



# Sexual Harassment Prevention and Other EEO Issues

(Supervisors/Management)

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# SEXUAL HARASSMENT PREVENTION AND OTHER EEO ISSUES

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## **SEXUAL HARASSMENT PREVENTION AND OTHER EEO ISSUES**

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California Civil Rights Department Handout, "Discrimination Is Against the Law"

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on Disability"

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Transgender or Gender Nonconforming"

## Eric Glassman

Eric Glassman has provided legal advice, training and litigation services to private corporations and public agencies for more than 20 years. Eric has conducted hundreds of seminars and workshops for managers and employees on a wide variety of topics. Attendees praise Eric's comfortable and relatable style, and his ability to convey complex legal concepts without resorting to using "legalese." Eric advises some of the nation's top employers on workplace issues, including hiring and separation of employment. Eric has authored many articles on employment law. A respected workplace investigator, Eric has conducted numerous inquiries on behalf of employers, typically focused on allegations of employee and supervisor misconduct. Eric is adept at interviewing witnesses and interpreting key documents. He works discreetly and efficiently to provide necessary, timely and accurate information. Eric is a member of the Association of Workplace Investigators. Eric is also an accomplished litigator, having taken more than 40 arbitrations to verdict.



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## Why This Topic Now?

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## Let's Review Your General EEO Knowledge - True or False?

1. Sexual harassment is the most common workplace EEO complaint.
2. Supervisors have 24 hours to report any potential EEO issues.
3. An employer's EEO policies should set a higher standard than the law.
4. Workplace bullying is against the law.
5. Retaliation potentially can occur between co-workers.

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## Let's Review Your General EEO Knowledge - True or False? (cont.)

6. "Zero tolerance" means employees who are found to have violated an employer's EEO policies must be terminated.
7. Workplace discrimination and harassment are separate issues.
8. An employer legally can prohibit staff from using recreational marijuana at home.

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## The Standard for Workplace Conduct - Respect and Professionalism

*Every employee is entitled to be treated with dignity and respect, even though the law does not require it.*

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## The “No Jerks” Rule

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## So, Under the Law, What is “Abusive Conduct”?

“Malicious workplace conduct that a reasonable person would find hostile, offensive, and unrelated to a legitimate business interest,” such as:

- Threatening or intimidating verbal or physical conduct
- Repeated verbal abuse
- Sabotaging or undermining someone’s work performance

*Cal. Gov’t Code § 12950.1*

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## Some Effects of Workplace Bullying

- Loss of self-esteem
- Mental and physical health
- Lower productivity
- Dissension among work teams
- "Quiet quitting"

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## "Why Can't Everyone Be Me?"

Peggy is highly motivated, and considers herself to be an expert at her job. She routinely refers to her co-workers as "incompetent" and "lazy." She is particularly upset with Ralph because he takes nearly twice as much time as Peggy to complete tasks. Peggy now monitors Ralph's productivity. Recently, Peggy told her supervisor not to assign Ralph a project, and explained, "That idiot will take forever to get it done."

### True or False:

1. Peggy's conduct violates your internal policies.
2. Peggy's conduct violates California's equal employment opportunity laws.

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## Preventing Discrimination, Harassment, and Retaliation

- Your policies and the law expressly prohibit unfair and inappropriate conduct based on an employee's "protected status"
- Your policies define these protections, and describe an internal complaint process so employees may safely raise concerns
- State and federal laws create further legal rights
- Government agencies and the courts enforce legal rights (but not policies)

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# Discrimination

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## What is Discrimination?

- An unfair personnel decision
- Made because of an employee's or applicant's protected status
- For which no legitimate business reason exists

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## True or False?

1. Discrimination requires intent.
2. An employer potentially discriminates against a job applicant by asking about the age of the applicant's spouse.
3. One way to avoid workplace bias is to create objective hiring criteria.
4. Employers must reasonably accommodate employees on the basis of their age and family status.
5. To ensure a good gender balance, a manager should consider the number of women in the work unit when hiring.

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## 13 Protected Characteristics Applicable to Everyone

- Race
- Color
- Ancestry
- National origin
- Genetic characteristics
- Sex
- Gender identity
- Gender expression
- Sexual orientation
- Reproductive health decision-making
- Marital status
- Political affiliation
- Religion

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## Six More That May Apply...

- Age (if age 40 or older)
- Mental disability
- Physical disability
- Medical condition (including pregnancy, childbirth, and breastfeeding)
- Military/veteran status
- Off-duty cannabis use (except in building and construction trades, or when state or federal laws provide otherwise)

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## Related to a Protected Class?

1. "Only good looking people need apply."
2. "That's a funny accent you have."
3. Friday, April 18, 2025
4. Clean and secure lactation rooms
5. Music played in a warehouse
6. A co-worker interrupting an employee during a meeting
7. A rope

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# Harassment

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## True or False?

1. A consensual dating relationship between co-workers can form the basis of a harassment complaint.
2. An employee can avoid an investigation into their allegedly harassing conduct by resigning.
3. One instance of inappropriate conduct will never violate the law.
4. Under the law, only the employer may be successfully sued for unlawful harassment.
5. A supervisor must immediately report conduct that may violate EEO policies.

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## Conduct Prohibited by Your Harassment Prevention Policy

- "Harassment" is any inappropriate conduct based on or related to a protected characteristic
  - The conduct could be verbal, physical, or visual
  - It could be a one-time incident ("zero-tolerance")
  - It could be based on a perceived characteristic
  - The actor's intent is irrelevant!
- Everyone has the right to raise a concern, even if they are not the target of the inappropriate conduct

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## So Who Gets to Decide What's "Inappropriate"?

