

EMPLOYMENT LAW SUMMARY

California Fair Employment Laws – Overview



Because You're Different

In addition to the workplace discrimination protections provided to employees under federal law, California law affords broad workplace discrimination protections under the state's **Fair Employment and Housing Act** (FEHA).

This Employment Law Summary provides a high-level overview of the FEHA as it applies to employment. For detailed information on the specific categories protected under the law, please see the corresponding Employment Law Summary for each category.

COVERED EMPLOYERS

The FEHA generally applies to all California employers with **five or more employees**. However, an exception to the five-employee minimum applies whenever **harassment** is at issue. The FEHA's prohibition against harassment applies to **every entity** that:

- Employs one or more people;
- Receives the services of one or more independent contractors, unpaid interns or volunteers; or
- Acts, directly or indirectly, as an agent of an employer.

EXEMPTIONS

Religious employers and nonprofit organizations are generally exempt from the FEHA. Certain religious employers that operate health care facilities or educational institutions are only partially exempt.

PROTECTED TRAITS

The FEHA protects individuals from employment discrimination and harassment based on their:

- Race (including hair texture and protective hairstyles associated with race);
- Color;
- Religious creed (including religious dress and grooming practices);
- Sex (including pregnancy, childbirth breastfeeding and related medical conditions);
- Gender, gender identity, gender expression and sexual orientation (heterosexuality, homosexuality and bisexuality);
- Marital status;
- National origin and ancestry;
- Physical disability (including AIDS and HIV), mental disability and medical conditions;
- Genetic information;
- Age (40 or older); and
- Military or veteran status.

Jan. 1, 2023, this list also includes reproductive health decision making. This includes, but is not limited to, any decision to use or access a particular drug, device, product or medical service for reproductive health.

Additionally, it's considered unlawful discrimination to make employment-related decisions based on an individual's accent, unless the individual's accent interferes materially with the applicant's ability to perform the job in question, or immigration status, unless it is required in order to comply with federal law.

The FEHA also protects individuals who:

- Are perceived to be a member of a class protected by the FEHA; or
- Associate with members of a protected class.

For example, an employer may not discriminate against an individual because the employer perceives him or her to be a member of a certain religion even if he or she is not actually a member of that religion.

PROHIBITED ACTIONS

Under the FEHA, employers may **not** take any of the following actions against an individual based on a protected trait:

- Refuse to hire or employ, discharge, or otherwise discriminate against the individual in compensation, terms, conditions or privileges of employment;
- Refuse to select the individual for or bar or discharge the individual from any apprenticeship training program, training program leading to employment, unpaid internship or other limited-duration program to provide unpaid work experience; and
- Print or circulate any publication or make any inquiry (either verbal or through the use of an application form) that expresses a limitation, specification or discrimination.

In addition, the FEHA prohibits employers from:

- Harassing or permitting their employees or agents to harass any person based on a protected trait;
- Refusing an employee's right to address consistently with both the employee's gender identity and gender expression;
- Subjecting any employee, applicant or other person to a test to determine the presence of a genetic characteristic;
- Failing to provide individual written notice to employees containing certain information on sexual harassment in the workplace;
- Requiring an employee to be sterilized as a condition for employment;
- Enforcing a policy that limits or prohibits the use of any language in any workplace, including an English-only policy, unless it's justified by business necessity and meets certain criteria; and
- Failing to take all reasonable steps necessary to prevent unlawful discrimination or harassment from occurring.

The FEHA's protections against harassment extend not only to employees and applicants, but also to unpaid interns, volunteers and independent contractors. An employer may be held liable for acts of sexual harassment against any of these individuals even if the person who commits the acts is not an employee or an agent of the employer.

In addition, the FEHA prohibits all employers from retaliating, discharging, expelling or otherwise discriminating against an individual because he or she:

- Opposes a practice that is forbidden under the FEHA; or
- Files a complaint, testifies or assists in any proceeding under the FEHA.

Finally, effective Jan. 1, 2023, the law also prohibits employers from requiring, as a condition of employment, continued employment, or a benefit of employment, an employee or applicant to disclose information relating to the individual's reproductive health decision making.

