

GOVERNOR'S VETO OF  
AB 101  
HAS CRIMINAL LAW  
CONSEQUENCES  
FOR EMPLOYERS

by Thomas F. Coleman, Esq.

October 29, 1991

*EEO Seminars*  
P.O. Box 65756  
Los Angeles, CA 90065  
(213) 258-8955 / ext. 104

*Copyright 1991, Thomas F. Coleman*

# GOVERNOR'S VETO OF AB 101 HAS CRIMINAL LAW CONSEQUENCES

by Thomas F. Coleman, Esq.

The Legislature recently passed AB 101 and sent it to the Governor. The Governor soon exercised his constitutional prerogative and returned the measure to the Assembly with his veto and written objections.<sup>1</sup>

In his veto message, the Governor indicated that AB 101 had "received my close attention and the most careful weighing of arguments for and against its enactment"<sup>2</sup> The veto message also indicated that the Governor rejected AB 101 after "conscientious and thorough analysis."

The Governor cited several reasons for his veto. Among them was the Governor's declaration that several existing state laws already prohibit public and private employers from engaging in sexual orientation discrimination.

---

<sup>1</sup>According to California Constitution, Art. IV, Sec. 10, the Governor may veto a bill by returning it with any objections to the house of origin.

<sup>2</sup>AB 101 Veto Message of the Governor to the Members of the Assembly, September 30, 1991 (see attachment at p. 14).

As examples of the "protections afforded by existing law to eliminate discrimination on the basis of sexual orientation in both public and private employment," the Governor stated:

"California *should and does presently* treat sexual orientation as a private matter, protected by the express right of privacy in the California Constitution, and entitled to legal protection in several specific areas: . . .

"Under current case law, Labor Code sections 1101 and 1102 protect manifest homosexuals from employment discrimination based on gay or lesbian political activities or affiliations. (*Gay Law Students Association v. Pacific Telephone and Telegraph* (1979) 24 C.3d 458.)

"Further, an Attorney General's opinion has concluded these provisions prohibit a private employer from discriminating on the basis of sexual orientation or affiliation, private as well as manifest. (69 Ops. Cal. Atty. Gen. 80 (1986))."

As a matter of policy, the Governor underscored his veto message by declaring that "No one can legitimately seek to protect or justify prejudice practiced by the employer who is in fact guilty of discrimination on the basis of sexual orientation." The Governor also acknowledged and declared "the right of employees to be free of such discrimination."

The substance of the Governor's pronouncements have significant ramifications, especially with respect to the enforcement

of the criminal laws of the State of California.<sup>3</sup>

The Governor cited Labor Code Sections 1101 and 1102 as two examples of existing protections against sexual orientation discrimination. Those statutes prohibit employers from taking adverse action against employees on account of their political activities. In the *Gay Law Students Association* case cited by the Governor, the Supreme Court observed:

"[T]he struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity."<sup>4</sup>

The Supreme Court ruled that an employer violates Labor Code Sections 1101 and 1102 if the employer discriminates against persons who identify themselves as homosexual, who defend homosexuality, or who are identified with activist homosexual organizations. The court concluded that applicants as well as employees are protected under Sections 1101 and 1102.

The Governor also cited with approval an Attorney General opinion concluding that all sexual orientation discrimination is

---

<sup>3</sup>The significance of these pronouncements is also magnified by the fact that it was the Governor, who made them. Article 5, Section 1 of the California Constitution vests the supreme executive power of the state in the Governor. Under Article V, Section 13 of the Constitution, the legal power of the Attorney General is subordinate to that of the Governor. When he vetoed AB 101, the Governor was acting in a legislative, not an executive capacity. *Lukens v. Nye* (1909) 156 Cal. 498, 105 P. 593. However, it would strain the imagination to conceive that the Governor would someday announce that he had a split personality and that the executive side of his official personality did not agree with the legal reasoning of his legislative side. In any event, courts can take judicial notice of legislative records and statements of concerned agencies in determining legislative intent. *Palmer v. Agee* (1978) 87 Cal.App.3d 377, 384. The Governor's veto message would appear to qualify as such a public record.

<sup>4</sup>*Gay Law Students Association* at 488 (see attachment at p. 20).

prohibited by Sections 1101 and 1102, regardless of whether the employee or applicant is openly gay or lesbian or private about his or her sexual orientation.<sup>5</sup>

Thus, as the law has been interpreted over the past 11 years by the Supreme Court, the Attorney General, and the Governor, all employers in California are prohibited from engaging in sexual orientation discrimination. Citing these Labor Code Sections and the Attorney General opinion with approval, the Court of Appeal has agreed.<sup>6</sup>

An employee who has been discriminated against in violation of Labor Code Sections 1101 and 1102 may file a civil lawsuit to recover damages sustained by the employer's wrongful conduct.<sup>7</sup> However, there is more.

An employer who discriminates against an employee or applicant in violation of Sections 1101 or 1102 has committed a misdemeanor.<sup>8</sup> The penalty for the crime is up to one year in the county jail or fines up to \$5,000.

The criminal process begins when a victim files a complaint with one of the 20 offices of the state Labor Commissioner. Those offices have been instructed to process complaints involving sexual orientation discrimination under Sections 1101 and 1102.

---

<sup>5</sup> (See attachment of Attorney General's Opinion at p. 21) Although an Attorney General's interpretation of a statute is not controlling, it is entitled to great weight and respect by the courts. *Tafuya v. Hastings College of Law* (1987) 191 Cal.App.3d 437. That the Governor cited such an opinion with approval would seem to give it even greater persuasive force.

<sup>6</sup>*Sibi Soroka v. Dayton Hudson Co.* (1991) \_\_ Cal.App.3d \_\_, Case No. A052157, filed October 25, 1991 (certified for publication).

<sup>7</sup>Labor Code Section 1105 specifically provides for civil remedies.

<sup>8</sup>Labor Code Section 1103 authorizes criminal prosecution.

In a memo sent to all district offices soon after the *Gay Law Students Association* case was issued by the Supreme Court, the Labor Commissioner stated:<sup>9</sup>

"With the widespread publicity this case has received, we may have claims filed in our offices under the theory advanced by the court. I am therefore furnishing the Senior Deputy in each office that part of the Supreme Court's decision dealing with Labor Code Sections 1101 and 1102. Note that the remedy for violation is criminal prosecution."

In November 1990, the Attorney General published a "Civil Rihts" handbook which stated:<sup>10</sup>

"The Attorney General of California has concluded that these sections prohibit all employment discrimination based on sexual orientation. An employer who violates either Labor Code Section 1101 or 1102 is guilty of a misdemeanor and is subject to a fine and/or jail time. Violators of these statutes may be

---

<sup>9</sup>On June 13, 1979, this memo was sent to all district offices by then Labor Commissioner James Quillan (see attachment at p. 19). A copy of the memo was sent to me by Assistant Labor Commissioner Albert Reyff on January 10, 1980 in response to inquiries by former American Civil Liberties Union Staff Attorney Susan McGrievy and myself (see attachments at pp. 31-36). Four days after Governor Wilson vetoed AB 101 I contacted Acting Labor Commissioner James Curry. We had a lengthy telephone conversation in which he acknowledged the continuing force and effect of the 1979 directive by Mr. Quillan. He mentioned that several cases had been processed by the Labor Commissioner's office subsequent to that directive. He further indicated that his office would continue to enforce Sections 1101 and 1102.

<sup>10</sup>"Unlawful Discrimination: Your Rights and Remedies," November 1990, Second Edition, California Attorney General's Office (see attachment at p. 26).

prosecuted by your local district and/or city attorney."

What does all of this mean for employers and employees in California? It means that in vetoing AB 101, the Governor has required employees or applicants who are victims of sexual orientation discrimination to resort to the use of *existing legal protections*. Those protections are both civil and criminal.

Existing civil protections generally require a victim to hire an attorney to file a lawsuit in Superior Court against the employer.<sup>11</sup> Most labor law attorneys require a substantial retainer. Most employment discrimination victims cannot raise the money for such a retainer. These victims are therefore left to pursue existing criminal remedies.<sup>12</sup>

What would happen if a victim of sexual orientation discrimination were to file a complaint with the Labor Commissioner?<sup>13</sup> The employee would file charges with the Labor

---

<sup>11</sup>Although 13 cities and one county have adopted ordinances prohibiting sexual orientation discrimination by private employers, most of these local laws do not have administrative remedies. (See attachment at p. 43 for a list of municipalities in California that prohibit sexual orientation discrimination.) Therefore, most victims of discrimination must file a lawsuit to obtain relief. There is no local agency in most of these jurisdictions to investigate such complaints and pursue the case for the victim. One exception is in San Francisco where the Human Rights Commission can process such cases. Otherwise, in most cities such as Los Angeles, Long Beach, and San Diego, the remedy is a civil lawsuit.

<sup>12</sup>The fact that the Labor Commissioner has processed very few cases under Sections 1101 and 1102 is probably because most victims do not know this remedy exists. The *Los Angeles Times* printed one article which discussed the remedies outlined in the Attorney General's Opinion, as did *The Advocate*, a national Lesbian and Gay news magazine (see attachments at pp. 30, 31).

<sup>13</sup>The procedures outlined here were followed in a case that I personally monitored in Bakersfield several years ago. When the Labor Commissioner's investigation determined that probable causes existed to believe that the employer violated the law, the employee  
(continued...)

Commissioner who would then conduct an investigation.<sup>14</sup> If the investigation were to show probable cause to believe that the employer has engaged in sexual orientation discrimination, the case would be referred to a city attorney or district attorney for prosecution.

What would happen if such a referral were to be received by a city attorney or district attorney -- today? The prosecutor basically would have three options: (1) file a criminal complaint in the Municipal Court; (2) refer the case for an office hearing in an attempt to resolve the matter; or (3) reject the case for insufficient evidence.

