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DISCRIMINATION LAWS IN THE CALIFORNIA WORKPLACE

An explanation of who California's anti-discrimination laws protect, which characteristics are covered, and how employees can enforce their rights.

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Kyle D. Smith is a California employment lawyer and the author of the articles on WorkLawyers.com. He represents employees in disputes with their employers, from unpaid wages and misclassification to wrongful termination.

He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.

Discrimination occurs when an employee or job applicant receives less favorable treatment because of a specific characteristic they have. In many cases, employers in California are prohibited by law from engaging in discrimination.[1]

Discrimination can take many forms. Common examples include:

- Refusing to hire, refusing to promote, demoting, or firing workers because of their protected characteristic or their membership in a protected group.
- Adopting a company policy that disproportionately affects workers who have a certain protected characteristic.
- Refusing to accommodate the religious or disability-related needs of certain employees.
- Permitting employees to be frequently and severely harassed in the workplace.

This article explores these concepts further and explains discrimination under California state and federal laws.

CH. 01

California's Legal Framework

There are a variety of laws, both on the state and federal level, that prohibit discrimination in the workplace. Their applicability will usually depend on the kind of discrimination being alleged.

1.1 Purpose of Workplace Anti-Discrimination Laws

Anti-discrimination laws are created and enforced for the betterment of society. Both federal and state governments have declared that seeking, obtaining, and holding employment without unlawful discrimination is a civil right.[2]

The State of California considers the protection against unlawful workplace discrimination to be a matter of public policy.[3] Anti-discrimination laws maintain social peace and harmony, keep employers and employees from suffering adverse effects, and help the government progress by being more inclusive so as to attract top talent, from all walks of life.[4]

1.2 California's Law Protecting Against Discrimination

California has one of the most comprehensive bodies of law protecting classes of individuals from employment discrimination. The *Fair Employment and Housing Act* (known as “FEHA”) protects California employees from discrimination based on many different factors, including race, religion, gender, disability, sexual orientation, veteran status, and age (if the employee is over 40).[5]

FEHA's protections apply generally to employers with five or more employees.[6] It is enforced by the Civil Rights Department (known as the “CRD”), formerly called the Department of Fair Employment and Housing (DFEH).[7] The CRD acts as a first resort for many aggrieved employees by providing a process for filing complaints.[8]

1.3 Federal Laws Protecting Against Discrimination

On the federal level, there are several laws that prohibit workplace discrimination. But the number of protected groups under federal law is narrower than those provided by California law.

- The *Civil Rights Act of 1964* prohibits employment discrimination based on race, sex, color, religion, and nationality.[9]
- The *Americans with Disabilities Act* specifically protects those with physical and mental disabilities from unfair discrimination.[10]
- The *Equal Pay Act of 1963* prohibits employers from having different rates of pay between the sexes for the same work in many situations.[11]
- The *Age Discrimination in Employment Act* protects against age-related discrimination against older workers.[12]
- The *Genetic Information Nondiscrimination Act* of 2008 prohibits employers from using the genetic information of current or prospective employees when making hiring, firing, and other employment decisions.[13]

Federal law also protects workers from discrimination based on sexual orientation or gender identity. The United States Supreme Court has held that the Civil Rights Act's ban on sex discrimination covers both.[14] Even so, California's list of protected characteristics remains broader than federal law's.

The U.S. Equal Employment Opportunity Commission (called the “EEOC”) is a federal agency responsible for enforcing and administering many federal laws governing workplace discrimination.[15]

1.4 Determining Which One Applies

In general, federal anti-discrimination laws do *not* prevent state or local governments from adopting laws that provide employees with equal or greater protections.[16] This means that California employers are required to comply with the law that creates the highest standards.

As such, employees may be protected by *both* state and federal law in their situation. However, there are a few considerations to keep in mind when deciding between filing a claim in state or federal court.

- **Type of discrimination.** If the type of discrimination is only covered under state law, then the discrimination claim should be brought in state court or with a state agency.
- **Employer size.** California law applies to businesses that employ five or more employees.[17] This is much smaller than most federal laws, which usually only cover larger businesses.[18]
- **Location.** Location also matters. State courts have jurisdiction on all claims that arise from an occurrence that happened in California. However, all claims on federal property, such as military bases, must be brought in federal court.[19]

It may seem that filing a lawsuit in federal court is more impressive or intimidating to your opponent. However, as a general practice rule, state courts are friendlier to plaintiffs. Juries in federal civil trials must reach a unanimous verdict.[20] But in California state courts, only three-fourths of the jury must agree.[21]

This article will focus on the rules applicable under FEHA because FEHA provides greater protections to most California employees than does federal law. Unless federal law is specifically mentioned, the law being discussed is FEHA.

CH. 02

The Two Main Types of Discrimination Cases

As mentioned above, *discrimination* occurs when an employee or job applicant receives less favorable treatment because of a specific characteristic they have, but not all types of discrimination are legally prohibited.

Discrimination claims generally fall into two broad categories:

- Disparate ***treatment*** discrimination, and
- Disparate ***impact*** discrimination.[22]

Each of these two types of discrimination are described below.

2.1 Disparate Treatment Discrimination

Disparate treatment discrimination happens when an employee is specifically targeted or singled out because of their protected characteristic. In these kinds of cases, the employer's actions must be motivated by a discriminatory intent.[23]

Disparate treatment might happen when the employer demotes, refuses to hire, refuses to promote, harasses, or takes some other negative action against the specific employee. Disparate treatment cases represent the most common type of discrimination that employees face.

In general, employees have the burden of proving that they were the victim of discrimination.[24] To do this, the employee must present evidence to show that several facts are true. These facts are called “elements” of the claim.

In cases involving disparate treatment discrimination, the elements are as follows:

- The employer was an entity covered by applicable anti-discrimination laws;
- The employer took a negative employment action against the worker, like refusing to hire them, refusing to promote them, or firing them;
- The employee or job applicant's protected status (for example, their race, religion, gender, or sexual orientation) was a motivating reason for the employer's negative employment action; and
- The employee suffered some kind of harm because of the employer's negative employment action.[25]

If the worker cannot prove one or more of these elements, they probably won't be able to successfully pursue an action against their employer for disparate treatment discrimination.

2.2 Disparate Impact Discrimination

Disparate impact discrimination happens when an employer adopts a policy that applies to all employees, but the policy has a more negative impact on those with a certain protected characteristic than those without it.[26]

Put another way, disparate impact claims arise when employers adopt policies that are “facially neutral,” in that they don't appear to discriminate against a protected characteristic. The policy might be unlawful, however, if it nevertheless has a disproportionately adverse impact on employees with a protected characteristic.

In a disparate impact case, the employer can be held liable even if the employer had no discriminatory intent whatsoever.[27]

EXAMPLE

To encourage employees to get more exercise, a business owner rewards his employees with five minutes off their shift whenever they take the stairs instead of the elevator. While this policy sounds great, not everyone can participate. Employees who suffer from disabilities might be disparately impacted.

As mentioned above, to successfully prove that an employer has engaged in disparate impact discrimination, the employee has the burden of showing that several facts are true.[28] These are called “elements” of the claim.

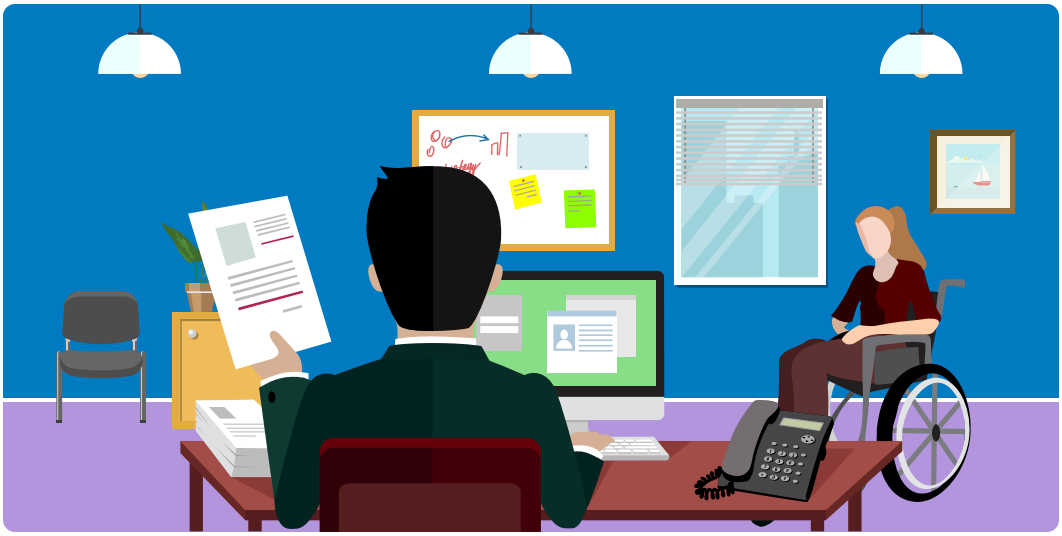
In cases involving disparate impact discrimination, the elements are as follows:

- The employer was an entity covered by applicable anti-discrimination laws;
- The employer adopted an employment practice that had a disproportionately adverse effect on a specific protected group, like members of a specific race, religion, gender, or sexual orientation;
- The employee or job applicant was a member of that specific protected group; and
- The employee or job applicant was harmed by the employment practice.[29]

If the worker cannot prove one or more of these elements, they probably won't be able to successfully pursue an action against their employer for disparate impact discrimination.

CH. 03

Which Employers Can Be Held Liable?



