

SCHOOL AND COLLEGE LEGAL SERVICES

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THE LEGAL UPDATE

December 3, 1990

TO: Superintendents, Member School Districts
(K-12 Districts and Community College Districts)

FROM: Jacqueline M. Gong, Assistant General Counsel *JMG*

RE: Sonoma County Ordinance Prohibiting Discrimination Based
Upon AIDS or an HIV Condition
Memo No. 25-90

The Sonoma County Board of Supervisors has recently enacted an ordinance prohibiting discrimination in employment, housing, and the provision of services based upon a person having AIDS or HIV infection. This ordinance is effective November 29, 1990 and applies to all school districts and community college districts within the unincorporated area of the County of Sonoma.

Provisions of the ordinance which are of particular interest include:

1. Prohibits an employer from taking any adverse action against an otherwise qualified employee or job applicant.
2. Prohibits an employer from not making reasonable accommodations for an otherwise qualified applicant or employee.
3. Prohibits an employer from failing or refusing to refer any individual for employment.
4. Prohibits an educational institution from denying or from imposing different terms or conditions upon admission, services, or use and enjoyment of facilities.

It is my understanding the County did intend to apply the ordinance to public schools and colleges although there is some question as to whether the County may do so. Until a court clarifies this question, districts should be aware of the ordinance and act accordingly.

A copy of the ordinance is enclosed for your information. If you have any questions, please do not hesitate to call me.

JMG:rr
JG1.28
Attachment

ORDINANCE NO. 4291

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, PROHIBITING DISCRIMINATION BASED UPON AIDS OR AN HIV CONDITION.

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I: Sections 19-1 through 19-12 of the Sonoma County Code are hereby designated "Article I. General Provisions." Sections 19-13 through 19-22, set forth below, are hereby designated "Article II. AIDS Discrimination."

SECTION II: Section 19-13 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-13. Policy. It is the policy of the County of Sonoma to eliminate discrimination based on the fact that a person has AIDS or a related condition, or HIV infection. In adopting this Ordinance, the Board of Supervisors of the County of Sonoma does not intend to proscribe any activity the proscription of which would constitute an infringement of the Constitution of the United States or the Constitution of the State of California. Recognizing that existing Federal and State enactments proscribe such discrimination in some, but not all, circumstances, the Board finds that such enactments do not occupy the field of such arbitrary discrimination, but that local regulation is both necessary and proper. This Article is not intended, and shall not be construed to apply to any person or activity which is regulated by Federal or State law, to the extent that application of this Article would conflict with such law or would unduly interfere with the achievement of Federal or State regulatory objectives. It is the intention of the Board of Supervisors that this Article shall be interpreted to be compatible with Federal and State enactments, and in furtherance of the public policies which those enactments express.

SECTION III: Section 19-14 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-14. Findings. The Board of Supervisors has studied documents and heard testimony, and makes the following findings:

1. AIDS is a deadly disease which affects a substantial number of Sonoma County residents.

2. AIDS is caused by infection with Human Immune Virus (HIV, "AIDS virus"), which is transmitted through significant exposure to certain body fluids, most notably blood and semen. The Human Immune Virus cannot be transmitted through casual contact or through the handling of food by infected persons.

3. Nevertheless, unreasonable fear of contracting the disease has caused landlords, employers and providers of services to discriminate against persons believed to be infected with the AIDS virus.

4. Such discrimination causes additional burdens to be placed on those persons or entities who do not discriminate, particularly on public and private non-profit groups engaged in health and social services to persons with AIDS.

5. Such discrimination by landlords, employers and providers of services gives those who engage in discriminatory practices an unfair competitive advantage over those who do not.

6. Such discrimination is against the public policy of the State of California and the United States, but state and federal enactments do not address all aspects of such discrimination, nor do they preempt local legislation. Local action is therefore necessary to address the local impacts of such discrimination.

SECTION IV: Section 19-15 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-15. Prohibited conduct.

(a) Discrimination prohibited. Discrimination against any person because that person has or is perceived to have AIDS, an HIV condition, or any disease which cannot be casually transmitted, is prohibited.

(b) Retaliation prohibited. It shall be unlawful for any person to discriminate against a person who has or who is believed to have:

- (i) opposed any act or practice made unlawful by this ordinance;
- (ii) supported this ordinance or its enforcement;
- (iii) filed a complaint under this ordinance;
- (iv) testified, assisted or proceeded in any way in any investigation, proceeding or litigation under this ordinance.

SECTION V: Section 19-16 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-16. Definitions. As used in this Article, the words or phrases listed below shall have the following meanings:

AIDS means Acquired Immune Deficiency Syndrome.

Business entity means any person, partnership, corporation or other entity, whether public or private, however organized, which provides goods or services to the public. The existence of membership requirements does not exempt any organization if (1) the only requirement for membership is payment of dues, or (2) membership is restricted only by occupation, gender, age or similar qualification which includes a substantial number of Sonoma County residents, with or without dues.

Discrimination includes but is not limited to the following actions affecting a person based upon the knowledge or perception that the person has an HIV disease or infection:

- (1) By an employer: limiting, segregating, classifying or taking any adverse action against an otherwise qualified employee or job applicant;
- (2) By an employer: not making reasonable accommodations to the limitations of an otherwise qualified applicant or employee so as to deprive any individual of employment opportunities, or otherwise adversely affect his or her status as an employee;
- (3) By an employer: To fail or refuse to refer for employment any individual, or otherwise to discriminate against any individual;
- (4) By an educational institution: To deny admission, services or use and enjoyment of facilities, or to impose different terms or conditions upon admission, services, or use and enjoyment of services;
- (5) By a health care provider or business entity: To exclude from participation in or be denied the benefits of the services, programs or activities of the provider or entity, or to provide such services, programs or activities on less favorable terms.
- (6) By any person: doing any of the acts described in this definition of discrimination because a person associates with a person who has or is perceived to have an HIV condition.

