

EMPLOYMENT LAW SUMMARY

California: Fair Employment – Religious Discrimination Law



Because You're Different

California workers are protected against religious discrimination under both federal and state law. While Title VII of the federal Civil Rights Act of 1964 applies to employers with 15 or more employees, California's Fair Employment and Housing Act (FEHA) generally applies to all employers with **five or more employees** in the state. The FEHA's protections extend to employees, applicants for employment, unpaid interns and participants in any limited-duration program that provides unpaid work experience.

This Employment Law Summary provides a general overview of FEHA's religious discrimination protections.

RELIGIOUS DISCRIMINATION PROTECTIONS

The FEHA, which is enforced by the [California Civil Rights Department](#) (CRD), prohibits employers from discriminating against or harassing employees or job applicants on the basis of their religious creed.

Under the law, discrimination includes, but is not limited to, any of the following actions taken on the basis of an individual's religious beliefs:

- Refusing to hire or employ the individual;
- Refusing to select the individual for a training program leading to employment, internship or limited-duration program for providing unpaid work experience;
- Barring or discharging the individual from employment or from a training program leading to employment, internship or limited-duration program for providing unpaid work experience; or
- Discriminating against the individual in compensation or in terms, conditions or privileges of employment.

DEFINITIONS OF RELIGION AND RELIGIOUS CREED

The FEHA defines the terms "religious creed" and "religion" broadly to include all aspects of religious belief, observance and practice, including religious dress and grooming practices. The law's protections apply not only to traditionally recognized religions, but also to less commonly held beliefs, observances or practices. This includes an individual's **lack** of religious beliefs, which means that employers may not discriminate against individuals based on the fact that they are atheist or agnostic.

The FEHA's protections also extend to individuals who are perceived to be members of a certain religion, even if they are not actually members of that religion. Likewise, employers may not discriminate against individuals based on the fact that they associate with members of a religion, even if they are not members of the religion themselves.

EXEMPTIONS

Nonprofit religious corporations and religious associations are generally exempt from the FEHA's religious discrimination provisions. In particular, these employers may require employees to be followers of a certain religion, though only in positions that involve religious duties.

Hospitals and health care facilities that are owned by or affiliated with religious entities and that provide services open to the public may not engage in discrimination or harassment on the basis of religion. However, these employers may take a person's religion into consideration when hiring and promoting executives or individuals in pastoral-care positions.

REASONABLE ACCOMMODATIONS

California employers have an affirmative duty to reasonably accommodate all aspects of an employee or applicant's religious beliefs. The FEHA explicitly states that employers must accommodate an individual's religious dress, grooming practices and observances of a Sabbath or other holy day.

A reasonable accommodation is a workplace modification that eliminates the employee's conflict between his or her religious practices and work requirements. Reasonable accommodations may include, but are not limited to:

- Job restructuring;
- Job reassignment;
- Modification of work practices; or
- Allowing employees to take time off to avoid a conflict with their religious observances.

Employers must be careful in constructing accommodations for their employees. The FEHA explicitly states that employers may not segregate employees from the public or from other employees as a form of religious accommodation. To request an accommodation, an individual does not need to use special words or specifically refer to the FEHA or an accommodation. Employers do not need to provide the exact accommodation requested if a reasonable alternative exists that satisfies the conflict and does not pose an undue hardship on the employer.

UNDUE HARDSHIP

An employer may be exempted from the FEHA's reasonable accommodation requirements if it can demonstrate that accommodating an individual's religious beliefs would cause undue hardship on the conduct of business. To demonstrate undue hardship, employers must show that accommodating the employee or applicant's religious observance or practice would result in significant difficulty or expense for the employer. This standard is a greater burden than the federal standards, which require only that the employer incur more than a minimal cost if it was to accommodate the employee. This standard is different than the federal standard, which requires an employer to accommodate an employee's religious beliefs or practices unless doing so would result in substantial increased costs in relation to the conduct of the employer's business.

In evaluating whether an accommodation would impose an undue hardship on a business, the FEHA considers the following, among other, factors:

- The size of the employer with respect to the number of employees, number and type of facilities and size of its budget;
- The employer's type of operation, including the composition and structure of its workforce;
- The nature and cost of the accommodation needed;
- Notice given to the employer of the need for accommodation; and
- The existence of any other reasonable alternative means of accommodation.

PENALTIES

Individuals who believe they have been discriminated against on the basis of their religious beliefs may file a complaint with the DFEH. Individuals have up to **three years** to file a claim.

Once a complaint is filed, the CRD will investigate the complaint and attempt to resolve the dispute. If the CRD finds evidence of discrimination and settlement efforts fail, it 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 found guilty of discriminating against employees or job applicants on the basis of their religious beliefs.

MORE INFORMATION

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

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