



PREGNANCY DISCRIMINATION LAWS IN THE CALIFORNIA WORKPLACE

California law protects pregnant employees and new mothers from workplace discrimination, and gives them rights to reasonable accommodation and job-protected leave.

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<https://www.worklawyers.com/pregnancy-discrimination-law-california/>

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Having a baby can be one of the most meaningful experiences in a woman's life. Unfortunately, it can also negatively impact a woman's career. In those cases, it's important to know which actions constitute unlawful pregnancy discrimination.

Pregnancy discrimination occurs when a pregnant employee or job applicant receives less favorable treatment because of pregnancy, childbirth, or a related medical condition. California law prohibits this discrimination by employers with five or more employees,¹ and treats it as a form of sex discrimination.² An employee who is disabled by pregnancy is also entitled to reasonable accommodation and to as much as four months of pregnancy disability leave.³

Pregnancy discrimination can take many forms. Common examples of *unlawful* pregnancy discrimination in the employment context include:

-  Refusing to hire a woman because she is pregnant or may someday become pregnant;⁴
-  Firing or demoting a woman because she experienced medical conditions related to pregnancy;⁵
-  Refusing to provide reasonable accommodations for a woman's pregnancy-related disabilities;⁶
-  Denying a woman time off for childbirth or medical conditions related to childbirth, if the woman is legally entitled to take that time off;⁷ and
-  Discriminating against a woman because she needs to breastfeed, pump, or treat medical conditions related to breastfeeding.⁸

These concepts, and others, are explained in more detail below. Because state law is generally more favorable to employees than federal law, this article focuses on employee rights under California law unless federal law is specifically referenced.

Legal Background



In California, employees are protected against pregnancy discrimination by both state and federal laws. The law that applies will usually depend on the type of harm being alleged.

1.1 Laws Protecting Against Discrimination

On the federal level, the *Pregnancy Discrimination Act*⁹ prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.¹⁰ It also states that women affected by pregnancy, childbirth, or related medical conditions are to be treated the same for all employment-related purposes, including the receipt of benefits.¹¹ It applies to employers with fifteen or more employees.¹²

A newer federal law goes further. The *Pregnant Workers Fairness Act*, effective June 27, 2023, requires employers with fifteen or more employees to provide reasonable accommodations for a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would impose an undue hardship.¹³ Unlike the Pregnancy Discrimination Act, which requires equal treatment, the newer law imposes an affirmative duty to accommodate pregnancy-related limitations, even

those that would not amount to a disability under the Americans with Disabilities Act.¹⁴

On the state level, the California *Fair Employment and Housing Act* (called “FEHA”) provides significant protection for pregnant workers.¹⁵ Like federal law, it prohibits discrimination and harassment on the basis of pregnancy.¹⁶ But unlike federal law, FEHA applies to employers with five or more employees, which means that it affects more California businesses than federal law.¹⁷

In addition to protecting pregnant employees from discrimination and harassment, FEHA requires covered employers to provide reasonable accommodations, as necessary, to employees disabled by their pregnancy.¹⁸ This can sometimes include a period of leave that extends beyond the normal statutory guidelines.

1.2 Laws Protecting Pregnancy-Related Leave

In California, four main laws provide leave rights to pregnant employees and new mothers:

-  The federal Family and Medical Leave Act¹⁹ (called “the FMLA”),
-  The California Fair Employment and Housing Act²⁰ (called “FEHA”),
-  California's Pregnancy Disability Leave Law²¹ (called “PDL”), and
-  The California Family Rights Act²² (called “CFRA”).

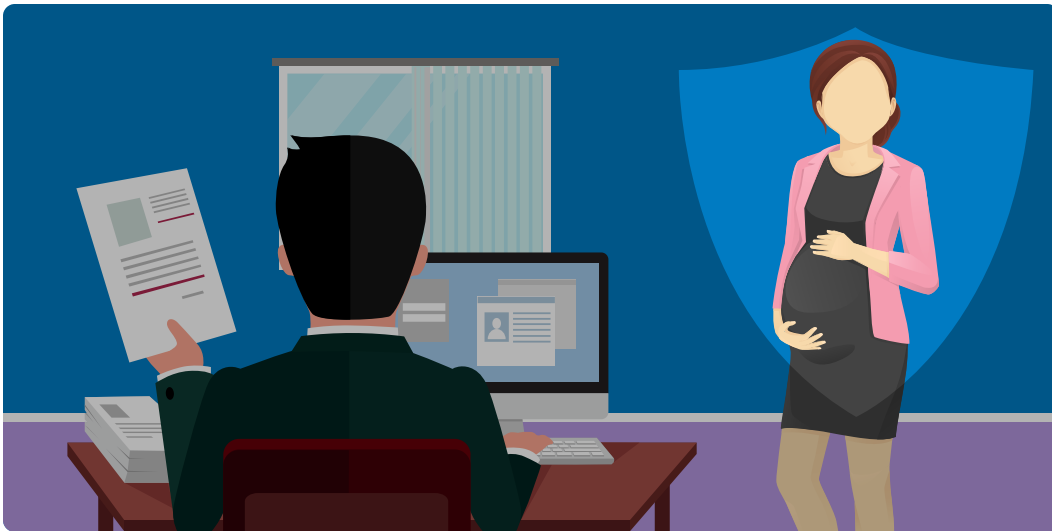
Each law has its own eligibility requirements, and each law provides leave for different lengths of time and under different circumstances. Their application to pregnant mothers is explained in our article: *Guide to Maternity Leave Law in California*.

