

LEGAL RIGHTS OF PERSONS WITH DISABILITIES

DISABILITY RIGHTS IN EMPLOYMENT



CALIFORNIA OFFICE OF THE ATTORNEY GENERAL

PUBLIC RIGHTS DIVISION

CIVIL RIGHTS ENFORCEMENT SECTION | *DISABILITY RIGHTS BUREAU*



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DISABILITY RIGHTS IN EMPLOYMENT

This publication discusses major California and federal laws that protect people with disabilities from discrimination, harassment, and retaliation in employment. It also describes an individual's options when they have experienced discrimination in employment because of their disability.

This publication is for informational purposes only, and is based on the law at the time of publication. Laws regularly change and are subject to differing interpretations. The facts of each and every case may also result in differing applications of the law. Accordingly, the information in this publication must not be considered definitive, exhaustive, or legal advice for any purpose, and does not create an attorney-client relationship with the California Department of Justice. When consulting this publication, check for any updates in the law that may be applicable in any given situation.

I. EMPLOYMENT LAWS THAT PROTECT INDIVIDUALS WITH DISABILITIES

The California Fair Employment and Housing Act (FEHA), the federal Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973 (Rehabilitation Act) protect people with disabilities from discrimination in employment. (Gov. Code, § 12940; 42 U.S.C. § 12111 et seq.; 29 U.S.C. § 701 et seq.) The FEHA, however, provides broader protections for people with disabilities than the ADA. While the ADA provides a “floor of protection” to people with disabilities, the FEHA provides additional protections that are independent of those in the ADA. (Gov. Code, § 12926.1, subs. (a), (c), (d).)

A. State Law

1. The California Fair Employment and Housing Act

The FEHA protects the right of people to seek, obtain, and hold employment without discrimination because of their disability or perceived disability. (Gov. Code, §§ 12920, 12926, subd. (o).) The FEHA also prohibits harassment because of a person's disability or perceived disability. (Gov. Code, §§ 12940, subd. (j), 12926, subd. (o).) The FEHA further prohibits retaliation against a person for exercising their rights under the FEHA, such as opposing disability discrimination. (See Gov. Code, § 12940, subd. (h).)

California employment discrimination law covers nearly all employers. An “employer” for purposes of the FEHA includes anyone regularly employing five or more employees; direct or indirect agents of an employer; and state and local governments. (Gov. Code, § 12926, subd. (d).) For purposes of harassment, an employer includes anyone employing one or more persons or regularly receiving the services of one or more independent contractors; direct or indirect agents of an employer; and state and local governments. (Gov. Code, § 12940, subd. (j)(4).)

2. Other State Laws Providing Protection

The California Legislature has expressed that it is a policy of the state to encourage and enable individuals with a disability to participate fully in the social and economic life of the state and to engage in remunerative employment. (Gov. Code, § 19230, subd. (a).) Further, it is a policy of the state for qualified individuals with a disability to be employed in state service on the same terms and conditions as persons without disabilities, and for the state to provide reasonable accommodations. (Gov. Code, § 19230, subs. (b)-(c).)

Therefore, in addition to the FEHA, numerous other California laws contain provisions that protect people with disabilities in employment. For example, programs or activities funded by the state must not discriminate against persons with disabilities. (Gov. Code, § 11135.) Also, no person may be denied state employment because of color blindness or total or partial blindness, unless “normal” eyesight or the ability to see eye color is absolutely necessary for the job. (Gov. Code, § 19701.) Similarly, no otherwise qualified

person may be denied the right to receive a teaching credential, training, or to engage in practice teaching in any school because the person has a disability. (Ed. Code, §§ 44337, 44338.) And contractors for public works projects may not discriminate against a person on the basis of disability. (Lab. Code, § 1735.)

B. Federal Law

1. The Americans with Disabilities Act

Similar to the FEHA, Title I of the ADA prohibits discrimination based on disability by employers. (42 U.S.C. § 12111 et seq.) But whereas the FEHA applies to employers who employ five or more persons, the ADA applies only to employers with 15 or more employees. (Gov. Code, § 12926, subd. (d); 42 U.S.C. § 12111(5)(A).) The FEHA also requires that a person's disability "limit" a major life activity, but under the ADA, a disability must cause a "substantial limitation" on a major life activity. (Gov. Code, § 12926.1, subds. (c), (d); 42 U.S.C. § 12102.)