Mary and Ben are co-workers. Ben has worked for the employer since 2020. Mary is new and wants to do well. Earlier today, Mary's manager assigned her to work on a project with Ben.

Do the following situations violate your harassment prevention policy?

1. Ben suggests they go to Starbucks for coffee during a break.
2. While at Starbucks, Ben puts his hand on Mary's shoulder, and offers to pay for her coffee.

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## So Who Gets to Decide What's "Inappropriate"? (cont.)

3. At the end of the day, Ben sends Mary a text inviting her to go to Starbucks the next day. Mary politely declines. Ben then texts Mary throughout the evening, asking if she would be interested in joining a new project team. His last text says, "Let's talk about it tomorrow at Starbucks. 😊"

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## Context is Everything

- It is impossible to create a complete list of workplace "Do's" and "Don'ts"
- Consider the effect on a reasonable person in the workplace

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## Ways to Prevent Workplace Harassment

- Develop a sense of inclusive “belonging”
- Make sure everyone has the opportunity to be heard and respected
- Focus on the power of words
- Be aware of your own biases
- Focus on emotional intelligence
- Promptly, thoroughly, and fairly investigate complaints

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## Dressing Up

Aaron is Meg's boss. One day, Aaron tells Meg, "I think your sales numbers would go up if you dressed a little better. You know, maybe paint your nails, wear a little more makeup?" Meg is offended.

**True or False: Aaron's comment does not violate the employer's harassment prevention policy because he is simply suggesting ideas to help Meg improve her sales numbers.**

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## Not Part of the Job

Latisha works in media sales for a technology company. Her job responsibilities include attending sales conferences throughout the country and socializing with clients. A senior vice president for her largest client just grabbed her rear end during a cocktail party. Latisha is very upset and calls her sales supervisor . . .

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## Not Part of the Job (cont.)

### What should Latisha's supervisor do?

1. Offer Latisha her sympathies, but nothing more. The senior vice president doesn't work for the supervisor.
2. Call the senior vice president in the morning and tell him to knock it off.
3. Thank Latisha for calling.
4. Report Latisha's concerns to Human Resources.
5. Consider ways to keep sales staff safe from harassing behavior at future conferences.

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## Bystander vs. Upstander

Positive actions staff members can take to keep each other safe and respected:

1. Listen
2. Be informed
3. Speak up
4. Be an ally

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## How About "Off Work" Concerns?

A dozen co-workers form a fantasy football league. They invite family members and friends to participate, and plan the league and conduct the draft on their own time away from work. One of the co-workers, Jon, goes on a racist rant on the group's private league website when his quarterback throws six interceptions in a single game. Mark, a co-worker, is offended and complains to the supervisor.

**True or False: The supervisor is not required to address Mark's complaint because Jon's conduct was not work related.**

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## Two Categories of Unlawful Harassment

- **"Hostile Work Environment" Harassment**

Conduct that:

- (1) Is related to a protected category,
- (2) Is unwelcome by the employee,
- (3) Is subjectively and objectively offensive,  
and
- (4) Makes it more difficult to do the job

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## Two Categories of Unlawful Harassment (cont.)

- **"Quid Pro Quo" Harassment**

- (1) A demand for a sexual favor
- (2) Tied to the threat of a job detriment or the promise of a job benefit and
- (3) The threat or promise is carried out

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## Retaliation

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## What is Retaliation?

When an employee is treated negatively because they engaged in "protected activity," such as by:

- Threatening to file or filing an EEO complaint
- Reporting an EEO violation on someone else's behalf
- Participating as a witness in an EEO investigation
- Requesting a reasonable accommodation for religious beliefs or disability

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## True or False?

1. Most retaliation claims are made against supervisors.
2. An employee who erroneously makes a harassment complaint is still protected from retaliation.
3. Fifty percent of employees who believe they are the victims of workplace harassment never speak up.

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## Remember the Following. . .

- Retaliation, like harassment, can move in any direction on the organizational chart
- A showing of EEO-related retaliation requires a "nexus" (a connection) between the protected activity and the negative treatment
- Employees are protected against retaliation, even if they raise a mistaken EEO-related concern

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# The Internal EEO Complaint Process

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## What an Employee Should Do With an EEO-Related Concern

- Your reporting options
  - Any member of management
  - The Executive Director
  - Head of Human Resources
- Some things to remember:
  - All employees have the right to safely raise EEO-related concerns
  - There is no need to follow the chain-of-command
  - There is no such thing as an “off-the-record” complaint
  - Disclosure of an employee’s concerns is handled on a “need-to-know” basis

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## What the Supervisor Should Do

- Remain fair and impartial
- Get the basic facts (but don’t conduct an investigation unless asked to do so)
- Report the basic facts immediately (15 minutes is ideal!)
- When in doubt, report
- Maintain discretion in discussing the concern – (report up, don’t gossip sideways)

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## What the Employer Should Do

- If the alleged activity potentially violates your EEO policies, conduct an investigation that is:
  - Prompt
  - Thorough
  - Impartial
- Take appropriate corrective action to stop misconduct and prevent future occurrences

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## Additional Remedies

- Claims may be filed with governmental agencies
  - The California Civil Rights Department  
([calcivilrights.ca.gov](http://calcivilrights.ca.gov))
  - The Equal Employment Opportunity Commission  
([eoc.gov](http://eoc.gov))
- Legal violations may result in the award of damages, attorneys' fees, and costs

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## Questions/Comments

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# **Electric & Gas Industries Association**

## **Equal Employment Opportunity, Discrimination, Harassment and Retaliation Prevention Policies**

## Section 1 - Governing Principles of Employment

### 1-1. Introduction

For employees who are commencing employment with Electric & Gas Industries Association ("EGIA" or the "Company"), on behalf of EGIA, let us extend a warm and sincere welcome.

