

# Morrison & Foerster Client Alert.

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## California Adopts Genetic Anti-Discrimination Protections

By Anna T. Ferrari and Christine E. Lyon

California Senate Bill 559 ("SB 559"), which expands state civil rights laws to prohibit discrimination based on genetic information, has been signed into law by Governor Brown.<sup>1</sup>

SB 559 adopts the philosophy of the federal Genetic Information and Nondiscrimination Act of 2008 ("GINA"), which prohibits discrimination in employment and health insurance coverage decisions based on genetic information. However, the California bill offers broader protection than GINA by prohibiting discrimination based on genetic information in the additional areas of housing, business services, emergency medical services, licensing qualifications, life insurance coverage, mortgage lending, and participation in state-funded or state-administered programs. This client alert will focus primarily on changes affecting California employers.

The bill amends the Fair Employment and Housing Act (FEHA) to prohibit employment<sup>2</sup> and housing<sup>3</sup> decisions based on genetic information. FEHA, as amended, also prohibits licensing boards from requiring any qualification based on genetic information, unless the practice is demonstrably job-related.<sup>4</sup> In addition, SB 559 amends the Unruh Civil Rights Act to prohibit unequal access to accommodations, advantages, facilities, privileges, or services provided by business establishments based on genetic information.<sup>5</sup>

SB 559 defines "genetic information" as information about an individual's genetic tests, the genetic tests of family members of the individual, or the manifestation of a disease or disorder in family members of the individual.<sup>6</sup> "Genetic information" includes "any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual."<sup>7</sup> The definition excludes information about an individual's sex and age, which are already considered to be protected classes under state civil rights laws.<sup>8</sup> SB 559's definition of genetic information closely tracks the language of the corresponding definition in GINA.<sup>9</sup>

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Not all of SB 559's provisions will seem new to California businesses. For example, GINA barred employers from intentionally acquiring genetic information from employees and applicants, and FEHA already prohibited employers from subjecting applicants or employees to genetic testing.<sup>10</sup> However, SB 559 now establishes genetic information as a protected class within the broader framework of California's civil rights laws.

*For more information about the privacy protections afforded to genetic information, please visit Morrison & Foerster's free online privacy library, located at [www.mofoprivacy.com](http://www.mofoprivacy.com).*

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*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*

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<sup>1</sup> The text and legislative history of SB 559 are available at <http://www.leginfo.ca.gov/>.

<sup>2</sup> Cal. Gov't Code §§ 12921, 12940(a). Employment decisions prohibited under FEHA include not only those concerning hiring, compensation, and other employment terms but also participation in labor organizations and employment training programs. Cal. Gov't Code § 12940(b), (c). Likewise, employers may not make non-job-related inquiries about an applicant's or employee's genetic information, or express limitations or specifications for employment based on genetic information. Cal. Gov't Code § 12940(d).

<sup>3</sup> Cal. Gov't Code §§ 12921, 12955. Among other things, FEHA prohibits inquiring about genetic information of any person seeking to purchase, rent, or lease housing; publishing preferences or limitations for housing accommodations based on genetic information; making mortgage lending decisions based on genetic information; and making a dwelling unavailable based on genetic information. Cal. Gov't Code § 12955(b)–(e), (k).

<sup>4</sup> Cal. Gov't Code § 12944(a). This statute also prohibits licensing boards from making non-job-related inquiries about a licensing applicant's or employee's genetic information, and from expressing any limitations or specifications for licensure based on genetic information. Cal. Gov't Code § 12944(c).

<sup>5</sup> Cal. Civ. Code § 51.

<sup>6</sup> Cal. Gov't Code § 12926(g)(1); Cal. Civ. Code § 51(e)(2)(A).

<sup>7</sup> Cal. Gov't Code § 12926(g)(2); Cal. Civ. Code § 51(e)(2)(B).

<sup>8</sup> Cal. Gov't Code § 12926(g)(3); Cal. Civ. Code § 51(e)(2)(C).

<sup>9</sup> 42 U.S.C. § 2000ff(4).

<sup>10</sup> Cal. Gov't Code § 12940(o).