

[WELCOME TO CALIFORNIA!](#)

California's Fair Employment and Housing Act (FEHA) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) prohibits discrimination in employment on the basis of sex. Women can bring the following claims under the FEHA (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) including but not limited to:

- (1) Unequal Pay
- (2) Disparate Treatment
- (3) Disparate Impact
- (4) Sexual Harassment
- (5) Pregnancy Discrimination
- (6) Discriminatory Hiring
- (7) Wrongfully Denied Promotion
- (8) Discriminatory Firing
- (9) Retaliation

Continue to learn more information about your rights!!!

[HAVE I BEEN DISCRIMINATED AGAINST? TAKE THE QUIZ!](#)

<u>What does the law say?</u>	<u>Where do I go from here?</u>
<u>Resources and Statistics</u>	<u>Real Life Stories</u>

WHAT DOES THE CALIFORNIA LAW SAY?

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- a. **Where is the law regarding sex discrimination in employment in California found?**
The law prohibiting sex discrimination in employment is found in [California’s Fair Employment and Housing Act \(“FEHA”\)](#)¹
(<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>).

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- b. **To whom does the FEHA apply?**
The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) applies to employees who work for an employer in California.

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- c. **What is an “employee” under this law?**
An employee is any individual working for an employer. An employee does not include individuals employed by a parent, spouse, or child, “or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.”²

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- d. **What is an “employer” under this law?**

An employer is any person or entity with five or more employees.³ An employer includes its agents and the state or local government but does not include associations or corporations that are religious non-profits.⁴ In addition to employers, the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) prohibits labor organizations, apprenticeship training programs, employment agencies, and licensing boards from discriminating against women.⁵

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e. Under the FEHA, what is illegal?

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) prohibits employment discrimination based on the “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person.”⁶

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f. What is sex or gender discrimination?

In California, sex discrimination is differential treatment based not only on whether a person is male or female, but also on a person’s gender identity.⁷ Gender identity is the sex a person identifies with and can be different from the anatomical sex assigned at birth.⁸ Sex discrimination also includes discrimination based on pregnancy, childbirth, and related medical conditions.⁹

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g. What constitutes sex or gender discrimination under the FEHA?

Sex discrimination includes refusing to hire, barring from training programs leading to employment, providing different terms or conditions of employment, or firing an employee based on sex.¹⁰ Sexual harassment is also a form of sex discrimination prohibited by the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>).¹¹ An employer must also allow a woman to take pregnancy leave and to wear pants.¹² If you feel you have been treated negatively in your employment because you are a woman, you may have a claim.

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h. Are women a “protected class”?

Yes. Women are a [protected class](#).¹³

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i. Is there a federal law about sex discrimination?

Yes. [Title VII of the Civil Rights Act](http://www.eeoc.gov/policy/vii.html)¹⁴ (<http://www.eeoc.gov/policy/vii.html>) prohibits sex discrimination under [federal law](#).¹⁵

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j. How does the state law compare with federal in terms of coverage?

California's anti-discrimination law closely mirrors federal law. However, a number of subtle differences make claims brought under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) more favorable. The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees, as opposed to requiring fifteen or more as [Title VII](#) (<http://www.eeoc.gov/policy/vii.html>) does,¹⁶ and the time limit for filing a complaint under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) is 365 days as opposed to 300 days.¹⁷ Furthermore, there are no limits on [compensatory](#) and [punitive damages](#) recoverable under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) like there are under [Title VII](#) (<http://www.eeoc.gov/policy/vii.html>).¹⁸

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k. Is it ever okay for my employer to treat or impact women differently because of their sex?

An employer can treat or impact women differently if such discrimination is based on a [bona fide occupational qualification](#) or on state or federal security regulations.¹⁹ The exceptions extend to bona fide retirement, pension, and insurance plans, and other employee benefits.²⁰

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l. In a nutshell, what must I prove to win my case?

Depending on the type of discrimination you faced, you will have to prove slightly different things, but generally speaking, you have to show that your employer took adverse action against you because you are a woman.²¹ Please refer to the various sections addressing each claim for more detail.

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m. What could my employer do to deny my allegations, and how do I respond to their denials?

In general, your employer could deny your allegations and escape liability if your employer can prove that it acted against you for legitimate reasons and not because you are a woman. You can respond by showing that your employer's legitimate reasons are just excuses and that the real reason your employer acted against you was because you are a woman.²²

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n. Does it matter when the discrimination occurred?