California's anti-discrimination laws apply to several categories of employers.[30] Those include:

- People or businesses that regularly employ five or more persons,
- People or businesses that act as an agent of a covered employer, and
- State or local governmental entities.[31]

There are important exceptions to each of these categories. For example, California's ban on harassment applies to employers of any size, even those that employ fewer than five people.[32]

Several other caveats are explained below.

3.1 Employers with Five or More People

Although California law seeks to eliminate discrimination from the workplace, it does not apply to very small employers.[33]

Employees of businesses that employ fewer than five people will have little recourse for discriminatory practices.[34] California law gives each of these phrases a specific meaning.

- **"Employer."** An *employer* for these purposes includes individuals as well as different types of businesses, corporations, associations, and other legal entities that have employees.[35]
- **"Regularly Employs."** An employer *regularly* employs five or more individuals when, during either of the most recent two calendar years, there was a period of 20 consecutive weeks where they employed five or more people during each working day of the week.[36]
- **"Five or More."** An employer employs *five or more* individuals when five or more people are under the direction and control of an employer under any employment contract, appointment, or apprenticeship.[37] The employment contract can be express or implied, oral or written.[38]

Employees on paid or unpaid leave are counted as employed individuals for these purposes.[39] Likewise, employees who are merely part-time are also counted as employed individuals for these purposes.[40]

> FEDERAL LAW DISTINGUISHED
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> Under the Americans with Disabilities Act, a person is an employer under federal law only if they have **15 or more** employees.[41]

3.2 Religious Organizations

Certain religious nonprofit associations and corporations are *not* considered "employers" for these purposes. Those religious employers are thus not subject to many of California's anti-discrimination laws.[42]

But, if the religious organization has a subdivision that is for-profit (meaning, it is subject to state or federal income taxes), that subdivision would *not* be exempt from California's anti-discrimination laws.[43]

Likewise, religious nonprofits that provide certain educational or health care services can sometimes be held liable as "employers" under California law.[44]

This exception does not apply to non-religious entities, even if they are nonprofit. So, most nonprofit corporations and nonprofit associations are considered “employers” under California law.[45]

3.3 Agents of Covered Employers

An *agent* is a person who represents another person or an entity in dealing with third persons.[46] Under California law, agents of covered employers are also considered employers.[47]

As such, agents of an employer can be held responsible for their acts of discrimination or retaliation.[48] And, in many cases, employers are responsible for what their agents do while representing the employer, including any discriminatory acts.

The California Supreme Court has confirmed this principle as applied to business entities. A company that carries out FEHA-regulated activities on an employer's behalf, such as a third-party firm that conducts pre-employment medical screening, can itself be held directly liable as an employer when it has at least five employees.[49]

To determine whether someone is an agent of an employer, courts look at the amount of control the employer exercises over them.[50] If the employer controls the way a person or business accomplishes its tasks, a court might find them to be an agent of the employer.[51]

Of note, a franchisor is usually not considered an employer or an agent under California law. But a franchisor can be held liable for unlawful activities if they exercise control over the day-to-day operations of the franchised location.[52]

3.4 Supervisors Usually Not Personally Liable

Many supervisors and coworkers are technically “agents” of an employer. But, in general, employees cannot file a lawsuit directly against their supervisors or coworkers for discrimination or retaliation.[53]

This isn't always a bad thing, because supervisors often do not have enough assets to remedy damages from discrimination the way an employing company may. However, a supervisor may be liable for civil or criminal harassment or other legal violations because harassment is personal and unrelated to the job or job duties.[54]

It is also important to remember that California law still protects employees who have been victimized by coworkers and supervisors. Employers can often be held liable for the actions of their employees.[55] So, even though the employee cannot sue the supervisors personally for their discriminatory and retaliatory conduct, they can often still sue their employer.

3.5 State and Local Governments

The State of California is an “employer” for the purposes of California's anti-discrimination laws. This means that people who work for the state can sue for any unlawful discrimination or retaliation they suffer.[56]

Along these same lines, the word “employer” includes any subdivisions of the State of California, county governments, city governments, local agencies, and special districts.[57]

3.6 Coworkers

In general, coworkers do not have authority to take adverse employment actions against employees. Otherwise, they would be considered supervisors. So, lawsuits against coworkers are generally limited to claims of harassment.

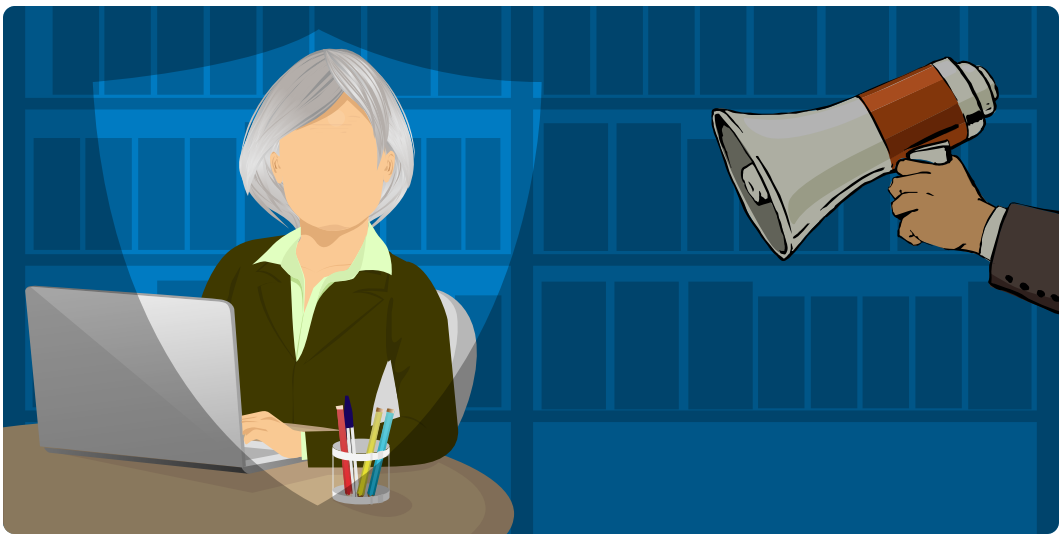
A coworker can be held personally liable for harassing an employee on the basis of their protected characteristic.[58] Similarly, the employer can be held liable if:

- The employer or any supervisors knew (or should have known) about the coworker's harassing conduct, and
- The employer failed to take immediate and appropriate action to correct the harassment.[59]

This is essentially a “negligence” theory of liability. Meaning, an employer will be liable if it negligently permits an employee with a protected characteristic to be harassed by coworkers.[60]

CH. 04

Which Workers Are Protected by Anti-Discrimination Laws?



The California Fair Employment and Housing Act ("FEHA") states that it is unlawful to discriminate against "any person" because of their protected characteristic.[61] In reality though, the protections of this part of the law are limited to the employment context.[62] The result is that only certain groups of workers can benefit from California's legal protections.

4.1 Employees

For the most part, a person must be an employee to be protected against discrimination under California law, at least in the context we're talking about in this article.[63] An *employee* is someone who is both:

- A person who works under the direction and control of the employer, and
- A person whom the employer has agreed to hire.[64]

The employer's agreement to hire the employee does *not* necessarily need to be made in writing (although that often helps). It can be made orally, or even just implied

by the actions of the employer and worker.[65]

If the employer has not agreed to hire the person, they might still be considered an "employee" if they are working under an *appointment* or as an *apprentice*.[66]

4.2 Job Applicants

California law expressly extends its anti-discrimination protections to applicants for employment positions.[67] Specifically, California makes it unlawful for an employer to refuse to hire a person or refuse to select the person for training that might lead to employment based on their protected characteristic (like the color of their skin, their gender, or their sexual orientation).[68]

An *applicant* is someone who files a written application with an employer. If the employer does not provide a written application form, then a person is an applicant if they express a specific desire to the employer to be considered for employment.[69]

In some cases, a person can be considered an "applicant" even if they haven't actually applied for a job. If they were deterred from applying for the position because of the employer's discriminatory practices, they may still have rights under California law.[70]

Importantly, California's protections do not extend to under-qualified applicants. An employer has the right to reject an applicant if they are less qualified for a position than the person ultimately selected.[71]

4.3 Independent Contractors (Harassment Only)

Under California law, an *independent contractor* is someone who performs a specific service for a specific price.[72] The person or business paying the independent contractor can control the result they want, but generally has no authority to control *the way* the independent contractor achieves the result.[73]

Independent contractors are not employees,[74] since they don't work under the direct control and supervision of the employer.[75] They therefore are not protected from workplace discrimination. They are, however, protected against harassment under FEHA.[76]

4.4 Immediate Family Members

Individuals employed by their parents, spouse, or child are *not* protected by California's anti-discrimination laws.[77]

Harassment of spouses and family members, however, may constitute criminal domestic violence.

4.5 Temporary Employees (Temps)

Temporary employees (sometimes called *temps*) are generally protected by California's anti-discrimination and anti-harassment laws.[78]

If the temp was hired by an agency and the agency assigned them to work for a business, the temp will sometimes be an employee of *both* the agency and business. Meaning, they can hold both the temp agency and the business responsible for unlawful discrimination.[79]

A temp does *not* have to be compensated directly by a temp agency or a business to be considered an employee. Rather, courts look at the amount of control the temp agency or business exercises over the worker.[80]

4.6 Unpaid Interns

Unpaid interns work for an employer in exchange for college or school credit or professional experience. Unpaid interns are generally *not* considered employees because the employer has not agreed to hire them.[81]

Nevertheless, as of 2015, California law protects unpaid interns from discrimination and harassment to the same extent as employees.[82] Unpaid interns represent one of the few positions in which a worker will have the right to be free from discrimination despite not being an employee.