For employees who have been with us, thanks for your past and continued service.

We extend our personal best wishes for success and happiness here at EGIA. We understand that it is our employees who provide the services that our customers and clients rely upon, and who will enable us to create new opportunities in the years to come.

### 1-2. Equal Employment Opportunity

EGIA is an Equal Opportunity Employer that does not discriminate on the basis of actual or perceived race, color, national origin, ancestry, sex, gender, gender identity, pregnancy, childbirth or related medical condition, religious creed, physical disability, mental disability, age, medical condition (cancer), marital status, veteran status, sexual orientation, genetic information, or any other characteristic protected by federal, state or local law. Our management team is dedicated to this policy with respect to recruitment, hiring, placement, promotion, transfer, training, compensation, benefits, employee activities and general treatment during employment.

The Company will endeavor to make a reasonable accommodation to the known physical limitations of qualified employees with disabilities unless the accommodation would impose an undue hardship on the operation of our business. If you need assistance to perform your job duties because of a physical or mental condition, please let your supervisor know.

Any employees with questions or concerns about equal employment opportunities in the workplace are encouraged to bring these issues to the attention of your supervisor. The Company will not allow any form of retaliation against individuals who raise issues of equal employment opportunity. To ensure our workplace is free of artificial barriers, violation of this policy will lead to discipline, up to and including discharge. All employees must cooperate with all investigations.

### 1-3. Discrimination, Harassment and Retaliation Prevention

EGIA does not tolerate and prohibits discrimination, harassment or retaliation of or against job applicants, contractors, interns, volunteers or employees by another employee, supervisor, vendor, customer or any third party on the basis of race, religious creed, color, age, sex, sexual orientation, gender, gender identity, gender expression, national origin, ancestry, marital status, medical condition as defined by state law (cancer or genetic characteristics), disability, military and veteran status, pregnancy, childbirth and related medical conditions, or any other characteristic protected by applicable federal, state or local laws and ordinances. The Company is committed to a workplace free of discrimination, harassment and retaliation.

#### **Discrimination Defined**

Discrimination under this policy means treating differently or denying or granting a benefit to an individual because of the individual's protected characteristic.

#### **Harassment Defined**

Harassment is defined in this policy as unwelcome verbal, visual or physical conduct creating an intimidating, offensive or hostile work environment that interferes with work performance. Harassment can be verbal (including slurs, jokes, insults, epithets, gestures or teasing), graphic (including offensive posters, symbols, cartoons, drawings, computer displays or emails) or physical conduct (including physically threatening another, blocking someone's way, etc.) that denigrates or shows hostility or aversion towards an individual because of any protected characteristic. Such conduct violates this policy, even if it is not unlawful. Because it is difficult to define unlawful harassment, employees are expected to behave at all times in a professional and respectful manner.

#### **Sexual Harassment Defined**

Sexual harassment can include all of the above actions, as well as other unwelcome conduct, such as unwelcome or unsolicited

sexual advances, requests for sexual favors, conversations regarding sexual activities and other verbal or physical conduct of a sexual nature.

Examples of conduct that violates this policy include:

- unwelcome sexual advances, flirtations, advances, leering, whistling, touching, pinching, assault, blocking normal movement;
- requests for sexual favors or demands for sexual favors in exchange for favorable treatment;
- obscene or vulgar gestures, posters or comments;
- sexual jokes or comments about a person's body, sexual prowess or sexual deficiencies;
- propositions or suggestive or insulting comments of a sexual nature;
- derogatory cartoons, posters and drawings;
- sexually-explicit emails or voicemails;
- uninvited touching of a sexual nature;
- unwelcome sexually-related comments;
- conversation about one's own or someone else's sex life;
- conduct or comments consistently targeted at only one gender, even if the content is not sexual; and
- teasing or other conduct directed toward a person because of the person's gender.

### **Retaliation Defined**

Retaliation means adverse conduct taken because an individual reported an actual or perceived violation of this policy, opposed practices prohibited by this policy, or participated in the reporting and investigation process described below. "Adverse conduct" includes but is not limited to:

- shunning and avoiding an individual who reports harassment, discrimination or retaliation;
- express or implied threats or intimidation intended to prevent an individual from reporting harassment, discrimination or retaliation; and
- denying employment benefits because an applicant or employee reported harassment, discrimination or retaliation or participated in the reporting and investigation process described below.

**All discrimination, harassment and retaliation is unacceptable in the workplace and in any work-related settings such as business trips and business-related social functions, regardless of whether the conduct is engaged in by a supervisor, co-worker, client, customer, vendor or other third party.**

### **Reporting Procedures**

The following steps have been put into place to ensure the work environment is respectful, professional, and free of discrimination, harassment and retaliation. If an employee believes someone has violated this policy or the Equal Employment Opportunity Policy, the employee should promptly bring the matter to the immediate attention of any member of management, the Executive Director, or Head of Human Resources.

