



Employment discrimination and harassment based on a person's disability or perceived disability are prohibited.



Department of Fair Employment and Housing

Filing a Complaint

Employees or job applicants who believe that they have been discriminated against or harassed because of a disability may, within **one year** of the alleged discrimination, file a complaint with the DFEH by calling (800) 884-1648. The DFEH processes complaints filed by persons with terminal illnesses on a priority basis.

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

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

- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer
- Damages for emotional distress from each employer or person found to have violated the law
- Punitive damages
- 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 the DFEH and a Right-to-Sue Notice has been issued.

For more information, see the DFEH publication 159 "Guide for Complainants and Respondents."

For more information, contact the DFEH toll free at **(800) 884-1684**
TTY number at **(800) 700-2320**
or visit our website at www.dfeh.ca.gov

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact the DFEH at the numbers above.



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Employment Discrimination Based on Disability

The *Fair Employment and Housing Act* (FEHA), enforced by the California Department of Fair Employment and Housing (DFEH), 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. 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, which includes 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.

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. For



The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination, harassment, and retaliation in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

example, California law has broader definitions of mental disability, physical disability, and medical condition.

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.

Employment Inquiries

The FEHA prohibits employers either verbally or in writing from:

- Requiring any medical/psychological examination/inquiry of any applicant or employee prior to making an offer of employment
- Inquiring directly or indirectly as to whether an applicant or employee has a mental/physical disability or medical condition
- Inquiring about the nature and severity of a mental/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 for reasonable accommodation.

Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical/psychological examination. However, the

examination/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, which are part of an employee health program. This information is retained separate and apart from employment and personnel records.

Reasonable Accommodation

The employer is required to interact with the 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 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.

Employees with disabilities may also be covered by the *California Family Rights Act* or the federal *Family Medical Leave Act*.

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. Failure to allow the submission of an independent medical opinion may be a separate violation of the law.

Discrimination

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

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 such individuals will cause an employer’s insurance rates to rise