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City Attorney's Office

## OAKLAND CITY COUNCIL

### RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB, VICE MAYOR ANNIE CAMPBELL WASHINGTON, & CITY ATTORNEY BARBARA PARKER

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#### RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1870 (REYES, FRIEDMAN & WALDRON) THAT WOULD EXTEND FROM ONE TO THREE YEARS THE STATUTE OF LIMITATIONS FOR FILING DISCRIMINATION, HARASSMENT AND RETALIATION COMPLAINTS WITH THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

**WHEREAS**, the California Fair Employment and Housing Act is designed to protect people from workplace and housing-related harassment, discrimination and retaliation based on protected characteristics such as sex, gender, sexual orientation, gender identity, race, age, religion, and disability; and

**WHEREAS**, current law requires a victim of harassment or other prohibited conduct to file a claim with the Department of Fair Employment and Housing within one year from the date of the last incident of harassment or other conduct, a requirement that must be completed before the victim can file a lawsuit; and

**WHEREAS**, workplace harassment creates an intimidating, hostile, degrading, humiliating, or offensive environment and such havoc can cause lasting effects on its victims, such that victims experiencing psychological trauma from the harassment or who fear retaliation can be hesitant to seek justice within a year of the harassment; and

**WHEREAS**, current law gives longer time for victims of some other crimes to file a lawsuit, with the statute of limitations for personal injury, fraud, and contract disputes being two years, three years, and four years respectively, compared to only 1 year for harassment claims; and

**WHEREAS**, Assembly Bill (AB) 1870 (Reyes, Friedman & Waldron), the STAND (Stand Together Against Non-Disclosures), Act, would extend the statute of limitations for filing discrimination, harassment and retaliation complaints with the Department of Fair Employment and Housing from one to three years; and

**WHEREAS**, California Employment Lawyers, Consumer Attorneys of California, and Equal Rights Advocates support AB 1870; now, therefore, be it

**RESOLVED:** That the Oakland City Council hereby endorses AB 1870 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

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Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CALIFORNIA 94612

## Agenda Memorandum

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To: Rules & Legislation Committee

From: Councilmember Dan Kalb, Vice Mayor Annie Campbell Washington, & City Attorney

Date: February 1, 2018

Subject: Support of AB 1870:

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for AB 1870 (Reyes, Friedman, & Waldron), we are submitting the attached Fact Sheet and text of the bill.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Kalb".

Dan Kalb, Councilmember

Annie Campbell Washington, Vice Mayor

Barbara Parker, City Attorney

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# OFFICE OF ASSEMBLY MEMBER

## Eloise Gómez Reyes

FORTY-SEVENTH ASSEMBLY DISTRICT

### AB 1870 (Reyes, Friedman, Waldron)

## Stopping Harassment and Reporting Extension (SHARE) ACT

### SUMMARY

AB 1870 would allow victims of harassment more time to bring claims forward by extending the current time limit (1-year) for which claims must be filed to three years.

Workplace harassment creates an intimidating, hostile, degrading, humiliating or offensive environment. These actions wreak havoc on its victims, and can cause lasting effects physically, mentally and emotionally. We cannot let the fear of retaliation and the psychological wounds caused by such actions prevent victims from seeking justice.

### EXISTING LAW/BACKGROUND

The California Fair Employment and Housing Act (FEHA) is designed to protect employees from workplace harassment, discrimination, and retaliation due to protected characteristics such as sex and gender, sexual orientation, gender identity, race, age, religion, disability, and more.

Often, harassment based on gender, race, religious preferences or other protected characteristics leads to, or is connected with sexual harassment. Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting.

Recent accounts of sexual misconduct both inside and outside the capitol community have made clear the need to take a closer look at the policies meant to ensure safe and healthy work environments. This includes how to better protect employees, some who when harassed may not immediately feel comfortable coming forward with formal accusations.

Under current law (Government Code § 12960) a victim of harassment must file a claim with the Department of Fair Employment and Housing within one year from the date of the last incident of harassment. The FEHA requires employers to "take reasonable steps to prevent and correct wrongful (harassing, discriminatory, retaliatory) behavior in the workplace.