A fifth statute, California's New Parent Leave Act, once extended baby-bonding leave to employers with 20 to 49 employees. It was repealed in 2021, and its protections are now part of the California Family Rights Act, which reaches employers with five or more employees.²³

The main idea behind these laws is to allow mothers (and sometimes fathers) to take a period of unpaid leave to spend time at home, taking care of the new baby, without having to worry about losing their job. This means that once an employee takes leave to which they are entitled under one of those laws, their employer must usually reinstate them to their same job (or a comparable job).²⁴

If an employer terminates, refuses to hire, or otherwise punishes an employee because they require a period of pregnancy-related leave (or because they might need that leave in the future), the employer's actions will often be considered a type of unlawful pregnancy discrimination and a violation of the applicable leave laws.²⁵

Unlawful Pregnancy Discrimination Defined



As mentioned above, *pregnancy discrimination* occurs when an employee or job applicant receives less favorable treatment because they are pregnant or may someday become pregnant. But not all types of pregnancy discrimination are prohibited.

To prove that an employer engaged in *unlawful* discrimination, the employee or job applicant will have the burden of proving certain facts.²⁶ These facts are called *elements* of the claim. In cases involving pregnancy discrimination, the elements are as follows:

-  The employer was an entity covered by applicable pregnancy 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 pregnancy, her pregnancy-related disability, or her ability to become pregnant 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.²⁷

The next few sections will take a closer look at each of these elements.

2.1 Which Employers Can Be Held Responsible

To determine whether an employer has committed unlawful pregnancy discrimination, the first question is whether California's anti-discrimination laws apply to them.

Under California law, an employer can usually be held responsible if they fall into one of the following categories:



The employer is a person or business that regularly employs five or more people,



The employer is a person or business who acts as an agent²⁸ of a covered employer, or



The employer is a state or local governmental entity.²⁹

There are important exceptions to each of these categories. For example, 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.³⁰

It is also worth noting that supervisors, managers, and coworkers are generally *not* personally liable for actions involving discrimination or retaliation, unless they are the actual employer.³¹ But employers can often be held legally responsible for discriminatory actions of supervisors and managers.³²

Finally, it is worth noting that pregnancy-based *harassment* protections are broader than California's protections against *discrimination*. California's ban on pregnancy-based harassment applies to employers of any size, even those that employ fewer than five people.³³ Similarly, supervisors, managers, and coworkers can be held personally liable for actions involving pregnancy harassment.³⁴

2.2 Which Workers Receive Protections

California law states that it is unlawful to discriminate against “any person” because of their pregnancy.³⁵ In reality though, the actions prohibited by this law are limited

to the employment context.³⁶ The result is that only certain groups of workers can benefit from California's legal protections.

Those workers generally fall into four categories:



Traditional Employees.³⁷ An *employee* is someone who works under the direction and control of the employer, and that the employer has agreed to hire.³⁸



Job Applicants. 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.³⁹



Temporary Employees ("Temps"). *Temps* are workers that are hired by an agency and the agency assigns them to work for a business. In some cases, the temp can hold both the temp agency and the business they work at responsible for unlawful pregnancy discrimination.⁴⁰



Unpaid Interns. In 2015, California law was extended to treat unpaid interns the same as regular employees for the purposes of pregnancy discrimination.⁴¹

There are, of course, some caveats to these categories. First, California's anti-discrimination 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.⁴²

Additionally, individuals employed by their parents, spouse, or child are not protected by California's anti-discrimination laws.⁴³