4.7 Volunteers

A *volunteer* is a person who offers labor without pay and without expectation of pay. Volunteers aren't employees, and therefore not protected from discrimination under California's anti-discrimination laws.[83] Volunteers are, however, protected from harassment.[84]

4.8 Certain Nonprofit Employees

Employees who work for a non-profit sheltered workshop or a rehabilitation facility are sometimes not considered “employees” under California's anti-discrimination laws.[85] To qualify under this exemption, the employee must be employed under a special license issued by the Division of Labor Standards Enforcement.[86] These places are specifically reserved for the disabled.

Notably, this category is now largely historical. California has phased out the special subminimum-wage license: no new licenses may be issued after January 1, 2022, and Labor Code section 1191 became inoperative while section 1191.5 was repealed as of January 1, 2025. Since that date, an employee with a disability must be paid no less than the applicable minimum wage.[87] Workers formerly employed under these licenses are therefore protected as employees like anyone else.

Whatever the case, despite this exemption, the employee might have a right to sue the employer if the employer engages in discriminatory or harassing activity that is not necessary to serve employees with disabilities.[88]

CH. 05

Which Characteristics Receive Protection?

5.1 Age

Age discrimination occurs when an employee or job applicant over the age of 40 receives less favorable treatment because of their age.[89] Both state and federal law prohibit covered employers from discriminating against an employee or applicant because of his or her age, so long as the employee is over the age of 40.[90]

This means that covered employers may not refuse to hire older workers who are equally or more qualified than other candidates simply because of their age, nor may covered employers fire employees once they reach a certain age.

5.2 Race, Color, National Origin, or Ancestry

It is unlawful in California for employers to discriminate against employees or job applicants based on their race, the color of their skin, their national origin, or their ancestry.[91] It is also unlawful for employers to discriminate on the basis of an

employee's association with members of other races, skin colors, national origins, or ancestries.[92]

California's protections against race discrimination also reach traits historically associated with race, including hair texture and protective hairstyles such as braids, locs, and twists.[93]

Employees are protected even if they are members of racial groups that have not traditionally been the subject of discrimination (like Caucasian employees).[94] Some people refer to these types of claims as “reverse discrimination” claims.

Of course, an employee's ethnicity will not always be readily known by the employer. California has therefore extended its protections against discrimination to employees that are *perceived* to be of a certain race, color, national origin, or ancestry (or perceived to associate with these groups).[95]

So even if the employee isn't actually a member of a protected class, it is still unlawful for an employer who believes them to be a member of that group to discriminate on that basis.

5.3 Religion

It is unlawful to discriminate against someone for their religious beliefs.[96] Additionally, if an employee has a genuine religious belief or observance that interferes with their job duties or work schedule, the employer must try to accommodate it.[97]

The phrase *religious belief* is a broad term that includes all aspects of religious practices.[98] Specifically, it can include the following:

- **Religious belief**: An actual religious belief or perceived belief. A belief in a god, supreme being, or a deity is not required to be considered *religious*, but something more than a philosophy or way of life is required.[99]
- **Profession of religious belief**: Identifying as a believer or practitioner of a particular faith.
- **Outward signs** of a particular religious belief or practice, including rituals, customs, and manner of dress.[100]

The test to determine whether a religious belief is a “genuine” one is whether it is sincerely held by the employee.[101] It is usually up to the employee, not their

employer or a court, to decide what is a tenet of their religious belief, what practices are necessary, or what constitutes religious observation.[102]

These protections, however, are sometimes limited. An employer does not need to accommodate a religious belief that would keep the employee separated from other employees or the public, or if it would cause violation of another civil right.[103]

> EXAMPLE
>
> A religious employee states that it is a sin for him to be alone in the same room with a woman who isn't his wife or a relative. He therefore requests that the employer separate him from female employees in the workplace. This accommodation is *not* reasonable because it would keep the employee separated from other employees or the public.[104]

5.4 Physical Disabilities

Physical disabilities are the most common type of disability in the workplace. In most cases, a *physical disability* is any bodily condition, cosmetic disfigurement, or anatomical loss that affects one or more of the body's major systems and limits a major life activity.[105]

In general, both employees and job applicants have a right to be free from discrimination on the basis of their physical disability.[106]

There are several ways an employee can show that they suffer from a physical disability. The most common way is to show three things:

- **Physical impairment.** The employee has an anatomical loss, cosmetic disfigurement, physiological disease, disorder, or condition.
- **Major bodily system.** The physical impairment affects at least one of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
- **Limited Life Activity.** The condition limits a major life activity.[107]

A condition *limits a major life activity* if it makes the achievement of that activity difficult.[108] The phrase “major life activity” is treated broadly. It includes normal

social activities, basic life functions (walking, eating, sleeping, etc.), and working.[109]

A worker can also establish that they have a physical disability by showing:

- That they have any health impairment that requires special education or related services;[110]
- That they have a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment;[111] or
- That their employer has a mistaken belief that the worker has or had a physical disability.[112]

In addition to the general test described above, California law has specifically included certain conditions as being within the definition of physical disability:

- Deafness,
- Blindness,
- Missing limbs (whether partial or complete),
- Mobility impairments requiring the use of a wheelchair,
- Cerebral palsy, and
- Chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, and heart and circulatory disease.[113]

An employee does *not* have a qualified disability if their condition is mild and temporary.[114] Mild conditions are determined on a case-by-case basis. They include conditions that have little or no long-term effects.[115] Examples include:

- The common cold,
- Seasonal or common influenza,
- Minor cuts or abrasions,
- Sprains,
- Muscle aches,
- Soreness,
- Bruises,
- Non-migraine headaches, and

- Minor and non-chronic gastrointestinal disorders.[116]

5.5 Mental Disabilities

A *mental disability*, for these purposes, is any mental or psychological condition that limits a major life activity.[117]

In general, both employees and job applicants have a right to be free from discrimination due to their mental disability.[118] Likewise, an employer also may not discriminate based on a perception that an employee or applicant has a mental disability, whether or not the belief is correct.[119]

Common examples of qualified mental disabilities include:

- Emotional illnesses,
- Mental illnesses,
- Intellectual or cognitive disability,
- Certain learning disabilities,
- Autism spectrum disorders,
- Schizophrenia,
- Clinical depression,
- Bipolar disorder,
- Post-traumatic stress disorder, and
- Obsessive compulsive disorder.[120]

Importantly, California law specifically excludes certain behavioral problems, even though many of them are arguably mental disabilities:

- Compulsive gambling,
- Kleptomania,
- Pyromania,
- Substance abuse disorders resulting from the current *unlawful* use of drugs, and

- Certain sexual behavior disorders, like pedophilia, exhibitionism, and voyeurism.[121]

Notably, transsexual or transgender persons do *not* have an excluded sexual behavior disorder. California law protects their right to appear or dress consistently with the employee's gender identity or gender expression.[122]

5.6 Medical Condition

A *medical condition* is defined as any genetic characteristic associated with a disease or a health impairment related to a cancer diagnosis.[123] Medical conditions are often an issue with employees who have an increased risk of future health problems.

California law protects employees with medical conditions.[124] This means that even though an employee is not currently experiencing symptoms, their employer may *not* discriminate against them.

The existence of a medical condition that exposes the employee to an increased risk of future medical problems renders them legally “disabled” for these purposes, and entitles them to protection.

5.7 Genetic Information

In California, an employer may *not* collect genetic information from an employee or prospective employee to make any decisions regarding that individual's employment.[125]

Genetic information may not be acquired from:

- The results of an individual's genetic test,
- The results of the genetic tests of the individual's family members,
- The knowledge that a genetic disease has manifested in the individual or a family member, and
- Requests to undergo genetic testing or to have a family member go through genetic testing.[126]

The phrase *genetic characteristics* refers to:

- A gene, chromosome, or combination of genes known to cause a certain disease or to greatly increase the risk of it, but hasn't manifested into actual disease,
- Inherited characteristics of a disease or disorder, or a characteristic that makes an individual more likely to develop a disease but hasn't manifested into disease yet.[127]

> EXAMPLE
>
> An employer may not fire an employee whose mother has Huntington's Disease under the assumption that the employee has inherited the disease.

5.8 Marital Status

An employer does *not* have the right to discriminate against a worker for being single, married, separated, divorced, or widowed.[128] Employers are also prohibited from adopting outright bans on hiring married workers at the same place of employment.[129]

It is not, however, considered discriminatory to regulate married coworkers in the same department to minimize any problems that may occur.[130] It is also not discriminatory to offer bigger benefits packages to those employees with more dependents, such as spouses.[131]

5.9 Sex

In California, an employer may not favor or discriminate against persons based on their sex.[132] *Sex* normally refers to whether a person is biologically male or female.

But the word “sex” in this context is broader than how it is normally used. It can include discrimination based on:

- Pregnancy or medical conditions related to pregnancy,
- Childbirth or medical conditions related to childbirth,
- Breastfeeding or medical conditions related to breastfeeding,
- Physical gender (male, female, intersex),

- ⚧ Gender identity, and
- ⚧ Gender expression.[133]

5.10 Pregnancy

In California, it is unlawful for an employer to discriminate against a pregnant employee on the basis of their pregnancy.[134] Pregnancy discrimination by a qualified employer is *always* prohibited, regardless of whether the employee is disabled from the pregnancy.