Every supervisor who learns of any employee's concern about conduct in violation of this policy, whether in a formal complaint or informally, must immediately report the issues raised to Head of Human Resources or the Executive Director.

### **Investigation Procedures**

Upon receiving a complaint, the Company will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this policy or our Equal Employment Opportunity policy. To the extent possible, the Company will endeavor to keep the reporting employee's concerns confidential. However, complete confidentiality may not be possible in all circumstances.

The Company will take corrective measures against any person who it finds to have engaged in conduct in violation of this policy, if the Company determines such measures are necessary. These measures may include, but are not limited to, counseling, suspension or immediate termination. Anyone, regardless of position or title, whom the Company determines has engaged in conduct that violates this policy will be subject to discipline, up to and including termination.

Remember, the Company cannot remedy claimed discrimination, harassment or retaliation unless employees bring these claims to the attention of management. Employees should not hesitate to report any conduct which they believe violates this policy.

**Excerpts from  
Relevant Federal and State  
EEO Laws**

## **Excerpts from Relevant Federal and State EEO Laws**

### **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

#### **Discrimination: 42 U.S.C. § 2000e-2**

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

#### **Retaliation: 42 U.S.C. § 2000e-3**

It shall be an unlawful employment practice for an employer to discriminate against any of his employees...because he has opposed any practice made an unlawful employment practice by this [title] or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this [title].

### **AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)**

#### **Discrimination: 29 U.S.C. § 623(a)**

Employer practices. It shall be unlawful for an employer--

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this [Act].

#### **Retaliation: 29 U.S.C. § 623(d)**

It shall be unlawful for an employer to discriminate against any of his employees... because such individual...has opposed any practice made unlawful by this section, or because such individual...has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this [Act].

## **AMERICAN WITH DISABILITIES ACT (ADA)**

### **Reasonable Accommodation: 42 U.S.C. § 12111**

The term "reasonable accommodation" may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

### **Discrimination: 42 U.S.C. § 12112**

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

### **Retaliation: 42 U.S.C. § 12203**

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this [Act] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this [Act].

## **GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)**

### **Discrimination: 42 U.S.C. § 2000ff-1**

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.



**Retaliation: 42 U.S.C. § 2000ff-6**

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this [title] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this [title].

**42 U.S.C. § 1981, THE CIVIL RIGHTS ACT OF 1866**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

**REHABILITATION ACT OF 1973**

**Discrimination: 29 U.S.C. § 793**

Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

**Retaliation: 28 C.F.R. § 41.52(c)**

The prohibition against discrimination in employment applies to...any other term, condition, or privilege of employment.

**VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT: 38 U.S.C. § 4212**

Any contract in the amount of \$100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans.

## **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

### **Discrimination: 38 U.S.C. § 4311(a)**

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

### **Retaliation: 38 U.S.C. § 4311(b)**

An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

## **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (FEHA)**

### **Discrimination: Cal. Gov't. Code § 12940(a)**

It is an unlawful employment practice...[f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

### **Discrimination: Cal. Gov't. Code § 12926 (w), (x)**

“Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

“Protective hairstyles” includes, but is not limited to, such hairstyles as braids, locks, and twists.

**Harassment: Cal. Gov't. Code § 12940(j)**

It is an unlawful employment practice...[f]or an employer...because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

**Retaliation: Cal. Gov't. Code § 12940(h)**

It is an unlawful employment practice...[f]or any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

**Reasonable Accommodation: Cal. Gov't. Code § 12940(m)**

It is an unlawful employment practice...[f]or an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation, as defined in subdivision (u) of Section 12926, to its operation.

**Interactive Process: Cal. Gov't. Code § 12940(n)**

It is an unlawful employment practice...[f]or an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any,

in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

**Undue Burden: Cal. Gov't. Code § 12926**

“Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

- (1) The nature and cost of the accommodation needed.
- (2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
- (4) The type of operations, including the composition, structure, and functions of the workforce of the entity.
- (5) The geographic separateness or administrative or fiscal relationship of the facility or facilities.

**National Origin: Cal. Code Regs. tit. 2, § 11027.1 (a), (b)**

“National origin” includes, but is not limited to, the individual's or ancestors' actual or perceived: (1) physical, cultural, or linguistic characteristics associated with a national origin group; (2) marriage to or association with persons of a national origin group; (3) tribal affiliation; (4) membership in or association with an organization identified with or seeking to promote the interests of a national origin group; (5) attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group; and (6) name that is associated with a national origin group.

"National origin groups" include, but are not limited to, ethnic groups, geographic places of origin, and countries that are not presently in existence.

**UNRUH CIVIL RIGHTS ACT: CAL. CIVIL CODE § 51**

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

**CALIFORNIA LABOR CODE: CAL. LAB. CODE § 1101**

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.

**CALIFORNIA LABOR CODE: CAL. LAB. CODE § 1102.5**

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

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# **California Civil Rights Department Handout, “Sexual Harassment”**

# SEXUAL HARASSMENT

## FACT SHEET



Civil Rights  
Department  
STATE OF CALIFORNIA

Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

## THERE ARE TWO TYPES OF SEXUAL HARASSMENT

1. **“Quid pro quo”** (Latin for “this for that”) sexual harassment is when someone conditions a job, promotion, or other work benefit on your submission to sexual advances or other conduct based on sex.
2. **“Hostile work environment”** sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you.

