



# California Employers Must Satisfy New 2-Part Test to Avoid Driver's License Discrimination When Hiring – Your 4-Step Action Plan for Compliance

Insights

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A new law signed into effect over the weekend by Governor Newsom will soon prohibit California employers from telling job applicants that a driver's license will be required for a job unless the position meets a two-part test. SB 1100 amends the Fair Employment Housing Act (FEHA) so that, starting January 1, 2025, you'll only be able to make such a statement if you reasonably expect driving to be one of the job functions and no alternative forms of transportation would work out. Read below for more details and for a four-step action plan you can take to comply with the new law.

## Quick Background

Before we delve into the specifics of the new law, signed by the Governor on September 28, it is important to provide some background regarding why it came to be. According to the bill's author, many employers require applicants to have a driver's license even if driving is not part of the job the employee seeks. This requirement creates a barrier to employment for those candidates that do not possess a driver's license but are otherwise qualified for the job. SB 1100 seeks to break down some of those barriers to employment.

## The New Two-Part Test

Starting January 1, 2025, you must meet the following two-part test before you can include a statement in a job advertisement, posting, application or other material stating an applicant must have a driver's license:

1. You must *reasonably* expect driving to be *one* of the job functions for the position

and

2. You must *reasonably* believe that satisfying the job function using an alternative form of transportation (such as ride hailing, taxi, carpooling, bicycling, or walking) *would not* be comparable in travel time or cost to your business.

## Does Driving Have to Be an *Essential* or *Major* Job Function?

A question likely to arise is whether the new FEHA amendment prohibits employers from requiring a driver's license unless driving is a *major* or *essential* function of the job. The likely answer is no, given the present language of the statute.

We see in other provisions of the FEHA references to "essential" or "major," particularly when discussing reasonable accommodations due to a disability or medical condition. Under the new FEHA amendment, however, we do not see such limiting language regarding driver's licenses. Instead, the statute only refers to situations where driving would be "one of the job functions for the position." It does not state driving has to be an essential or major job function of the position for the test to be satisfied.

### **What Happens if the Employer Violates the New Law?**

Like other unlawful employment practice prohibited under FEHA, employers could face an injunction, declaratory relief (such as being required to hire the applicant), or be held liable for compensatory damages, punitive damages, attorney's fees, and costs if found in violation of the new law.

### **What You Should Do Next: Your 4-Step Plan to Compliance**

1. Carefully **evaluate each job position** to determine if it meets the new two-part test. If a position does not meet the test, revise the job posting, application, and any other document that references a driver's license requirement for that position.
2. **Review and revise job descriptions.** Although "other materials" is not yet defined in the statute, job descriptions likely fall within the definition of "other materials." As such, be sure to make changes there, too, if the two-part test is not met.
3. Examine your **handbooks and stand-alone policies** as they too may reference driver's licenses. Revise accordingly.
4. **Train your hiring personnel.** If the position does not meet the new two-part test, your hiring personnel should refrain from asking the applicant whether they have a driver's license. Instead, if they have a concern regarding the applicant's ability to get to work, the question should be posed more along the lines of "if hired, do you have a mode of transportation to get to work?"

### **Conclusion**

We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions regarding the new FEHA amendment, please contact your Fisher Phillips attorney, the author of this alert, or any attorney in [any of our six California offices](#).

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