In some cases, pregnant women receive protection from discrimination based on both: their pregnancy, and their pregnancy-related disability. If pregnant women are disabled by their pregnancy, they are entitled to a reasonable accommodation unless it would cause the employer an undue hardship.[135]

Reasonable accommodations can be important for female employees because an employer will sometimes be required to grant extended family leave.[136] Additionally, a reasonable accommodation may be necessary to modify the employee's work conditions and permit the employee to work in comfort.

To be eligible for these types of accommodations, the employee would need to be legally “disabled” by their pregnancy, meaning the employee would need to show her pregnancy has limited a major life activity.[137]

5.11 Gender, Gender Identity, or Gender Expression

Qualified employers are prohibited from discriminating against employees on the basis of their gender, gender identity, or gender expression.[138]

These terms are broad and include a person's gender-related appearance and behavior, even if that isn't stereotypically associated with the person's assigned sex at birth.[139] Thus, people who are transgender, genderqueer, and gender-fluid are protected against employment discrimination in California.

5.12 Sexual Orientation

In California, it is unlawful for an employer to discriminate against a person for their sexual orientation.[140] The phrase *sexual orientation* refers specifically to whether a person is heterosexual, homosexual, or bisexual.[141]

Employers are also prohibited from discriminating against employees for their perceived sexual orientation.[142]

> EXAMPLE
>
> An employer covered under the Fair Employment and Housing Act fires a male employee because he “acts gay.” That employer has engaged in unlawful sexual orientation discrimination, regardless of whether the employee is actually gay.[143]

5.13 Reproductive Health Decisionmaking

Since January 1, 2023, California law has also prohibited employers from discriminating against employees or job applicants because of their reproductive health decisionmaking.[144] This includes, but is not limited to, a decision to use or access a particular drug, device, product, or medical service for reproductive health.[145]

Employers are also prohibited from requiring employees or applicants to disclose information about their reproductive health decisionmaking as a condition of employment, continued employment, or an employment benefit.[146]

5.14 Military or Veteran Status

It is illegal to discriminate against active and veteran military service members.[147]

California's anti-discrimination protections apply to active military service members and veterans of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.[148]

5.15 Criminal Conviction History

Most employers in California are prohibited from asking job applicants about their conviction history before making a conditional offer.[149] After a conditional offer is made, the employer may conduct a background check.[150] But even then employers are prohibited from considering any of the following:

- An arrest not followed by conviction, except under limited circumstances (like when the employee or applicant is currently out on bail);
- Referral to or participation in a pretrial or posttrial diversion program; or
- Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.[151]

If, after a conditional offer is made, the employer conducts a background check and discovers a prior conviction, they must conduct an individualized assessment of the applicant's conviction history. The goal of this individualized assessment is to determine whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position.[152]

During the individualized assessment, the employer must consider:

- The nature and gravity of the offense or conduct,
- The time that has passed since the offense or conduct and completion of the sentence, and
- The nature of the job held or sought.[153]

An employer that fires or refuses to hire a worker in violation of these rules commits unlawful discrimination.

5.16 Combinations of Characteristics

An employee is protected not only when they are discriminated against because of a single protected characteristic, but also when the discrimination is based on a *combination* of protected characteristics.[154] An employer might, for example, tolerate older workers generally and tolerate female workers generally, yet single out older women. That is unlawful discrimination even though neither age nor sex alone explains the treatment.[155]

CH. 06

Other Types of Unlawful Discrimination

As mentioned above, California's primary anti-discrimination law is called the California Fair Employment and Housing Act ("FEHA").[156] It protects the groups of people listed above from discrimination.

But throughout California's labor laws, there are other types of prohibited acts that might constitute unlawful discrimination. Many of them are addressed in this section.[157]

6.1 Failure to Accommodate a Disability

California law requires employers to make reasonable accommodations for employees with disabilities.[158] This duty arises as soon as the employer knows of the disability.[159] An employer does not have this duty, however, if the accommodation would cause the employer an undue hardship.[160]

A *reasonable accommodation* is an adjustment to the employee's work environment that can enable the employee to perform the essential functions of the job.[161] The

type of adjustment will vary depending on the employee's job and the nature of the disability. Whether a proposed accommodation is reasonable is a question of fact, and can be the subject of much debate.[162]

Common examples of accommodations for disabilities include:

- Rearranging the employee's workspace to make it accessible for people with disabilities.[163]
- Permitting the employee time off to see a medical professional.[164]
- Permitting an employee to work from home.[165]
- Changing the time in which the duties of the employee's position must be completed.
- Allowing the employee to bring an assistive animal to the workplace.[166]

There are, of course, many other types of accommodations to which an employee may have a right. The most appropriate type of accommodation will depend on the employee's specific situation.

If you would like to learn more about reasonable accommodations for disabilities in California, please review our article: Reasonable Accommodation Laws in the California Workplace.

6.2 Failure to Accommodate a Religious Preference

Likewise, an employer must make reasonable accommodations for an employee's religious preferences.[167] Once an employee has shown that he or she sincerely believes and follows a religion, the burden is on the employer to make reasonable accommodations so the employee can observe the religion and work if requested.[168]

Three things must be established before there is a duty to accommodate the employee's religious preferences:

- The employee must have a bona fide religious belief,
- The employer must be aware of that religious belief, and
- The belief must conflict with the employee's job in some way.[169]

Once these elements are established, the employer must respect the employee's religious tenets and accommodate the observance of the employee's religious practices.[170]

> EXAMPLE
>
> An observant Jew cannot work on the Sabbath, so his employer does not require him to work on Saturdays and holidays. However, the Sabbath begins on Friday at sundown. In the winter, sundown begins before the employer's business closes in the evening.
>
> The employer might accommodate the employee's religious practices by allowing him to start work earlier on Friday so as to get home before sundown.

As you can see, the available types of accommodations will depend on the individual employee's religious beliefs, practices, and observances.[171]

However, the employer need not accommodate an employee's religious beliefs if doing so would cause the employer to experience an "undue hardship."[172] An employer is subject to an *undue hardship* if the accommodation would require significant difficulty or expense.[173]

Employers must explore every reasonable option available before determining that no accommodation can be made.[174]

6.3 Failure to Accommodate a Lactation Break

A *lactation break* is a period of time during the work day for nursing mothers to express breast milk (i.e., a break to pump). Both state and federal laws require California employers to provide lactation breaks.[175]

But the right to a lactation break does not apply if it would seriously disrupt the operations of the employer.[176] This exception is hard to meet, however, and employers should be cautious before invoking it.

Importantly for the purposes of this article, employers are prohibited from discriminating against employees who request a lactation accommodation or who attempt to express breast milk.[177]

If you would like to learn more about lactation break laws in California, please review our article: Workplace Breastfeeding Laws in California, Made Easy.

6.4 Immigration-Based Discrimination

All persons, regardless of their immigration status, are protected by California's employment laws.[178] That does not mean, however, that immigration-based discrimination is unlawful. It merely means that non-citizens are protected against discrimination to the same extent as United States citizens.[179]

In fact, employers are prohibited by law from hiring or continuing to employ undocumented immigrants.[180] So, to some extent, employers are required to consider an employee's immigration status.

The employer's ability to investigate their employees' legal status is limited, however. They may not request more or different documents than are required by the federal government.[181] Nor may they refuse to honor immigration-related documents that reasonably appear to be genuine.[182]

And, if the employee is present in the United States legally, and the employer nevertheless discriminates against them on the basis of their status as an immigrant, the employer may have engaged in national origin discrimination.

It is unlawful for employers to discriminate against an employee based on their national origin.[183] National origin discrimination can include discrimination against those holding the type of driver's license that California gives to non-citizens.[184]

Additionally, employers are prohibited from reporting or threatening to report their employees' citizenship or immigration status in retaliation for the employee's exercise of an employment-related right.[185]

6.5 Language Discrimination

In general, it is unlawful for employers to limit or prohibit the use of any language in any workplace.[186] These issues commonly arise when an employer adopts an English-only requirement in their workplace.

The purpose of the rule prohibiting language discrimination is to prevent employers from adopting policies that effectively discriminate against employees based on national origin.[187]

As with many laws, there is an important exception to the rule prohibiting language discrimination. An employer may limit or prohibit the use of a language in the workplace if:

- The language restriction is justified by a business necessity,
- The employer has notified its employees of when the language restriction is required to be observed,
- The employer has notified its employees of the consequences of violating the language restriction, and
- There is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.[188]

A language restriction is considered a *business necessity* when it is needed to ensure the safe and efficient operation of the business. The language restriction must also effectively fulfill the business purpose it is supposed to serve.[189]

6.6 Political Discrimination

California law prohibits employers from controlling their employees' political activities.[190] This means that an employer may not punish an employee for being a member of a specific political party. Nor may employers forbid employees from going to political rallies or becoming candidates for public office.

Employers are also prohibited from trying to coerce or influence their employees to take any sort of political action.[191] And employers are prohibited from retaliating against employees who oppose such practices.[192]

Political discrimination can be serious. In some cases, it is criminally punishable as a misdemeanor.[193] There are also fines, fees, and civil damages that can be imposed against the employer (and sometimes recovered by the employee).[194]

6.7 Failure to Prevent Discrimination

If an employer becomes aware that discrimination in the workplace is occurring, they have a duty to put a stop to it and to take all reasonable steps necessary to prevent it in the future.[195]

As mentioned above, employees have the burden of proving that they were the victim of discrimination.[196] This burden extends to cases in which the employee is alleging that the employer unlawfully failed to prevent workplace discrimination.[197]

To meet this burden, the employee must present evidence to show that several facts are true. These facts are called “elements” of the claim. The elements of a failure-to-prevent-discrimination claim are as follows:

- The employee was subject to discrimination, harassment, or retaliation;
- The employer knew or should have known about the discrimination, harassment, or retaliation;
- The employer did nothing (or not enough) to prevent the discrimination, harassment, or retaliation from happening; and
- The employee was harmed by the discrimination, harassment, or retaliation.[198]

These types of claims commonly arise when an employee wants to sue their employer for the actions of other people in the workplace who may or may not be personally liable for discrimination.