The harassment must be severe or pervasive to be unlawful. A single act of harassment may be sufficiently severe to be unlawful.

## SEXUAL HARASSMENT INCLUDES MANY FORMS OF OFFENSIVE BEHAVIORS

BEHAVIORS THAT MAY BE SEXUAL HARASSMENT:

1. Unwanted sexual advances
2. Offering employment benefits in exchange for sexual favors
3. Leering; gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
4. Derogatory comments, epithets, slurs, or jokes
5. Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations
6. Physical touching or assault, as well as impeding or blocking movements

Actual or threatened retaliation for rejecting advances or complaining about harassment is also unlawful.

Employees or job applicants who believe that they have been sexually harassed or retaliated against may file a complaint of discrimination with CRD within three years of the last act of harassment or retaliation.

CRD serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If CRD finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court to address the causes of the discrimination and on behalf of the complaining party. CRD may seek court orders changing the employer's policies and practices, punitive damages, and attorney's fees and costs if it prevails in litigation. Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with CRD and a Right-to-Sue Notice has been issued.

## EMPLOYER RESPONSIBILITY & LIABILITY

All employers, regardless of the number of employees, are covered by the harassment provisions of California law. Employers are liable for harassment by their supervisors or agents. All harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassment or for aiding and abetting harassment. The law requires employers to take reasonable steps to prevent harassment. If an employer fails to take such steps, that employer can be held liable for the harassment. In addition, an employer may be liable for the harassment by a non-employee (for example, a client or customer) of an employee, applicant, or person providing services for the employer. An employer will only be liable for this form of harassment if it knew or should have known of the harassment, and failed to take immediate and appropriate corrective action.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct, and to create a workplace free of harassment.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way for an employer to avoid or limit liability if harassment occurs.



# SEXUAL HARASSMENT

## FACT SHEET



Civil Rights  
Department  
STATE OF CALIFORNIA

### CIVIL REMEDIES

- **Damages for emotional distress from each employer or person in violation of the law**
- **Hiring or reinstatement**
- **Back pay or promotion**
- **Changes in the policies or practices of the employer**

### ALL EMPLOYERS MUST TAKE THE FOLLOWING ACTIONS TO PREVENT HARASSMENT AND CORRECT IT WHEN IT OCCURS:

- 1.** Distribute copies of this brochure or an alternative writing that complies with Government Code 12950. This pamphlet may be duplicated in any quantity.
- 2.** Post a copy of the Department's employment poster entitled "California Law Prohibits Workplace Discrimination and Harassment."
- 3.** Develop a harassment, discrimination, and retaliation prevention policy in accordance with 2 CCR 11023. The policy must:
  - Be in writing.
  - List all protected groups under the FEHA.
  - Indicate that the law prohibits coworkers and third parties, as well as supervisors and managers with whom the employee comes into contact, from engaging in prohibited harassment.
  - Create a complaint process that ensures confidentiality to the extent possible; a timely response; an impartial and timely investigation by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures.
  - Provide a complaint mechanism that does not require an employee to complain directly to their immediate supervisor. That complaint mechanism must include, but is not limited to including: provisions for direct communication, either orally or in writing, with a designated company representative; and/or a complaint hotline; and/or access to an ombudsperson; and/or identification of CRD and the United States Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
  - Instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so that the company can try to resolve the claim internally. Employers with 50 or more employees are required to

include this as a topic in mandated sexual harassment prevention training (see 2 CCR 11024).

- Indicate that when the employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
- Make clear that employees shall not be retaliated against as a result of making a complaint or participating in an investigation.

**4.** Distribute its harassment, discrimination, and retaliation prevention policy by doing one or more of the following:

- Printing the policy and providing a copy to employees with an acknowledgement form for employees to sign and return.
- Sending the policy via email with an acknowledgment return form.
- Posting the current version of the policy on a company intranet with a tracking system to ensure all employees have read and acknowledged receipt of the policy.
- Discussing policies upon hire and/or during a new hire orientation session.
- Using any other method that ensures employees received and understand the policy.

**5.** If the employer's workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their spoken language, that employer shall translate the harassment, discrimination, and retaliation policy into every language spoken by at least ten percent of the workforce.

**6.** In addition, employers who do business in California and employ 5 or more part-time or full-time employees must provide at least one hour of training regarding the prevention of sexual harassment, including harassment based on gender identity, gender expression, and sexual orientation, to each non-supervisory employee; and two hours of such training to each supervisory employee. Training must be provided within six months of assumption of employment. Employees must be trained every two years. Please see Gov. Code 12950.1 and 2 CCR 11024 for further information.

### TO FILE A COMPLAINT

#### Civil Rights Department

[calcivilrights.ca.gov/complaintprocess](http://calcivilrights.ca.gov/complaintprocess)

Toll Free: 800.884.1684

TTY: 800.700.2320



**California Civil  
Rights  
Department  
Handout,  
“Discrimination Is  
Against the Law”**

# DISCRIMINATION IN PUBLIC SERVICES AND ACCOMMODATIONS IS PROHIBITED UNDER THE UNRUH CIVIL RIGHTS ACT

THE CIVIL RIGHTS DEPARTMENT IS THE STATE AGENCY CHARGED WITH ENFORCING CALIFORNIA'S CIVIL RIGHTS LAWS. THE MISSION OF THE CRD IS TO PROTECT THE PEOPLE OF CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT, HOUSING, BUSINESSES, AND STATE-FUNDED PROGRAMS, AND FROM BIAS-MOTIVATED VIOLENCE AND HUMAN TRAFFICKING.