Finally, independent contractors and volunteers are generally *not* protected by California's anti-discrimination laws.⁴⁴ They are, however, protected by California's provisions that prohibit pregnancy-based harassment.⁴⁵

2.3 Which Forms of Discrimination Are Prohibited

California law provides significant protections against discrimination on the basis of an employee's pregnancy status. *Discrimination* includes treating individuals differently, due to their pregnancy or recent childbirth, with respect to:



Their compensation,



The terms or privileges of their employment,

- ✓ Their work conditions, and
- ✓ Their job assignments.⁴⁶

Importantly, pregnancy discrimination is illegal at almost any stage of employment, including:

- ✗ During hiring (or before taking applications if recruiting materials are discriminatory),⁴⁷
- ✗ While considering promotions,
- ✗ When making raise determinations,
- ✗ When making determinations about laying off or firing employees,
- ✗ While considering training opportunities,
- ✗ When deciding whether to permit leave time, and
- ✗ When determining employee benefits.⁴⁸

Additionally, if the employee becomes disabled by her pregnancy or a condition related to childbirth, the employer will often have an obligation to provide them with a reasonable accommodation.⁴⁹ This can mean that the employer is required to make the employee's working conditions significantly more comfortable.

Accommodations for Pregnancy-Related Disabilities



Many female employees become physically or mentally impaired during or after childbirth. This can expose them to another type of workplace harm: disability discrimination. *Disability discrimination* is the improper treatment of someone based on their physical or mental impairment.

California law prohibits employers with five or more employees from discriminating on the basis of an employee's:⁵⁰

-  Physical disability,
-  Mental disability,
-  Medical condition, or
-  Genetic condition.⁵¹

To qualify for protection, the employee must be able to perform the job's essential functions.⁵² If an employee requires an accommodation to do their job, the employer has a legal obligation to provide it, unless doing so would be significantly difficult and expensive.⁵³

3.1 Is Pregnancy a Disability?

In general, pregnancy itself is *not* considered a disability. But, if pregnancy-related complications arise that impair an employee's ability to do their job, then the employer must consider and accommodate them on a case-by-case basis.⁵⁴

For the purposes of this article, the primary question is whether the employee is *disabled* by her pregnancy. If so, she can receive protection against discrimination in the same way other employees with disabilities would. This might mean that the employer is required to provide a reasonable accommodation for her pregnancy-related disability.

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.⁵⁵ 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.⁵⁶

Reasonable accommodations can be important for female employees because an employer will sometimes be required to grant extended family leave (beyond what would be otherwise legally-required).⁵⁷ Additionally, a reasonable accommodation may be necessary to modify the employee's work conditions and permit the employee to work in comfort.

A woman is *disabled* by her pregnancy if, in the opinion of her doctor, she is unable to perform any one or more of the essential functions of her job because of her pregnancy.⁵⁸ A woman might also be disabled by her pregnancy if she suffers from one or more of the following conditions:

-  Severe morning sickness,
-  Prenatal or postnatal care,
-  The need for bed rest,
-  Gestational diabetes,
-  Pregnancy-induced hypertension,
-  Preeclampsia,
-  Post-partum depression,
-  Loss or end of pregnancy, and
-  Recovery from loss or end of pregnancy.⁵⁹

The common factor with each of these examples is that the pregnancy-related disability has limited a major life activity.⁶⁰

To learn more about disability discrimination, please read our article: [Disability Discrimination Laws in the California Workplace](#).

3.2 When Reasonable Accommodations Are Required

If an employee is disabled by her pregnancy, as described above, covered employers must provide them with a reasonable accommodation, if necessary.⁶¹ This duty arises as soon as the employer knows of the disability.⁶² An employer does not have this duty, however, if the accommodation would cause the employer an undue hardship.⁶³

In general, courts are flexible in considering what accommodations are reasonable.⁶⁴ And employers are required to consider “any and all” reasonable accommodations they are aware of.⁶⁵

Additionally, the employer *must* consider the employee's preference in deciding which kind of accommodation to select.⁶⁶ Nevertheless, employers have discretion to choose between accommodations that are otherwise reasonable and effective.⁶⁷

Importantly, however, employers are *not* required to consider an accommodation if it would prevent the employee from performing the *essential functions* of the job. Nor is an employer required to accommodate disabilities that would endanger the employee's health or the health of their coworkers.⁶⁸