6.8 Harassment

The California Fair Employment and Housing Act (“FEHA”) prohibits employers from harassing any employee on the basis of one of the protected characteristics listed above (e.g., race, gender, sexual orientation, disability, religion, etc.).[199] This rule applies to employers, supervisors, and coworkers.[200]

Harassment occurs when a work environment is made to be hostile, offensive, oppressive, or intimidating.[201] Harassment is unlawful when it is motivated by a protected characteristic.[202] This kind of environment deprives its victim of their statutory right to work in a place free of discrimination.[203]

To be actionable, harassment must be frequent or severe.[204] A single offensive comment will usually not meet this test.[205] But a single incident of harassing conduct can be enough to create a triable issue if it unreasonably interfered with the employee's work performance or created an intimidating, hostile, or offensive working environment, and harassment cases are rarely appropriate for summary judgment.[206]

Harassment can take a variety of forms. The harassment may involve physical, oral, or written conduct that is offensive or derogatory, so long as it is motivated by the

employee's protected characteristic.[207] Common examples of harassment include frequent or severe:

- Offensive jokes,
- Name-calling,
- Derogatory comments about the employee's appearance, or
- Inappropriate touching.[208]

Unlike normal discrimination claims, the law does not require employees to be damaged or harmed in any way by the offending conduct. A claim of unlawful harassment is complete simply by the harassment itself.[209]

Additionally, even small employers (those who employ one or more employees) are prohibited from engaging in unlawful workplace harassment.[210] This differs from discrimination claims, which generally only apply to employers of five or more people.[211] So, harassment claims are sometimes easier to prove than normal discrimination claims.

CH. 07

Consequences of Unlawful Discrimination

Employers who unlawfully discriminate are subject to civil damages and penalties. Among other consequences, employers could be subject to the following:

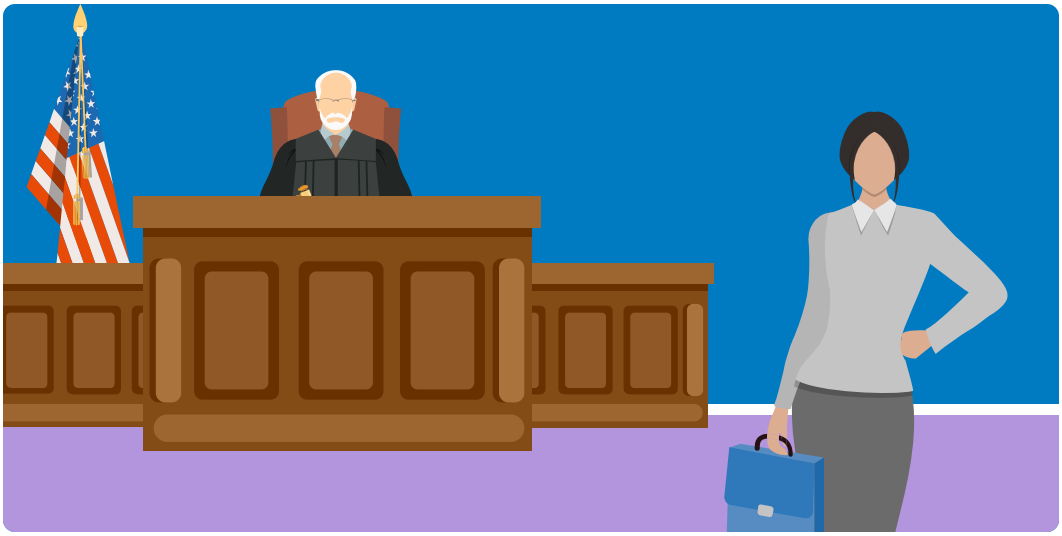
- Paying the employee backpay, contributing to the employee's retirement funds, or giving the employee other amounts that are meant to compensate them for all the harm caused by the employer's unlawful acts;[212]
- Paying damages equal to the amount of money the employee may have lost from: an unfair firing, the refusal to promote the employee, or unequal pay;[213]
- Repaying the employee's attorney fees;[214]
- Repaying the employee's litigation expenses or expert witness fees;[215]
- Reinstatement of the employee in their job, or paying the employee's future projected earnings if reinstatement isn't feasible;[216]
- Interest on the amounts won as a result of a lawsuit;[217]
- Compensation for the employee's emotional pain or suffering;[218] and

- Punitive damages meant to punish the employer for their wrongdoing.[219]

These types of damages are the most common seen in employment cases. If specific facts merit, there may be other types of remedies the employee can pursue.

CH. 08

Filing a Discrimination Claim



8.1 Claims Start with a Government Agency

When an employee decides to sue their employer, they must first file a written complaint with an administrative agency.[220] Employees pursuing a discrimination claim can't go straight to court with a lawsuit.[221] They must first go through this administrative process, which is referred to as “exhausting” the employee's administrative remedies.

If the employee is bringing claims under state law only, the complaint should be filed with California's Civil Rights Department (the CRD).[222] We have provided a more in-depth explanation of the process in our article: How to File a Work Discrimination Complaint with California's Civil Rights Department.

If the employee is bringing claims under federal law, the complaint can be filed with either the CRD or the U.S. Equal Employment Opportunity Commission (the EEOC). When a complaint is filed with the CRD, courts consider it to have also been filed with the EEOC.[223]

Filing the complaint in either agency satisfies the employee's obligations in this regard. If the employee chooses to file with the EEOC, they can find more information

about the process here.

If, after a complaint is filed with the appropriate administrative agency, the claim is not resolved by either the EEOC or the CRD, the employee will be issued a document called a *right-to-sue letter*.[224] The employee may then pursue their case by bringing a lawsuit in court.

8.2 The Deadline to File (Statute of Limitations)

Employees are up against strict deadlines when pursuing relief for work discrimination. If the employee is bringing claims under state law, they must file a complaint against the employer with California's Civil Rights Department (the CRD) no later than **three years** from the date of the alleged discriminatory act.[225]

If the employee has gone through the administrative process and has been issued a right-to-sue letter from the CRD, the employee will then have **one year** to file a lawsuit in civil court against the employer.[226] This one-year clock starts ticking on the date the right-to-sue letter is issued.

If the employee is pursuing federal relief, they must file a complaint with either the CRD or the U.S. Equal Employment Opportunity Commission (the EEOC) within **300 days** of the alleged discriminatory act.[227] If either agency issues a right-to-sue letter, the employee will have **90 days** to file a lawsuit in court based on federal claims.[228]

There are, of course, exceptions to these time limits. You should speak with a lawyer immediately if you are unsure whether your claim is time-barred.

8.3 Retaliation is Prohibited

Employees are often worried about the consequences of pursuing a discrimination claim against their employer. However, it's important to understand that employers may not terminate or take adverse employment actions against their employees simply because the employee opposed the employer's discriminatory policies.[229]

Similarly, an employee who has suffered discrimination has a right to file a complaint, testify, or assist in any proceeding in a discrimination claim against their employer. The employer may not retaliate against them for doing so.[230]

CH. 09

Hiring a Lawyer

Employees are *not* required to have a lawyer to file a claim against their employer, but it's often a good idea to have one.

The law can be complex and very few cases are straightforward. Even if the facts are strong in an employee's case, an experienced employment law attorney can sometimes help by:

- Collecting all legally relevant information,
- Applying the law to the evidence and related facts in a compelling way,
- Avoiding the strategic pitfalls many nonlawyers are unfamiliar with, and
- Maximizing the financial damages the employee receives.

Of course, there is no guarantee that a lawyer will be able to accomplish these things. But when employees handle their legal disputes without representation, there is sometimes an increased risk that they will lose or severely harm their case due to legal missteps that a lawyer would have avoided.

If the employer contests the employee's claim (which happens often), legal arguments will have to be made and evidence might need to be presented. This

might occur in court or with an administrative agency, sometimes according to complicated legal procedures. It can be a good idea to have a lawyer who is familiar with navigating these systems.

In many cases, attorneys are willing to work with no upfront costs on the part of the employee. Instead, they will take a percentage of what the employee wins at the end of the case.

It is also possible that the employer will be required to pay the employee's legal fees at the end of the case. Some laws place the burden of those expenses on the employer because it's easier for them to afford it.[231]

References

1	Gov. Code, § 12940.
2	See, e.g., 42 U.S.C. § 2000e–2000e-17 [Civil Rights Act of 1964]; Gov. Code, § 12921.
3	Gov. Code, § 12920 [“It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decisionmaking, or military and veteran status.”].
4	Gov. Code, § 12920.
5	Gov. Code, § 12940, subd. (a); *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 638 [“The broad purpose of the FEHA is to safeguard an employee's right to seek, obtain, and hold employment without experiencing discrimination on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age.”].
6	Gov. Code, § 12926, subd. (d).
7	Gov. Code, §§ 12925, subd. (b), 12930.
8	Gov. Code, § 12960, subd. (b); Cal. Code of Regs., tit. 2, §§ 10002–10034.
9	42 U.S.C. § 2000e–2000e-17 [Civil Rights Act of 1964].
10	42 U.S.C. § 12101(b)(2). The ADA has since been modified by the ADA Amendments Act of 2008, which kept the ADA's original purpose but expanded the rights it provided. (Pub.L. No. 110-325, § 2, 122 Stat. 3553.)
11	29 U.S.C. § 206(d).

