



KNOW YOUR RIGHTS IN THE WORKPLACE



About CAIR California

The Council on American-Islamic Relations, California (CAIR-CA) is the largest American Muslim civil rights and advocacy organization in the United States. Our mission is to enhance the understanding of Islam, protect civil rights, promote justice, and empower American Muslims. CAIR-CA is the organization's largest and oldest chapter, with offices in the Greater Los Angeles Area, the Central California/Sacramento Valley, San Diego, and the San Francisco Bay Area.



Disclaimer

The material in this publication is provided for informational purposes only and is not intended to constitute legal advice. Readers should not rely on the information provided herein without seeking professional legal counsel. Neither transmission nor receipt of the material contained herein creates an attorney-client relationship between the author and the receiver.

What This Guide Covers

This guide provides a brief overview of some of the protections available for California workers who encounter discrimination or harassment in the workplace. This guide is particularly intended to provide American Muslim workers with information about responding to religious discrimination, tips on requesting religious accommodations, and information on administrative agency complaint processes.

Not Covered Here

A wide variety of employment law topics are not covered in this publication, such as leave laws, disabilities in the workplace, workers' compensation, wage and hour violations, payroll issues, etc. For more information on these topics, readers are encouraged to seek guidance or advice from employment law attorneys.



Sources of Protection

A variety of federal and California laws prohibit discrimination in the workplace.

Federal Laws and Agencies

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on race, religion, color, national origin, and sex by public and private employers with at least 15 employees.

Other federal laws that protect workers from discrimination include, but are not limited to, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay Act of 1963.

The **Equal Employment Opportunity Commission** (EEOC) is the federal agency responsible for enforcing federal laws governing workplace discrimination such as Title VII.





State Laws and Agencies

California's employment laws generally offer more protections against employment discrimination than their federal counterparts.

California's **Fair Employment and Housing Act (FEHA)** protects employees from discrimination based on protected characteristics such as race, religious creed, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, medical condition, pregnancy, marital status, or military status; as well as employees **perceived** to have any of those characteristics.

The FEHA generally only applies to employers with at least five employees. However, the FEHA's protections against harassment applies to **all** employers, regardless of size.

The California **Department of Fair Employment and Housing (DFEH)** enforces the FEHA. Additional California protections against discrimination can be found in the California Labor Code.

Local Laws and Agencies

Some localities have laws that prohibit additional types of discrimination. These laws are enforced by local agencies. For example, San Francisco prohibits discrimination based on gender identification and weight; the San Francisco Human Rights Commission enforces and investigates complaints of discrimination based on these classes.

Other local areas may have similar offices or agencies responsible for enforcing local civil rights ordinances – check your City or County Clerk's office for more information.

General Discrimination and Harassment

What is Discrimination?

Discrimination occurs when an employee or job applicant is treated **less favorably** or **differently because of** a specific protected characteristic, such as an adherence to a particular religion.

Discrimination can take many forms and does not have to be intentional to be illegal. Types of prohibited discriminatory actions by employers include, but are not limited to:

- **Disparate Treatment:** when an employer treats an employee or applicant unequally based on a protected trait or characteristic, or lack thereof.
- **Disparate Impact:** when an employer adopts policies or practices that apply to all employees, but they disproportionately affect workers who have a certain protected characteristic.
- **Harassment:** when an employer permits frequent or severe conduct that affects an employee's ability to perform their job at work.
- **Failure to Accommodate:** when an employer fails to make reasonable accommodations for an employee's sincerely held religious beliefs, practices, or observances.
- **Retaliation:** when an employer takes an "adverse action" against an employee because the employee exercised a "protected legal right", such as complaining about discrimination or harassment in the workplace. Adverse actions are not only limited to termination or demotions but can also include actions that affect any employee's job performance or opportunity for advancement.

What is Harassment?

Harassment is a form of illegal discrimination. It is unwelcome conduct that creates an intimidating, hostile, or threatening work environment. Harassment is illegal if it is based on a personal characteristic protected by an anti-discrimination law (such as the FEHA).

