

California's Fair Employment & Housing Act ("FEHA")

– What does it protect you against?

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California's Fair Employment & Housing Act ("FEHA") protects employees from illegal **discrimination** and **harassment** in employment based on *race, color, religion, sex* (pregnancy or gender), *sexual orientation, marital status, national origin, ancestry, mental and physical disability* (including HIV/AIDS), *medical condition* (cancer/genetic characteristics), *age* (40 and above), *denial of family and medical care leave*, and *denial of pregnancy disability leave*.

FEHA protects employees that are *perceived* to have any of the above protected characteristics. Physical and mental impairment includes conditions that are disabling, potentially disabling, or perceived as disabling.

FEHA also requires employers to 1) reasonably accommodate an employee or job applicant's religious beliefs and practices, 2) reasonably accommodate employees or job applicants, with a disability, in order to enable them to perform the essential functions of a job, 3) provide up to four months leave to employees due to pregnancy, childbirth, or a related medical condition, and 4) provide reasonable accommodations requested by an employee, on the advice of her health care provider, related to her pregnancy, childbirth, or related medical conditions.

FEHA's protection against **harassment** extends to *independent contractors* in addition to employees. California courts have held that harassment is unwelcome conduct that must be severe or pervasive. This severe or pervasive conduct must relate to one or more of the protected categories listed above i.e. *race, gender, sexual orientation* etc. Forms of harassment can include, but are not limited to, verbal or written comments, drawings, photos, emails, physical touching, intimidation, or gestures.

It is important to note that under FEHA, *supervisors* or other co-employees cannot be sued individually for **discrimination**. Supervisors or other co-employees are, however, *personally liable* for any type of prohibited **harassment** under FEHA. [Government Code section 12940 (j)(3)].

FEHA further prohibits **retaliation** against a person who opposes, reports, or assists another person in opposing unlawful discrimination.

Does FEHA apply to my employer and am I protected?

FEHA typically applies to any employer regularly employing *five* or more persons. Labor organizations, employment agencies, and apprenticeship programs are also subject to FEHA's provisions.

There is an important exception to FEHA's five-employee requirement: The prohibition against **harassment** applies to anyone who regularly employs at least *one* person or regularly receives the services of at least *one independent contractor*.

In addition, all *governmental employers* are covered under the FEHA regardless of size.

How do I enforce my rights under FEHA?

To enforce your rights under FEHA, the law requires that you first exhaust all administrative remedies. In order to exhaust your administrative remedies there are two options:

1) File a complaint with the Department of Fair Employment and Housing ("DFEH"). The DFEH will then proceed to investigate your claim, and attempt to mediate your case; or

2) Request an immediate "right to sue" notice that allows you to proceed with a lawsuit in civil court.

We strongly suggest you talk to an attorney about your specific situation, and request an immediate right to sue notice from DFEH's website. You can request a "right to sue" notice here: <http://www.dfeh.ca.gov/OnlineRTS/>.

The DFEH receives a multitude of complaints on a weekly basis. As a government agency, they are hindered by backlog issues, resources, time, and manpower in aggressively pursuing each case they investigate. Accordingly, their findings often yield unsatisfactory results for aggrieved employees.

Filing a civil complaint in California Superior Court offers additional advantages that are not available if the DFEH litigates your case in a public hearing before the Fair Employment and Housing Commission (FEHC). These advantages include 1) no limit on emotional distress damages, 2) possible punitive damages against the employer, and 3) the prevailing party may recover their reasonable attorney's fees, expert witness fees and costs.