Yes. The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) requires that you file a complaint with [California's Department of Fair Employment and Housing](http://www.dfeh.ca.gov)²³ ("DFEH") (<http://www.dfeh.ca.gov>) within 365 days of when the discrimination occurred.²⁴ This time limit, called a statute of limitations, prevents you from taking action against your employer if the complaint is not filed within the 365 day period.

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o. What options do I have if my employer has fewer than five employees?

Under the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), if your employer has fewer than five employees, most discrimination claims cannot be filed against your employer.²⁵ A few notable exceptions exist. You can file a claim for sexual harassment,²⁶ retaliation,²⁷ and discrimination in training programs leading to employment.²⁸ You can also file a claim against individuals for aiding, abetting, inciting, compelling, or coercing the doing of any discriminatory acts.²⁹ You can also file an [unequal pay claim](#)³⁰ under California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>).³¹ If you do not have any legal claims, alternative solutions are available [here](#)³².

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p. Who enforces the law?

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) is enforced by the Fair Employment and Housing Commission ("FEHC").³³ Federal laws are enforced by the Equal Employment Opportunity Commission ("EEOC") (<http://www.eeoc.gov/>).

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q. How do I file a claim of sex discrimination with the DFEH?

You can file a claim by contacting the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) and scheduling a consultation meeting. For more information on filing a claim, click [here](#)³⁴.

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r. If I prove my sex discrimination claim, what kind of remedies am I entitled to?

If you bring a successful sex discrimination claim under the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), you are entitled to any [remedies](#) that will fulfill the purposes of the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) including [compensatory](#) and [punitive damages](#).³⁵ For more information on available [remedies](#), click [here](#)³⁶.

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WHAT TYPES OF DISCRIMINATION ARE COVERED UNDER THE LAW?³⁷

[UNEQUAL PAY: *I don't think I'm being paid fairly compared to men doing the same job.*](#)

(Link to Equal Pay claims)

[DISPARATE IMPACT: *I think my employer's policies disadvantage women more than men.*](#)

(Link to Disparate Impact claims)

[DISPARATE TREATMENT: *I think my employer treats women differently than men.*](#) (Link to Disparate Treatment claims)

[SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*](#) (Link to Sexual Harassment claims)

[PREGNANCY DISCRIMINATION: *I think my employer is discriminating against me because I am pregnant.*](#) (Link to Pregnancy Discrimination claims)

[DISCRIMINATORY HIRING: *I did not get the job I applied for and I think it's because I'm a woman.*](#) (Link to Discriminatory Hiring claims)

[WRONGFULLY DENIED PROMOTION: *I think I didn't get the promotion because I am a woman.*](#) (Link to Wrongfully Denied Promotion claims)

[DISCRIMINATORY FIRING: *I just got fired from my job, and I think it's because I'm a woman.*](#) (Link to Discriminatory Firing claims)

[RETALIATION: *I think my employer fired me because I filed a complaint of sex discrimination.*](#) (Link to Reprisal/Retaliation claims)

UNEQUAL PAY: *I don't think I'm being paid fairly compared to men doing the same job.*

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a. What laws protect me from receiving unequal pay for equal work?

The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) prohibits an employer from discriminating against you in compensation because of your gender.³⁸ In addition to the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) specifically addresses inequities in wages.³⁹ Furthermore, [federal laws](#)⁴⁰ including [Title VII](#) (<http://www.eeoc.gov/policy/vii.html>) and the [Equal Pay Act](#) (<http://www.eeoc.gov/policy/epa.html>) protect you against wage discrimination.

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b. What are the differences between claims brought under the FEHA and those brought under California's equal pay law?

Unlike the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), which only covers employers with five or more employees,⁴¹ California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) provides broader coverage since it does not specify a minimum number of employees.⁴² Furthermore, California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) does not require you to file a complaint with an administrative department before bringing a lawsuit.⁴³ However, California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) has a "same establishment" requirement,⁴⁴ which does not exist with the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>).⁴⁵ California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) requires that you

bring claims only if men working in the same establishment, i.e. place of business⁴⁶, are receiving higher wages for equal work.⁴⁷

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c. Who enforces California's equal pay law?