What would happen if the prosecutor were to file a criminal complaint with the Municipal Court? Either a warrant would be issued for the employer's arrest or the employer would be notified to appear in court for an arraignment. At the arraignment, the employer would be required to enter a plea of guilty or not guilty.<sup>15</sup> If the employer were to plead not guilty, the case would be set for trial. Of course, the employer would be entitled to a jury trial.

What would happen if the employer were to be convicted by a jury?<sup>16</sup> The court could place the employer on probation, order the employer to pay a fine up to \$5,000 for a corporation or \$1,000

---

<sup>13</sup>(...continued)

was reinstated with back pay by the employer before the Labor Commissioner referred the case to the Kern County District Attorney for prosecution.

<sup>14</sup>The Department of Industrial Relations has Bureau of Field Enforcement Offices and District Offices throughout the state (see attachment at p. 37).

<sup>15</sup>The court proceedings and the court records would be, of course, open to the public.

<sup>16</sup>In order to convict the employer, the prosecutor would be required to convince all 12 jurors, beyond a reasonable doubt, that the employer discriminated against the victim on the basis of sexual orientation.

for an individual, and/or sentence the employer to serve up to one year in the county jail.

In all criminal prosecutions of this nature, "the employer is responsible for acts of his managers, officers, agents, and employees."<sup>17</sup> For a wide variety of reasons, it would seem that most employers would be granted probation for a first offense.

What would happen if an employer were to be placed on probation? The court could order the employer to participate in an educational program designed to eliminate sexual orientation discrimination in the future. Also, a court would most likely order the employer to pay restitution as a condition of probation.<sup>18</sup> Restitution would include lost wages.<sup>19</sup>

The purpose of a restitution order is to "make the victim whole." *People v. Walmsley* (1985) 168 Cal.App.3d 636, 639. It is therefore likely a court would order an employer to hire a victim-applicant or to reinstate a victim-employee.<sup>20</sup>

What is the bottom line? The Governor's veto of AB 101 has forced employers and employees into an extremely adversarial situation of criminal and victim. Most victims of discrimination most likely will be middle-class or working-class employees who won't have the option of initiating high-priced civil lawsuits to gain redress. If these victims want any remedy at all, they will be forced into the

---

<sup>17</sup>Labor Code Section 1104.

<sup>18</sup>Article I, Section 28(b) also known as the "Victim's Bill of Rights" declares that crime victims have a right to restitution for losses they suffer as a result of criminal activity.

<sup>19</sup>Penal Code Section 1203.04.

<sup>20</sup>The purposes of a restitution order are rehabilitating the offender and deterring future criminal conduct. *In re Brian S.* (1982) 130 Cal.App.3d 523, 529; *People v. Hodgkin* (1987) 194 Cal.App.3d 795, 802; *Walmsley, supra*, at p. 639.

heavy-handed and high-stakes criminal process described above.

The availability of criminal remedies to victims of sexual orientation discrimination has been affirmed by San Francisco District Attorney Arlo Smith and Los Angeles City Attorney James Hahn. Both prosecutors held press conferences on October 29, 1991, to announce a statewide law enforcement program -- including the imposition of criminal penalties -- to protect gays and lesbians in employment.<sup>21</sup>

In contrast, AB 101 and its purely civil remedies -- administrative or judicial -- may begin to look more attractive to employers and employees alike.<sup>22</sup>

---

<sup>21</sup>Arlo Smith's press advisory stresses that Governor Wilson's veto of AB 101 "has left D.A.'s no choice but to prosecute employers as criminals." (See attachment at p. 38) Jim Hahn's press advisory announces an enforcement campaign using state and city laws to eradicate sexual orientation discrimination in employment. (See attachment at p. 39) Furthermore, Arlo Smith and Jim Hahn each have sent a letter to state Labor Commissioner Victoria L. Bradshaw reminding her that the Governor and the Attorney General have concluded that complaints of discrimination against homosexuals are within the Labor Commissioner's jurisdiction under Labor Code Sections 1101 and 1102. Mr. Smith emphasized that his office "is prepared to prosecute any employer who violates those sections." Both prosecutors requested the Commissioner to investigate all proper complaints and refer to them to their respective offices for prosecution. (See attachment at pp. 40-42)

<sup>22</sup>Employers may prefer AB 101 for several reasons: (1) administrative investigations are civil and not criminal in nature; (2) the administrative process is private unlike a criminal prosecution which is public and necessarily exposes an employer to publicity; (3) the costs of AB 101's administrative procedures are minimal compared to months or years of litigation involving expensive legal fees under current remedies. Employees may also prefer AB 101 for several reasons: (1) an administrative process would not require the employee to be public about his or her sexual orientation unlike a criminal trial which is open to the public; (2) a civil jury can return a verdict if 9 out of 12 jurors agree, unlike a criminal trial which requires unanimity; (3) criminal restitution is limited to out of pocket costs whereby civil damages can include emotional distress and punitive damages. These are only a few of the reasons that AB 101 may be more attractive to employers and employees rather than existing civil and criminal protections.

## *About the Author*

Thomas F. Coleman has been practicing law in California since 1973. During the past 18 years, Mr. Coleman has become one of the nation's leading experts on public policy and the law governing sexual orientation and marital status discrimination.

Mr. Coleman is currently the president of *EEO Seminars*. *EEO Seminars* provides consulting services and seminars for businesses on issues concerning employment discrimination based on sexual orientation and marital status.

From 1975 to 1979, Mr. Coleman was publisher and managing editor of the *Sexual Law Reporter*, a legal periodical analyzing and reporting on national developments with respect to sexual privacy, sexual orientation discrimination, and marital status discrimination. Major universities, law schools, professors, students, lawyers, and judges subscribed to the publication.

In 1979, Mr. Coleman was asked by the Governor's Office for suggestions on the wording of a proposed executive order to be issued by the Governor. Mr. Coleman's suggestions were adopted and on April 4, 1979, Governor Edmund G. Brown Jr. signed an executive order prohibiting sexual orientation discrimination in state employment. For two years, Mr. Coleman worked with the Governor's Office and the State Personnel Board to implement the executive order. This work resulted in the creation of a Sexual Orientation Discrimination Project within the State Personnel Board. The Project assisted the Board in developing policies and guidelines governing such discrimination in the state workforce.

In 1979, Mr. Coleman participated as a friend of the court in the landmark case of *Gay Law Students Association v. Pacific Telephone* (1979) 24 Cal.3d 458. In its decision, the court ruled that sexual orientation discrimination is illegal in both public and private employment throughout California.

In 1981, Mr. Coleman was appointed to serve as Executive Director of the Governor's Commission on Personal Privacy. After two years of public hearings and research, the Commission issued its final report to the Governor and the Legislature. Over 100 pages of the report focused on sexual orientation discrimination, particularly in the areas of employment and housing. Mr. Coleman was the author of the final report of the Privacy Commission.

In 1981, Mr. Coleman conducted a seminar for Affirmative Action Officers within the California state civil service. The seminar was entitled "Sexual Orientation Discrimination in State Employment"

In 1983, Mr. Coleman testified before the Board of Regents of the University of California. He presented the regents with a legal basis for adopting a nondiscrimination policy.

In 1984, Mr. Coleman participated in a seminar in Los Angeles on sexual orientation discrimination in employment. His presentation focused on "Constitutional Rights in the Workplace."

In 1984, Mr. Coleman was appointed to serve as a member of the California Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence. Mr. Coleman assisted the commission's staff and consultants in gathering information about hate crimes against lesbians and gay men and in formulating recommendations designed to prevent and combat such violence. The commission held hearings and issued reports in 1986, 1988, and 1990.

In 1985, Mr. Coleman participated as a friend of the court in the case of *N.G.T.F. v. Board of Education* (1985) 470 U.S. 903. In that case, the United States Supreme Court upheld a decision of the U.S. Court of Appeals protecting Oklahoma teachers from sexual orientation discrimination.

In 1985, Mr. Coleman became an adjunct professor at the University of Southern California Law Center. For several years he has taught a class on "Rights of Domestic Partners." Major portions of the class focus on employment discrimination on the basis of sexual orientation and marital status.

In 1986, Mr. Coleman was appointed to serve as a special consultant to the Los Angeles City Task Force on Family Diversity. After two years of research and public hearings, the task force issued its final report in May 1988. Major portions of the report focused on sexual orientation and marital status discrimination, especially in the areas of employment, housing, and insurance. For the following three years, Mr. Coleman worked closely with city council members, the city administrative officer, the city attorney, the personnel department and several unions to develop a system granting sick leave and bereavement leave to a city employee if his or her unmarried partner were to become ill or die. In 1991, two city unions, representing more than 12,000 workers signed contracts with the city that included these domestic partnership benefits.

In 1987, Mr. Coleman was appointed to serve as a member of the California Legislature's Joint Select Task Force on the Changing Family. After many public hearings and ongoing research, the task force issued a series of reports to the Legislature. One aspect of the study involved work and family issues. Recommendations were made to eliminate discrimination on the basis of sexual orientation and marital status from employee benefits programs.

In 1989, Mr. Coleman was appointed to serve as chairperson of the Los Angeles City Attorney's Consumer Task Force on Marital Status Discrimination. The task force issued its final report in May 1990. The report documented widespread discrimination by businesses on the basis of sexual orientation and marital status. It made numerous recommendations to eliminate discriminatory practices. Many of the recommendations are currently in the process of implementation.

In 1989, Mr. Coleman participated as a friend of the court in the landmark case of *Braschi v. Stahl Associates* (1989) 74 N.Y. 201. In that case, New York's highest court ruled that the term "family" was not necessarily limited to relationships based on blood, marriage, or adoption. The court concluded that unmarried partners who live together on a longterm basis may be considered a family in some legal contexts. The *Braschi* decision is being cited as precedent in numerous lawsuits against employers by employees who have been denied employment benefits, such as sick and bereavement leave, health and dental insurance, and other benefits for their unmarried partners.