### THIS BILL

This bill extends the statute of limitation to three years for both public and private employees to come forward with a sexual harassment claim. In addition this bill injects much needed balance into the civil system, protecting due process so that every Californian has equal access to recourse.

### Support

- California Employment Lawyers Association (Co-Sponsor)
- Consumer Attorneys of California (Co-Sponsor)
- Equal Rights Advocates (Co-Sponsor)

### CONTACT

Mark Farouk  
Chief of Staff  
(916) 319-2047  
[Mark.Farouk@asm.ca.gov](mailto:Mark.Farouk@asm.ca.gov)

ASSEMBLY BILL

No. 1870

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**Introduced by Assembly Members Reyes, Friedman, and Waldron  
(Coauthors: Assembly Members Berman, Bonta, Chiu, Chu,  
McCarty, and Voepel)**

January 12, 2018

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An act to amend Sections 12960 and 12980 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1870, as introduced, Reyes. Employment discrimination: unlawful employment practices.

Existing law, the California Fair Employment and Housing Act, makes specified employment and housing practices unlawful, including discrimination against or harassment of employees and tenants, among others. Existing law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred, unless otherwise specified.

This bill would extend the period to 3 years for which complaints alleging unlawful employment or housing practices may be filed with the department, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12960 of the Government Code is
- 2 amended to read:

1 12960. (a) This article governs the procedure for the prevention  
2 and elimination of practices made unlawful pursuant to Article 1  
3 (commencing with Section 12940) of Chapter 6.

4 (b) Any person claiming to be aggrieved by an alleged unlawful  
5 practice may file with the department a verified complaint, in  
6 writing, that shall state the name and address of the person,  
7 employer, labor organization, or employment agency alleged to  
8 have committed the unlawful practice complained of, and that shall  
9 set forth the particulars thereof and contain other information as  
10 may be required by the department. The director or the director's  
11 authorized representative may in like manner, on that person's  
12 own motion, make, sign, and file a complaint.

13 (c) Any employer whose employees, or some of them, refuse  
14 or threaten to refuse to cooperate with this part may file with the  
15 department a verified complaint asking for assistance by  
16 conciliation or other remedial action.

17 (d) ~~No~~ A complaint ~~may~~ *shall not* be filed after the expiration  
18 of ~~one year~~ *three years* from the date upon which the alleged  
19 unlawful practice or refusal to cooperate occurred, except that this  
20 period may be extended as follows:

21 (1) For a period of time not to exceed 90 days following the  
22 expiration of ~~that year~~, *those three years*, if a person allegedly  
23 aggrieved by an unlawful practice first obtained knowledge of the  
24 facts of the alleged unlawful practice after the expiration of ~~one~~  
25 *year three years* from the date of their occurrence.

26 (2) For a period of time not to exceed one year following a  
27 rebutted presumption of the identity of the person's employer under  
28 Section 12928, in order to allow a person allegedly aggrieved by  
29 an unlawful practice to make a substitute identification of the actual  
30 employer.

31 (3) For a period of time, not to exceed one year from the date  
32 the person aggrieved by an alleged violation of Section 51.7 of the  
33 Civil Code becomes aware of the identity of a person liable for  
34 the alleged violation, but in no case exceeding three years from  
35 the date of the alleged violation if during that period the aggrieved  
36 person is unaware of the identity of any person liable for the alleged  
37 violation.

38 (4) For a period of time not to exceed one year from the date  
39 that a person allegedly aggrieved by an unlawful practice attains  
40 the age of majority.

1 SEC. 2. Section 12980 of the Government Code is amended  
2 to read:

3 12980. This article governs the procedure for the prevention  
4 and elimination of discrimination in housing made unlawful  
5 pursuant to Article 2 (commencing with Section 12955) of Chapter  
6 6.

7 (a) Any person claiming to be aggrieved by an alleged violation  
8 of Section 12955, 12955.1, or 12955.7 may file with the department  
9 a verified complaint in writing that shall state the name and address  
10 of the person alleged to have committed the violation complained  
11 of, and that shall set forth the particulars of the alleged violation  
12 and contain any other information required by the department.