[California's Division of Labor Standards Enforcement](http://www.dir.ca.gov/DLSE/dlse.html)⁴⁸ (<http://www.dir.ca.gov/DLSE/dlse.html>) is responsible for enforcing California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>).⁴⁹ You can file a complaint with the division⁵⁰ and the division may prosecute your claim for you⁵¹, but you may also choose to bring a private lawsuit without filing a complaint with the division.⁵²

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d. What kinds of employees are covered by California's equal pay law?

California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) covers all employees except for outside salesmen or workers in the national service program “using assistance provided under Section 12571 of Title 42 of the United States Code.”⁵³

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e. What does pay discrimination look like?

If a male employee at your workplace is doing work similar to your own under similar conditions, your wages should be equal to his. For example, if you are a director at a company,⁵⁴ and there are other directors at your company who have similar qualifications, experience, and responsibilities, then you may be experiencing pay discrimination.⁵⁵

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f. How do I prove that I am not receiving equal pay for equal work?

To prove wage discrimination based on sex, you must show that you are receiving less pay than an employee of the opposite sex who holds a job requiring “equal skill, effort, and responsibility, and is performed under similar working conditions.”⁵⁶

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g. How do I prove that my work requires equal skill, effort, and responsibility as my coworker?

To prove that your work is equal to that of a male coworker, you can present many kinds of evidence. For instance, you can show that your work requires similar levels of education and prior work experience.⁵⁷ You can also show that you engaged in similar amounts and kinds of activities as your coworker or that you generated similar amounts

of revenue for your company.⁵⁸ Ask yourself if your coworker has duties substantially similar to your own. If the answer is yes, then you may be performing equal work.

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h. Must I prove that my employer intentionally paid me less because I am a female?

No. California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) does not require such proof.⁵⁹ However, other discrimination claims under the **FEHA** (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) require proof that your employer intended to discriminate against you because you are a woman.⁶⁰

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i. What could my employer do to defeat my claim brought under the equal pay law?

Your employer can escape liability if your employer pays wages according to “a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.”⁶¹ For example, under a system which measures earnings by quantity of production, if you produce less work and get paid less, you are not being discriminated against.

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j. Does it matter when the discrimination occurred?

Yes. California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) allows you to recover wages lost only during the two years prior to filing the complaint.⁶² The two year limitation expands to a three year limitation if your employer willfully discriminated against you.⁶³

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k. If I prove my claim for unequal pay, what kind of remedies am I entitled to?

California Labor Code § 1197.5 (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1171-1205>) allows you to recover the money that you did not receive as a result of your lower wages with interest, multiplied by two.⁶⁴ You can also recover **attorney’s fees**.⁶⁵ The **FEHA** (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) provides for other **remedies**⁶⁶ in addition to monetary damages.

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DISPARATE IMPACT: *I think my employer's policies disadvantage women more than men.*

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a. What does disparate impact mean?

An employer may have a policy that seems facially neutral but negatively affects a particular group of people in practice. Such a policy is said to have a disparate impact on that particular group.⁶⁷ The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for disparate impact claims.⁶⁸

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b. What is a facially neutral policy?

A facially neutral policy is one that, on its surface, does not appear to discriminate against any group.

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c. What does disparate impact look like?

Any kind of policy that seems neutral but affects women differently than men may result in [disparate impact](#). For example, a company may have a minimum height requirement when hiring employees. Although the height requirement on its surface does not seem to discriminate against women, fewer women may be hired because women are shorter than men on average. This is [disparate impact](#), and it is an illegal form of discrimination.⁶⁹

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d. What kinds of claims can be brought as a disparate impact claim?

Some examples of [disparate impact](#) claims are tests for employee selection that create a differential based on gender, minimum weight requirements, and minimum height requirements.⁷⁰

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e. I think that a company policy adversely affects me because of my gender, how do I prove it?

You can prove that your employer's policy has a [disparate impact](#) against women by showing that the policy affects applicants or employees in a "significantly discriminatory pattern."⁷¹ Statistics are a good way to show this pattern of discrimination. For example, if your company has a test for selecting new employees and only 20% of women pass the test as opposed to 50% of men, you may be able to show that your employer's policy has a [disparate impact](#).⁷²

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f. What is the difference between disparate impact and disparate treatment?