In 1989, Mr. Coleman was retained as a consultant by the City of West Hollywood as an expert on domestic partnership issues. He presented his findings to the city council on how the city could strengthen its ordinance protecting domestic partners from discrimination.

In 1989, Mr. Coleman conducted a seminar for faculty and staff at the University of Southern California on "Employee Benefits and the Changing Family."

Over the past 18 years, Mr. Coleman has conducted workshops and seminars and made numerous public presentations dealing with discrimination on the basis of sexual orientation and marital status. These have included presentations at: American Bar Association, California State Bar Association, Los Angeles County Bar Association, Los Angeles City Council, Annual Conference on Women and the Law, New York University Legal Symposium, and a variety of civil rights organizations.

Mr. Coleman is often quoted by the print media on issues pertaining to family diversity, domestic partnerships, sexual orientation discrimination, and marital status discrimination. For example, he has been quoted by Time Magazine, New York Times, Los Angeles Times, Boston Globe, Philadelphia Enquirer, Detroit News, Chicago Tribune, San Francisco Examiner, San Francisco Chronicle, Sacramento Union, Seattle Post Intelligencer, and the Orlando Sentinel.

Mr. Coleman has appeared frequently on radio and television shows, discussing issues pertaining to family diversity, domestic partnerships, sexual orientation discrimination, and marital status discrimination. For example, he has appeared on national shows such as ABC Nightline, NBC Today Show, and the CBS Evening News.

# *List of Attachments*

1.	Governor's Veto of AB 101 and Veto Message .....	14
2.	Memo from Labor Commissioner, June 13, 1979 .....	19
3.	Excerpt from Supreme Court Opinion about Labor Code Sections 1101 and 1102 .....	20
4.	Attorney General Opinion About the Scope of Labor Code Sections 1101 and 1101 .....	21
5.	Excerpt from Attorney General's Handbook on Civil Rights .....	26
6.	Los Angeles Times Article About Attorney General Opinion on Labor Code Sections 1101 and 1102 .....	30
7.	Advocate Article About Attorney General Opinion .....	31
8.	Letter from Susan McGrievy to Director of Department of Industrial Relations .....	32
9.	Letter from Thomas F. Coleman to Director of Department of Industrial Relations .....	33
10.	Letter from Assistant State Labor Commissioner to Thomas F. Coleman .....	35
11.	Letter from Assistant State Labor Commissioner to Susan McGrievy .....	36
12.	Directory of Regional and District Offices of the State Labor Commissioner .....	37
13.	News Advisory from District Attorney Arlo Smith .....	38
14.	News Advisory from City Attorney James Hahn .....	39
15.	Letter from Arlo Smith to state Labor Commissioner .....	40
16.	Letter from Jim Hahn to state Labor Commissioner .....	42
17.	List of Municipalities with Ordinances Prohibiting Sexual Orientation Discrimination in Employment .....	43

State of California  
GOVERNOR'S OFFICE  
SACRAMENTO, CA 95814



PETE WILSON  
GOVERNOR

TELEPHONE  
(916) 445-2841

WILSON TO VETO AB101

FOR IMMEDIATE RELEASE  
September 29, 1991

Contact: Bill Livingstone  
Dan Schnur  
Franz Wisner  
James Lee  
(916) 445-4571

SACRAMENTO -- Governor Pete Wilson today announced he is vetoing AB 101. Attached is a copy of the Governor's veto message, which will be delivered to the bill's sponsor, Assemblyman Terry Friedman (D-Los Angeles), tomorrow morning.

-30-



PETE WILSON  
GOVERNOR

State of California  
GOVERNOR'S OFFICE  
SACRAMENTO 95814

TELEPHONE  
(916) 445-2841

September 30, 1991

To the Members of the California Assembly:

Assembly Bill No. 101 is important legislation. It deserves and has received my close attention and the most careful weighing of arguments for and against its enactment. I have given AB 101 and these arguments conscientious and thorough analysis and I am returning this bill without my signature.

My decision to do so will cause profound disappointment to men and women of good faith whose goodwill I value, and I genuinely regret that. I regret even more any false comfort that may be derived from it by the tiny minority of mean-spirited, gay-bashing bigots. Their own need for tolerance ironically exceeds their capacity to extend it. The excesses of such bigots strongly tempt me to sign the bill. But their abhorrent conduct cannot be the basis for my decision, any more than the excesses of a minority of the bill's supporters.

It is important that Californians of goodwill on both sides of the issue understand the reasons for my veto.

Proponents argue that a single issue, and a simple one, is presented by AB 101: that simple fairness demands the elimination of discrimination in employment on the basis of sexual orientation. Were AB 101 not a complex statutory proposal of remedies and procedures but rather a simple resolution declaring that simple proposition, it could be easily accepted.

Indeed I have expressed that very view earlier this year in a meeting with a group of California newspaper editors. And in fact, California should and does presently treat sexual orientation as a private matter, protected by the express right of privacy contained in the California Constitution, and entitled to legal protection in several specific areas:

Housing

Homosexuals are protected from discrimination in housing accommodations under the Unruh Act (See Rolon v. Kulwitzky (1984) 153 Cal. App. 3d 289; Hubert v. Williams (1982) 133 Cal. App. 3d Supp. 1.). In fact, in recognition of such existing protection, the sponsor has deleted the housing provisions of AB 101 as unnecessary.

Employment

The state constitution's equal protection clause prohibits discrimination by any governmental entity against any class of individuals in employment decisions (Art. I, sec. 7, subd. (a), Cal. Const.).

Government Code sec. 18500 requires all civil service applicants and employees be treated in an equitable manner without regard to sexual orientation.

Executive Order B-54-79 prohibits discrimination on the basis of sexual orientation in state employment.

→ Under current case law, Labor Code sections 1101 and 1102 protect manifest homosexuals from employment discrimination based on gay or lesbian political activities or affiliations. (Gay Law Students Association v. Pacific Telephone and Telegraph (1979) 24 C. 3d 458.)

→ Further, an Attorney General's opinion has concluded these provisions prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation, private as well as manifest (69 Ops. Cal. Atty. Gen. 80 (1986)).

Moreover, courts have been increasingly vigorous in protecting homosexual employees from wrongful termination. (Collins v. Shell Oil Company (1990) 56 Fair Empl. Prac. Cas. 440.)

Despite the protections afforded by existing law to eliminate discrimination on the basis of sexual orientation in both public and private employment, its proponents argue that the further protection of AB 101 is required.

What they are really contending is that alleged victims of such discrimination require the specific remedy of the fair employment procedures of the Department of Fair Employment and Housing, and the Fair Employment and Housing Commission.

Witness

Witnesses are provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...

Witness

The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...

The witness is provided for the purpose of...  
The witness is provided for the purpose of...

The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...



The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...



The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...

The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...

The witness is provided for the purpose of...  
The witness is provided for the purpose of...  
The witness is provided for the purpose of...

September 30, 1991

So let us focus on those procedures, and seek to determine whether AB 101 is fair not only to employees but to employers, especially small business owners, who are not guilty of discrimination. No one can legitimately seek to protect or justify prejudice practiced by the employer who is in fact guilty of discrimination on the basis of sexual orientation. 

While we acknowledge and declare the right of employees to be free of such discrimination, we are compelled to apply a test of fairness so as to avoid imposing an unfair result upon employers charged with but not guilty of discrimination, and upon the other employees of such employers.

The remedy proposed by AB 101 for those who believe themselves to be victims of employer discrimination based on their sexual orientation is to pursue procedures now available to those who believe themselves the victims of job discrimination because of race, gender, age, physical disability or membership in some other protected class.

Over 10,000 such complaints are filed each year with the Department of Fair Employment and Housing! Up to one-quarter may wind up in court, adding substantially to the flood-tide of litigation which increasingly and importantly threatens California's competitiveness as a place to do business.

The cost to employers of defending against these lawsuits is not readily quantifiable, but it is real and substantial, especially to small employers. Litigation in any form is expensive. The potential cost, however, is more than going to court. It includes a myriad of unknowns, such as the potential increase in business insurance. It also includes the cost of avoiding litigation. As has happened in other cases, businesses may find themselves implementing costly programs to avoid the protracted negative publicity that even groundless lawsuits sometimes cause.

As we all know, the simple filing of a lawsuit appears as an indictment in the morning newspaper. This is a powerful weapon even in the hands of the well meaning. In the hands of the malicious or litigious, it holds the potential for serious abuse.

Indeed, I am advised by state government and private attorneys that many employers--especially the small businesses that employ 85% of California's work force--simply do not contest charges that they dispute, choosing instead to settle to avoid the hassle, the expense, and the notoriety resulting from the defense of a lawsuit.

Members of the Assembly  
Page four

September 30, 1991

In short, AB 101 is not a simple resolution declaring an acknowledged right. It is a statute imposing, in addition to present protections, a specific remedy which does indeed create burdens upon employers, both guilty and innocent.

AB 101 has been routinely labeled by the news media as a "gay rights bill." Proponents of the legislation have rejected this characterization, protesting that they are seeking no special rights unavailable to others, but only freedom from discrimination. They ask, they say, only fairness.

Well, fair enough.

But they should understand, then, the need for fairness to innocent employers and their other employees.

While there is no question that bigots exist and engage in abhorrent, utterly repugnant gay-bashing, the real test of whether AB 101 should become law is a test of the fairness of the remedy it proposes.

And there is clearly a question in each of the more than 10,000 cases filed annually with the Department of Fair Employment and Housing as to whether the complaint of discrimination is meritorious or simply the product of employer disgruntlement urged on by a litigious lawyer.