12 29 U.S.C. § 621(b).

13 Genetic Information Nondiscrimination Act of 2008 (Pub.L. No. 110-233, 122 Stat. 881), codified at 42 U.S.C. § 2000ff et seq. Title II of the act governs employment discrimination.

14 *Bostock v. Clayton County* (2020) 590 U.S. 644 [140 S.Ct. 1731] [discrimination based on sexual orientation or gender identity is discrimination "because of . . . sex" under Title VII of the Civil Rights Act of 1964].

15 42 U.S.C. § 2000e-5.

16 *California Federal Sav. & Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 281 ["Congress has explicitly disclaimed any intent categorically to pre-empt state law or to 'occupy the field' of employment discrimination law."]; see, e.g., 42 U.S.C. § 2000e-7; 29 C.F.R. § 1630.1(d) ["This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than is afforded by this part."].

17 Gov. Code, § 12926, subd. (d).

18 See, e.g., 29 U.S.C. § 630(b); 42 U.S.C. § 12111(5).

19 See *Taylor v. Lockheed Martin Corp.* (2000) 78 Cal.App.4th 472, 481 ["A federal enclave is land over which the federal government exercises legislative jurisdiction."].

20 Fed. R. Civ. Proc., rule 48(b) ["Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members."].

21 Cal. Const., art. I, § 16; Code of Civ. Proc., § 618.

22 *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 128 ["In general, there are two types of illegal employment discrimination under the ADA and the FEHA: disparate treatment and disparate impact."].

23 *Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 195 ["In order to prevail under the disparate treatment theory, an

employee must show that the employer harbored a discriminatory intent."].

24 *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307; *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129.

25 CACI No. 2500 [Disparate Treatment—Essential Factual Elements (Gov. Code, § 12940(a))].

26 *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129 ["To prevail on a theory of disparate impact, the employee must show that regardless of motive, a facially neutral employer practice or policy, bearing no manifest relationship to job requirements, in fact had a disproportionate adverse effect on certain employees because of their membership in a protected group."].

27 *Int'l Bhd. of Teamsters v. United States* (1977) 431 U.S. 324, 335, fn. 15 [97 S.Ct. 1843, 1854] ["Claims of disparate treatment may be distinguished from claims that stress 'disparate impact.' The latter involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity. [Citations.] Proof of discriminatory motive, we have held, is not required under a disparate-impact theory."].

28 *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307; *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129.

29 CACI No. 2502 [Disparate Impact—Essential Factual Elements (Gov. Code, § 12940(a))].

30 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a).

31 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (d).

32 Gov. Code, § 12940, subd. (j)(4)(A) [defining "employer" to include "any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract," for the purposes of harassment]; *Page v. Superior Court* (1995) 31 Cal.App.4th 1206, 1217 ["FEHA's prohibition against harassment is not limited to employers of five or more persons. Rather, FEHA expressly

	makes the harassment prohibition applicable to employers of 'one or more persons.'"].
33	Gov. Code, §§ 12920, 12926, subd. (d).
34	Gov. Code, § 12926, subd. (d).
35	Gov. Code, § 12925, subd. (d).
36	Cal. Code of Regs., tit. 2, § 11008, subd. (d)(1).
37	Cal. Code of Regs., tit. 2, § 11008, subds. (c), (d).
38	Cal. Code of Regs., tit. 2, § 11008, subds. (c), (d).
39	Cal. Code of Regs., tit. 2, § 11008, subd. (d)(2).
40	Cal. Code of Regs., tit. 2, § 11008, subd. (d)(2).
41	42 U.S.C. § 12111(5)(A); 29 C.F.R. § 1630.2(e)(1).
42	Gov. Code, § 12926, subd. (d).
43	Cal. Code of Regs., tit. 2, § 11008, subd. (d)(5) ["A religious association or religious corporation not organized for private profit is not an employer under the meaning of this Act; any non-profit religious organization exempt from federal and state income tax as a non-profit religious organization is presumed not to be an employer under this Act. Notwithstanding such status, any portion of such tax exempt religious association or religious corporation subject to state or federal income taxes as an unrelated business and regularly employing five or more individuals is an employer."].
44	See Gov. Code, § 12926.2.
45	Cal. Code of Regs., tit. 2, § 11008, subd. (d)(6) ["'Employer' includes any non-profit corporation or non-profit association other than that defined in subsection (5)."].
46	Civ. Code, § 2295.
47	Gov. Code, § 12926, subd. (d); Cal. Code of Regs., tit. 2, § 11008, subd. (d)(3) ["Any person or individual acting as an agent of an employer, directly or indirectly, is also an employer."].
48	Gov. Code, § 12940, subd. (a).

49 *Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [holding that FEHA's agent-inclusive definition permits a business-entity agent with at least five employees that carries out FEHA-regulated activities to be held directly liable as an employer; the Court did not decide whether the same is true of agents with fewer than five employees].

50 *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 492 [“The Court of Appeal in Nichols identified the 'right to control' as a significant factor in defining an agency relationship.”]; see also *Laird v. Capital Cities/Abc* (1998) 68 Cal.App.4th 727, 741.

51 *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 493.

52 *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 503 [“A franchisor will be liable if it has retained or assumed the right of general control over the relevant day-to-day operations at its franchised locations that we have described, and cannot escape liability in such a case merely because it failed or declined to establish a policy with regard to that particular conduct.”].

53 *Reno v. Baird* (1998) 18 Cal.4th 640, 645 [holding that only the employer, and not individual supervisors, may be sued and held liable under FEHA's prohibition against discriminatory hiring, firing, and personnel practices]; *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173; *Le Bourgeois v. Fireplace Mfg.* (1998) 68 Cal.App.4th 1049, 1054–1055.

54 *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 62–63 [“[I]t was the intent of the Legislature to place individual supervisory employees at risk of personal liability for personal conduct constituting harassment, but that it was not the intent of the Legislature to place individual supervisory employees at risk of personal liability for personnel management decisions later considered to be discriminatory. We conclude that the Legislature's differential treatment of harassment and discrimination is based on the fundamental distinction between harassment as a type of conduct not necessary to a supervisor's job performance, and business or personnel management decisions—which might later be considered discriminatory—as inherently necessary to performance of a supervisor's job. As a foundational step in our analysis, therefore, we distinguish harassment from discrimination.”].

55 *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 77 [“The fact that the employer is liable via the respondeat superior effect of the 'agent' language provides protection to employees even if individual supervisors are not personally liable. Hence we do not find this consideration to compel a conclusion that the Legislature must have intended to impose personal liability on individual supervisory employees.”].

56 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (d)(4).

57 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (d)(4) [“'Employer' includes the State of California, any political or civil subdivision thereof, counties, cities, city and county, local agencies, or special districts, irrespective of whether that entity employs five or more individuals.”].

58 Gov. Code, § 12940, subd. (j)(3).

59 Gov. Code, § 12940, subd. (j)(1) [“Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.”].

60 *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707 [“When the harasser is a nonsupervisory employee, employer liability turns on a showing of negligence (that is, the employer knew or should have known of the harassment and failed to take appropriate corrective action).”].

61 Gov. Code, § 12940, subd. (a).

62 See generally Gov. Code, § 12940.

63 *Shephard v. Loyola Marymount Univ.* (2002) 102 Cal.App.4th 837, 842 [“In order to recover under the discrimination in employment provisions of the FEHA, the aggrieved plaintiff must be an employee.”].

64 Gov. Code, § 12926, subd. (c); Cal. Code of Regs., tit. 2, § 11008, subd. (c) [“'Employee.' Any individual under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written.”]; but see *Shephard v. Loyola*

Marymount Univ. (2002) 102 Cal.App.4th 837, 842 [“[T]he FEHA does not define an employer, employee, or what constitutes employment.”].

65 Cal. Code of Regs., tit. 2, § 11008, subd. (c).

66 Cal. Code of Regs., tit. 2, § 11008, subd. (c); *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 633 [“[T]he FEHA confers employee status on those individuals who have been appointed, who are hired under express or implied contract, or who serve as apprentices.”]; but see *Estrada v. City of Los Angeles* (2013) 218 Cal.App.4th 143, 155 [person appointed to a volunteer position by a city was not an “employee” because he served without pay].

67 Gov. Code, § 12940; *Sada v. Robert F. Kennedy Med. Ctr.* (1997) 56 Cal.App.4th 138, 144.

68 Gov. Code, § 12940, subd. (a).

69 Cal. Code of Regs., tit. 2, § 11008, subd. (a) [“'Applicant.' Any individual who files a written application or, where an employer or other covered entity does not provide an application form, any individual who otherwise indicates a specific desire to an employer or other covered entity to be considered for employment.”].

70 Cal. Code of Regs., tit. 2, § 11008, subd. (a) [“Except for recordkeeping purposes, 'Applicant' is also an individual who can prove that he or she has been deterred from applying for a job by an employer's or other covered entity's alleged discriminatory practice.”].

71 *Sada v. Robert F. Kennedy Med. Ctr.* (1997) 56 Cal.App.4th 138, 153 [“The Act does not prohibit an employer from rejecting a job applicant because she is less qualified than the person selected.”].

72 Labor Code, § 3353.

73 Labor Code, § 3353.

74 Cal. Code of Regs., tit. 2, § 11008, subd. (c)(1).

75 Gov. Code, § 12940, subd. (j)(5).

76 Gov. Code, § 12940, subd. (j)(1).

77 Gov. Code, § 12926, subd. (c); *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 632 [noting that FEHA excludes persons employed by

close relatives].