A claim of [disparate impact](#) requires for you to show that your employer's policy affected women more negatively than men, regardless of whether or not your employer intended to discriminate against women. However, a claim of [disparate treatment](#) requires proof that your employer intended to treat you differently because you are a woman.⁷³

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g. What could my employer do to deny my allegations?

In [disparate impact](#) cases, an employer can respond to your allegations by showing that the discriminatory policy is "necessary to the safe and efficient operation of the business"⁷⁴ and that the policy effectively fulfills this need.⁷⁵ This business necessity defense only works if there are no other less discriminatory alternatives to the current policy.⁷⁶ For a policy concerning hiring requirements, an employer can show that the policy is legal because it tests for essential job functions.⁷⁷

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a. What does “disparate treatment” mean?

Disparate treatment is any kind of action your employer may take with the intention of discriminating against you because you are a woman.⁷⁸ The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for disparate treatment claims.⁷⁹

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b. What kind of claims can be brought as a disparate treatment claim?

There are many kinds of [disparate treatment](#) claims that may be brought. A claim against an employer who is paying you less than a man performing the same job is one example.⁸⁰ Another example is a claim against an employer who refuses to promote you because you are a woman.⁸¹ Basically, if an employer acts against you with regard to your employment just because you are a woman, you may have a claim.⁸²

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c. I think that I may have experienced disparate treatment from my employer because of my gender, how do I prove it?

The proof of [disparate treatment](#) will vary slightly depending on the facts of your case.⁸³ In general, you need to present actions taken by your employer that, if left unexplained by your employer, create an inference that the actions were more likely than not a result of discrimination based on your sex.⁸⁴ Please refer to the separate sections on sex discrimination in [hiring](#)⁸⁵, [firing](#)⁸⁶, and [promotions](#)⁸⁷ for more detail.

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d. What is the difference between disparate treatment and disparate impact?

The main difference between [disparate treatment](#) and [disparate impact](#) revolves around your employer's intentions. [Disparate treatment](#) involves action by the employer intended to discriminate against women. An explicitly discriminatory policy such as separate pay scales for men and women counts as [disparate treatment](#).⁸⁸ However, [disparate impact](#) involves an employer's policy, which the employer may not have intended to be discriminatory, but nonetheless affects women more negatively than men.⁸⁹

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e. For my disparate treatment claim, do I have to prove that my employer intended to discriminate against me?

To prove [disparate treatment](#), you usually need to show that your employer intended to discriminate against you. However, if you are experiencing [disparate treatment](#) because your employer has a policy that is discriminatory on its face, you do not need to show discriminatory intent to prove [disparate treatment](#).⁹⁰ For example, if your employer has an explicit policy of paying men more than women, you do not need to prove discriminatory intent.

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f. Are there times when an employer may legally treat women differently than men?

Yes. An employer may treat you differently if the treatment is based on a bona fide occupational qualification.⁹¹ A bona fide occupational qualification means any characteristic that is necessary to perform the job safely and efficiently without undermining the essence of the business operation.⁹² Under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), an employer may also give preference to veterans.⁹³ For instance, if an employer chooses to hire a man instead of you because he is veteran, the employer is legally justified in doing so.

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g. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate, non-discriminatory reasons for acting against you.⁹⁴ For example, an employer could say that it fired you because of poor work performance or that it gave you fewer benefits because you worked fewer hours. You can respond to your employer's denials directly by presenting evidence that your employer's actions were more likely than not motivated by discriminatory reasons or indirectly by presenting evidence that the reasons offered by your employer lack credibility.⁹⁵

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a. What constitutes sexual harassment?

Two kinds of conduct constitute sexual harassment.⁹⁶ Quid pro quo, which means “something for something,”⁹⁷ is a form of sexual harassment “where a term of employment is conditioned upon submission to unwelcome sexual advances.”⁹⁸ Hostile working environment is another form of sexual harassment “where the harassment is sufficiently pervasive so as to alter the conditions of employment and create an abusive work environment.”⁹⁹ The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers all employers regardless of the number of employees.¹⁰⁰

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b. What does “Quid Pro Quo” sexual harassment look like?

If your supervisor, or any other coworker with the power to change your employment status, asks for sexual favors by threatening your employment or offering employment benefits, you may be a victim of [quid pro quo](#) sexual harassment. For instance, if your

supervisor asks you to have sex with him, threatening to fire you if you do not, your supervisor is sexually harassing you.