Unlawful discrimination under the ADA includes limiting, segregating, or classifying a job applicant or employee because of a disability in a manner adversely affecting the individual's status or opportunities. (42 U.S.C. § 12112(b)(1).) Discrimination can also include failing to make a reasonable accommodation for a person with a disability, or using employment tests and standards that tend to screen out persons with disabilities, unless such tests or standards are job-related and consistent with business necessity and performance cannot be accomplished by a reasonable accommodation. (42 U.S.C. §§ 12112, 12113.)

The ADA prohibits discrimination or retaliation against anyone who has opposed acts or practices that are unlawful under the ADA, has asserted a claim under the ADA, or has assisted in the assertion of such a claim by acting as a witness or aiding in the investigation of ADA violations. (42 U.S.C. § 12203(a).)

The ADA does not invalidate or limit the remedies, rights, and procedures of any state law that provides equal or greater protection for the rights of individuals with disabilities. (42 U.S.C. § 12201(b).) Employers must therefore meet the higher standards in California state law imposing greater protection. (29 C.F.R. § 1630.1, subd. (c)(2).)

2. The Rehabilitation Act of 1973

Although Title I of the ADA does not apply to the federal government in the employment context, the Rehabilitation Act prohibits the federal government, federal contractors, and employers who receive federal financial assistance from discriminating against people with disabilities. (42 U.S.C. § 12111(5)(B); 29 U.S.C. § 701 et seq.) This protection extends to all aspects of employment, including recruitment, hiring, promotion, benefits, social or recreational programs, termination, and any other term, condition or privilege of employment. (See 29 U.S.C. § 701 et seq.) The standards for determining whether an act of discrimination violates the Rehabilitation Act are the same standards applied under the ADA. (29 U.S.C. §§ 791(f), 793(d), 794(d) [incorporating ADA standards into the Rehabilitation Act].)

II. RIGHTS IN EMPLOYMENT

A. Persons Protected Under the Law

The FEHA's definition of "disability" is broad. (Gov. Code, § 12926.1, subds. (b), (c).) It includes physical disabilities, mental health disabilities, and medical conditions. (*Ibid*; see also Gov. Code, § 12926, subds. (m), (j), (i).) Physical and mental health disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. (Gov. Code, § 12926.1, subd. (c).) Mental health disability under the FEHA does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania or disorders resulting from current unlawful drug use. (Gov. Code, § 12926, subd. (j)(5).) To be considered

a “disability” under the FEHA, a condition or impairment must “limit a major life activity” without regard to mitigating measures, such as medications, assistive devices, prosthetics, or reasonable accommodations. (Gov. Code, § 12926, subd. (m)(1)(B); Gov. Code, § 12926.1, subds. (c), (d).) In other words, the condition or impairment must make “achievement of the major life activity difficult.” (Cal. Code Regs., tit. 2, § 11065, subd. (l)(3).) “Major life activities” include physical, mental, and social activities and working. (Gov. Code, § 12926, subd. (m)(1)(B)(iii).)

The FEHA also forbids discrimination in employment because of a medical condition. “Medical condition” refers to any health impairment related to or associated with: 1) a diagnosis of cancer or a record or history of cancer, and 2) genetic characteristics. (Gov. Code, §§ 12926, subd. (i), 12940, subd. (a).)

The FEHA also protects people who are perceived or treated as having or having had a disability. (See Gov. Code, § 12926, subds. (m)(4)-(5), (j)(4)-(5).) In some circumstances, the FEHA may prohibit an employer from taking adverse action against an employee because of their association with another person who has or is perceived to have a disability. (*Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1036-1037.) Employers must construe the definition of disability broadly to protect applicants and employees from discrimination because of an actual or perceived disability. (Cal. Code Regs., tit. 2, §§ 11064, subd. (b), 11065, subd. (d).)

Individuals with short-term or temporary conditions may qualify for protection—even though the same condition may not qualify under the ADA. (See *Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 595 [employee met burden of demonstrating triable issue of fact by presenting evidence of temporary or short-term physical impairment that was potentially disabling or perceived as potentially disabling by employer]; *Diaz v. Federal Express Corp.* (C.D. Cal. 2005) 373 F.Supp.2d 1034, 1051-1052 [unlike the ADA, the FEHA has no durational requirement for evaluation of whether condition constitutes disability].) However, conditions that are mild which do not limit a major life activity, as determined on a case-by-case basis, do not qualify as a disability under the FEHA. (Cal. Code Regs., tit. 2, § 11065, subd. (d)(9)(B).)