13 The filing of a complaint and pursuit of conciliation or remedy  
14 under this part shall not prejudice the complainant's right to pursue  
15 effective judicial relief under other applicable laws, but if a civil  
16 action has been filed under Section 52 of the Civil Code, the  
17 department shall terminate proceedings upon notification of the  
18 entry of final judgment unless the judgment is a dismissal entered  
19 at the complainant's request.

20 (b) The Attorney General or the director may, in a like manner,  
21 make, sign, and file complaints citing practices that appear to  
22 violate the purpose of this part or any specific provisions of this  
23 part relating to housing discrimination.

24 No complaint may be filed after the expiration of ~~one year~~ *three*  
25 *years* from the date upon which the alleged violation occurred or  
26 terminated.

27 (c) The department may thereupon proceed upon the complaint  
28 in the same manner and with the same powers as provided in this  
29 part in the case of an unlawful practice, except that where the  
30 provisions of this article provide greater rights and remedies to an  
31 aggrieved person than the provisions of Article 1 (commencing  
32 with Section 12960), the provisions of this article shall prevail.

33 (d) Upon the filing of a complaint, the department shall serve  
34 notice upon the complainant of the time limits, rights of the parties,  
35 and choice of forums provided for under the law.

36 (e) The department shall commence proceedings with respect  
37 to a complaint within 30 days of filing of the complaint.

38 (f) An investigation of allegations contained in any complaint  
39 filed with the department shall be completed within 100 days after  
40 receipt of the complaint, unless it is impracticable to do so. If the

1 investigation is not completed within 100 days, the complainant  
2 and respondent shall be notified, in writing, of the department's  
3 reasons for not doing so.

4 (g) Upon the conclusion of each investigation, the department  
5 shall prepare a final investigative report containing all of the  
6 following:

7 (1) The names of any witnesses and the dates of any contacts  
8 with those witnesses.

9 (2) A summary of the dates of any correspondence or other  
10 contacts with the aggrieved persons or the respondent.

11 (3) A summary of witness statements.

12 (4) Answers to interrogatories.

13 (5) A summary description of other pertinent records.

14 A final investigative report may be amended if additional  
15 evidence is later discovered.

16 (h) If a civil action is not brought by the department within 100  
17 days after the filing of a complaint, or if the department earlier  
18 determines that no civil action will be brought, the department  
19 shall promptly notify the person claiming to be aggrieved. This  
20 notice shall, in any event, be issued no more than 30 days after the  
21 date of the determination or 30 days after the date of the expiration  
22 of the 100-day period, whichever date first occurs. The notice shall  
23 indicate that the person claiming to be aggrieved may bring a civil  
24 action under this part against the person named in the verified  
25 complaint within the time period specified in Section 12989.1.  
26 The notice shall also indicate, unless the department has determined  
27 that no civil action will be brought, that the person claiming to be  
28 aggrieved has the option of continuing to seek redress for the  
29 alleged discrimination through the procedures of the department  
30 if the person does not desire to file a civil action. The superior  
31 courts of the State of California shall have jurisdiction of these  
32 actions, and the aggrieved person may file in these courts. The  
33 action may be brought in any county in the state in which the  
34 violation is alleged to have been committed, or in the county in  
35 which the records relevant to the alleged violation are maintained  
36 and administered, but if the defendant is not found within that  
37 county, the action may be brought within the county of the  
38 defendant's residence or principal office. A copy of any complaint  
39 filed pursuant to this part shall be served on the principal offices  
40 of the department. The remedy for failure to send a copy of a



1 complaint is an order to do so. In a civil action brought under this  
2 section, the court, in its discretion, may award to the prevailing  
3 party reasonable attorney's fees.

4 (i) All agreements reached in settlement of any housing  
5 discrimination complaint filed pursuant to this section shall be  
6 made public, unless otherwise agreed by the complainant and  
7 respondent, and the department determines that the disclosure is  
8 not required to further the purposes of the act.

9 (j) All agreements reached in settlement of any housing  
10 discrimination complaint filed pursuant to this section shall be  
11 agreements between the respondent and complainant, and shall be  
12 subject to approval by the department.