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EQUAL OPPORTUNITY

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INTRODUCTION

All employers, regardless of size, should be aware of state and federal laws regarding equal opportunity. Different laws and regulations apply, depending on the size and type of business.

CALIFORNIA LEGAL OBLIGATIONS



The California Fair Employment and Housing Act (FEHA)—prohibits discrimination in employment and housing. The California Equal Pay Law is also a state law requiring equal pay for equal work. The FEHA covers employers with five or more employees, including any person acting as an agent of the employer. The prohibition against harassment applies to *all* employers, regardless of the number of employees.

NOTE: Religious associations and corporations not organized for private profit are exempt from the requirements of the FEHA. The California Supreme Court has determined that a church-affiliated hospital falls within the “religious association” exemption.

The FEHA is enforced by the California Department of Fair Employment and Housing (DFEH). The California Equal Pay Law applies to *all* employers regardless of the number of employees. The California Equal Pay Law is administered by the California Division of Labor Standards Enforcement (DLSE).



The Victims of Domestic Violence Employment Leave Act—prohibits *all* employers from discharging, discriminating or retaliating against employees who are victims of domestic violence and must take time off from work as a result of domestic violence. Employers with **25 or more employees** have an even greater obligation to prevent domestic violence discrimination.



Crime Victim's Leave of Absence—employers must allow an employee who is a victim of a crime, or certain persons related to crime victims, time off from work to attend court proceedings. The new law applies to all employers and prohibits employers from discharging or discriminating against an employee for taking a leave of absence to attend court proceedings related to the crime.

**CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT (FEHA)**



The California Fair Employment and Housing Act (FEHA) prohibits discrimination in employment based on race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sex or sexual orientation. The Act prohibits discrimination based on the perception that a person has any of these characteristics or is associated with a person who has, or is perceived to have, any of these characteristics. FEHA covers employers with 5 or more employees, except the prohibition against sexual harassment applies to *all* employers.

Posting Requirement: Employers covered by FEHA must post the “Harassment or Discrimination in Employment is Prohibited by Law” (DFEH-162) notice in the workplace.

The disability discrimination provisions of FEHA have been expanded in recent years to provide greater protections to persons with disabilities. In many ways, state law provides more generous protections to persons with disabilities than the federal Americans with Disabilities Act (ADA). FEHA’s broader scope of protection for individuals with disabilities will prevail over the ADA provisions where it is more favorable to the worker.

**WHAT ARE SOME KEY
DIFFERENCES BETWEEN
THE ADA AND FEHA?**

Under the ADA, a physical or mental disability is defined as an impairment that “substantially limits” one or more of the major life activities of an individual. However, under FEHA, a person is considered disabled if merely “limited” in one or more of the major life activities, rather than “substantially limited” as required under the ADA. The term “major life activities” is also broadly defined under state law to include physical, mental, social and work activities. FEHA’s broader scope of coverage makes it easier for employees to establish a disability under California law.

FEHA applies to employers with 5 or more employees, while the federal ADA prohibits employers of 15 or more employees from discriminating against individuals with disabilities.

WHAT IS CONSIDERED A DISABILITY UNDER FEHA?

A person is considered disabled if he:

- has a physical or mental impairment that limits one or more major life activity;
- has a record of such an impairment; or
- is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to:

- contagious and non-contagious diseases or conditions such as orthopedic, visual, speech and hearing impairments;
- cerebral palsy;
- epilepsy;
- muscular dystrophy;
- cancer;
- heart disease;
- diabetes;
- mental retardation;
- emotional illness;
- Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV);
- tuberculosis;
- specific learning disabilities;
- drug addiction(s); or
- alcoholism.

WHAT SHOULD EMPLOYERS DO TO CONFORM WITH THE FEHA DISABILITY PROVISIONS?

To conform with FEHA, employers should do the following:

- Limit pre-employment medical and psychological examinations and questions to those that are job-related and consistent with business necessity.

- All claims should be taken seriously, including disability discrimination and requests for reasonable accommodation. Accommodation requests should be handled in a prompt and good-faith manner; preferably face-to-face in a confidential setting. All meetings should be documented.
- Consult with human resources and legal counsel to review policies to ensure they conform with California law.

WHAT ACTIONS ARE PROHIBITED BY FEHA?

Generally, the FEHA prohibits employers from taking any of the following actions against an employee or applicant if the action is based on any of the previously-mentioned characteristics.

- Refusal to hire or employ a person.
- Refusal to select a person for a training program leading to employment.
- Barring or discharging a person from employment.
- Barring or discharging a person from a training program leading to employment.
- Discriminating against a person in compensation or in terms, conditions or privileges of employment.
- Performing any of the above-listed acts because of a person's religious beliefs, unless the employer is unable to reasonably accommodate a person without causing an undue hardship on the conduct of business.
- Printing or circulating any publication about an employee or applicant that expresses any limitation, specification or discrimination.
- Making any non-job-related inquiries of an employee or applicant that expresses any limitation, specification or discrimination.
- Harassing, discharging or otherwise discriminating against a person because the person has opposed any illegal practices under the Act.
- Harassing, discharging or otherwise discriminating against a person because the person has filed a complaint under the Act.
- Harassing, based on the characteristics listed above, an employee, applicant or person providing services pursuant to a contract.

NOTE: Although the Act generally applies to employers with at least five employees, the harassment prohibition applies to employers with at least *one* employee.

- Failure to take all reasonable steps to prevent discrimination and harassment from occurring in the workplace.
- Failure to make a reasonable accommodation for a known disability of an applicant or employee, unless such an accommodation causes undue hardship to the employer.
- Subjecting an employee, applicant or other person to a test for the presence of a genetic characteristic.

DOES THE FEHA PROHIBIT HARASSMENT?

Yes. The Act prohibits harassment, including sexual harassment, against employees, contract employees (independent contractors) and job applicants. Employers must take all reasonable steps to prevent harassment. The prohibition against harassment applies to *all* employers except religious organizations and non-profit corporations.

Employers must distribute the California Department of Fair Employment and Housing (DFEH-185) information sheet on sexual harassment to all employees. Employers may distribute alternative information as long as information from the DFEH's information sheet is included.

WHAT TYPES OF HARASSMENT ARE UNLAWFUL UNDER THE FEHA?

Harassment of an employee, contractor or applicant based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sex, sexual orientation, gender or pregnancy, childbirth or related medical conditions is unlawful under the FEHA.

DOES THE FEHA MAKE CERTAIN INFORMATION UNAVAILABLE TO EMPLOYERS?

Yes. Employers may not ask for information either verbally or on a job application concerning race, religion, color, national origin, ancestry, physical or mental disability, mental condition, marital status, sex or sexual orientation. Unless it violates the Americans with Disabilities Act (ADA), it is permissible to ask a job applicant for information concerning physical fitness, medical condition, physical condition or medical history if the information is directly related to the position the applicant is applying for or directly related to whether the applicant would endanger the safety of himself or others.

Employers are prohibited from requiring genetic testing under the FEHA.