PROTECTION FOR OFF-DUTY MARIJUANA USE

As of Jan. 1, 2024, employers may not request information about prior marijuana use from applicants or discriminate against or in any way penalize an employee or applicant based on the individual's:

- Use of marijuana off the job and away from the workplace; or
- • Positive employer-required drug tests for marijuana that do not measure present impairment.

EXEMPTIONS

The new prohibitions against discrimination based on marijuana use do not apply to:

- Employees in the building and construction trades;
- Individuals applying for or working in positions that are subject to federal background investigation, clearance requirements, or state or federal laws that require drug testing as a condition of employment or for federal funding, licensing-related benefits or contracts; or
- Individuals who possess, use or are impaired by marijuana at work.

Employers are also allowed to maintain a drug-and alcohol-free workplace.

REASONABLE ACCOMMODATION REQUIREMENTS

The FEHA requires employers to provide reasonable accommodations for an employee or applicant's:

- Disability;
- Religious beliefs and practices, including religious dress and grooming practice; and
- Pregnancy, childbirth or related medical conditions.

Reasonable accommodations are changes made to a job or workplace that enable an employee or applicant to successfully perform the essential duties of a position or to enjoy the same employment rights and privileges as other employees.

An employer may be excused from the accommodation requirements if it can show that a requested accommodation would cause **undue hardship** on its business. The determination of whether undue hardship exists involves consideration of the following factors:

- The nature and cost of the accommodation;
- The overall financial resources of the facilities involved in providing reasonable accommodations;
- The employer's type of operation; and
- The geographic separateness of facilities.

NOTICE POSTING REQUIREMENT

The FEHA requires all employers to display a [notice](#) regarding the law's protections. The notice must be conspicuously posted in hiring offices, on employee bulletin boards, in employment agency waiting rooms and in other places where employees gather.

If more than 10% of an employer's workforce at any facility or establishment speaks a language other than English, the employer must also post the notice in the appropriate foreign language or languages at each facility or establishment. The California Civil Rights Department's (CRD) website provides this poster in English and in several languages that employers may also use.

Employers must also post a notice regarding transgender or gender nonconforming rights in the workplace along with other mandatory workplace postings in a prominent and accessible location in the workplace. Additionally, employers must distribute written information to their employees regarding sexual harassment prevention.

RECORDKEEPING REQUIREMENTS

Under the FEHA, employers must maintain the following records for **four years**:

- Employee applications;
- Employment referral records and files; and
- Personnel files of employees and applicants.

Employers must also maintain applicant identification records of the race, sex and national origin of each applicant and job applied for.

Additionally, employers must maintain personnel records relating to employee performance and grievances for **three years** after the employee is terminated. However, due to the above requirement regarding personnel files, employers should consider retaining these records for four years after termination of an employee.

Following a complaint with the CRD, an employer must maintain all personnel or employment records relating to the complaining party and all other employees holding similar positions to that held or sought by the complaining party at the facility where the discriminatory practice allegedly occurred.

After a complaint is filed with the CRD, an employer must maintain all records and files until the later of the following:

- The first date after the time period for filing a civil action has expired; or
- The first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals or related proceedings have terminated.

Records related to sexual harassment training for supervisors and nonsupervisory employees must be maintained for **two years**; however, it's generally considered best practice to maintain them for four years. Employers must maintain the following information:

- The name of the employee trained;
- The date of training;
- The sign-in sheet;
- A copy of any certificates of attendance or completion issued;
- The type of training;
- A copy of all written or recorded materials that comprise the training; and
- The name of the training provider.

ENFORCEMENT AND PENALTIES

The FEHA is enforced by the [California Civil Rights Department](#) (CRD). Individuals who believe that an employer has violated the law may file a complaint with the CRD **within three years** of the alleged violation.

Once a complaint is filed, the CRD will investigate and attempt to resolve the dispute. If the CRD finds evidence of discrimination and settlement efforts fail, the CRD may file a formal accusation or lawsuit against the employer.

The FEHA provides remedies for individuals who experience prohibited discrimination, harassment or retaliation. Remedies may include hiring, promotion, reinstatement, back pay, front pay, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages and emotional distress damages. In addition, civil courts may order unlimited monetary damages against an employer that is found guilty of discriminating against employees or applicants on the basis of a protected trait.

MORE INFORMATION

For more information on California's fair employment laws, please consult Heffernan Insurance Brokers or visit the [CRD website](#).

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