The test of fairness to be applied to AB 101 is whether there is evidence of discrimination so pervasive as to warrant state government imposing so widely a burden so oppressive to potentially numerous innocent employers.

Should we increase the already heavy caseload at the Department of Fair Employment and Housing and in the courts?

Fairness demands that where other protections exist in the law, anecdotal evidence of even invidious discrimination--if it has not been shown to be pervasive--does not warrant imposing that burden.

Cordially,



PETE WILSON

# Memorandum

To : All Professionals

Date : June 13, 1979

Subject: Supreme Court Decision -  
LC Secs. 1101 and 1102

From : **Department of Industrial Relations**  
Division of Labor Standards Enforcement  
James L. Quillin, Labor Commissioner



In a recent Supreme Court decision, Gay Law Students Association et al vs. Pacific Telephone and Telegraph Company et al (S.F. 23625, Super. Ct. No. 691-750), the court decided that homosexuals may assert a cause of action against an employer for violation of Labor Code Sections 1101 or 1102, alleging they were discriminated against because of their being "manifest" homosexuals or persons making "an issue of their homosexuality." In its opinion, the court states, "The struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity."

With the widespread publicity this case has received, we may have claims filed in our offices under the theory advanced by the court. I am therefore furnishing the Senior Deputy in each office that part of the Supreme Court's decision dealing with Labor Code Sections 1101 and 1102. Note that the remedy for violation is criminal prosecution.



Should you have questions regarding this matter, you may wish to contact our Legal Section.

JLQ:ba

8. *Plaintiffs' complaint additionally states a cause of action against PT&T for interfering with plaintiffs' political freedom in violation of Labor Code sections 1101 and 1102.*

[18] Over 60 years ago the California Legislature, recognizing that employers could misuse their economic power to interfere with the political activities of their employees, enacted Labor Code sections 1101 and 1102 to protect the employees' rights. Labor Code section 1101 provides that "No employer shall make, adopt, or enforce any rule, regulation, or policy: (a) Forbidding or preventing employees from engaging or participating in politics . . . (b) Controlling or directing, or tending to control or direct the political activities of affiliations of employees." Similarly, section 1102 states that "No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity."<sup>16</sup> These sections serve to protect "the fundamental right of employees in general to engage in political activity without interference by employers." (*Fort v. Civil Service Commission* (1964) 61 Cal.2d 331, 335, 38 Cal.Rptr. 625, 627, 392 P.2d 385, 387; see *Lockheed Aircraft Corp. v. Superior Court* (1946) 28 Cal.2d 481, 486, 171 P.2d 21.)

[19] These statutes cannot be narrowly confined to partisan activity. As explained in *Mallard v. Boring* (1960) 182 Cal.App.2d 390, 395, 6 Cal.Rptr. 171, 174: "The term 'political activity' connotes the espousal of a candidate or a cause, and some degree of action to promote the acceptance thereof by other persons." (Emphasis added.) The Supreme Court has recognized the political character of activities such as participation in litigation (*N.A.A.C.P. v. Button* (1963)

16. Although sections 1101 and 1102 refer only to "employees," identical terminology in the federal Labor Management Relations Act has been held to protect applicants for employment as well as on the job employees. (See, e. g., *Phelps Dodge Corp. v. N.L.R.B.* (1941) 313 U.S. 177, 191-192, 61 S.Ct. 845, 85 L.Ed. 1271; and *N.L.R.B. v. Mason & Hanger-Silas Co.* (8th Cir. 1971) 449 F.2d 425, 427.)

We cannot view the statutes as permitting employers to hire only members of the Republican Party, but forbidding them from firing members of the Democratic Party. Such an anomalous interpretation of these statutes would allow employers to thwart the legislative

Portion of Opinion  
on Labor Code Violations  
Imposing Criminal Penalties  
for Discrimination Against  
Gay and Lesbian Employees

371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405), the wearing of symbolic armbands (*Tinker v. Des Moines School Dist.* (1969) 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731), and the association with others for the advancement of beliefs and ideas (*N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488.)<sup>17</sup>

[20] Measured by these standards, the struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity. Indeed the subject of the rights of homosexuals incites heated political debate today, and the "gay liberation movement" encourages its homosexual members to attempt to convince other members of society that homosexuals should be accorded the same fundamental rights as heterosexuals. The aims of the struggle for homosexual rights, and the tactics employed, bear a close analogy to the continuing struggle for civil rights waged by blacks, women, and other minorities. (See, e. g., *Gay Students Org. of Univ. of New Hampshire v. Banner* (1st Cir. 1974) 509 F.2d 652, 657; *Acanfora v. Board of Education* (4th Cir. 1974) 491 F.2d 498, cert. den. 419 U.S. 836, 95 S.Ct. 64, 42 L.Ed.2d 63; *Aumiller v. University of Delaware* (D.Del. 1977) 434 F.Supp. 1273, 1292-1302.)

A principal barrier to homosexual equality is the common feeling that homosexuality is an affliction which the homosexual worker must conceal from his employer and his fellow workers. Consequently one important aspect of the struggle for equal rights is to induce homosexual individuals to "come out of the closet," acknowledge

purpose of protecting citizens by merely advancing their discriminatory practices to an earlier stage in employee-employer relations. "Employers cannot be permitted to evade the salutary objectives of [a] statute by indirection." (*Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347, 129 Cal.Rptr. 824, 828.)

17. Compare *Rosenfield v. Malcolm* (1967) 65 Cal.2d 559, 561, 55 Cal.Rptr. 505, 506, 421 P.2d 697, 698, in which we held that Alameda County could not discharge an employee who refused to resign from an organization called the "Ad Hoc Committee to End Discrimination."

their sexual preferences, and to associate with others in working for equal rights.

[21] In light of this factor in the movement for homosexual rights, the allegations of plaintiffs' complaint assume a special significance. Plaintiffs allege that PT&T discriminates against "manifest" homosexuals and against persons who make "an issue of their homosexuality." The complaint asserts also that PT&T will not hire anyone referred to them by plaintiff Society for Individual Rights, an organization active in promoting the rights of homosexuals to equal employment opportunities. These allegations can reasonably be construed as charging that PT&T discriminates in particular against persons who identify themselves as homosexual, who defend homosexuality, or who are identified with activist homosexual organizations. So construed, the allegations charge that PT&T has adopted a "policy . . . tending to control or direct the political activities or affiliations of employees" in violation of section 1101, and has "attempt[ed] to coerce or influence . . . employees . . . to . . . refrain from adopting [a] particular course or line of political . . . activity" in violation of section 1102.

In *Lockheed Aircraft Corp. v. Superior Court* (1946) 28 Cal.2d 481, 171 P.2d 21, our court established the principle that an employee who has been discriminated against in violation of sections 1101 or 1102 may maintain a cause of action against his employer to recover damages sustained as a result of the employer's unlawful conduct. (See also Lab. Code, § 1105.) Thus, since the allegations of the complaint do allege that PT&T has engaged in conduct which violates these statutory provisions, the complaint also states a cause of action against PT&T on this ground.

\* GAY LAW STUDENTS ASSOCIATION  
et al., Plaintiffs and Appellants,

v.

PACIFIC TELEPHONE AND TELE-  
GRAPH COMPANY et al., Defend-  
ants and Respondents.

S.F. 23625.

Supreme Court of California.

May 31, 1979.

Rehearing Denied July 25, 1979.

595 P.2d 592

24 Cal.3d 458

Opinion No. 85-404—April 30, 1986

**SUBJECT:** JOB DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION—Labor Code sections 1101 and 1102 prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation.

**Requested by:** MEMBER, CALIFORNIA STATE ASSEMBLY

**Opinion by:** JOHN K. VAN DE KAMP, Attorney General  
Nelson Kempsey, Chief Deputy

The Honorable Art Agnos, Member, California State Assembly, has requested an opinion on the following question:

Do Labor Code sections 1101 and 1102 prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation?

#### CONCLUSION

Labor Code sections 1101 and 1102 prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation.

#### ANALYSIS

For more than a decade, the homosexual community in California has strove by litigation and legislation for equality of treatment and equality of rights with the heterosexual community. The California Supreme Court has ruled that Labor Code sections 1101 and 1102 protect employees who identify themselves as homosexual from reprisal by their employers. We are now asked whether those sections would be interpreted to prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation.

Section 1101 provides:

"No employer shall make, adopt, or enforce any rule, regulation, or policy:

"(a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.

"(b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees."

Section 1102 provides:

"No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity."

The prohibitions were originally enacted as a single section in 1915 and were

It is obvious that the Legislature has barred, for example, the discharge<sup>3</sup> of an employee who openly declares himself or herself to be affiliated with the Republican or Democratic Party by reason of that party association. We cannot imagine that the Legislature intended at the same time to grant permission to an employer to have a policy permitting discharge of employees on the basis of the employer's belief that an employee is a covert Republican or a secret Democrat.

It appears instead to have been the Legislature's judgment that political activities are not within the purview of an employer's legitimate interests, and that political activities or affiliations, whether private or public, should not be tolerated as the basis for employment decisions. In the context of the question we have been asked and the California Supreme Court's conclusion that homosexual identification is a political activity, we conclude that the Legislature's protection for political activity extends to those who have not made a public issue of their orientation as well as those whose stand is openly proclaimed.

This conclusion is consistent with the text of the relevant sections, which point with fair clarity in that direction. Section 1101 bars any employer from any policy "tending to control or direct the political activities or affiliations of employees." Section 1102 bars any employer from attempting to coerce or influence any employee "to adopt or follow or refrain from adopting or following any particular course of line of political action or political activity."