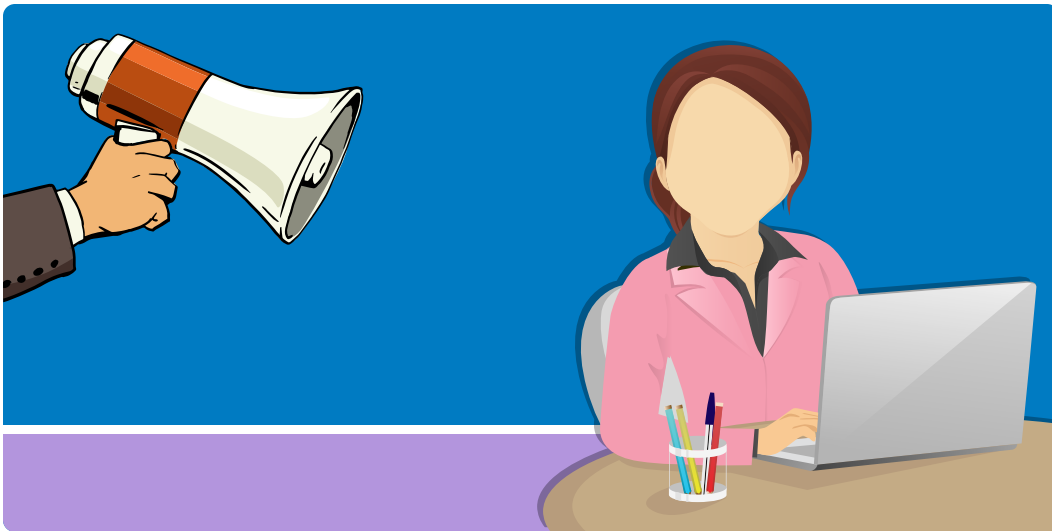
Reasonable accommodations often involve making existing facilities readily accessible to pregnant employees.⁶⁹ They can also include:

-  Job restructuring,
-  Reassignment to a vacant position,
-  Alterations to when tasks are to be completed,
-  Changes to how functions are performed,⁷⁰ or
-  Permitting the employee to take a period of leave for treatment and recovery.⁷¹

Again, the best type of accommodation will vary from job to job.

If an employer offers an employee a reasonable accommodation, the employee has a right to reject it. The employer may not retaliate against the employee for rejecting the accommodation.⁷²

The Rule against Pregnancy-Based Harassment



The California Fair Employment and Housing Act (called “FEHA”) prohibits employers from harassing any employee for becoming pregnant, for having a child, or for requesting leave associated with pregnancy.⁷³ This rule applies to employers, supervisors, and coworkers.⁷⁴

Harassment is unlawful when it is severe or pervasive enough to create a hostile, intimidating, or offensive work environment, or when it results in an adverse employment decision.⁷⁵ California law is protective on this point. By statute, harassing conduct is actionable when a reasonable person would find that it made the job more difficult to do; the employee need not prove that their actual productivity declined.⁷⁶

Pregnancy harassment is treated similarly to other forms of workplace harassment. The harassment may involve physical, oral, or written conduct that is offensive or derogatory, so long as it is based on the woman's sex or her pregnancy.⁷⁷ Even a single incident can be enough to support a claim, so long as it unreasonably interfered with the employee's work or created an intimidating, hostile, or offensive work environment.⁷⁸ The law still does not reach every unpleasant moment at work,

though: minor annoyances, occasional teasing, and stray offhand comments usually will not, on their own, amount to unlawful harassment.⁷⁹

Common examples of harassment include frequent or severe: offensive jokes; name-calling; derogatory comments about the woman's weight, breastmilk, or appearance; photos; or inappropriate touching.⁸⁰ It can come not only from men in the workplace, but from women as well.

 EXAMPLE

A supervisor constantly making offensive or derogatory remarks about an employee's pregnancy can constitute unlawful harassment.

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.⁸¹

The Right to Take Lactation Breaks after Childbirth



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.⁸²

The right to a lactation break does not apply if it would seriously disrupt the operations of the employer.⁸³ This exception is hard to meet, however, and employers should be cautious before invoking it.

5.1 Duration of Lactation Breaks

The length of the lactation break must be a *reasonable amount of time* to express breast milk.⁸⁴ This somewhat vague standard usually means that there are no strict time limits.