The definition of disability under the ADA and the Rehabilitation Act includes both physical and mental health disabilities that substantially limit one or more major life activities, a record of such disabilities, or being regarded as having such disabilities. (42 U.S.C. § 12102; 29 U.S.C. § 705(9)(B), (20)(B).) To determine whether a disability substantially limits a major life activity, employers may not consider mitigating measures such as medication, prosthetics, or hearing aids. (42 U.S.C. § 12102(4)(E)(i)(I)-(IV); 29 U.S.C. §§ 791(f), 793(d), 794(d) [incorporating ADA standards into the Rehabilitation Act]; 41 C.F.R. § 60-741.2(bb)(3).) But an employer may consider the effect of the mitigating measures of ordinary eyeglasses or contact lenses when determining whether an impairment substantially limits a major life activity. (42 U.S.C. § 12102(4)(E)(ii); 41 C.F.R. § 60-741.2(bb)(3).)

B. Right to Reasonable Accommodations

Employers have an affirmative duty to make reasonable accommodations for the known disabilities of applicants and employees, unless the employer can show, after engaging in the interactive process, that the accommodation would impose an undue hardship on the employer. (Gov. Code, § 12940, subd. (m); Cal. Code Regs., tit. 2, § 11068, subd. (a); 42 U.S.C. § 12112(b)(5)(A)-(B); 29 U.S.C. §§ 791(f), 793(d), 794(d) [incorporating ADA standards into the Rehabilitation Act]; 29 C.F.R. § 1614.102(a)(8) (2012); 41 C.F.R. § 60-741.44(d) (2014).) “Undue hardship” is any action requiring significant difficulty or expense, taking into account a number of factors, including cost, size of the employer, and the employer’s type of operations. (Gov. Code, § 12926, subd. (u); 42 U.S.C. § 12111(10); 29 C.F.R. § 1614.203(a)(10) [term “undue hardship” under the Rehabilitation Act has the same meaning as set forth in the ADA].)

Under the ADA, the employee generally has the duty to inform the employer about the need for a reasonable accommodation. (See [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#) (Oct. 17, 2002) U.S. Equal Employment Opportunity Commission [as of Aug. 29, 2023].) However, once the employer becomes aware of the need for an accommodation, the employer has a duty to engage in the interactive process with the employee to identify and implement appropriate reasonable accommodations. (See *Humphrey v. Memorial Hospitals Ass'n* (9th Cir. 2001) 239 F.3d 1128, 1137; 29 C.F.R. § 1630.2 (o)(3).) Similarly, under the FEHA, employers who are aware of an employee's disability have an affirmative duty to make a reasonable accommodation. (Gov. Code, § 12940, subd. (m); Cal. Code Regs., tit. 2, § 11069.)

A reasonable accommodation is a modification or adjustment that is effective in enabling an applicant or employee with a disability to do the following:

- Have an equal opportunity to be considered for a desired job
- Perform the essential functions of the job the employee holds or desires, or
- Enjoy equivalent benefits and privileges of employment as do other similarly situated employees without disabilities

(Cal. Code Regs., tit. 2, § 11065, subd. (p)(1).)

Determining the appropriate accommodation “requires an individualized assessment of both the job at issue and the specific physical or mental limitations of the individual that are directly related to the need for reasonable accommodation.” (Cal. Code Regs., tit. 2, § 11064, subd. (b).)

Below are some examples of reasonable accommodations:

- Making existing facilities used by applicants and employees readily accessible for individuals with disabilities (may include, but is not limited to, providing accessible break rooms, restrooms, training rooms, or reserved parking places; acquiring or modifying furniture, equipment or devices; or making other similar adjustments in the work environment)
- Allowing applicants or employees to bring assistive animals to work¹
- Transferring an employee to a more accessible worksite
- Providing assistive aids and services such as qualified readers or interpreters to an applicant or employee
- Adjustments to job duties, such as reallocation or redistribution of non-essential job functions in a job with multiple responsibilities
- Providing a part-time, modified, or work from home schedule