Returning to the analogy of employees with undisclosed affiliations with a political party, we can see that if an employer had a policy of discharging employees believed to be secretly associated with the Democratic Party, employees who were actually oriented in that direction would feel pressured to either declare themselves publicly as Democrats in order to secure the protection of Labor Code sections 1101 and 1102 for their political affiliation, or to declare themselves as Republicans in order to placate their employer. Those whose private orientation was toward the Republican Party would feel a similar compulsion to convince their employer of their orientation.

In either case, the policy of the employer would coerce all employees to make a declaration of orientation one way or the other in order to secure the protection of the Labor Code. The effect of the policy would be to force the company's employees into particular courses of political activity, irrespective of any preference to keep their orientation a private matter.

Remembering that the Supreme Court has defined open self-identification of homosexuality as a political act, we conclude that if an employer had a policy of discharging employees because the employer held a belief that the employee's personal sexual orientation was homosexual, that policy would tend to control or direct the political activities or affiliations of that employee and others as well.

We also believe that the Supreme Court has presaged the decision it would render if presented with the question we discuss here. The court noted that an important

<sup>3</sup>While we use the example here of discharge from employment, the protection of the statutes is broader. Section 1102 prohibits an employer from threatening discharge or loss of employment for political action. Any denial, deprivation or diminution of employment status of benefits would constitute a loss. See Gay Law Students Assn., *supra*, 24 Cal. 3d at 487, fn. 16.



aspect of the struggle for equal rights is to encourage homosexual individuals to acknowledge their sexual preferences. Interpreting the provisions of the Labor Code to permit employers to have a policy of discharging employees on the basis of the employer's beliefs concerning the sexual orientation of its employees would have a marked chilling effect upon the willingness of those employees to take the political action of declaring their sexual orientation. If such an employment policy impacted the political choices of a company's employees—and it seems a certainty that such a policy would have a substantial tendency to do so—it would violate the letter and the spirit of the two Labor Code sections we have been discussing.

We conclude the Supreme Court would determine that the logic of the views it expressed in *Gay Law Students Assn.* leads inexorably to the conclusion that declarations and activities surrounding an employee's sexual orientation are matters of legitimate concern to the employee only, and that the Legislature has prohibited employers from adopting policies which would impact those choices.

Since the Legislature has banned discrimination against employees on the basis of their political views, activities and affiliations, and since the Supreme Court has defined self-identification of homosexual orientation as protected political action, the Supreme Court would also rule that a policy of discrimination against employees on the basis of beliefs as to their homosexual orientation is also prohibited by that legislation.

# UNLAWFUL DISCRIMINATION

## Your Rights and Remedies Civil Rights Handbook



November 1990  
Second Edition  
California Attorney General's Office

***UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES, Second Edition,\****  
was prepared under the supervision of The Office of the Attorney  
General, State of California, Public Rights Division, Civil Rights  
Enforcement Unit.

**JOHN K. VAN DE KAMP**  
Attorney General of the State of California

**ANDREA SHERIDAN ORDIN**  
Chief Assistant Attorney General

**CAROLE RITTS KORNBLUM**  
Assistant Attorney General

**MARIAN M. JOHNSTON**  
Supervising Deputy Attorney General  
Editor

**KATHLEEN W. MIKKELSON**  
Deputy Attorney General  
Writer and Editor

**JEFFREY HOPS**  
**IRENE MOY**  
**JULIANA STONE**  
**JOE WEBER**  
Legal Research and Writing

**KATHLEEN CRAVEN**  
**PATRICIA MUNSTERER**  
Production

For additional information about  
***UNLAWFUL DISCRIMINATION: YOUR RIGHTS AND REMEDIES,***  
please contact:

**Attorney General's Public Inquiry Unit**  
P.O. Box 944255  
Sacramento, California 94244-2550

Telephone: (916) 322-3360  
Toll Free Number: (800) 952-5225 (in California)

Line for the Hearing Impaired:  
(916) 324-5564  
Toll Free Number: (800) 952-5548 (in California)

---

\* Much of the material in this Second Edition is an update of the First Edition, Louis Verdugo, Jr., and Henry Torres, Jr., Deputy Attorneys General, writers and editors.

### Other Prohibited Employment Discrimination

The types of employment discrimination prohibited under the FEHA are limited to the categories actually mentioned therein. However, other state statutes and constitutional guarantees may also prohibit employment discrimination.

### **Sexual Orientation**

In *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, the California Supreme Court denied FEHA coverage to claims of employment discrimination based upon sexual orientation because that particular classification was not identified in the FEHA.

However, a victim of employment discrimination based upon sexual orientation is not without a remedy, particularly where public employment is concerned. The Supreme Court in the *Gay Law Students* case indicated that if a person is discriminated against by a public entity on the basis of sexual orientation, the equal protection clause of the California Constitution (art. I, § 7, subd. (a)) may have been violated. The Supreme Court held that employment discrimination which was based upon sexual orientation and which was allegedly practiced by a privately owned public utility enjoying a state-protected monopoly involved sufficient state action to violate the California Constitution.

Under the reasoning of the *Gay Law Students* decision, the state equal protection clause would prohibit the state, as well as any local public agency,<sup>23/</sup> from arbitrarily discriminating against any class of individuals in employment decisions, including any classification based upon sexual orientation. Accordingly, all arbitrary discrimination by public employers is prohibited under the equal protection clause of the California Constitution.

---

23. 66 Ops. Cal. Atty. Gen. 486 (1983).

Additionally, it should be noted that an Executive Order prohibits any state entity from discriminating against an employee because of the employee's sexual orientation.<sup>24/</sup> Violations of this Executive Order should be reported to the State Personnel Board in writing. The address is:

*State Personnel Board  
Appeals Division - Sacramento  
801 Capitol Mall  
Sacramento, CA 95814  
Telephone: (916) 445-5191*

If you have any questions or need further information regarding this Executive Order, contact the:

*State Personnel Board, Appeals Division  
Sacramento Hearing Office: (916) 445-7398  
Los Angeles Hearing Office: (213) 620-3018*

Finally, Labor Code sections 1101 and 1102, which prohibit employers from interfering with the political activities of employees, have been construed to prohibit employers from arbitrarily discriminating against homosexuals in the hiring, firing, and promotion of employees. In *Gay Law Students*, the Supreme Court held that the gay law students association had stated a separate claim under Labor Code sections 1101 and 1102 by alleging that manifest homosexuals and those who made an issue of their homosexuality had been discriminated against in the employment process. The Attorney General of California has concluded that these sections prohibit all employment discrimination based on sexual orientation.<sup>25/</sup> An employer who violates either Labor Code section 1101 or 1102 is guilty of a misdemeanor and is subject to a fine and/or jail time. Violators of these statutes may be prosecuted by your local district and/or city attorney. Additionally, if an employee files a private lawsuit for damages in the appropriate court and is successful, he or she may recover damages for the personal losses caused by his or her employer's violation of Labor Code section 1101 or 1102.

---

24. Exec. Order No. B-54-79 (1979).

25. 69 Ops. Cal. Atty. Gen. 80 (1986).

# Law Protects Gays, Van de Kamp Says

## Bars Employers From Discriminating, Formal Opinion Declares

By RICHARD C. PADDOCK, *Times Staff Writer*

SACRAMENTO—A state law that protects workers' rights to engage in political activity bars private employers from discriminating against homosexuals, Atty. Gen. John Van de Kamp said in a formal opinion Wednesday.

The opinion represented a victory for gay rights activists who lost a hard-fought battle two years ago when Gov. George Deukmejian vetoed a bill that would have prohibited employment discrimination against homosexuals.

While the opinion does not have the force of law, such a statement by the attorney general carries considerable weight as a guideline in courtrooms and law offices.

Although no one would predict in detail its precise effect on the private sector, legal experts said the opinion offered a new line of legal argument for those claiming to be victims of anti-homosexual discrimination.

"It seems to me that it breaks new ground," said UCLA law professor Kenneth Karst. "The Legislature has been asked by gay rights groups to add laws like this in the past and the laws have not been adopted. This is a way of accomplishing by interpretation of existing law something similar to what what would have been enacted."

Assemblyman Art Agnos (D-San Francisco), author of the gay rights bill vetoed by Deukmejian, hailed Van de Kamp's opinion, which came in response to a question Agnos had asked him.

Agnos said that as a result of the opinion homosexuals "now have support for filing a lawsuit and they have a basis for appealing to their local district attorney for criminal prosecution when an employer violates their rights."

Agnos said he will continue to push for enactment of anti-discrimination legislation, which he

said would better protect homosexuals by specifically writing safeguards into the law and avoiding potentially long legal battles.

A spokesman for the California Manufacturers Assn., a major employer group that had initially opposed the Agnos legislation, said the opinion may help clarify "cloudy legal waters." He said a summary of the document will be sent to members of the association.

Van de Kamp's opinion was based on a 1979 state Supreme Court ruling that the declaration of one's homosexuality was a political statement and was therefore protected under the state labor code.

In his opinion, Van de Kamp forecast that the court would extend the protection to all homosexuals on the ground that employers cannot discriminate against workers they believe to be gay. Such discrimination would be illegal because it would force gays into making a political statement by declaring their sexual orientation.

"We conclude that if an employer had a policy of discharging employees because the employer held a belief that the employee's personal sexual orientation was homosexual, that policy would tend to control or direct the political activities or affiliations of that employee or others as well," Van de Kamp wrote.

A spokesman for Deukmejian said the governor had not reviewed the opinion and had no comment on it.

Van de Kamp said in an interview that the decision was difficult to make and that there is room for legal experts to disagree on the issue. It took the attorney general more than a year to research and write the opinion.

"It is not without doubt, but we think the labor code covers it," Van

de Kamp said.

The opinion hinged on a case brought by the Gay Law Students Assn. against Pacific Telephone Co., charging that the utility practiced discrimination against homosexuals.

