

## COMPLAINTS MUST BE FILED WITHIN ONE YEAR OF THE LAST ACT OF DISCRIMINATION

# FILING A COMPLAINT

THE MISSION OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING IS TO PROTECT THE PEOPLE OF CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS, AND FROM THE PERPETRATION OF ACTS OF HATE VIOLENCE AND HUMAN TRAFFICKING

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

## EMPLOYMENT DISCRIMINATION BASED ON DISABILITY



Employees or job applicants who believe they have been discriminated against or harassed because of a disability may, within one year of the alleged discrimination, file a complaint with DFEH by contacting DFEH on our website or by phone as described on the back of this brochure. DFEH processes complaints filed by persons with terminal illnesses on a priority basis.

DFEH serves as an objective fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence of discrimination and settlement efforts fail, DFEH may file a lawsuit in civil court on behalf of the complaining party, after a mandatory mediation. If the court finds that discrimination has occurred, it can order remedies such as:

- 1 Damages for emotional distress from each employer or person in violation of the law
- 2 Hiring or reinstatement
- 3 Back pay or promotion
- 4 Changes in the policies or practices of the employer
- 5 Punitive damages
- 6 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 DFEH and a Right-to-Sue Notice has been issued.

### FOR MORE INFORMATION

Department of Fair Employment and Housing  
Toll Free: (800) 884-1684  
TTY: (800) 700-2320  
Online: [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

Also find us on:



If you have a disability that prevents you from submitting a written intake form on-line, by mail, or email, the DFEH can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice).

To schedule an appointment, contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY) or by email at [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov).

*DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.*

*Contact DFEH at (800) 884-1684 (voice or via relay operator 711), TTY (800) 700-2320, or [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov) to discuss your preferred format to access our materials or webpages.*

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, such as filing a complaint about discrimination. 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, including 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.

IN ADDITION TO THE PROTECTIONS OF THE FAIR EMPLOYMENT AND HOUSING ACT, EMPLOYEES WITH DISABILITIES MAY ALSO BE COVERED BY THE CALIFORNIA FAMILY RIGHTS ACT OR THE FEDERAL FAMILY MEDICAL LEAVE ACT

## FEHA vs. THE FEDERAL AMERICANS WITH DISABILITIES ACT:



## EMPLOYMENT DISCRIMINATION AND HARASSMENT BASED ON A PERSON'S DISABILITY OR PERCEIVED DISABILITY ARE PROHIBITED

## CALIFORNIA LAW PROHIBITS DISCRIMINATION BASED UPON AN INDIVIDUAL'S ACTUAL OR PERCEIVED DISABILITY

The FEHA provides broader protection for persons with disabilities than federal law. California employers with five or more employees must follow the FEHA. California also has broader definitions of mental disability, physical disability, and medical condition than does federal law.

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.

### REASONABLE ACCOMMODATION

An employer is required to interact with an 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 need for 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.

### EMPLOYMENT INQUIRIES

The FEHA prohibits employers from either verbally or in writing:

- 1 Requiring any medical or psychological examination or related inquiry of any applicant or employee prior to making an offer of employment
- 2 Inquiring directly or indirectly as to whether an applicant or employee has a mental or physical disability or medical condition
- 3 Inquiring about the nature and severity of a mental or 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 either with or without a reasonable accommodation.

Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical or psychological examination. However, the examination or 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, as part of an employee health program. This information must be retained separate and apart from employment and personnel records. Employers may not penalize employees for declining to participate in voluntary medical examinations.

### 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 with or without reasonable accommodation. Failure to allow the submission of an independent medical opinion may be a separate violation of the law.

### DISCRIMINATION

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 individuals with disabilities will cause an employer's insurance rates to rise

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