¹ “Assistive animal” means an animal that is necessary as a reasonable accommodation for a person with a disability. (Cal. Code Regs., tit. 2, § 11065, subd. (a).) Specific examples include, but are not limited to: (1) a “guide dog,” as defined at Civil Code section 54.1, trained to guide a blind or visually impaired person, (2) a “signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hearing impaired person to sounds, (3) a “service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of a person with a disability, (4) a “support dog” or other animal that provides emotional, cognitive, or other similar support to a person with a disability, including, but not limited to, traumatic brain injuries or mental disabilities, such as major depression. (*Ibid.*)

- Adjusting when and/or how an essential function is performed
- Modifying examinations, training materials, policies, or supervision methods
- Dividing complex tasks into smaller parts
- Providing additional training
- Providing paid or unpaid leave for treatment and recovery
- Providing a reassignment to a vacant position, and
- Other similar accommodations

(Cal. Code Regs., tit. 2, § 11065, subd. (p)(2); 42 U.S.C. § 12111(9); 29 U.S.C. §§ 791 (f), 793(d), 794(d) [incorporating ADA standards to the Rehabilitation Act].)

An employer is not required to create a new position to accommodate an employee with a disability. (See Cal. Code Regs., tit. 2, § 11068, subd. (d)(4).)

Depending on the circumstances, such as when the employee cannot presently perform the essential functions of the job or otherwise needs time away from the job for treatment and recovery, a leave of absence may be a reasonable accommodation. (Cal. Code Regs., tit. 2, § 11068, subd. (c).) Although a leave of absence may be a reasonable accommodation, an employer may not require the employee to take leave if the employee can work with a different reasonable accommodation. (*Ibid.*) An employer is not required to provide an indefinite leave of absence as a reasonable accommodation. (*Ibid.*) The various laws regarding medical leaves of absence and pregnancy disability leave are not covered in this publication. Further information on these laws can be found on the [California Civil Rights Department \(CRD\)'s website](#).

An employer may fire or refuse to hire someone with a disability or medical condition if the person is unable to perform the essential functions of the job even with reasonable accommodation. (Gov. Code, § 12940, subs. (a)(1)-(2); Cal. Code Regs., tit. 2, § 11066, subd. (a); 42 U.S.C. § 12111(8).) The “essential functions” of a job are the fundamental job duties that an individual with a disability holds or desires. (Gov. Code, § 12926, subd. (f); 29 C.F.R. § 1630.2(n)(1).) Additionally, an employer may fire or refuse to hire someone with a disability if there is no reasonable accommodation that would allow the individual to perform the essential functions of the job in a manner that would not endanger their health, or the health and safety of others. (Cal. Code Regs., tit. 2, § 11067, subs. (b), (c); see also 42 U.S.C. §§ 12111(3), 12113(a), (b).) Elimination of an essential function of a job is not a reasonable accommodation. (Cal. Code Regs., tit. 2, § 11068, subd. (b); *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 375, superseded by statute on other grounds [“FEHA does not obligate the employer to accommodate the employee by excusing [them] from the performance of essential functions”].)

C. Employers Must Engage in the Interactive Process

An employee usually has the responsibility to initiate the interactive process by requesting a reasonable accommodation. (See Gov. Code, § 12940, subd. (n).) Under the FEHA, in response to a reasonable accommodation request, employers must “engage in a timely, good faith, interactive process” with an employee or applicant to determine effective reasonable accommodations. (*Ibid.*) An employer must also initiate the interactive process when it becomes aware of the need for an accommodation through a third party or observation. (Cal. Code Regs., tit. 2, § 11069, subd. (b)(2).) Similarly, the employer must initiate the interactive process when it becomes aware of the possible need for an accommodation when an employee with a disability has exhausted their leave under federal, state, or private employer leave provisions, but the employee’s healthcare provider indicates that further accommodations are still necessary. (Cal. Code Regs., tit. 2, § 11069, subd. (b)(3).)