In a majority decision written by then-Justice Matthew Tobriner, the court in 1979 ruled that making a declaration of homosexuality was a political statement, because doing so is part of the movement for gay equality.

Discrimination against employees who engage in political activities has been outlawed under two sections of the labor code first adopted in 1915.

"Since the Legislature has banned discrimination against employees on the basis of their political views, activities and affiliations, and since the Supreme Court has defined self-identification of homosexual orientation as protected political action, the Supreme Court would also rule that a policy of discrimination against employees on the basis of beliefs as to their political orientation is also prohibited by the legislation," Van de Kamp wrote.



Los Angeles Times

Atty. Gen. John Van de Kamp

The opinion is based on a 1979 state Supreme Court ruling that the declaration of one's homosexuality is a political statement and is therefore protected under the state labor code.

Armed with the opinion, Agnos said he will call on businesses throughout the state to end any practice of discriminating against homosexuals. He also said he will acquaint district attorneys with the opinion and encourage them to give full consideration to anyone who complains of discrimination.

## Calif. Att'y Gen. Rules Labor Code Protects Gays in Private Firms

In a decision that increases job protection for gays, California Attorney General John Van de Kamp has ruled that California's Labor Code bars private firms from discriminating against homosexuals—whether they are openly gay or not.

Van de Kamp's ruling expands on a 1979 California Supreme Court decision, which held that private firms could not discriminate against people who identified themselves as homosexual. The court asserted that "coming out" was a political act that was protected under the Labor Code.

Now, Van de Kamp has declared that the state supreme court would also rule that employment discrimination on the basis of sexual orientation is itself illegal.

"In the context of the California Supreme Court's conclusion that homosexual identification is a political activity," Van de



*Att'y Gen. John Van de Kamp has ruled that private companies cannot discriminate against gays.*

Kamp wrote, "we conclude that the Legislature's protection for political activity extends to those who have not made a public issue of their orientation as well as those whose stand is openly proclaimed."

Van de Kamp issued his opinion at the request of state Assemblyman Art Agnos, a San Francisco Democrat who sponsored the AB 1 legislation that would have protected homosexuals against employment discrimination. The bill passed the legislature but was vetoed by Gov. George Deukmejian (R).

Thomas F. Coleman, a gay lawyer in Los Angeles who served as executive director of former Gov. Edmund G. (Jerry) Brown Jr.'s Commission on Personal Privacy, said that the "clear legislative mandate" of AB 1 would still be preferable to an interpretation like Van de Kamp's, which could be challenged in the courts.

But Coleman said the Van de Kamp opinion gave a "major protection" to gays. Under the Labor Code, he said, someone can bring a complaint of discrimination before the labor department. After evaluating the complaint, the state agency can refer it to local district attorneys for criminal prosecution. The complainant can also hire an attorney to file suit against the firm accused of discrimination.

If AB 1 became law, it would not have been necessary for the complainant to hire an attorney. Instead, the state Department of Fair Employment and Housing would have handled the complaint, seeking civil penalties against the employer if discrimination was found to exist and attempts at conciliation failed.

Under an executive order issued by former Gov. Jerry Brown, discrimination on the basis of sexual orientation is prohibited in state employment. A previous decision by Van de Kamp extended that protection to local public agencies.

While Van de Kamp's latest opinion is a further extension of protection, it is an interpretation of how the California Supreme Court would rule. That court is now under heavy attack from right-wingers, and a majority of the court's members are up for reelection. If conservatives dominate the court and Van de Kamp's ruling is challenged, the new protection could be overturned.

— Peter Freiberg

# ACLU Foundation

of Southern California

RECEIVED DEC 13 1979

633 South Shatto Place · Los Angeles, Ca. 90005 · (213) 487-1720

December 11, 1979



Donald Vail  
Director of Industrial Relations  
P.O. Box 603  
San Francisco, CA 94101

Dear Mr. Vail:

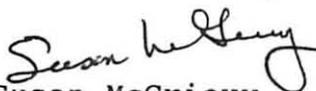
Please find enclosed a brochure which I wrote on the present state of the law relative to Gay Employment rights. You will note that (B)(3) indicates a person fired for the political act of "coming out of the closet" has redress to the State of California, Department of Industrial Relations, Labor Commissioners under Labor Code Sections 1101 and 1102. This is based upon the State Supreme Court's decision in the Pacific Telephone case.

The problem is that in the past months I have been involved in what has become almost a series of shouting matches with your commissioners in the state to get them to take complaints of this nature.

Basically, the problem appears to be one of administration. Your agency has yet to inform its commissioners that it has jurisdiction over Gay Employment Discrimination cases under these sections of the Labor Code. This is making it difficult for Gays to be treated equitably under the law.

We would greatly appreciate if it your office could prepare an administrative directive for the commissioners informing them that they do have jurisdiction.

Your sincerely,

  
Susan McGrievy  
Staff Attorney  
National ACLU  
Gay Rights Project

SM/cc'  
cc: Tom Coleman  
Anthony Klein

Enclosure

Chairman  
Stanley K. Sheinbaum \*  
President  
Norman Lear \*  
Vice-Presidents  
Jerry Godell \*  
Madeline Goodwin \*  
Sol Marcus \*  
Recording Secretary  
Laurie Ostrow \*  
Assistant Secretary  
Lloyd Smith \*  
Corresponding Secretary  
Irma Colen \*  
Treasurer  
Lou Colen \*

## BOARD OF DIRECTORS

Aris Anagnos \*  
David Begelman  
Alan Bergman  
Marilyn Bergman \*  
Bayard Berman  
Janice Best \*  
LaRee Caughey  
John Caughey  
Robert Cohn \*  
Barry Diller  
Gary Familian  
Liz Familian  
David Getfen  
Gloria Godell  
Antoinette Z. Haber  
Mildred Harris  
Eileen Heim \*  
Fred Heim \*  
Christie Hefner  
Hugh Hefner  
Allan K. Jonas \*  
Dorothy Jonas  
Charles E. Jones  
Jimi Kaufer \*  
Burt Lancaster \*  
Jennings Lang  
Frances Lear  
Irving Lichtenstein, M.D. \*  
Charles E. Lloyd, Esq.  
Shirley Magidson  
Faye Nuell  
Max Palevsky \*  
Judy Balaban Quine \*  
Henry C. Rogers  
Roz Rogers \*  
Miriam Rosenstein  
Pat Roth  
Marvin Schachter  
George Staff \*  
Barbara Tannenbaum  
Florence Temkin \*  
Malinda Trugman  
Richard Trugman  
June Tyre  
Edward G. Victor \*  
Philip Wain \*  
Chic Wolk  
Leo Wyler

## \* Executive Committee

Executive Director  
Ramona Ripston  
Associate Director  
Carol Sobel  
Legal Director  
Fred Okrand  
Counsel  
Mark Rosenbaum  
Terry Smerling

NATIONAL COMMITTEE  
FOR  
SEXUAL CIVIL LIBERTIES

Thomas F. Coleman, Esq.  
Co-Chairman

Dr. Arthur C. Warner  
Co-Chairman

1800 North Highland Avenue, Suite 106  
Los Angeles, California 90028  
(213) 464-6666

December 31, 1979

Donald Vail  
Director of Industrial Relations  
P.O. Box 603  
San Francisco, California 94101

Dear Mr. Vail:

I received a copy of a letter sent to you by Susan McGrievy of the A.C.L.U. dated December 11, 1979. In that letter Ms. McGrievy expressed concern that the Labor Commissioners are not aware of their obligations with respect to the employment rights of gay people.

I would like to offer the assistance of this committee to you and your staff, in this regard. The National Committee has been working cooperatively and effectively with the Governor's office, the State Personnel Board, and the Division of Fair Employment and Housing Practices. We have worked with Mr. J. Anthony Kline, the Governor's Legal Affairs Secretary, with respect to the wording and implementation of the Governor's Executive Order on Sexual Orientation, and the State Personnel Board and its Executive Officer, Mr. Ron Kurtz, with respect to interpretation and implementation of the Governor's Executive Order on Employment Rights and the Supreme Court mandates in Gay Law Students Association v. Pacific Telephone and Telegraph Company. We have assisted Ms. Joanne Lewis of the Division of Fair Employment and Housing Practices with respect to revising policies on the enforcement of gay housing rights. Currently, we have started a project with the State Alcoholic Beverage Control Board and Mr. Baxter Rice, with respect to necessary policy changes in view of the recent Supreme Court decision of Pryor v. Municipal Court (the state's lewd conduct statute was declared unconstitutional in this case).

If we can be of any assistance to you or your Labor Commissioners with respect to the interpretation of the Pacific Telephone case and in

Donald Vail  
Director of Industrial Relations  
December 31, 1979  
Page 2

establishing policy guidelines with respect to your jurisdiction in this regard, we would be happy to do so. If you are interested in drawing upon our resources and expertise, please let us know and we will extend our assistance to you.

Very truly yours,



Thomas F. Coleman

/psp

cc: J. Anthony Kline  
Susan McGrievy

AD 104

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

455 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

(415) 557-3827



January 10, 1980

ADDRESS REPLY TO:  
P.O. Box 603  
San Francisco, CA 94101

IN REPLY REFER TO:

RECEIVED JAN 15 1980

Mr. Thomas F. Coleman  
National Committee for  
Sexual Civil Liberties  
1800 North Highland Avenue, Suite 106  
Los Angeles, Ca. 90028

Dear Mr. Coleman:

Director Vial has forwarded your letter of  
December 31, 1979, to me for reply.

Enclosed is a copy of my reply to Susan McGrievy  
of the ACLU, and if you or your organization  
experience any difficulty, please contact the  
listed Area Administrators or myself.