Civil Rights  
Department  
STATE OF CALIFORNIA

The law requires “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments.” Business establishments covered by the law include, but are not limited to:

- Hotels and motels
- Nonprofit organizations
- Restaurants
- Theaters
- Barber shops and beauty salons
- Hospitals
- Housing accommodations
- Local government and public agencies
- Retail establishments

## HATE VIOLENCE

Under the Ralph Civil Rights Act, it is against the law for any person to threaten or commit acts of violence against a person or property based on race, color, religion, ancestry, national origin, age, marital status, medical condition, genetic information, disability, sex/gender, gender identity, gender expression, sexual orientation, political affiliation, or position in a labor dispute.

## HUMAN TRAFFICKING

Human trafficking is a violation of civil law in addition to being a criminal offense. In 2016, AB 1684 (Stone) gave CRD authority to receive, investigate, conciliate, mediate, and prosecute civil complaints alleging human trafficking under California Civil Code, § 52.5, the California Trafficking Victims Protection Act.

## FILING A COMPLAINT

If you believe you are a victim of discrimination, hate violence, or human trafficking, you may file a complaint by contacting CRD as described below. For employment cases only, file within three years of the last date of harm; for all other cases, file within one year of the last date of harm. CRD processes complaints filed by persons with terminal illnesses on a priority basis.

To schedule an appointment, contact the Communication Center below.

If you have a disability that requires a reasonable accommodation, CRD can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or you can contact us below.

## CONTACT US

Toll Free: (800) 884-1684  
TTY: (800) 700-2320  
contact.center@calcivilrights.ca.gov  
calcivilrights.ca.gov/complaintprocess

# DISCRIMINATION IS AGAINST THE LAW

## CIVIL RIGHTS IN CALIFORNIA

The Civil Rights Department (CRD) enforces California state laws that prohibit harassment and discrimination in employment, housing, and public accommodations and that provide for pregnancy leave and family and personal medical leave. It also accepts and investigates complaints alleging hate violence or threats of hate violence and human trafficking.

## CRD ENFORCES THESE LAWS BY:

The Civil Rights Department enforces this law by:

1. Investigating harassment, discrimination, and denial of leave complaints
2. Assisting parties to voluntarily resolve complaints involving alleged violations of the laws
3. Prosecuting violations of the law
4. Educating Californians about the laws prohibiting harassment and discrimination by providing written materials and participating in seminars and conferences

# DISCRIMINATION IS AGAINST THE LAW



Civil Rights  
Department  
STATE OF CALIFORNIA

## YOU ARE PROTECTED

The California Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination in employment based on the following:

- Race (includes hair texture and protective hairstyle)
- Color
- Religion (includes religious dress & grooming practices)
- Sex/gender (includes pregnancy, childbirth, breastfeeding and/or related medical conditions)
- Gender identity, gender expression
- Sexual orientation
- Marital status
- Medical Condition (genetic characteristics, cancer or a record or history of cancer)
- Military or veteran status
- National origin (includes language use and possession of driver's license issued to persons unable to prove their presence in the United States is authorized under federal law)
- Ancestry
- Disability (mental and physical, including HIV/AIDS, cancer, and genetic characteristics)
- Genetic information
- Request for family care leave
- Request for leave for a serious health condition
- Request for Pregnancy Disability Leave
- Retaliation for reporting patient abuse in tax-supported institutions
- Age (over 40)
- Criminal Background (Fair Chance Act)

## DISCRIMINATION IS PROHIBITED

Discrimination is prohibited in all employment practices, including, but not limited to:

1. Advertisements
2. Applications, screening, and interviews
3. Hiring, transferring, promoting, terminating, or separating employees
4. Working conditions
5. Participating in a training or apprenticeship program, employee organization, or union

Discrimination is prohibited in all aspects of the housing business, including, but not limited to:

1. Advertisements
2. Mortgage lending and insurance
3. Application and selection processes
4. Terms, conditions, and privileges of occupancy, including freedom from harassment
5. Public and private land-use practices, including the existence of restrictive covenants

Individuals with disabilities are entitled to reasonable accommodation in rules, policies, practices, and services and are also permitted, at their own expense, to reasonably modify their dwelling to ensure full enjoyment of the premises.

As in employment discrimination law, individuals are protected from retaliation for filing complaints.

FEHA also prohibits discrimination in the rental and sale of housing based on the following:

- Race
- Color
- Religion
- Sex
- Gender
- Gender identity/ Gender expression
- Ancestry
- Sexual orientation
- Marital status
- Source of income
- Genetic information
- National origin (including language use restrictions)
- Familial status (households with children under age 18, individuals who are pregnant, or who are pending legal custody of a child under age 18)
- Disability (mental and physical, including HIV/AIDS, cancer, and genetic characteristics)
- Military or veteran status

## CALIFORNIA WORKERS ARE:

- Guaranteed reasonable accommodation or leave if disabled because of pregnancy, or if your job would cause undue risk to you or your pregnancy's successful completion (if working for an employer of more than 5 employees)
- Guaranteed leave for the birth or adoption of a child; for the employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition (if working for an employer of more than 50 employees)
- Protected from harassment because of their sex, race, or any other category covered under the law
- Protected from retaliation for filing a complaint with CRD, for participating in the investigation of a complaint, or for protesting possible violations of the law
- California workers with disabilities are also entitled to reasonable accommodation when necessary in order to perform the job

