

# Enlarge the Pool of Applicants

- Send job postings to placement services of schools with high enrollment of underrepresented groups.
- Personal contact: Call your colleagues for assistance in identifying qualified candidates from the student population or their personal network.
- Contact and encourage outstanding candidates to apply.
- Advertise in journals whose readership consists of underrepresented groups.
- Post announcements on websites that reach underrepresented groups.
- Be proactive in seeking names of individuals who may be interested in a new position when you attend conferences. Reach out to them when a position becomes available.

# Trust the Process that Brought the Candidates to the Search Committee

- Search Committee members are expected to perform their duties in accordance with California law.
- Granting a preference – such as hiring – to any individual or group on the basis of race, sex, color, ethnicity or national origin is illegal.

# Trust the Process that Brought the Candidates to the Search Committee

- Committee members may not make a hiring recommendation based in whole or in part on the candidate's race.

# Avoid the Following:

- Creating set-asides or quotas for filling positions based on race, sex, color, ethnicity, or national origin.
- Providing different recruitment priorities (e.g., early deadlines) or standards for positions based on race, sex, color, ethnicity, or national origin.
- Breaking a tie-vote on the basis of race, sex, color, ethnicity or national origin.
- Choosing candidates to create a particular ethnic or gender mixture in the department.
- Making hiring decisions based on a desire to have faculty demographics match student demographics.

## Don't Ruin the Search!

Do not send a communication like this:

“The Search Committee has recommended two candidates. One is a young Chinese man; the other is a mature African-American woman. As a member of the Search Committee, I believe we should not hire the Chinese man because 50% of the program’s faculty is Asian and only 10% is African-American. Therefore, we should hire the African-American woman.”

## Prop. 209 Impermissible v. Permissible Considerations

Impermissible	Permissible
We recommend candidate X because he is Hispanic.	We recommend candidate X because he is fluent in multiple languages. (Provided that language is relevant to the position.)
We already have too many male professors so we should not hire Candidate A.	Candidate B has a demonstrated a stronger commitment to gender studies that is necessary for this position.
Candidate X does not match the demographics of our student population.	Candidate Y has more of the listed preferred qualifications than Candidate X.

## **In the Hiring Process**

- Be thoughtful about the characteristics that are desired for the position.
- Carefully craft the position announcement to include the necessary and preferred qualifications that could be held by members of underrepresented groups.
- Ask the same questions of all candidates.
- Have many open-ended questions that will allow the candidates to illustrate their unique attributes.
- Document the reasoning for the choice of candidate on the basis of qualifications, not characteristics.

# CSU is committed to an environment of inclusive excellence:

The California State University is committed to maintaining an inclusive community that **values diversity** and fosters tolerance and mutual respect. We **embrace and encourage our community differences** in Age, Disability, Race or Ethnicity, Gender, Gender Identity or Expression, Nationality, Religion, Sexual Orientation, Genetic Information, Veteran or Military Status, and other characteristics that make our community unique.

(EO 1096 rev)

# **CSUN Hiring Policies**

## **Manual of Procedures for Search and Screen Committees for Full-Time Faculty Positions**

- Step 1: Initiation of the search
- Step 2: Convening the search committee
- Step 3: Recruitment
- Step 4: Screening of applicants
- Step 5: Selecting potential finalists
- Step 6 : Checking references
- Step 7: Interviewing finalists
- Step 8: Recommending an applicant for appointment
- Step 9: Completing the search report and closing the files

## **General Rules**

- Consult, Consult, Consult!
- Preserve Confidentiality
- Act Professionally
- Search Actively
- Avoid Conflicts of Interest

## **Initiation of the Search**

- Draft the faculty position announcement
- Prepare a recruitment plan
- Forward the position announcement and recruitment plan to the Office of Faculty Affairs and then the Chief Diversity Officer

## **Convening the Search Committee**

- Form the search committee
- Call the first meeting
- Clarify the role of the committee chair
- Designate an Equity and Diversity Representative

## **Recruitment**

- Set up a timeline for the search
- Disseminate ads and position announcements
- Establish a recruitment file
- Acknowledge and notify applicants

## **Screening of Applicants**

- Create an evaluation instrument
- Carry out an initial screening
- Process unsolicited materials
- Eliminate unqualified applicants
- Identify qualified applicants
- Identify the best qualified applicants
- Consult with the College Dean
- Contact the best qualified applicants

## **Selecting potential finalists and checking references**

- Select potential finalists
- Prepare questions for references
- Perform reference checks
- Record and report responses
- Contact candidates eliminated from further consideration

## **Interviewing finalists**

- Contact finalists
- Respond to questions regarding visas
- Structure the visit
- Determine the content and format of the interview
- Prepare comment sheets for interviews

## **Recommending an applicant for appointment**

- Prepare a recommendation
- Review reserve applicants
- Follow up

## **Completing the search and closing the files**

- Notify applicants not recommended
- Close files
- Address Inquiries from Unsuccessful Applicants



[www.calstate.edu](http://www.calstate.edu)