Thank you for your offer of assistance with respect  
to the interpretation of the Pacific Telephone case.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Albert J. Reiff".

Albert J. Reiff  
Assistant State Labor Commissioner

AJR:ba

Enc.

(A15) 227-3227

January 10, 1950

RECEIVED JAN 12 1950

Mr. Thomas E. Coleman  
National Committee for  
General Civil Liberties  
1000 North Highland Avenue, Suite 102  
Los Angeles, Ca. 90028

Dear Mr. Coleman:

Director Visa has forwarded your letter of  
December 31, 1949, to me for reply.

Inclosed is a copy of my reply to your inquiry  
of the ACIU, and if you or your organization  
experience any difficulty, please contact the  
United Area Administrators or myself.

Thank you for your offer of assistance with respect  
to the interpretation of the Pacific Relations Act.

Sincerely yours,

Albert J. Ryan  
Assistant State Labor Commissioner

ALJ:ba

enc.

(415) 557-3827

January 9, 1980

Ms. Susan McGrievy  
Staff Attorney  
National ACLU, Gay Rights Project  
633 South Shatto Place  
Los Angeles, Ca. 90005

Dear Ms. McGrievy:

Director Vial has asked me to reply to your letter of December 11, 1979, concerning possible complaints under Labor Code Sections 1101 and 1102 by gay persons.

On June 13, 1979, shortly after the Supreme Court decision involving Pacific Telephone and Telegraph Company, State Labor Commissioner James L. Quillin issued the attached memo to our staff which indicates that our jurisdiction is limited to investigating the criminal aspects of the violations.

If you encounter a situation where one of our offices has refused to take a complaint under these sections, you may contact either of the following or bring the matter directly to my attention:

Colleen Logan, Area Administrator  
107 South Broadway, Room 5015, Los Angeles 90012  
Telephone: (213) 620-5130

Max Turchen, Area Administrator  
8155 Van Nuys Blvd., Suite 950, Panorama City 91402  
Telephone: (213) 782-3733

Thank you for writing, and we hope to work with you to clarify any possible misunderstandings with our district offices.

Sincerely yours,

Albert J. Reyff  
Assistant State Labor Commissioner

AJR:ba

Enc.

cc: D. Vial, A. Klein, Area Administrators

The State Labor Commissioner enforces Labor Code Sections 1101 and 1102. Employees who are victims of sexual orientation discrimination may file a complaint with the local office of the labor commissioner. The complaint is investigated by those offices. If the labor commissioner finds "probable cause" to believe that such discrimination has occurred, the case is referred to a district attorney or a city attorney for criminal prosecution.

**INDUSTRIAL RELATIONS, DEPARTMENT OF-  
Sacramento, 1121 I St., Suite 307 (95814)**

General Information ..... 597-3356 557-3356 7-3356

**LABOR STANDARDS ENFORCEMENT, DIVISION  
OF- San Francisco, 525 Golden Gate Ave., P.O.  
Box 603 (94101)**

**Headquarters Office- 5th Flr.**

State Labor Commissioner and Chief-  
Acting Commissioner-James Garry ..... 597-3827 557-3827 7-3827  
Deputy Chief ..... 597-3827 557-3827 7-3827  
Assistant Chief-Steve Rojas ..... 597-3827 557-3827 7-3827  
General Information ..... 597-0860 557-0860 7-0860  
Staff Support Services  
Staff Services Manager-Mike Giles ..... 597-8155 557-8155 7-8155  
Associate Governmental Program Analyst-  
Leslie Clements ..... 597-8154 557-8154 7-8154  
Staff Support Analyst-Lucia Cejo ..... 597-8258 557-8258 7-8258  
Special Assistant-Joan Toigo ..... 597-3827 557-3827 7-3827  
Management Services Technician-Eliza Jimenez ..... 597-0477 557-0477 7-0477

**Legal Section**

Los Angeles-107 S. Broadway, Rm. 5015 (90012) 640-2500 620-2500 2500  
San Francisco-  
525 Golden Gate Ave., 6th Flr. (94102)  
Chief Counsel-H. Thomas Cadell ..... 597-2516 557-2516 7-2516  
San Jose-  
100 Paseo de San Antonio, Rm. 120 (95113) ..... 522-9656 277-9656 7-9656  
Fresno-668 W. Shaw Ave., Suite C-130 (93704) .. 209-221-8195 221-8195  
Long Beach-245 W. Boardway, Rm. 450 (90802) .. 635-5461 590-5461 5461  
Santa Ana-28 Civic Center Plaza (92701) ..... 657-4942 558-4942 4942  
Sacramento-2422 Arden Way, Suite 50 (95825) .... 430-2331 924-2331 2331  
San Diego-8765 Aero Dr., Suite 125 (92123) ..... 631-7028 237-7028 7028  
Van Nuys-6150 Van Nuys Blvd., Rm 200 (91401) .. 733-5482 901-5482 5482  
Ventura-5720 Ralston St., Suite 103 (93003) ..... 723-4647 654-4647 4647

**BUREAU OF FIELD ENFORCEMENT OFFICES**

**Northern Bureau- Sacramento, 1023 J St.,**

Rm. 205 (95814)  
Manager-Nance Milberger ..... 454-7707 324-7707 4-7707  
Bakersfield-  
5555 California Ave., Suite 200 (93309) ..... 681-2582 395-2582 2582  
Fresno-666 W. Shaw Ave., Suite C-132 (93704) .. 209-221-1877 221-1877  
Napa-3273 Claremont Way, Rm. 206 (94558) ..... 707-257-7804 257-7804  
Oakland-360 22nd St., Rm. 501 (94621) ..... 415-464-4276 464-1233 4-1233  
Redding-2115 Akard Ave., Rm. 17 (96001) ..... 442-2654 225-2654 2654  
San Francisco-  
525 Golden Gate Ave., 1st Flr. (94102) ..... 597-0904 557-0904 7-0904  
San Jose-  
100 Paseo de San Antonio, Rm. 126 (95113) ..... 522-1907 277-1907 7-1907  
Santa Rosa-50 D St., Suite 360 (92701) ..... 590-2413 576-2413 2413  
Stockton-31 East Channel St., Rm. 318 (95202) .... 423-3616 948-3616 3616

**Southern Bureau- Los Angeles, 107 S. Broadway,**

Suite 5027 (90012) ..... 897-2905 277-1907 7-1907  
Manager-Roger Miller ..... 640-2204 620-2204 2204  
Indio-81-730 Highway 111, Suite 4 (92201) ..... 619-347-4211 347-4211  
Long Beach-245 W. Broadway, Rm. 450 (90802) .. 635-5466 590-5466 5466  
Pomona-300 S. Park Ave., Rm. 830A (91769) ..... 714-967-8068 967-8068  
San Bernardino-  
303 W. Third St., Rm. 140 (92401) ..... 670-4333 383-4333 4333  
San Diego-8765 Aero Dr., Suite 120 (92123) ..... 631-7030 237-7030 7030  
Santa Ana-  
28 Civic Center Plaza, Rm. 433 (92701) ..... 657-4113 558-4113 4113  
Santa Barbara-  
411 E. Canon Perdido St., Rm. 3 (93101) ..... 805-963-1438 963-1438  
Santa Monica-2701 Ocean Park Blvd. (90405) .... 213-312-0014 312-0014

**District Offices**

Bakersfield- 5555 California Ave., Suite  
200 (93309)  
Senior Deputy Labor Commissioner ..... 681-2710 395-2710 2710  
El Centro- 1699 W. Maine St., Suite E (92243) .. 619-353-0585 353-0585  
Eureka- 619 Second ST., Rm. 109 (95501) ..... 538-6612 445-6612 6612  
Fresno- 668 W. Shaw Ave., Suite C-  
131 (93704) ..... 209-221-5005 221-5005

**Inglewood- One Manchester Blvd., Suite  
604 (90301)**

Regional Manager-Carol Cole ..... 697-6380 412-6380 6380  
Senior Deputy Labor Commissioner ..... 697-6380 412-6380  
Long Beach- 245 W. Broadway,  
Rm. 450 (90802)  
Senior Deputy Labor Commissioner ..... 635-5044 590-5044 5044  
Los Angeles- 107 S. Broadway,  
Rm. 5015 (90012)  
Senior Deputy Labor Commissioner ..... 640-2497 620-2497 2497  
General Information ..... 897-4037 620-5130 5130  
Marysville- 922 G St. (95901)  
Deputy-In-Charge ..... 457-4061 741-4061 4061

ATSS No. Public No. Ext.