**California Civil  
Rights Department  
Handout,  
“Employment  
Discrimination  
Based on Disability”**



# EMPLOYMENT DISCRIMINATION AND HARASSMENT BASED ON A PERSON'S DISABILITY OR PERCEIVED DISABILITY ARE PROHIBITED

THE CIVIL RIGHTS DEPARTMENT IS THE STATE AGENCY  
CHARGED WITH ENFORCING CALIFORNIA'S CIVIL RIGHTS LAWS.  
THE MISSION OF THE CRD IS TO PROTECT THE PEOPLE OF  
CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT,  
HOUSING, BUSINESSES, AND STATE-FUNDED PROGRAMS AND  
FROM BIAS-MOTIVATED VIOLENCE AND HUMAN TRAFFICKING.



## CALIFORNIA LAW PROHIBITS DISCRIMINATION BASED UPON AN INDIVIDUAL'S ACTUAL OR PERCEIVED DISABILITY

### POTENTIAL REMEDIES

CRD serves as an objective fact-finder and attempts to help the parties voluntarily resolve disputes. If CRD finds sufficient evidence of discrimination and settlement efforts fail, CRD may file a lawsuit in civil court on behalf of the complaining party, after a mandatory mediation.

If the court finds that discrimination has occurred, it can order remedies such as:

1. Damages for emotional distress from each employer or person in violation of the law
2. Hiring or reinstatement
3. Back pay or promotion
4. Changes in the policies or practices of the employer
5. Punitive damages
6. Reasonable attorney's fees and costs

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with CRD and a Right-to-Sue Notice has been issued.

## FILING A COMPLAINT

If you believe you are a victim of discrimination or harassment, you may file a complaint by contacting CRD as described below.

Complaints must be filed within three years of the last act of discrimination. CRD processes complaints filed by persons with terminal illnesses on a priority basis.

To schedule an appointment, contact the Communication Center below.

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with CRD and a Right-to-Sue Notice has been issued.

If you have a disability that requires a reasonable accommodation, CRD can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or you can contact us below.

## CONTACT US

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Toll Free: (800) 884-1684  
TTY: (800) 700-2320  
[contact.center@calcivilrights.ca.gov](mailto:contact.center@calcivilrights.ca.gov)

For additional translations of this guidance:  
[www.cacivilrights.ca.gov/posters/employment](https://www.cacivilrights.ca.gov/posters/employment)

## EMPLOYMENT DISCRIMINATION BASED ON DISABILITY

The Fair Employment and Housing Act (FEHA), enforced by the California Civil Rights Department (CRD), prohibits employment discrimination and harassment based on a person's disability or perceived disability. In addition, the FEHA prohibits retaliation for exercising a FEHA right, such as filing a complaint about discrimination. The law also requires employers to reasonably accommodate individuals with mental or physical disabilities unless the employer can show that to do so would cause an undue hardship.

The law covers mental or physical disabilities, including HIV/AIDS, regardless of whether the conditions are presently disabling. It also covers medical conditions, which are defined as either cancer or genetic characteristics.

Disability does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.

# EMPLOYMENT DISCRIMINATION BASED ON DISABILITY

## FEHA VS. THE FEDERAL AMERICANS WITH DISABILITIES ACT:

The FEHA provides broader protection for persons with disabilities than federal law. California employers with five or more employees must follow the FEHA. California also has broader definitions of mental disability, physical disability, and medical condition than does federal law.

Under California law, a disability must only “limit” a major life activity. The disability does not have to involve a “substantial limitation,” as under federal law, to be considered a disability. Whether a condition or disability “limits” a major life activity is determined regardless of any mitigating measure, such as medication or prosthesis, unless the mitigating measure itself limits a major life activity.

### REASONABLE ACCOMMODATION

An employer is required to interact with an employee to explore all possible means of reasonably accommodating a person prior to rejecting the person for a job or making any employment-related decision. The need for accommodation may arise from a mitigating measure, such as medication taken for the primary disability.

An accommodation is reasonable if it does not impose an undue hardship on the employer's business. Reasonable accommodation can include, but is not limited to, changing job duties or work hours, providing leave, relocating the work area, and/or providing mechanical or electrical aids. An employer may obtain help from government agencies and outside experts to determine whether accommodation is possible.

### INDEPENDENT MEDICAL OPINION

An employer must allow an applicant the opportunity to submit an independent medical opinion if there is a dispute as to whether the person can perform the essential functions of a position with or without reasonable accommodation. Failure to allow the submission of an independent medical opinion may be a separate violation of the law.

### DISCRIMINATION

The following two reasons commonly raised by employers are not legally acceptable excuses for discriminating against persons with disabilities:

- Possibility of future harm to the person or to others
  - Employing individuals with disabilities will cause an employer's insurance rates to rise
- Any employment-related or personnel decision based on either of the following reasons is not discriminatory:
- The person is unable to perform the essential functions of the job and no reasonable accommodation exists that would enable the person to perform the “essential functions” of the job
  - The person would create an imminent and substantial danger to self or others by performing the job and no reasonable accommodation exists that would remove or reduce the danger

### EMPLOYMENT INQUIRIES

The FEHA prohibits employers from either verbally or in writing:

1. Requiring any medical or psychological examination or related inquiry of any applicant or employee prior to making an offer of employment
2. Inquiring directly or indirectly as to whether an applicant or employee has a mental or physical disability or medical condition
3. Inquiring about the nature and severity of a mental or physical disability or medical condition

However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request either with or without a reasonable accommodation.

Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical or psychological examination. However, the examination or inquiry must be job related and consistent with business necessity and all entering employees in the same job classification must be subject to the same examination or inquiry.

An employer may also conduct voluntary medical examinations, including medical histories, as part of an employee health program. This information must be retained separate and apart from employment and personnel records. Employers may not penalize employees for declining to participate in voluntary medical examinations.

**California Civil Rights  
Department,  
“The Rights of  
Employees Who Are  
Transgender or  
Gender  
Nonconforming”**





Civil Rights  
Department  
STATE OF CALIFORNIA

# THE RIGHTS OF EMPLOYEES WHO ARE TRANSGENDER OR GENDER NONCONFORMING

**CALIFORNIA LAW PROTECTS TRANSGENDER AND GENDER NONCONFORMING PEOPLE FROM DISCRIMINATION, HARASSMENT, AND RETALIATION AT WORK. THESE PROTECTIONS ARE ENFORCED BY THE CIVIL RIGHTS DEPARTMENT (CRD).**

## THINGS YOU NEED TO KNOW

### 1. Does California law protect transgender and gender nonconforming employees from employment discrimination?

Yes. All employees, job applicants, unpaid interns, volunteers, and contractors are protected from discrimination at work when based on a protected characteristic, such as their gender identity, gender expression, sexual orientation, race, or national origin. This means that private employers with five or more employees may not, for example, refuse to hire or promote someone because they identify as – or are perceived to identify as – transgender or non-binary, or because they express their gender in non-stereotypical ways.

Employment discrimination can occur at any time during the hiring or employment process. In addition to refusing to hire or promote someone, unlawful discrimination includes discharging an employee, subjecting them to worse working conditions, or unfairly modifying the terms of their employment because of their gender identity or gender expression.

### 2. Does California law protect transgender and gender nonconforming employees from harassment at work?

Yes. All employers are prohibited from harassing any employee, intern, volunteer, or contractor because of their gender identity or gender expression. For example, an employer can be liable if co-workers create a hostile work environment – whether in person or virtual – for an employee who is undergoing a gender transition. Similarly, an employer can be liable when customers or other third parties harass an employee because of their gender identity or expression, such as intentionally referring to a gender-nonconforming employee by the wrong pronouns or name.

### 3. Does California law protect employees who complain about discrimination or harassment in the workplace?

Yes. Employers are prohibited from retaliating against any employee who asserts their right under the law to be free from discrimination or harassment. For example, an employer commits unlawful retaliation when it responds to an employee making a discrimination complaint – to their supervisor, human resources staff, or CRD – by cutting their shifts.

### 4. If bathrooms, showers, and locker rooms are sex-segregated, can employees choose the one that is most appropriate for them?

Yes. All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. In addition, where possible, an employer should provide an easily accessible, gender-neutral (or "all-gender"), single user facility for use by any employee. The use of single stall restrooms

and other facilities should always be a matter of choice. Employees should never be forced to use one, as a matter of policy or due to harassment.

### 5. Does an employee have the right to be addressed by the name and pronouns that correspond to their gender identity or gender expression, even if different from their legal name and gender?

Yes. Employees have the right to use and be addressed by the name and pronouns that correspond with their gender identity or gender expression. These are sometimes known as "chosen" or "preferred" names and pronouns. For example, an employee does not need to have legally changed their name or birth certificate, nor have undergone any type of gender transition (such as surgery), to use a name and/or pronouns that correspond with their gender identity or gender expression. An employer may be legally obligated to use an employee's legal name in specific employment records, but when no legal obligation compels the use of a legal name, employers and co-workers must respect an employee's chosen name and pronouns. For example, some businesses utilize software for payroll and other administrative purposes, such as creating work schedules or generating virtual profiles. While it may be appropriate for the business to use a transgender employee's legal name for payroll purposes when legally required, refusing or failing to use that person's chosen name and pronouns, if different from their legal name, on a shift schedule, nametag, instant messaging account, or work ID card could be harassing or discriminatory. CRD recommends that employers take care to ensure that each employee's chosen name and pronouns are respected to the greatest extent allowed by law.

### 6. Does an employee have the right to dress in a way that corresponds with their gender identity and gender expression?

Yes. An employer who imposes a dress code must enforce it in a non-discriminatory manner. This means that each employee must be allowed to dress in accordance with their gender identity and expression. While an employer may establish a dress code or grooming policy in accord with business necessity, all employees must be held to the same standard, regardless of their gender identity or expression.

### 7. Can an employer ask an applicant about their sex assigned at birth or gender identity in an interview?

No. Employers may ask non-discriminatory questions, such as inquiring about an applicant's employment history or asking for professional references. But an interviewer should not ask questions designed to detect a person's gender identity or gender transition history such as asking about why the person changed their name. Employers should also not ask questions about a person's body or whether they plan to have surgery.

Want to learn more?

Visit: <https://bit.ly/3hTG1EO>

## TO FILE A COMPLAINT

### Civil Rights Department

[calcivilrights.ca.gov/complaintprocess](http://calcivilrights.ca.gov/complaintprocess)

Toll Free: 800.884.1684 / TTY: 800.700.2320

California Relay Service (711)

Have a disability that requires a reasonable accommodation?  
CRD can assist you with your complaint.