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c. How do I prove “Quid Pro Quo” sexual harassment?

To prove quid pro quo sexual harassment, you must show that a job, a job benefit, or the absence of a job detriment was explicitly or implicitly conditioned upon your acceptance of sexual conduct.¹⁰¹

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d. What does “Hostile Work Environment” sexual harassment look like?

Actions that create a [hostile work environment](#) can include “[v]erbal harassment, e.g., epithets, derogatory comments or slurs,” “[p]hysical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement,” and “[v]isual forms of harassment, e.g., derogatory posters, cartoons, or drawings.”¹⁰² These actions must be directed at you on the basis of your sex, e.g. epithets related to women, sexual drawings, and so forth.¹⁰³

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e. How do I prove “Hostile Work Environment” sexual harassment?

To prove that you worked in a [hostile work environment](#), you must show all of the following:¹⁰⁴

- That you belong to a protected group (as a woman, you do);
- That you were subject to unwelcome sexual harassment (e.g. lewd comments, physical contact);
- That the harassment complained of was based on sex;
- That the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment;
- [Respondeat superior](#).

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f. What is respondeat superior?

Respondeat superior is a doctrine for holding employers liable for the conduct of its employees i.e. co-workers.¹⁰⁵ For sexual harassment, respondeat superior is automatically shown if your employer, its agents, or a supervisor harassed you. However, in the case of co-workers, respondeat superior is only established if your employer, its agents, or a supervisor knew or should have known about the harassment but failed to remedy the situation.¹⁰⁶

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g. How do I show that this conduct created an abusive environment to work in?

To determine if the conduct is severe enough to create an abusive environment, the courts consider factors like “(1) the nature of the unwelcome sexual acts or works (generally, physical touching is more offensive than unwelcome verbal abuse); (2) the frequency of the offensive encounters; (3) the total number of days over which all of the offensive conduct occurs; and (4) the context in which the sexually harassing conduct occurred.”¹⁰⁷ Evidence that you lost tangible employment benefits is not necessary but helps.¹⁰⁸

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h. Do I need to show that my employer knew what was going on?

Your employer need not know of the sexual harassment if the harasser is a supervisor or agent of the employer.¹⁰⁹ However, for sexual harassment by coworkers, an employer is only liable if it knew or should have known of the harassment and failed to remedy the situation.¹¹⁰ If you feel that a coworker is harassing you, it is important that you let your employer know about what is happening, although a failure to inform your employer will not necessarily bar any claim of sexual harassment you may have.¹¹¹

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i. Do I need to show that I suffered a tangible loss?

No. You do not need to show any tangible losses in employment such as lost productivity leading to a demotion.¹¹²

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j. Can I file a claim against my boss/supervisor under the FEHA?

Yes. You can file a claim against your boss or supervisor.¹¹³ Moreover, your employer is automatically liable for the actions of a supervising employee.¹¹⁴ Thus, your employer has strict liability for harassment by its supervisors.¹¹⁵

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k. Can I bring a claim against my co-worker if he is not my boss or supervisor?

Yes. However, the sexual harassment is unlawful only if the employer knew or should have known of the harassment and failed to intervene.¹¹⁶

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l. Can I bring a claim against my employer for harassment by non-employees?

Yes. However, your employer may be liable only if the employer knew or should have known of the harassment and failed to intervene.¹¹⁷ Your employer must also have had sufficient legal control over the non-employee.¹¹⁸

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m. I complained to my employer and they reprimanded the harasser. Can I still file a claim?

You can still file a claim. However, if the employer took action and the incidences of sexual harassment stop, your employer may not be liable.¹¹⁹

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n. I reported to my employer, but they didn't do anything – can I still file a claim?

Yes. In fact, your employer is required by law to take any reasonable actions to prevent and stop sexual harassment.¹²⁰ The fact that your employer failed to take action is further proof of their liability for sexual harassment and may result in [punitive damages](#) if your employer authorized the harassing conduct.¹²¹

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o. What if my harasser is also a woman?

You may have a claim for sexual harassment even if your harasser is also a woman.¹²²

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p. Is one incident of sexual harassment sufficient basis for a claim?