**Napa- 3273 Claremont Way, 2nd Flr. (94558)**

Senior Deputy Labor Commissioner ..... 707-257-0660 257-0660  
Oakland-360 22nd St., Rm. 500 (94621)  
Senior Deputy Labor Commissioner ..... 415-464-0600 464-1353 4-1353  
Pomona- 300 S. Park Ave., Rm. 830 (91769)  
Senior Deputy Labor Commissioner ..... 714-622-4236 622-4236  
Redding- 2115 Akard Ave., Rm. 17 (96001)  
Senior Deputy Labor Commissioner ..... 442-2654 225-2654 2654  
Sacramento- 2422 Arden Way, Suite 50 (95825)  
Regional Manager-Robert Caligiuri ..... 430-6116 920-6116 6116  
Senior Deputy Labor Commissioner ..... 430-6116 920-6116 6116  
Salinas- 21 W. Laurel Dr., Suite 69 (93906) ..... 588-3040 443-3040 3040  
San Bernardino- 303 W. Third St.,  
Rm. 140 (92401)  
Senior Deputy Labor Commissioner ..... 670-4333 383-4333 4333  
San Diego- 8765 Aero Dr., Suite 120 (92123)  
Senior Deputy Labor Commissioner ..... 631-7310 237-7310 7310  
San Francisco- 525 Golden Gate Ave., Rm  
102 (95102)  
Senior Deputy Labor Commissioner ..... 597-0860 557-0860 7-0860  
San Jose- 100 Paseo de San Antonio,  
Rm. 120 (95113)  
Senior Deputy Labor Commissioner ..... 522-9647 277-9647 7-9647  
San Mateo- 1900 S. Norfolk Blvd., Suite  
219 (94403)  
Senior Deputy Labor Commissioner ..... 415-572-9451 572-9451  
San Rafael- 45 Mitchell Blvd., Rm. 11 (94903) .. 415-492-0289 492-0289  
Santa Ana- 28 Civic Center Plaza,  
Rm. 625 (92701) ..... 657-4115 558-4115 4115  
Senior Deputy Labor Commissioner ..... 657-4115 558-4115 4115  
Santa Barbara- 411 E. Canon Perdido,  
Rm. 3 (93101)  
Senior Deputy Labor Commissioner ..... 805-963-1438 963-1438  
Santa Rosa- 50 D St., Suite 360 (95404)  
Senior Deputy Labor Commissioner ..... 590-2390 576-2390 2390  
Stockton- 31 E. Channel St., Rm. 328 (95202)  
Senior Deputy Labor Commissioner ..... 423-7770 948-7770 7770  
Van Nuys- 6150 Van Nuys Blvd., Rm  
200 (91402)  
Senior Deputy Labor Commissioner ..... 733-5312 901-5312 5312  
Ventura- 5720 Ralston St., # 103 (93003)  
Senior Deputy Labor Commissioner ..... 723-4538 654-4538 4538  
Whittier- 13215 E. Penn, Suite 300 (90602)  
Regional Manager-Denos Carras ..... 213-698-2278 698-2278  
Senior Deputy Labor Commissioner ..... 213-698-2278 698-2278

**DISTRICT ATTORNEY**

ARLO SMITH  
DISTRICT ATTORNEY



ROBERT M. PODESTA  
CHIEF ASSISTANT  
DISTRICT ATTORNEY

**SAN FRANCISCO**

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

**MEDIA ADVISORY**

FOR IMMEDIATE RELEASE  
CONTACT: ARLO SMITH 415/553-1741

OCTOBER 28, 1991

NEWS CONFERENCE: 1:45 P.M., TUESDAY, OCTOBER 29

DISTRICT ATTORNEY'S OFFICE  
HALL OF JUSTICE  
850 BRYANT STREET  
3RD FLOOR CONFERENCE ROOM  
SAN FRANCISCO

-----  
**D.A. SMITH TO ANNOUNCE STATEWIDE PROGRAM TO  
PROTECT GAYS, LESBIANS IN EMPLOYMENT**  
-----

**Says Wilson's AB 101 veto has left D.A.s no choice  
but to prosecute employers.**  
-----

SAN FRANCISCO--District Attorney Arlo Smith will hold a news conference tomorrow afternoon to announce the launch of a statewide model program to protect gays and lesbians from employment discrimination in the wake of Gov. Wilson's veto of Assembly Bill 101. The model program will be a joint endeavor by Smith and Los Angeles City Attorney Jim Hahn.

In consultation with Los Angeles attorney Thomas F. Coleman, a nationally recognized expert in the field of public policy and law affecting sexual orientation and marital status discrimination, the program will use existing state legal protections in which criminal remedies may be sought against employers who discriminate on the basis of sexual orientation.

Coleman will be on hand at the news conference to discuss the specifics of the statewide model program.

In his September 30 veto of AB 101, Governor Wilson cited existing state legal protections for gays and lesbians in employment, including Labor Code sections 1101 and 1102 and "the express right of privacy contained in the California Constitution."



JAMES K. HAHN  
CITY ATTORNEY

Office of the City Attorney  
Los Angeles, California

EXECUTIVE OFFICE  
1800 CITY HALL EAST  
LOS ANGELES 90012  
(213) 485-5408

CRIMINAL BRANCH  
(213) 485-5470

CIVIL BRANCH  
(213) 485-6870

TELECOPIER:  
(213) 680-9654

FOR IMMEDIATE RELEASE  
OCTOBER 28, 1991

MIKE QUALLS (213) 485-6493  
TED GOLDSTEIN (213) 485-2065

News Advisory

Responding to the veto of Assembly Bill 101, Los Angeles City Attorney Jim Hahn will hold a news conference at 9:30 a.m. tomorrow (Oct. 29) to announce the launch of an enforcement campaign using existing state and city laws to protect gays and lesbians from employment discrimination in Los Angeles.

The news conference will be held in the 18th Floor conference room in City Hall East, 200 N. Main St., Los Angeles Civic Center.

Also participating in the news conference will be Los Angeles attorney Thomas F. Coleman, one of the nation's leading experts on public policy and the law governing sexual orientation and marital status discrimination.

(Assembly Bill 101, which would have specifically prohibited employment discrimination on the basis of sexual orientation, was vetoed Sept. 30 by Gov. Pete Wilson after being approved by the state Legislature.)

**DISTRICT ATTORNEY**

ARLO SMITH  
DISTRICT ATTORNEY



ROBERT M. PODESTA  
CHIEF ASSISTANT  
DISTRICT ATTORNEY

**SAN FRANCISCO**

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

October 28, 1991

Victoria L. Bradshaw  
State Labor Commissioner  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
455 Golden Gate Ave., Suite 3194  
San Francisco, CA 94102

Dear Commissioner Bradshaw:

In the message accompanying his veto of Assembly Bill 101 last month, Governor Wilson stressed that remedies are currently available to redress complaints of employment discrimination against gays and lesbians. The Governor cited Gay Law Students Association v. Pacific Telephone & Telegraph (1979) 24 Cal. 3d 458 for the proposition that the California Labor Code protects from discrimination those workers involved in gay issues or those who identify themselves openly as homosexual.

The Governor has pointed out that the California Attorney General has concluded that Secs. 1101 and 1102 prohibit an employer from discrimination on the basis of homosexual orientation or affiliation. (69 Ops. Cal. Attorney General 80 1986)

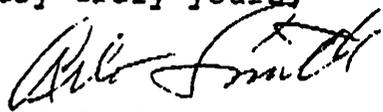
Both the Governor and Attorney General have concluded that complaints of employment discrimination involving gays and lesbians are within your jurisdiction.

Labor Code section 1103 makes it a misdemeanor to violate either Labor Code section 1101 or 1102. This office is prepared to prosecute any employer who violates those sections and requests that your Commission investigate (pursuant to Labor Code section 98.7) all proper complaints and refer them to us.

Victoria L. Bradshaw  
State Labor Commissioner  
October 28, 1991  
Page 2

I look forward to establishing an effective means by which we can deal with the problem of employment discrimination in all forms. I would be pleased to meet with you to discuss this further and to work up a mutually acceptable protocol.

Very truly yours,



ARLO SMITH  
District Attorney

AS:jb



1800 CITY HALL EAST  
LOS ANGELES 90012  
(213) 485-3408

**Office of the City Attorney**  
**Los Angeles, California**

**JAMES K. HAHN**  
CITY ATTORNEY

October 28, 1991

Honorable Victoria L. Bradshaw  
State Labor Commissioner  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
455 Golden Gate Avenue, Suite 3194  
San Francisco, California 94102

Dear Commissioner Bradshaw:

Governor Wilson noted in his September 30 veto message regarding Assembly Bill 101 that gays and lesbians are protected from discrimination by California Labor Code Sections 1101 and 1102 and that complaints made under these statutes are within your jurisdiction.

Labor Code Section 1103 makes it a misdemeanor to violate Labor Code Sections 1101 or 1102, and as the prosecutor of misdemeanor offenses within the City of Los Angeles, I am prepared to file criminal complaints in cases in which employers violate these laws. Therefore, I request that you forward to my office any cases that you deem appropriate for my review.

I look forward to establishing a working relationship between our two offices to combat employment discrimination. Please do not hesitate to contact me if you have any questions.

Very truly yours,

*James K. Hahn*  
JAMES K. HAHN  
City Attorney

JKH:vei

## MUNICIPAL SEXUAL ORIENTATION ORDINANCES IN CALIFORNIA

### CITIES

Berkeley	public emp, private emp, ed, R.E./housing, credit, unions
Concord	<i>(REPEAL ATTEMPT IS ON NOVEMBER 1991 BALLOT)</i> public emp, accom, private emp, R.E./housing, unions (there are no procedures--they refer to the appropriate state or federal agency)
Cupertino	public emp
Davis	public emp, accom, private emp, R.E./housing, credit, unions
Hayward	public emp, accom, private emp, education, housing (not real estate and not owner occupied), unions, city facilities and services, advertising
Irvine	<i>REPEALED</i> (had been public emp, accom, private emp, ed, R.E./housing, unions)
Laguna Beach	public emp, accom, private emp, ed, R.E./housing, credit, unions
Long Beach	public emp, private emp
Los Angeles	public emp, accom, private emp, ed, R.E./housing, credit, unions
Mountain View	public emp
Oakland	public emp, accom, private emp, R.E./housing, credit, unions
Palo Alto	education
Riverside	contractors with city
Sacramento	public emp, accom, private emp, ed, R.E./housing, credit, unions
San Diego	public emp, accom, private emp, advertising, R.E./housing
San Francisco	public emp, accom, private emp, ed, R.E./housing, credit, unions
Santa Barbara	public emp, education
Santa Cruz	public emp
Santa Monica	public emp, accom, private emp, ed, R.E./housing, credit, unions, employment benefits, city facilities and services
West Hollywood	public emp, accom, private emp, ed, R.E./housing, credit, unions

### COUNTIES

Alameda	public emp
San Mateo	public emp, private emp, R.E./housing
Santa Barbara	public emp
Santa Cruz	public emp