The employer, employee, and applicants share the obligation to cooperate in good faith during the interactive process. (Cal. Code Regs., tit. 2, § 11069, subds. (c), (d).) The interactive process must include an individualized assessment of both the job at issue and the specific disability-related limitations of the person that prompt the requested reasonable accommodation. (Cal. Code Regs., tit. 2, § 11064, subd. (b).) If the existence of a disability and/or the need for reasonable accommodation is not obvious, an employer may require an applicant or employee to obtain and provide reasonable medical documentation from a healthcare provider. (Cal. Code Regs., tit. 2, § 11069, subd. (d).) The medical documentation must include information that the employee or applicant has a condition that limits a major life activity, and a description of why the employee or applicant needs a reasonable accommodation. (Cal. Code Regs., tit. 2, § 11069, subd. (d)(5).) If an applicant or employee provides insufficient documentation, an employer must still provide a reasonable accommodation but only to the extent the reasonable accommodation is supported by the medical documentation provided to date. (Cal. Code Regs., tit. 2, § 11069, subd. (d)(6).)

Like the FEHA, the ADA and the Rehabilitation Act require that a covered employer engage in the interactive process to determine an effective reasonable accommodation. (29 C.F.R. § 1630.2(o)(3); 29 U.S.C. § 794(d) [incorporating ADA standards into the Rehabilitation Act].) However, the duty of an employer to provide a reasonable accommodation for an employee with a disability is broader under the FEHA than under the ADA. (*Bagatti v. Dept. of Rehabilitation* (2002) 97 Cal.App.4th 344, 362). In addition, under the FEHA, an employer's failure to engage in the interactive process can be set forth as a separate claim in a lawsuit brought for employment discrimination on the basis of disability. (See Gov. Code, § 12940, subd. (n).)

D. Nondiscrimination in Recruitment and Testing

Employers must equally consider people with disabilities in recruitment activities and must make reasonable accommodations during the recruitment process. (Cal. Code Regs., tit. 2, § 11070; 42 U.S.C. § 12112.) For example, during the interview process, employers must provide interpreters for individuals with hearing disabilities and provide rooms which are accessible to wheelchairs. (Cal. Code Regs., tit. 2, § 11070, subd. (c).)

Employers may not ask general questions about an applicant's disability, but may ask an applicant if they can perform job-related functions. (Gov. Code, § 12940, subd. (e)(2); Cal. Code Regs., tit. 2, § 11070, subd. (b)(2), (c); 42 U.S.C. § 12112(d); 29 U.S.C. § 794(d) [incorporating standards of the ADA into the Rehabilitation Act].) For example, an employer may not ask the following questions:

- "Do you have any particular disabilities?"
- "Have you ever been treated for any of the following diseases or conditions?"
- "Are you now receiving or have you ever received workers' compensation?"
- "What prescription medications are you taking?"
- "Have you ever had a job-related injury or medical condition?"
- "Have you ever left a job because of any physical or mental limitations?"
- "Have you ever been hospitalized?"
- "Have you ever taken medical leave?"

(Cal. Code Regs., tit. 2, § 11070, subds. (b)(2)(A)-(H).)

An employer may only ask questions like this or require an exam after making an offer of employment, but only if (1) the questions or exam are job-related and consistent with business necessity and (2) all entering employees in similar positions are subjected to the same questions or exam. (Gov. Code, § 12940, subd. (e)(3); 42 U.S.C. § 12112(d).)

Under the Rehabilitation Act, however, a covered employer may ask an applicant to volunteer information about their disability if it is made clear that the information will only be used to monitor the effectiveness of the employer's affirmative action programs. (29 C.F.R. § 1614.203(d)-(e); 41 C.F.R. § 60-741.42.) Employees may also volunteer medical information as part of an employer's voluntary health program. (Gov. Code, § 12940, subd. (f)(2); 42 U.S.C. § 12112(d)(4)(B); 41 C.F.R. § 60-741.23(b)(4).)

In addition, employers may not use testing criteria that discriminate against people with disabilities unless the criteria are job-related and no alternative testing method is available, or an alternate method would pose an undue hardship on the employer. (Cal. Code Regs., tit. 2, § 11072, subd. (b)(3); 42 U.S.C. § 12112(b)(3); 29 U.S.C. § 794(d); 41 C.F.R. § 60-741.21(a)(4), (7).) An employer may also not use tests of physical agility or strength unless the physical skills measured by such tests are job-related. (Cal. Code Regs., tit. 2, § 11072, subd. (b)(4).)