78 Cal. Code of Regs., tit. 2, § 11008, subd. (c)(5) [“An individual compensated by a temporary service agency for work to be performed for an employer contracting with the temporary service agency is an employee of that employer for such terms, conditions and privileges of employment under the control of that employer. Such an individual also is an employee of the temporary service agency with regard to such terms, conditions and privileges of employment under the control of the temporary service agency.”].

79 Cal. Code of Regs., tit. 2, § 11008, subd. (c)(5); see also *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 174 [“The possibility of dual employment is well recognized in the case law. 'Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—his original or 'general' employer and a second, the 'special' employer.'”], quoting *Miller v. Long Beach Oil Dev. Co.* (1959) 167 Cal.App.2d 546, 549.

80 *Bradley v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1612, 1625–1626 [“[T]he employment relationship for FEHA purposes must be tied directly to the amount of control exercised over the employee. . . . The law has long recognized that a contracting employer acts as an 'employer' for purposes of applying state and federal antidiscrimination laws.”].

81 See Gov. Code, § 12926, subd. (c); Cal. Code of Regs., tit. 2, § 11008, subd. (c); but see Cal. Code of Regs., tit. 2, § 11008, subd. (k) [“Unpaid interns and volunteers may or may not be employees.”].

82 Gov. Code, § 12940, subds. (c), (j), (l).

83 See *Estrada v. City of Los Angeles* (2013) 218 Cal.App.4th 143, 155 [unpaid volunteer found to not be an employee within the meaning of FEHA].

84 Gov. Code, § 12940, subd. (j), as amended by Stats. 2014, ch. 302, § 1, eff. Jan. 1, 2015.

85 Gov. Code, § 12926.05, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (c)(1) [“'Employee' does not include any individual employed under

special license in a non-profit sheltered workshop or rehabilitation facility.”].

86 Gov. Code, § 12926.05; Labor Code, §§ 1191, 1191.5.

87 Lab. Code, §§ 1191, 1191.5, as amended by Stats. 2021, ch. 339 (SB 639); DIR, Sheltered Workshops and Special Minimum Wage Workers (dir.ca.gov).

88 Gov. Code, § 12926.05, subd. (b)(2).

89 29 U.S.C. §§ 623, 631(a); Gov. Code, §§ 12926, subd. (b) [“'Age' refers to the chronological age of any individual who has reached his or her 40th birthday.”], 12940, subd. (a) [an employer may not refuse to hire a candidate or discriminate against an employee on the basis of race, skin color, national origin, religion, disability, gender, sexual orientation, or age].

90 *Linsley v. Twentieth Century Fox Film Corp.* (1999) 75 Cal.App.4th 762, 766 [“Both California and federal law prohibit employers from unlawfully discriminating against employees on the basis of their age.”]; 29 U.S.C. §§ 621–634; Gov. Code, § 12900 et seq.

91 Gov. Code, § 12940, subd. (a).

92 Gov. Code, §§ 12926, subd. (o), 12940, subd. (a).

93 Gov. Code, § 12926, subds. (w), (x), added by the CROWN Act (Stats. 2019, ch. 58 [SB 188]).

94 *McDonald v. Santa Fe Trail Transp. Co.* (1976) 427 U.S. 273, 280 [96 S.Ct. 2574, 2579] [“Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable were they [non-white] . . . .”].

95 Gov. Code, § 12926, subd. (o) [“Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, reproductive health decisionmaking, or veteran or military status” includes any of the following: (1) Any combination of those characteristics. (2) A perception that the person has any of those characteristics or any combination of those characteristics. (3) A perception that the person is associated with a person who has, or is

perceived to have, any of those characteristics or any combination of those characteristics.].

96 Gov. Code, § 12940, subd. (a).

97 Gov. Code, § 12940, subd. (l)(1).

98 Gov. Code, § 12926, subd. (q) ["'Religious creed,' 'religion,' 'religious observance,' 'religious belief,' and 'creed' include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. 'Religious dress practice' shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual observing a religious creed. 'Religious grooming practice' shall be construed broadly to include all forms of head, facial, and body hair that are part of an individual observing a religious creed."].

99 *Friedman v. Southern California Permanente Medical Group* (2002) 102 Cal.App.4th 39, 49 ["A belief in a Supreme Being is not required. [Citations.] But, something more than a philosophy or way of life is required."].

100 Gov. Code, § 12926, subd. (q).

101 *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1013 ["The relevant inquiry is the sincerity, not the verity of the employee's religious beliefs."].

102 *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1014; *Fowler v. Rhode Island* (1953) 345 U.S. 67, 70 [73 S.Ct. 526, 527] ["it is no business of courts to say that what is a religious practice or activity for one group is not religion"].

103 Gov. Code, § 12940, subds. (l)(2), (l)(3).

104 Gov. Code, § 12940, subd. (l)(2) ["An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public."].

105 Gov. Code, § 12926, subd. (m)(1); *Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 584; *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1026.

106 Gov. Code, § 12940, subd. (a).

107 Gov. Code, § 12926, subd. (m)(1).

108 Gov. Code, § 12926, subd. (m)(1)(B)(ii) [“A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.”].

109 Gov. Code, § 12926, subd. (m)(1)(B)(iii) [“'Major life activities' shall be broadly construed and includes physical, mental, and social activities and working.”]; Cal. Code of Regs., tit. 2, § 11065, subd. (l)(1) [“Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.”].

110 Gov. Code, § 12926, subd. (m)(2).

111 Gov. Code, § 12926, subd. (m)(3).

112 Gov. Code, § 12926, subds. (m)(4), (m)(5).

113 Cal. Code of Regs., tit. 2, § 11065, subd. (d)(2)(C).

114 Cal. Code of Regs., tit. 2, § 11065, subd. (d)(9)(B).

115 See, e.g., *Muller v. Auto. Club of So. Cal.* (1998) 61 Cal.App.4th 431, 440–444 [no disability found where employee suffered from a mere temporary anxiety disorder].

116 Cal. Code of Regs., tit. 2, § 11065, subd. (d)(9)(B) [“'Disability' does not include: . . . conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis. These excluded conditions have little or no residual effects, such as the common cold; seasonal or common influenza; minor cuts, sprains, muscle aches, soreness, bruises, or abrasions; non-migraine headaches, and minor and non-chronic gastrointestinal disorders.”].

117 Gov. Code, § 12926, subd. (j)(1); Cal. Code of Regs., tit. 2, § 11065, subd. (d)(1).

118 Gov. Code, § 12940, subd. (a).

119 Gov. Code, §§ 12926, subd. (o), 12940, subd. (a).

120 Cal. Code of Regs., tit. 2, § 11065, subd. (d)(1).

121 Gov. Code, § 12926, subd. (j)(5); Cal. Code of Regs., tit. 2, § 11065, subds. (d)(9)(A) ["'Disability' does not include: . . . compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs, and 'sexual behavior disorders' . . . ."], (q).

122 See Gov. Code, § 12949.

123 Gov. Code, § 12926, subd. (i); Cal. Code of Regs., tit. 2, § 11065, subd. (d)(7).

124 Gov. Code, § 12940, subd. (a).

125 Gov. Code, § 12940, subd. (o) ["It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: . . . For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic."].

126 Gov. Code, § 12926, subds. (g)(1)–(4); Gov. Code, § 12940, subd. (o).

127 Gov. Code, § 12926, subds. (g), (i).

128 Gov. Code, § 12940, subd. (a) [prohibiting discrimination on the basis of marital status].

129 *Hope Internat. University v. Superior Court* (2004) 119 Cal.App.4th 719, 724 ["[R]egulations governing California's marital status antidiscrimination laws are clear that marriage between two coworkers is not ipso facto a reason to get rid of one of them."]; see also *id.* at p. 743 ["the state civil rights statute impliedly provides that employers cannot have an a priori or automatic rule against married coworkers"].

130 Gov. Code, § 12940, subd. (a)(3)(A).

131 Gov. Code, § 12940, subd. (a)(3)(B).

132 Gov. Code, § 12940, subd. (a).

133 Gov. Code, § 12926, subd. (r).

134 Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a), 12945.

135 *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1339 [“Under section 12940, a woman disabled by pregnancy is entitled to the protections afforded any other disabled employee—a reasonable accommodation that does not impose an undue hardship on her employer.”]; Cal. Code of Regs., tit. 2, § 11068, subd. (a).

136 Gov. Code, § 12945, subd. (b).

137 Gov. Code, § 12926, subd. (m)(1).

138 Gov. Code, § 12940, subd. (a).

139 Gov. Code, § 12926, subd. (r)(2) [“'Sex' also includes, but is not limited to, a person's gender. 'Gender' means sex, and includes a person's gender identity and gender expression. 'Gender expression' means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.”].

140 Gov. Code, § 12940, subd. (a).

141 Gov. Code, § 12926, subd. (s) [“'Sexual orientation' means heterosexuality, homosexuality, and bisexuality.”].

142 Gov. Code, § 12926, subd. (o).

143 Gov. Code, §§ 12926, subd. (o), 12940, subd. (a).

144 Gov. Code, § 12940, subd. (a), as amended by Stats. 2022, ch. 630 (SB 523), eff. Jan. 1, 2023.

145 Gov. Code, § 12926, subd. (y).

146 Gov. Code, § 12940, subd. (p).

147 Gov. Code, § 12940, subd. (a) [prohibiting employers from discriminating on the basis of the “veteran or military status of any person”].