One incident of sexual harassment may be sufficient to bring a claim. However, the “severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct.”¹²³ Therefore, if sexual harassment involves one incident, your harasser’s conduct must have been extremely severe.¹²⁴ For example, sexual assault may be severe enough to sustain a claim.¹²⁵

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q. Can my employer escape liability if the person who harassed me had my consent to act the way s/he did?

Yes, your consent to the harassing conduct can defeat your claim of sexual harassment.¹²⁶ However, if you consented as a matter of submission, you may still have a claim.¹²⁷ For instance, if you consented to the sexual conduct only because you feared adverse employment action, your employer could still be liable.

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r. Can I get damages for emotional distress?

Yes. You do not need to show any tangible losses in employment such as lost productivity leading to a demotion.¹²⁸ You can recover solely for any emotional distress you have experienced.

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s. Can I get punitive damages for sexual harassment?

Yes. You can get [punitive damages](#) if your employer authorized the sexual harassment or if your employer knew of your coworkers behavior and still failed to take action in conscious disregard of your rights.¹²⁹

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- t. What is the difference between disparate treatment/impact and sexual harassment?**
[Disparate treatment/impact](#), which includes illegal hiring, promoting, and firing practices, is closely related to sexual harassment, and both are forms of illegal discrimination.¹³⁰ However, with [disparate treatment/impact](#), you are required to show that your employer discriminated against you “in compensation or in terms, conditions or privileges of employment.”¹³¹ For sexual harassment claims, you are not required to “allege loss of tangible job benefits.”¹³²

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- u. What could my employer do to deny my allegations?**
Your employer may be able to escape or limit liability if your employer provided means to remedy the situation, you unreasonably failed to use the means provided by the employer, and the measures would have partially or wholly remedied the sexual harassment.¹³³ Also, for [hostile work environment](#) claims, an employer may avoid liability if the sexual conduct was not sufficiently severe or pervasive.¹³⁴

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PREGNANCY DISCRIMINATION: *I think my employer is discriminating against me because I am pregnant.*

- a. [What is pregnancy discrimination and does the FEHA cover it?](#)
- b. [I think I am being impacted or treated differently because of my pregnancy? How do I prove it?](#)
- c. [I just found out that I'm pregnant, should I tell my employer?](#)
- d. [Can I ask my employer to make accommodations for me on account of my pregnancy?](#)
- e. [How do I prove that I need a special accommodation?](#)
- f. [Can I ask my employer to transfer me to a less strenuous or hazardous position during my pregnancy?](#)
- g. [How do I prove that I need a transfer?](#)
- h. [Can I take a pregnancy leave?](#)
- i. [What constitutes a reasonable request for a pregnancy leave?](#)
- j. [For what amount of time can I take leave because of pregnancy?](#)
- k. [What happens to my job when I return from pregnancy leave?](#)
- l. [Can my employer deny me pregnancy leave?](#)
- m. [I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?](#)
- n. [Is my employer required to pay me while I am on pregnancy leave?](#)
- o. [I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?](#)
- p. [Can an employer refuse to hire me or decide to fire me because I may become pregnant?](#)
- q. [Can my employer refuse to select me for a training program because I am pregnant?](#)
- r. [Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?](#)
- s. [Can my employer keep me from working in certain areas or doing certain tasks because of health and safety concerns?](#)
- t. [Can my employer move me to another position while I am pregnant so as not to offend clients or customers?](#)
- u. [I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't allow me to take more than 2 breaks a day. Can I file a claim?](#)
- v. [Can my employer treat me differently because I am unmarried and pregnant?](#)
- w. [I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?](#)
- x. [My employer's medical plan covers most health conditions, but excludes pregnancy-related costs. Is this legal?](#)
- y. [My employer's medical plan covers most health conditions, but excludes contraceptive devices and medication. Is this legal?](#)
- z. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- aa. [Does it matter when the discrimination occurred? \(new window to WDTLS\)](#)
- bb. [What options do I have if I my employer has fewer than five employees? \(new window to WDTLS\)](#)
- cc. [If I prove my pregnancy discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

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a. What is pregnancy discrimination and does the FEHA cover it?

Pregnancy discrimination occurs if your employer treats you differently or harasses you because you are pregnant, you just gave birth, or you have medical conditions related to the pregnancy or childbirth.¹³⁵ The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) makes pregnancy discrimination illegal.¹³⁶ In addition, the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) requires employers to give pregnancy leave and to provide reasonable accommodations for employees affected by pregnancy.¹³⁷ The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for pregnancy discrimination claims.¹³⁸

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b. I think I am being impacted or treated differently because of my pregnancy? How do I prove it?