The employer must ensure that test results accurately reflect the applicant's job skills or aptitude for the job, rather than merely reflecting the applicant's disability. (Cal. Code Regs., tit. 2, § 11072, subd. (b)(5); 42 U.S.C. § 12112(b)(6)-(7); 41 C.F.R. § 60-741.21(a)(8).) To accomplish this, the employer must reasonably accommodate the applicant's disability during pre-employment testing, such as by making the site physically accessible. (Cal. Code Regs., tit. 2, § 11072, subd. (b)(5).) Other forms of accommodations may include providing readers and interpreters, allowing more time for test-taking, and administering alternate tests or individualized assessments. (*Ibid.*) A person with disabilities who does not pass an employer's physical exam must be allowed to submit independent medical opinions for consideration before a final determination is made. (Cal. Code Regs., tit. 2, § 11071, subd. (b)(2).)

Moreover, exclusion of a group of persons with disabilities because of a bona fide occupational qualification does not constitute unlawful discrimination under the FEHA. (Gov. Code, § 12940; Cal. Code Regs., tit. 2, § 11010, subd. (a).) For example, an employer may be able to refuse to hire people with back problems for a job that requires heavy lifting. However, employers can only rely upon a bona fide occupational qualification defense to exclude a group of people if all or almost all members of that group cannot perform the job in a safe manner. (See Cal. Code Regs., tit. 2, § 11010, subd. (a); see also *Sterling Transit Co., Inc. v. Fair Employment Prac. Com.* (1981) 121 Cal.App.3d 791, 797.)

E. Confidentiality of an Employee or Applicant's Disability

Information obtained by the employer regarding an employee or applicant's disability is confidential. (Cal. Code Regs., tit. 2, § 11069, subd. (g)(1)-(2); 42 U.S.C. § 12112(d)(3)(B); 29 U.S.C. § 794(d).) However, supervisors may be informed of restrictions or accommodations with respect to an individual's duties, and first aid and safety personnel may be informed of the condition if the condition may require emergency treatment. (42 U.S.C. § 12112(d)(3)(B); 29 U.S.C. § 794(d).) In addition, government officials investigating compliance with the law may be provided relevant information upon request. (*Ibid.*)

F. Affirmative Action in Employment

Under the Rehabilitation Act, the federal government and all government contractors and subcontractors with contracts of \$10,000 or more, must take affirmative action in hiring and promoting qualified individuals with disabilities. (See 29 U.S.C. §§ 791(b), 793(a).) The Office of Federal Contract Compliance Programs of the U.S. Department of Labor has developed regulations for complying with this law, located in Section 503 of the Rehabilitation Act. (29 U.S.C. § 793; 41 C.F.R. § 60-741.1 et seq.)

There is no affirmative action requirement for covered employers under the ADA or the FEHA.²

G. Protection Against Harassment

The FEHA protects individuals who actually have a disability, as well as those who are perceived to have a disability, from harassment. (Gov. Code, §12926, subd. (o).) The harassment must be sufficiently severe or pervasive to alter the conditions of the individual's employment and create a hostile working environment. (See *Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 38.) In addition, employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct. (Gov. Code, § 12940, subs. (j), (k); Cal. Code Regs., tit. 2, § 11023, subd. (a).)

Under the FEHA, an employer is liable for harassment by an employee's direct supervisor or manager. (See Gov. Code, § 12940, subd. (j)(1).) However, an employer is only responsible for harassment by other employees if the employer knew or should have known of the harassing conduct and failed to take immediate and appropriate corrective action. (*Ibid.*)

An individual supervisor or coworker who engages in harassing conduct against another employee is personally liable for that harassment. (Gov. Code, § 12940, subd. (j)(3).)

H. Protection Against Discrimination and Retaliation

An employer may not discriminate or retaliate against a person for opposing conduct that violates the FEHA, the ADA, or the Rehabilitation Act, or for filing a complaint, testifying, or assisting in any proceeding regarding a violation of these laws. (Gov. Code, § 12940, subd. (h); Cal. Code Regs., tit. 2, § 11021, subd. (a); 42 U.S.C. § 12203(a); 29 U.S.C. § 794(d).)

In addition, an employer may not retaliate or discriminate against an employee for requesting a reasonable accommodation, regardless of whether the employer granted the request. (Gov. Code, § 12940, subs. (l) (4), (m)(2); Cal. Code Regs., tit. 2, § 11068, subd. (k); see also *Coons v. Secretary of U.S. Dept. of Treasury* (9th Cir. 2004) 383 F.3d 879, 887, citing *Heisler v. Metropolitan Council* (8th Cir.) 339 F.3d 622, 630, fn. 5 [stating that ADA prohibits an employer from retaliating against an employee who seeks a good faith accommodation even where the employee ultimately is determined not to have a qualifying condition].)