The U.S. Department of Labor has suggested that the act of expressing breast milk alone typically takes about 15 to 20 minutes, but a reasonable break time will usually be longer because the employee will likely require preparation before beginning.⁸⁵

The appropriate length of the break will depend on a variety of factors. Those include:

-  The frequency and number of breaks the nursing mother might need;
-  The time it takes to walk to and from the lactation space and the wait, if any, to use the space;
-  The time it takes the employee to retrieve her pump and other supplies from another location;
-  The time it takes the employee to unpack and set up her own pump or if a pump is provided for her;
-  The efficiency of the pump used to express milk (employees using different pumps may require more or less time);
-  The time it takes the employee to wash her hands before pumping and to clean the pump attachments when she is done expressing milk; and
-  The time it takes for the employee to store her milk either in a refrigerator or personal cooler.⁸⁶

5.2 When to Take Lactation Breaks

If the employee is entitled to take rest or meal breaks, the employee should try to take the lactation break at the same time as the rest or meal breaks.⁸⁷

But if that isn't possible, or if the employee requires additional break time to express milk, the employer is still required to allow the lactation breaks at other times.⁸⁸

5.3 Location of the Lactation Break

Employers are required to make reasonable efforts to provide employees with a private area to express breast milk. The area must be in close proximity to the employee's work area, and may *not* be a toilet stall.⁸⁹

A *private area*, for these purposes, is one that is shielded from view and free from intrusion from coworkers and the public.⁹⁰ If the employee's normal work area is private and suitable, the employer is allowed to designate that area as the place for the employee to express their breast milk in private.⁹¹

5.4 Pay During Lactation Breaks

If the employee takes their lactation breaks at times other than their normal rest or meal breaks, the employer is *not* required to pay the employee during the lactation break.⁹²

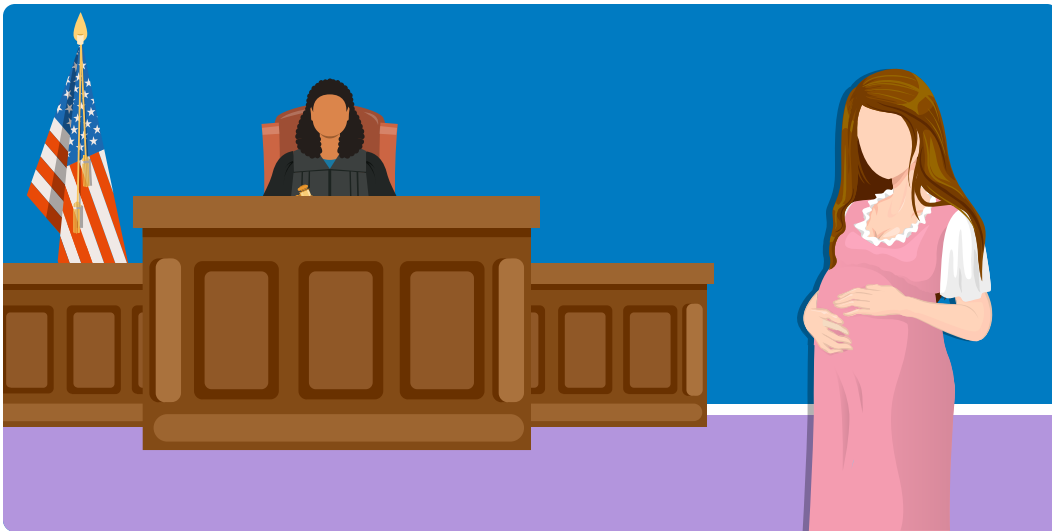
If the lactation break occurs at the same time that a paid break would otherwise occur for the employee, the break must be paid.

5.5 Requesting a Lactation Break

If new mothers desire to express breast milk at work, they should notify their employer of the need to do so. It is usually a good idea to put the request in writing, using respectful but concise language.

Employers are legally prohibited from retaliating against employees who request a lactation break.⁹³ This means that an employee cannot be punished, fired, or treated unfairly for exercising the right to a lactation break.

Filing a Pregnancy Discrimination Complaint



6.1 Do Pregnant Employees Need a Lawyer?

Employees are *not* required to have a lawyer to file a claim against their employer. But it is often a good idea to have one.

The law can be complex and very few cases are straightforward. Even if the facts are strong, 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 doing those things.

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 is easier for them to afford it.⁹⁴

So, although there is no legal requirement that an employee must have an attorney, navigating the claims process can be much easier if the employee has one.

6.2 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.⁹⁵ Employees pursuing a pregnancy discrimination claim *cannot* go straight to court with a lawsuit.⁹⁶ This process 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 (CRD), formerly the Department of Fair Employment and Housing (DFEH).⁹⁷ The CRD complaint process is explained in our article: *How to File a 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.⁹⁸

So, 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.⁹⁹ The employee may then pursue their case by bringing a lawsuit in court.