Harassment becomes unlawful when it becomes so “severe or pervasive” that it interferes with an employee’s ability to perform the job. California’s prohibition on workplace harassment applies to employers of any size.

Note: In some instances, a single, isolated offensive comment may be sufficiently severe or pervasive to constitute harassment.



Protected Areas for Discrimination/Harassment

Examples of categories where discrimination is prohibited by federal and state laws include:

Religion

- Discriminating against an employee or job applicant based on his or her religious beliefs is illegal.¹
- “Religion” is broadly defined under both Title VII and the FEHA. Religious beliefs include all aspects of an individual’s religious practices, including actual or perceived religious belief, identifying as a practitioner of a particular faith, and all aspects of religious practice — such as religious rituals, customs, and dress and grooming practices.²

Racial

- Discriminating against an employee or job applicant based on his or her race, skin color, national origin, or ancestry is illegal.³

Language

- Discriminating against an employee or job applicant because of his or her native language or other language skills is illegal.
- Generally, it is illegal for an employer to limit or prohibit the use of any language in a workplace, such as implementing an English-only policy.⁴ An exception allows employers to limit or prohibit the use of a language in the workplace if the restriction (1) is justified as a business necessity, and (2) the employer has notified its employees of when the restriction is in effect, and of consequences for violating the restriction.⁵

1 Cal. Gov’t Code § 12940 (a).

2 Cal. Gov’t Code § 12926 (q).

3 Cal. Gov’t Code § 12940 (a).

4 Cal. Gov’t Code § 12951 (a).

5 *Id.*

Retaliation

Retaliation occurs when an employer takes “adverse action” against a worker because he or she engaged in “protected activity.”⁶

“Adverse action” is an act that negatively and significantly affects the terms and conditions of employment.⁷ Examples may include, but are not limited to:

- Termination, demotion, or suspension,
- Reassignment or reduction in work assignments or shifts,
- Denial of workplace resources or negative change of previously granted accommodations.

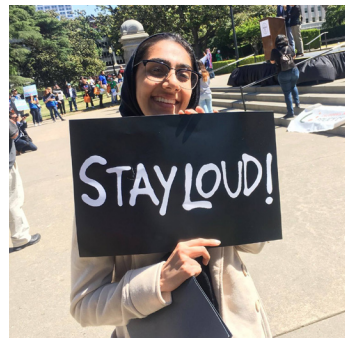
Examples of “protected activity” include, but are not limited to:

- Complaining about harassment or discriminatory treatment in the workplace,
- Filing a lawsuit against your employer.

When it comes to discrimination, federal and state laws guarantee your right to report acts of alleged employment discrimination or harassment. It is illegal for your employer to retaliate or take negative employment action against you for making a complaint.

Wrongful Termination in Violation of Public Policy

Generally, employees in California are considered “at will” employees. This means that they can be fired at any time — for any or for no reason at all. However, terminations motivated by discrimination against an individual’s protected characteristic violate public policy. Similarly, firing an employee as retaliation for seeking a reasonable religious accommodation also violate public policy.



6 Cal Gov’t Code § 12940 (h).

7 *Yanowitz v. L’Oreal USA, Inc.*, 36 Cal. 4th 1028 (2005).

Remedies

- **Advocacy:** Consider trying to resolve the situation internally first by speaking with a supervisor or manager. Follow your employer's grievance or complaint procedure, if applicable. Document incidents of harassment or discrimination, potential witnesses, and steps taken to address the issue internally. Make sure to submit written reports, and keep a copy of each report you make, including who you reported to and the date.
- **Escalation:** File a complaint with the federal, state, or local government administrative agency responsible for enforcing the law that was violated.
 - **Administrative Agency Process:** If you believe you have been discriminated against by your employer because of a protected characteristic, you can file a complaint with either the EEOC or the DFEH. The agencies will investigate your complaint and try to resolve the complaint.
 - If you file a complaint with either the EEOC or DFEH, you should request that the complaint be "cross-filed" with the other agency as well.

EEOC complaints must, generally, be filed within 300 days of the discriminatory act.