148 Gov. Code, § 12926, subd. (k).

149 Gov. Code, § 12952, subd. (a).

150 Gov. Code, § 12952, subd. (a).

151 Gov. Code, § 12952, subd. (a); Labor Code, § 432.7, subds. (a)(1), (f).

152 Gov. Code, § 12952, subd. (c).

153 Gov. Code, § 12952, subd. (c).

154 Gov. Code, §§ 12920, 12926, subd. (o), as amended by Stats. 2024 (SB 1137), eff. Jan. 1, 2025. The Legislature declared the amendments declaratory of existing law.

155 See *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551, 1562 [recognizing that discrimination may target the combination of two protected traits].

156 Gov. Code, § 12940, subd. (a).

157 Please note that this article is not intended to be comprehensive. There may be types of unlawful discrimination not covered here.

158 Gov. Code, § 12940, subds. (a), (m); *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54 ["In addition to a general prohibition against unlawful employment discrimination based on disability, FEHA provides an independent cause of action for an employer's failure to provide a reasonable accommodation for an applicant's or employee's known disability."].

159 Cal. Code of Regs., tit. 2, § 11068, subd. (a).

160 Cal. Code of Regs., tit. 2, § 11068, subd. (a).

161 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.

162 *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228, fn. 11 ["the reasonableness of an accommodation is generally a factual question"].

163 Cal. Code of Regs., tit. 2, § 11065, subd. (p)(2)(A).

164 Cal. Code of Regs., tit. 2, §§ 11065, subd. (p)(2)(M), 11068, subd. (c).

165 Cal. Code of Regs., tit. 2, § 11065, subd. (p)(2)(L).

166 Cal. Code of Regs., tit. 2, § 11065, subd. (p)(2)(B).

167 Gov. Code, § 12940, subd. (l).

168 *Soldinger v. Northwest Airlines* (1996) 51 Cal.App.4th 345, 370 ["Once the employee establishes a prima facie case, then the employer must establish it initiated good faith efforts to accommodate or no accommodation was possible without producing undue hardship."].

169 *Soldinger v. Northwest Airlines* (1996) 51 Cal.App.4th 345, 370 ["In evaluating an argument the employer failed to accommodate an employee's religious beliefs, the employee must establish a prima facie

case that he or she had a bona fide religious belief, of which the employer was aware, that conflicts with an employment requirement."].

170 *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1013 ["Under California law, an employer is required to accommodate not just a religious belief, but also a religious observance, if reasonably possible without undue hardship. (§ 12940, subd. (l).) There is nothing in the language of the statute that obligates an employer to accommodate only those religious practices that are required by the tenets of the employee's religion, or that amount to a 'temporal mandate' of the religion."].

171 *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1017 ["an individual's religious beliefs must be accommodated even where it means making an exception to a rule which is reasonably applied to other individuals with different beliefs."].

172 *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1013 ["Under California law, an employer is required to accommodate not just a religious belief, but also a religious observance, if reasonably possible without undue hardship."].

173 Gov. Code, § 12926, subd. (u) ["'Undue hardship' means an action requiring significant difficulty or expense . . . ."].

174 *Slatkin v. Univ. of Redlands* (2001) 88 Cal.App.4th 1147, 1159 ["FEHA forbids 'an employer . . . to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer . . . demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance."].

175 Labor Code, §§ 1030–1033; 29 U.S.C. § 218d [federal break time and space requirements for nursing employees, extended to nearly all employees covered by the Fair Labor Standards Act as of December 29, 2022].

176 Labor Code, § 1032 [“An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.”]; see also 29 U.S.C. § 218d [under federal law, employers with fewer than 50 employees are exempt from the break time and space requirements if compliance would impose an undue hardship].

177 Labor Code, §§ 1031–1033.

178 Labor Code, § 1171.5, subd. (a).

179 Labor Code, § 1171.5, subd. (a).

180 8 U.S.C. § 1324a(a).

181 Labor Code, § 1019.1, subd. (a)(1).

182 Labor Code, § 1019.1, subd. (a)(2).

183 Gov. Code, § 12940, subd. (a).

184 Gov. Code, § 12926, subd. (v); Veh. Code, § 12801.9.

185 Labor Code, § 244.

186 Gov. Code, § 12951, subd. (a).

187 Turner, *Public Entities, Officers, and Employees: Chapter 295: Codification of California's Fair Employment and Housing Commission Regulations Governing Workplace Language Policies* (2002) 33 McGeorge L.Rev. 433, 439.

188 Gov. Code, § 12951.

189 Gov. Code, § 12951, subd. (b).

190 Labor Code, §§ 1101, 1102; see also Labor Code, § 96, subd. (k).

191 Labor Code, § 1102.

192 Labor Code, § 1102.5.

193 Labor Code, § 1103 [“An employer or any other person or entity that violates this chapter is guilty of a misdemeanor punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed one thousand dollars ($1,000) or both that fine and imprisonment, or, in the case of a corporation, by a fine not to exceed five thousand dollars ($5,000).”].

194 Labor Code, §§ 1102.5–1105.

195 Gov. Code, § 12940, subd. (k) [“It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: . . . For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”].

196 *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307; *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129.

197 *Alejandro v. ST Micro Elecs., Inc.* (N.D.Cal. 2015) 129 F.Supp.3d 898, 913.

198 *Alejandro v. ST Micro Elecs., Inc.* (N.D.Cal. 2015) 129 F.Supp.3d 898, 913.

199 Gov. Code, § 12940, subd. (j).

200 Gov. Code, § 12940, subd. (j)(3).

201 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608.

202 Gov. Code, § 12940.

203 *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608; Gov. Code, § 12940.

204 *McGinest v. GTE Serv. Corp.* (9th Cir. 2004) 360 F.3d 1103, 1113 [“In evaluating the objective hostility of a work environment, the factors to be considered include the 'frequency of discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'”], quoting *Nichols v. Azteca Rest. Enters.* (9th Cir. 2001) 256 F.3d 864, 872.

205 *Faragher v. City of Boca Raton* (1998) 524 U.S. 775, 788 [118 S.Ct. 2275, 2283]; *Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 519 [“This determination requires judges and juries to exercise '[c]ommon sense, and an appropriate sensitivity to social context' in order to evaluate whether a reasonable person in the plaintiff's position would find the conduct severely hostile or abusive.”].

206 Gov. Code, § 12923, subds. (b), (e), added by Stats. 2018, ch. 955 (SB 1300).

207 Cal. Code of Regs., tit. 2, §§ 11019, subd. (b), 11034, subd. (f)(1).

208 Cal. Code of Regs., tit. 2, §§ 11019, subd. (b), 11034, subd. (f)(1).

209 *Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, 1352 [“for FEHA purposes, no loss of tangible job benefits is necessary to establish harassment.”].

210 Gov. Code, § 12940, subd. (j)(4)(A) [defining “employer” to include “any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract,” for the purposes of harassment]; *Page v. Superior Court* (1995) 31 Cal.App.4th 1206, 1217 [“FEHA's prohibition against harassment is not limited to employers of five or more persons. Rather, FEHA expressly makes the harassment prohibition applicable to employers of 'one or more persons.'”].

211 Compare Gov. Code, § 12926, subd. (d), with Gov. Code, § 12940, subd. (j)(4)(A).

212 Civ. Code, § 3333 [“For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”].

213 Civ. Code, § 3333.

214 Gov. Code, § 12965, subd. (c)(6) [“In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees . . . .”].

215 Gov. Code, § 12965, subd. (c)(6).

216 *Pollard v. E. I. du Pont de Nemours & Co.* (2001) 532 U.S. 843, 846 [121 S.Ct. 1946, 1948, 150 L.Ed.2d 62, 67] [“In cases in which reinstatement is not viable because of continuing hostility between the plaintiff and the employer or its workers, or because of psychological injuries suffered by

the plaintiff as a result of the discrimination, courts have ordered front pay as a substitute for reinstatement."].

217 Civ. Code, § 3287, subd. (a).

218 42 U.S.C. § 1981a(b)(3).

219 Civ. Code, § 3294, subd. (a) ["In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."].

220 Gov. Code, § 12960, subd. (b).

221 *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724 ["Under California law 'an employee must exhaust the . . . administrative remedy' provided by the Fair Employment and Housing Act, by filing an administrative complaint with the California Department of Fair Employment and Housing (DFEH) . . . ."]; *Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 90 ["Before a person may file a civil complaint alleging a violation of this statute, he or she must first file an administrative claim with the DFEH."].

222 Gov. Code, § 12960, subd. (b).

223 *Surrell v. Cal. Water Serv.* (9th Cir. 2008) 518 F.3d 1097, 1104 ["Although Surrell never filed a charge directly with the EEOC, her charge filed with the State Employment Department is deemed filed with the EEOC pursuant to a worksharing agreement between the two entities."].

224 Gov. Code, § 12965, subd. (c)(1)(A) ["Except as specified in subparagraphs (B) and (C), if a civil action is not brought by the department pursuant to subdivision (a) within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought pursuant to subdivision (a), the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice."].

225 Gov. Code, § 12960.

226 Gov. Code, § 12965, subd. (c)(1)(C) [providing that the aggrieved person "may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice"].

227 42 U.S.C. §§ 2000e-5(e)(1), 12117.

228 42 U.S.C. §§ 2000e-5(f)(1), 12117.

229 Gov. Code, § 12940, subd. (h).

230 Gov. Code, § 12940, subd. (h).

231 See, e.g., Gov. Code, § 12965, subd. (c)(6) ["In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees . . . ."].