6.3 The Deadline to File (Statute of Limitations)

Employees are up against strict deadlines when pursuing relief for pregnancy discrimination. If the employee is bringing claims under state law, they must file a complaint against the employer with California's Civil Rights Department (CRD) no later than **three years** from the date of the alleged discriminatory act.¹⁰⁰

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.¹⁰¹ 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.¹⁰² 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.¹⁰³

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.

6.4 Retaliation Is Prohibited

Even though the vast majority of employers will follow the law, employees are often worried about the consequences of pursuing a pregnancy discrimination claim against their employer. But it is important to understand that employers may *not* terminate or take adverse employment actions against their pregnant employees simply because they opposed the employer's pregnancy-based discrimination policies.¹⁰⁴

Similarly, an employee who has suffered pregnancy discrimination has a right to file a complaint, testify, or assist in a pregnancy discrimination claim against their employer. The employer may not retaliate against them for doing so.¹⁰⁵

References

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| 1 | Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a), 12945. |
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| 2 | <i>Sanchez v. Swissport, Inc.</i> (2013) 213 Cal.App.4th 1331, 1340 [“Pregnancy discrimination is a form of sex discrimination.”]. |
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| 3 | Gov. Code, § 12945, subd. (a)(1); Cal. Code of Regs., tit. 2, §§ 11035, subd. (f), 11068, subd. (a). |
| <hr/> | |
| 4 | <i>Johnson Controls v. Fair Employment & Hous. Com.</i> (1990) 218 Cal.App.3d 517, 533. |
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| 5 | Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a). |
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| 6 | <i>Sanchez v. Swissport, Inc.</i> (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). |
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| 7 | See, e.g., Gov. Code, § 12945. |
| <hr/> | |
| 8 | Labor Code, § 1030 [“Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child”]; 29 U.S.C. § 218d(a)(1) [“a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk”]; see also Gov. Code, § 12926, subd. (r)(1)(C). |
| <hr/> | |
| 9 | Pub.L. No. 95-555, 92 Stat. 2076. |
| <hr/> | |
| 10 | 42 U.S.C. § 2000e(k) [“The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits |

under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise.”].

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- 11 42 U.S.C. § 2000e(k).
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- 12 42 U.S.C. § 2000e(b) [“The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees”].
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- 13 42 U.S.C. §§ 2000gg–2000gg-6; see id., § 2000gg-1 [it is an unlawful employment practice for a covered entity to “not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity”]. The U.S. Equal Employment Opportunity Commission’s implementing regulations took effect June 18, 2024 (29 C.F.R. pt. 1636); a provision requiring accommodation of elective abortion was later vacated, and the agency has signaled that it may revisit other provisions.
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- 14 42 U.S.C. § 2000gg [a “known limitation” exists “whether or not such condition meets the definition of disability” under the Americans with Disabilities Act]; see 29 C.F.R. § 1636.3.
-
- 15 Gov. Code, § 12900 et seq.
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- 16 Gov. Code, §§ 12926, subd. (r)(1)(A), 12940, subd. (a), 12945.
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- 17 Gov. Code, § 12926, subd. (d).
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- 18 *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).
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- 19 29 U.S.C. § 2601–2654.
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- 20 Gov. Code, § 12900 et seq.; see *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1334 [where an employee has exhausted all permissible leave available under the Pregnancy Disability Leave Law,

the employee may nevertheless state a cause of action for sex discrimination under the California Fair Employment and Housing Act].

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- 21 Gov. Code, § 12945.
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- 22 Gov. Code, § 12945.2.
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- 23 Gov. Code, former § 12945.6, repealed by Sen. Bill No. 1383 (2019–2020 Reg. Sess.); the California Family Rights Act now applies to employers with five or more persons (Gov. Code, § 12945.2, subd. (b)(4)).
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- 24 Gov. Code, § 12945; Cal. Code of Regs., tit. 2, § 11043 [“An employee who exercises her right to take pregnancy disability leave is guaranteed a right to return to the same position”]; Cal. Code of Regs., tit. 2, § 11089 [“Upon granting the CFRA leave, the employer shall inform the employee of its guarantee to reinstate the employee to the same or a comparable position, subject to the defenses permitted by section 11089(d), and shall provide the guarantee in writing upon request of the employee.”]; 29 U.S.C. § 2614(a); 29 C.F.R. §§ 825.214, 825.216.
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- 25 Gov. Code, §§ 12940, 12945; Cal. Code of Regs., tit. 2, §§ 11043, 11089; 29 U.S.C. § 2614(a); 29 C.F.R. §§ 825.214, 825.216.
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- 26 *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.
-
- 27 Gov. Code, § 12940; CACI No. 2500 [Disparate Treatment—Essential Factual Elements].
-
- 28 An *agent* is a person who acts on behalf of an employer. (Civ. Code, § 2295.) The employer must agree to have the agent act on its behalf for this type of relationship to exist. (*Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 91 [“An agency relationship is a bilateral matter created through mutual consent.”].)
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- 29 Gov. Code, §§ 12926, subd. (d), 12940, subd. (a); Cal. Code of Regs., tit. 2, § 11008, subd. (e).
-
- 30 Gov. Code, § 12926, subd. (d).
-
- 31 *Reno v. Baird* (1998) 18 Cal.4th 640, 663 [“[W]e conclude that individuals who do not themselves qualify as employers may not be sued under the FEHA for alleged discriminatory acts.”]; *Jones v. Lodge at*

