

A Guide to California's Fair Employment & Housing Act (FEHA)

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What Type of Conduct Does FEHA Protect Against?

California's Fair Employment & Housing Act ("FEHA") protects employees from **illegal discrimination** and **harassment** in employment based on *race, color, religion, sex* (pregnancy or gender), *sexual orientation, marital status, national origin, ancestry, disability* (mental and physical, including HIV/AIDS), *medical condition* (cancer/genetic characteristics), *age* (40 and above), *denial of family and medical care leave*, and *denial of pregnancy disability leave*.

FEHA also requires employers to 1) reasonably accommodate an employee or job applicant's religious beliefs and practices, 2) reasonably accommodate employees or job applicants, with a disability, in order to enable them to perform the essential functions of a job, 3) provide up to four months leave to employees due to pregnancy, childbirth, or a related medical condition, and 4) provide reasonable accommodations requested by an employee, on the advice of her health care provider, related to her pregnancy, childbirth, or related medical conditions.

FEHA further prohibits **retaliation** against a person who opposes, reports, or assists another person in opposing unlawful discrimination.

Exhaust Your Administrative Remedies:

To enforce your rights under FEHA, the law requires that you first exhaust all administrative remedies. In order to exhaust your administrative remedies there are two options:

- 1) File a complaint with the Department of Fair Employment and Housing ("DFEH"). The DFEH will then proceed to investigate your claim, and attempt to mediate your case; or,
- 2) Request an immediate "right to sue" notice that allows you to proceed with a lawsuit in civil court.

We strongly suggest you talk to an attorney about your specific situation, and request an immediate right to sue notice from the DFEH's website. You can request a "right to sue" notice here: <http://www.dfeh.ca.gov/OnlineRTS/>.

The DFEH receives a multitude of complaints on a weekly basis. As a government agency, they are hindered by backlog issues, resources, time, and manpower in aggressively pursuing each case they investigate. Accordingly, their findings often yield unsatisfactory results for aggrieved employees.

Filing a civil complaint in California Superior Court offers additional advantages that are not available if the DFEH litigates your case in a public hearing before the Fair Employment and Housing Commission (FEHC). These advantages include 1) no limit on emotional distress

damages, 2) possible punitive damages against the employer, and 3) the prevailing party may recover their reasonable attorney's fees, expert witness fees and costs.

FEHA Statute of Limitations:

It's important for aggrieved employees to know that there are **time deadlines** that affect their ability to enforce their legal rights under California's Fair Employment & Housing Act ("FEHA"):

1) If the aggrieved employee elects to bring a lawsuit to enforce his or her rights under FEHA, then he or she must file suit within 1 year after the Department of Fair Housing & Employment ("DFEH") issues the right-to-sue notice [this rule is subject to certain tolling provisions under Cal. Govt. Code § 12965(d)].

2) If the aggrieved employee elects to file a complaint with the DFEH, it must be filed within 1 year after the employer's alleged unlawful conduct took place. However, this 1 year rule may be extended by an additional 90 days, if the employee finds out about the employer's unlawful conduct after the 1 year period.

3) For *continuing acts of discrimination* in the workplace, the last day to file the DFEH complaint is 1 year after the most recent discriminatory act by the employer. If the employee files the DFEH complaint within 1 year of the most recent discriminatory act, relief may be possible for the entire course of the employer's unlawful conduct.

4) In 2008, the California Supreme Court held that if an employee elects to seek an internal administrative remedy with their employer, the running of the limitations period is *tolled* automatically during the time consumed by the administrative proceeding.

Do not hesitate to contact the Law Offices of Manbir S. Chowdhary at 949.910.6810, if you have any questions about FEHA, or how it may pertain to your particular situation.