III. COMPLAINTS

An individual who believes they have been discriminated against in employment under any of the laws described in this publication may have options to file complaints with a government agency or in court. Please be aware that these complaints may have strict timeframes for filing and other requirements. It is best for an individual wishing to file a lawsuit to consult with a lawyer as soon as possible.

A. For Violations of the FEHA

An individual who has experienced disability discrimination in employment has several legal remedies under the FEHA. They may file a complaint with the California Civil Rights Department (CRD). CRD is authorized to take individual complaints and investigate and enforce the FEHA to vindicate individual victims' rights. More information about the complaint process is available on [CRD's website](#).

² Under Article I, section 31 of the California Constitution, the state may not grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting. It does not similarly restrict affirmative action on the basis of disability. (See Cal. Const., art. I, § 31.)

An individual may also file a lawsuit to recover damages but must first file with CRD and receive a right-to-sue notice before filing a lawsuit. (Gov. Code, § 12965; Cal. Code Regs., tit. 2, § 10005.)

B. For Violations of the ADA

The ADA gives the federal Equal Employment Opportunity Commission (EEOC) the primary authority to enforce the ADA's prohibitions against discrimination in employment based on disability. (42 U.S.C. § 12117.) An individual who believes that they have experienced unlawful employment discrimination because of a disability may file a complaint with the EEOC for investigation. A complaint must be filed with the EEOC before a lawsuit for unlawful discrimination can be filed. (See [Filing a Charge of Discrimination with the EEOC](#) U.S. Equal Employment Opportunity Commission [as of Aug. 29, 2023].) More information about the EEOC's complaint process is available at [EEOC's website](#).

In addition, an individual may file a report of discrimination based on disability to the [U.S. Department of Justice Civil Rights Division](#).

C. For Violations of the Rehabilitation Act

1. By Federal Agencies

Individuals who believe they have experienced unlawful employment discrimination by a federal agency because of a physical or mental health disability may file a complaint with the EEOC. An individual may also file a lawsuit but must go through the administrative complaint process first. More information about the EEOC's complaint process for federal employees is available at the [EEOC's website for federal employees](#).

2. By Federal Contractors

Individuals who believe that they have experienced unlawful discrimination by a federal government contractor may file a complaint with the U.S. Department of Labor's Office of Federal Contract Compliance Program (OFCCP). More information on the OFCCP complaint process can be found at the [OFCCP's website](#).

3. By Recipients of Federal Financial Assistance

If a recipient of federal financial assistance violates the law, the agency that provided the financial assistance may enforce compliance by terminating the assistance or by any other legally-authorized means. If an individual believes that they have experienced discrimination, they may file a complaint with the agency that provides federal financial assistance to their employer. More information about the process to make a complaint against a recipient of federal financial assistance may be found by visiting the website of the agency that provides such assistance to the employer.

For questions or comments about this publication, please contact the California Department of Justice's Disability Rights Bureau within the Civil Rights Enforcement Section at DisabilityRights@doj.ca.gov.

For individual complaints and inquiries, please contact the [California Civil Rights Department \(CRD\)](#), formerly known as the Department of Fair Employment and Housing. Please note that the California Department of Justice, unlike CRD, only pursues systemic violations by local governmental entities or companies directly impacting the general public or large groups of individuals. It does not handle individual complaints or inquiries. It also does not represent individuals, provide legal advice, or provide updates about its investigations and/or litigation, even to individuals who provided information about those matters. It also does not handle cases involving isolated violations of law, matters against state-level public entities, or out-of-state conduct.

To report a complaint to the California Department of Justice, please contact the Public Inquiry Unit (PIU). PIU staff may not respond to every inquiry, cannot answer legal questions or give legal advice, and cannot act as a personal lawyer for individuals who report a complaint. Complaints may be referred to a more appropriate agency.

For more information about reporting a complaint against a business or company to PIU, visit the [Consumer Complaint webpage](#).

For more information about reporting a complaint against another entity to PIU, visit the [General Comment, Question or Complaint webpage](#).