Torrey Pines Partnership (2008) 42 Cal.4th 1158, 1173 [“[W]e conclude that the employer is liable for retaliation under section 12940, subdivision (h), but nonemployer individuals are not personally liable for their role in that retaliation.”].

32 *Le Bourgeois v. Fireplace Mfg.* (1998) 68 Cal.App.4th 1049, 1054–1055 [“[D]iscrimination claims under the FEHA . . . may be maintained against employers, but not against supervisors individually.”].

33 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.’”].

34 Gov. Code, § 12940, subd. (j)(3) [“An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”]; see also *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707 [“When the harasser is a supervisor, the employer is strictly liable for the supervisor’s actions. [Citation.] 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).”].

35 Gov. Code, § 12940, subd. (a).

36 See generally Gov. Code, § 12940.

37 *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.”].

38 Gov. Code, § 12926, subd. (c); Cal. Code of Regs., tit. 2, § 11008, subd. (d) [“‘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.”].

39 Cal. Code of Regs., tit. 2, § 11008, subd. (b) [“‘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.”].

40 Cal. Code of Regs., tit. 2, § 11008, subd. (d)(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.”].

41 Gov. Code, § 12940, subs. (c), (j), & (l), as amended by Stats. 2014, ch. 302, § 1, eff. Jan. 1, 2015.

42 *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.”].

43 Gov. Code, § 12926, subd. (c) [“Except as provided by Section 12926.05, ‘employee’ does not include any individual employed by that person’s parent, spouse, or child . . .”]; *Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 632 [noting that FEHA excludes persons employed by close relatives].

44 Cal. Code of Regs., tit. 2, § 11008, subd. (d)(1) [“‘Employee’ does not include an independent contractor as defined in Labor Code section 3353.”]; *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].

45 Gov. Code, § 12940, subs. (j)(1) [“It is an unlawful employment practice . . . [f]or an employer, labor organization, employment agency, apprenticeship training program or any training program leading to

employment, or any other person, because . . . sex . . . to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract”], (j)(5).

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- 46 Gov. Code, § 12940, subd. (a).
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- 47 Gov. Code, § 12940, subd. (a).
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- 48 Gov. Code, § 12940.
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- 49 Gov. Code, §§ 12926, 12940.
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- 50 Gov. Code, § 12940, subd. (a).
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- 51 Gov. Code, §§ 12926, subds. (d), (i), (j), (m), 12926.1, 12940, subd. (a).
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- 52 Gov. Code, §§ 12926, subds. (d), (i), (j), (m), 12926.1, 12940, subd. (a).
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- 53 Gov. Code, § 12940, subds. (a), (m); Cal. Code of Regs., tit. 2, § 11068, subd. (a).
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- 54 *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).
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- 55 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 373.
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- 56 *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228, fn. 11 [“the reasonableness of an accommodation is generally a factual question”].
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- 57 See Gov. Code, § 12945, subd. (a)(3)(A); Cal. Code of Regs., tit. 2, § 11068, subd. (c); *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1339.
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- 58 Cal. Code of Regs., tit. 2, § 11035, subd. (f) [“A woman is 'disabled by pregnancy' if, in the opinion of her health care provider, she is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of these functions without undue risk to herself, to her pregnancy's successful completion, or to other persons.”].
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- 59 Cal. Code of Regs., tit. 2, § 11035, subd. (f).
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- 60 Gov. Code, § 12926, subd. (m)(1).
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- 61 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.”].
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- 62 Cal. Code of Regs., tit. 2, § 11068, subd. (a).
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- 63 Cal. Code of Regs., tit. 2, § 11068, subd. (a).
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- 64 *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 948.
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- 65 Cal. Code of Regs., tit. 2, § 11068, subd. (e).
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- 66 Cal. Code of Regs., tit. 2, § 11068, subd. (e).
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- 67 *Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228 [“[T]he employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.” (Quotation marks omitted.)], quoting *Hankins v. The Gap, Inc.* (6th Cir. 1996) 84 F.3d 797, 800–801.
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- 68 *Sterling Transit Co. v. Fair Employment Practice Com.* (1981) 121 Cal.App.3d 791, 798 [“An employer may refuse to hire persons whose physical handicap prevents them from performing their duties in a manner which does not endanger their health.”].
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- 69 Gov. Code, § 12926, subd. (p)(1).
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- 70 *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 374; Gov. Code, § 12926, subd. (p)(2); Cal. Code of Regs., tit. 2, § 11065, subd. (p)(2).
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- 71 Cal. Code of Regs., tit. 2, §§ 11065, subd. (p)(2)(M), 11068, subd. (c).
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- 72 Cal. Code of Regs., tit. 2, § 11068, subd. (e).
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- 73 Gov. Code, § 12940, subd. (j).
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- 74 Gov. Code, § 12940, subd. (j)(3).
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- 75 *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.