DFEH complaints must be filed within one year of the discriminatory act.

If the administrative agency finds evidence to support your discrimination claim and settlement attempts between you and your employer are unsuccessful, the agency may hold a hearing or file a lawsuit on your behalf.

Otherwise, you will receive a "right to sue" notice from the agency. Once you receive a "right to sue" notice, you will be able to file your own lawsuit against your employer in court. The time limits for filing a lawsuit after receiving a "right to sue" notice are as follows:

- EEOC: within 90 days
- DFEH: within one year.

Religious Accommodations

If an employee has religious beliefs or practices that conflict with his or her job duties or work schedule, the law requires employers to make reasonable accommodations, unless doing so would cause an undue hardship on the employer's business.

Reasonable Accommodation

A reasonable accommodation is one that eliminates the conflict between the employee's religious beliefs and their employment responsibilities. The "reasonableness" of an employer's efforts to accommodate is context and situation dependent.⁸

Undue Hardship

The employer has the burden of proving that it cannot provide a reasonable accommodation because the accommodation would cause an undue hardship. What constitutes an "undue hardship" — in other words, what an employer has to show to meet this burden — depends on whether federal or state law applies.

Under federal law, an accommodation is an "undue hardship" if it is more than a minimal burden on a business.

Under California law, an accommodation presents an "undue hardship" if it would cause significant difficulty or expense on the business.

Whether an accommodation is an "undue hardship" ultimately depends on several factors, such as:

- The nature and cost of the accommodation,
- Size of the employer,
- Geographic factors,
- Reasonable alternatives to the requested accommodation.

8 *Soldinger v. Northwest Airlines, Inc.*, 54 Cal. App. 4th 345, 370 (1996).

Types

Common types of religious accommodations include:

- Adjusting dress and grooming standards to allow for the wearing of religious attire such as a hijab, kufi, facial hair, or jewelry.
- Modifying work schedules or shift changes to allow for religious holidays or observances such as Eid and Jummah (including necessary time to travel to and from a religious observance), or for private prayer time at prescribed times during the work day.



Standard – Sincerely Held Belief

A “sincere religious belief” is any meaningful belief, observance, or practice that is important to the person professing it, similar to that of traditionally recognized religious beliefs. The belief need not be from an organized religion, be widely practiced,⁹ or be a long-held belief by the employee. However, even though “religion” and “religious beliefs” in anti-discrimination laws are defined broadly, economic philosophies and social or political belief structures and organizations are not “religious beliefs” under Title VII or the FEHA.

How to Request an Accommodation

Employees are not required to use any “magic words” to request an accommodation. However, employees and applicants must make the employer or hiring agency aware of the need for an accommodation.

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United States v. Seeger, 380 U.S. 163, 177 (1965).

Employees or applicants should make requests for accommodations orally and in writing to their immediate supervisors. When an employee informs an employer about a sincerely-held religious belief that conflicts with a job requirement and requests an accommodation, the employer must begin an interactive process to discuss the request, gather more information, and assess available options.



Political Expression in the Workplace

Generally, employers are not allowed to take direct adverse action against employees for the employee's political activities outside of work (or that do not affect the employee's job performance). However, employers can regulate employees' workplace political expression if such behavior would affect their job performance or impact co-workers. Employers may be able to prohibit employees from displaying political items in the workplace as long as the prohibition is applied uniformly to all employees and viewpoints.

Other Places to Find Assistance

Organizations and Nonprofits

Legal Aid at Work
415.864.8848
www.legalaidatwork.org/contact

**Katharine and George Alexander
Community Law Center**
408.288.7030
www.law.scu.edu/kgac/c/workers-rights

Government Agencies

**United States Equal Employment
Opportunity Commission**
www.eeoc.gov

**California Department of
Fair Employment and Housing**
www.dfeh.ca.gov

United States Department of Labor
www.dol.gov

**California Labor
Commissioner's Office**
www.dir.ca.gov/dlse

If you think you have been subject to discrimination or harassment in the workplace, contact your local CAIR office for an assessment and possible assistance.

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