(7) In housing: To refuse to rent or lease a rental unit, refuse to negotiate for the rental or lease of a rental unit, evict from a rental unit, or otherwise deny to or withhold a rental unit or services connected therewith from any person, or to rent or lease a rental unit or provide related services on less favorable terms.

Educational Institution means any corporation, partnership or business entity engaged in training, classes or education, of adults or children.

Employer means any person regularly employing one or more persons, or any person acting directly or indirectly as the agent of an employer, including an employment agency.

Health Care provider means any person or facility licensed or certified by the state or any Emergency Medical Services Agency to provide health care, including medical transport, prehospital emergency care, dental care and mental health care.

HIV means the infectious agent known as Human Immune Virus, Human Immunodeficiency Virus, HTLV-III, LAV or AIDS virus.

HIV condition means AIDS, AIDS-Related Complex, or HIV infection.

Housing means use or occupancy of any rental unit, including dwelling units, guest rooms, hotel or motel rooms, suites or dormitories rented or offered for rent for living or dwelling purposes, the land and building appurtenant thereto, and all services, privileges and facilities supplied; in connection with the use or occupancy thereof. This term shall also include mobile homes whether rent is paid for the mobile home and the land upon which it is located, or rent is paid for the land alone.

Otherwise qualified describes a person with an HIV condition who, with or without reasonable modifications to rules, policies or practices or the provision of auxiliary aids or services, meets the essential eligibility requirements for the receipt of services or participation in programs or activities or for employment or housing.

Person includes any individual or legal entity, public or private, located or doing business within the unincorporated area of Sonoma County.

SECTION VI: Section 19-16 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-16. Exceptions.

(a) Owner-occupied dwellings. Nothing in this Article shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his or her family occupies the same dwelling unit as the prospective tenant.

(b) Employee benefit systems. Nothing in this Article is intended to require an employer to violate the conditions of a bona fide employee benefit program. Notwithstanding the foregoing, an employee benefit program which prohibits or is construed to prohibit the hiring of any person who would otherwise be required to be hired under the provisions of this Article, or which purports to exclude coverage of HIV conditions either by its express terms or by exclusion of conditions such as sexually transmitted diseases or transfusion-related conditions, is to that extent void as against public policy.

(c) In-home employers. Nothing in this Article shall apply to employment of individuals to perform services in the place of residence of the employer.

(d) Bona fide occupational qualifications. Nothing in this Article shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification or the lack thereof. However, in any action brought under this Article, if a party asserts that an otherwise prohibited practice is justified by a bona fide occupational qualification, that party shall have the burden of proving: (a) that the discrimination is in fact a necessary result of bona fide a occupational qualification; and (b) that there exists no less discriminatory means of satisfying the occupational qualification.

(e) Lawful insurance practices. Discrimination as defined in this Article does not include actions taken by insurance companies which are expressly permitted by state or Federal law with respect to applicants or covered persons or groups.

(f) Religious organizations. Discrimination as defined in this Article does not include bona fide restrictions by religious organizations limiting employment or services to persons of the same religion.

SECTION VII: Section 19-17 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-17. Enforcement.

(a) Any aggrieved person may enforce the provisions of this Article by means of a civil action for damages, injunction, and such other relief as the court may allow.

(b) Any person who permits, or who proposes to commit an act in violation of this Article may be enjoined therefrom by a court of competent jurisdiction. An action for injunction under this section may be brought by any aggrieved person, by the County Counsel, District Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

(c) The criminal penalties imposed by Chapter 1 of this Code shall not apply to violations of this chapter.

SECTION VIII: Section 19-18 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-18. Limitation of actions. Any action or complaint under this Article must be commenced within two years of the date upon which the alleged discriminatory act occurred. This time period shall not begin to run until the aggrieved person discovers or with reasonable diligence should have discovered the discriminatory act.

SECTION IX: Section 19-19 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-19. Waiver Not Valid. Any written or oral agreement to waive any of the provisions of this ordinance is against public policy and therefore void.

SECTION X: Section 19-20 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-20. Application.

(a) The provisions of this ordinance shall apply within the unincorporated area of Sonoma County.

(b) To the extent permitted by public bidding laws, the County of Sonoma shall require that all contract suppliers of goods or services comply with the provisions of this ordinance. The Board may waive this requirement upon a finding that a specified countervailing public policy requires doing so.

SECTION XI: Section 19-22 is hereby added to the Sonoma County Code to read as follows:

Sec. 19-22. Severability. If any part or provision of this Ordinance, or the application of it to any person or circumstance is held invalid, the remainder of this Ordinance shall not be affected thereby, and shall continue in full force and effect. To this end, the provisions of this Ordinance shall be severable.

SECTION XII: Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against same, in the Press Democrat, a newspaper of general circulation published in the County of Sonoma, State of California.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sonoma, State of California on October 30, 1990, by the following vote:

SUPERVISORS:

NICHOLAS aye HARBERSON aye SMITH aye CARPENTER aye ESPOSTI aye
AYES 5 NOES 0 ABSTAIN 0 ABSENT 0

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

Nick Esposti
Chair, Board of Supervisors
County of Sonoma

ATTEST:

Eve T. Lewis
EEVE T. LEWIS, County Clerk and
ex-officio Clerk of the Board of
Supervisors