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- 76 Gov. Code, § 12923, subd. (a) [adopting the standard set out in Justice Ginsburg's concurrence in *Harris v. Forklift Systems* (1993) 510 U.S. 17].
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- 77 Cal. Code of Regs., tit. 2, § 11019, subd. (b).
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- 78 Gov. Code, § 12923, subd. (b) [rejecting *Brooks v. City of San Mateo* (2000) 229 F.3d 917]; Cal. Code of Regs., tit. 2, § 11034, subd. (f)(2)(A) ["A single, unwelcomed act of harassment may be sufficiently severe so as to create an unlawful hostile work environment."].
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- 79 *Lyle v. Warner Bros. Television Productions* (2006) 38 Cal.4th 264; see Gov. Code, § 12923, subd. (a).
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- 80 Cal. Code of Regs., tit. 2, § 11019, subd. (b).
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- 81 *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."].
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- 82 Labor Code, §§ 1030–1033; 29 U.S.C. § 218d [the PUMP for Nursing Mothers Act; an employer with fewer than 50 employees is exempt only if compliance would impose an undue hardship (§ 218d(c))].
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- 83 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(c) ["An employer that employs less than 50 employees shall not be subject to the requirements of this section, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business."].
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- 84 Labor Code, § 1030 ["Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child"]; 29 U.S.C. § 218d(a)(1) ["a reasonable break time for an employee to express breast milk for such employee's nursing child

for 1 year after the child's birth each time such employee has need to express the milk”].

85 Reasonable Break Time for Nursing Mothers, 75 Fed.Reg. 80073, 80075 (Dec. 21, 2010).

86 Reasonable Break Time for Nursing Mothers, 75 Fed.Reg. 80073, 80075 (Dec. 21, 2010).

87 Labor Code, § 1030 [“The break time shall, if possible, run concurrently with any break time already provided to the employee.”].

88 Labor Code, § 1030.

89 Labor Code, § 1031 [“The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private.”].

90 29 U.S.C. § 218d(a)(2) [“a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk”].

91 Labor Code, § 1031 [“The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.”].

92 Labor Code, § 1030 [“Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.”]; 29 U.S.C. § 218d(b)(1) [“an employer shall not be required to compensate an employee receiving reasonable break time under subsection (a)(1) for any time spent during the workday for such purpose unless otherwise required by Federal or State law or municipal ordinance.”].

93 Labor Code, § 98.6, subd. (a) [“A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because . . . of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.”].

94	Gov. Code, § 12965, subd. (c)(6) ["In civil actions brought under this section, the court, in its discretion, may award to the prevailing party . . . reasonable attorney's fees and costs, including expert witness fees, except that . . . a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so."].
95	Gov. Code, § 12960.
96	<i>Martin v. Lockheed Missiles & Space Co.</i> (1994) 29 Cal.App.4th 1718, 1724; <i>Williams v. City of Belvedere</i> (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."].
97	Gov. Code, § 12960.
98	<i>Surrell v. Cal. Water Serv.</i> (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."].
99	Gov. Code, § 12965, subd. (c)(1)(A) ["[I]f a civil action is not brought by the department . . . within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought . . . , 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."].
100	Gov. Code, § 12960, subd. (e)(5).
101	Gov. Code, § 12965, subd. (c)(1)(C).
102	42 U.S.C. §§ 2000e-5(e)(1), 12117.
103	42 U.S.C. §§ 2000e-5(f)(1), 12117.
104	Gov. Code, § 12940, subd. (h).
105	Gov. Code, § 12940, subd. (h).