

Discrimination and Harassment in Employment

YOUR LEGAL RIGHTS

1. What are “discrimination” and “harassment?”

“Discrimination” means being treated differently or unfairly. Discrimination in employment is illegal when the treatment is based on a personal characteristic or status, such as sex or race, which is protected under anti-discrimination laws. Since the law prohibits discrimination based only on certain protected categories, not every form of discriminatory or unfair treatment is illegal. . Discrimination can be expressed through “harassment,” when a boss, supervisor, or co-worker says or does something that creates an intimidating, hostile or threatening work environment. Harassment is illegal if it is based on a personal characteristic or status protected under anti-discrimination laws. To be illegal, the harassment must be so “severe or pervasive” that it interferes with the employee’s ability to perform the job. Several federal and state laws protect people against many types of discrimination in employment.

There are several **federal** laws prohibiting discrimination:

Title VII of the Civil Rights Act of 1964 (“Title VII”), prohibits discrimination based on race, color, sex (including sexual harassment), national origin, religion, and pregnancy;

The **Americans with Disabilities Act** (“ADA”) prohibits discrimination on the basis of disability;

The **Age Discrimination in Employment Act** (“ADEA”) prohibits discrimination based on age (40+).

Unlike the federal laws, **California** has one law prohibiting discrimination. The **Fair Employment and Housing Act** (“FEHA”) prohibits discrimination based on race, color, sex (including sexual harassment), national origin, ancestry, disability, sexual orientation, gender identity (including transgender status) medical condition (cancer), pregnancy, and marital status.

2. Do these anti-discrimination laws apply to me?

Federal and state laws make it illegal for an employer to discriminate against employees or job applicants who are members of a protected group in hiring, firing, pay, or other terms and conditions of employment. These laws apply, however, only if the employer has at least the number of employees indicated below:

Civil Rights Act of 1964 (Title VII).....	Federal law.....	15 employees
Americans with Disabilities Act (ADA).....	... Federal law.....	15 employees
Age Discrimination in Employment Act (ADEA).....	Federal law.....	20 employees
Fair Employment and Housing Act (FEHA).....	California state law.....	5 employees*

* The Fair Employment and Housing Act protections against **harassment** apply regardless of the number of employees.

3. Identifying discrimination

These state and federal laws prohibit employers from refusing to hire a job applicant, firing an employee, or changing other terms and conditions of employment (such as pay or benefits) if the reason for the action is that the employee or job applicant is a member of a protected group. Discrimination can take different forms and does not even have to be intentional to be illegal. Two general types of discrimination the law protects against are:

“Disparate Treatment” This means that an employer intentionally singles out an individual or a group of people for unequal treatment for an illegal reason. For example, a victim of “disparate treatment” might be someone who is:

- denied a position or a promotion because of race;
- made to feel unsafe or humiliated because of repeated remarks made by a supervisor or co-workers about women or people of color;
- pressured by a superior to engage in sexual activity in order to keep a job;
- threatened because of sexual orientation.

“Disparate Impact” This term applies when an employer has a policy or practice that has the effect of discriminating—even though it doesn’t single out a protected group for different treatment—and which is not related to an actual requirement of the job. This type of discrimination does not have to be intentional to be illegal. Examples of such policies or practices include:

- imposing lifting requirements for a job that does not actually require lifting (such requirements tend to exclude women or people with certain disabilities);
- a written test that excludes almost all non-white people and is not related to the job requirements;
- forbidding employees from speaking any language other than English at all times at work.

4. What can I do if I am being discriminated against?

Protect yourself:

- Keep a journal at home recording incidents of suspected discrimination or harassment. Write down dates, times, and witnesses to any such incidents. Documenting wrongful conduct when it happens will help if you ever need to take action such as a lawsuit.

- Keep copies of all important letters and documents that you send to your employer or that the employer sends you.
- In cases of sexual or racial harassment, complain to a manager or supervisor promptly (unless that person is the harasser and complaining to him/her will be fruitless). Follow up with a written complaint; keep a copy for yourself. If you do not complain, the employer might later say that it did not know about the harassment.
- If in doubt, do not sign anything without legal advice. Be careful of documents that require you to agree to waive your right to bring a complaint, or require you to arbitrate disputes with an employer.

Consider your options:

It's usually best to try to resolve the situation informally by first speaking with a supervisor or manager.

Follow your employer's grievance procedure, if it has one. Talk with your union representative or someone in the employer's human resources or personnel office if you do not belong to a union.

You can also choose to file an employment discrimination complaint with the federal Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH), which will investigate your complaint free of charge and try to resolve the problem. If you file a complaint with one of these agencies, you should request that it ""cross-file"" your claim with the other agency as well. You must file a complaint with the EEOC within 300 days of the last act of discrimination or harassment, or with the DFEH within one year of the last act of discrimination. (Note: **federal government employees** must file with their employer's EEO office within 45 days). If you do not file a complaint within these time limits, you may lose your right to legal protection from the discrimination or harassment .

If the EEOC or DFEH finds evidence of discrimination and is not able to reach a settlement between you and the employer, the agency may "prosecute" your case by holding a formal hearing or filing a lawsuit on your behalf. You should be aware, however, that the EEOC and DFEH are very selective about which cases they will prosecute and therefore prosecute very few of the thousands of complaints they receive each year. If the EEOC or DFEH chooses not to prosecute your case, you will receive a "right to sue" notice from the agency. (Note: you can request a right to sue notice at any point in the investigation process, which will stop the agency's investigation.) Only after you receive a right to sue letter can you file your own lawsuit in court. If you get a right to sue notice from the EEOC, you must file a lawsuit within 90 days. If you get a right to sue notice from the DFEH, you must file a lawsuit within one year. If you do not file a lawsuit within these time limits, you may lose your legal right to file a lawsuit regarding the discrimination or harassment.

5. What if I am fired or disciplined for complaining?

Under state and federal law, it is illegal for a person or company to retaliate against someone who complains about discrimination or harassment in the workplace. Retaliation may include actions such as terminating an employee, moving an employee to less favorable assignments or shifts, providing undeserved negative evaluations to an employee, or intensifying the original harassment. If anyone (including a co-worker or supervisor) retaliates against you for either bringing a formal complaint or otherwise protesting unlawful discrimination at your worksite, you can file a retaliation claim with the EEOC or DFEH.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.