The [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) includes “pregnancy, childbirth, or related medical conditions” in the definition of “sex” with regard to discrimination.¹³⁹ So, the proof of any [disparate treatment](#) or [impact](#) claim based on pregnancy is the same as the proof for gender-based claims. You just have to show that you were discriminated against because you are pregnant rather than because you are a woman. Please refer to the sections on each claim for more detail.

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c. I just found out that I’m pregnant, should I tell my employer?

No law requires you to tell your employer that you are pregnant.¹⁴⁰ It is your choice. Furthermore, an employer cannot ask you questions unrelated to your job about your pregnancy if the employer thinks you may be pregnant.¹⁴¹ However, if you plan on taking leave or transferring positions because of your pregnancy, you have an obligation to inform your employer of your situation at least thirty days before the leave or transfer begins, if possible.¹⁴² Also, you must request special accommodations for your pregnancy if your employer is to be required to provide such accommodations.¹⁴³

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d. Can I ask my employer to make accommodations for me on account of my pregnancy?

Yes. Under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), an employer must provide reasonable accommodations for you, if you make such a request with the advice of your health care provider.¹⁴⁴ Furthermore, if your employer has a policy, practice, or collective bargaining agreement provision governing accommodations for temporarily disabled workers, it is unlawful for an employer to accommodate you any less for your temporary disability due to pregnancy.¹⁴⁵

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e. How do I prove that I need a special accommodation?

You can prove that you need special accommodations by showing that your health care provider advises such accommodations.¹⁴⁶ For example, you could get a written note from your health care provider explaining the special accommodation that you require.¹⁴⁷

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f. Can I ask my employer to transfer me to a less strenuous or hazardous position during my pregnancy?

Yes. Under the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), if your employer has a policy, practice, or collective bargaining agreement that allows temporarily disabled employees to transfer to less strenuous positions or hazardous positions, your employer must also allow for you to transfer at your request.¹⁴⁸

Furthermore, even if your employer does not have such a provision for temporarily disabled workers, your employer must still fulfill your transfer request on advice of your physician, if the request can be reasonably accommodated.¹⁴⁹

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g. How do I prove that I need a transfer?

You can prove that you need a transfer by getting a certification or a written note, from your health care provider explaining that you need to be transferred.¹⁵⁰ However, even if you have a certification, an employer is required to transfer you only if it is reasonable.¹⁵¹ For example, an employer is not obligated to transfer you if the transfer requires that your employer fire another employee or create a new, unnecessary position.

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h. Can I take a pregnancy leave?

Yes. The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) requires that your employer grant you pregnancy leave if you make a reasonable request.¹⁵²

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i. What constitutes a reasonable request for a pregnancy leave?

A request is reasonable if you give notice at least thirty days prior to the start of the pregnancy leave.¹⁵³ Also, if your employer requires a written note from your health care provider regarding the necessity of your pregnancy leave, you must provide it.¹⁵⁴

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j. For what amount of time can I take leave because of pregnancy?

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) allows a maximum of four months for pregnancy leave.¹⁵⁵

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k. What happens to my job when I return from pregnancy leave?

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) requires that your employer give you back your position, or a comparable position, when you come back from pregnancy leave.¹⁵⁶

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l. Can my employer deny me pregnancy leave?

Yes. Your employer can have a policy denying leave to temporarily disabled workers if the policy is a business necessity.¹⁵⁷

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m. I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?

Yes and no. You can be fired if your pregnancy leads to poor job performance and you do not request pregnancy leave or reasonable accommodations. However, you are legally entitled to pregnancy leave and reasonable accommodations for your pregnancy and related medical conditions.¹⁵⁸ So, if you are missing work because you have taken pregnancy leave or because your employer is allowing you to do so to reasonably accommodate you, you cannot be fired.¹⁵⁹

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n. Is my employer required to pay me while I am on pregnancy leave?

No. The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) does not require an employer to pay you while you are on pregnancy leave.¹⁶⁰ However, during your pregnancy leave, you may use any accrued paid vacation time you may have.¹⁶¹ Also, if your employer provides paid leave for workers with other temporary disabilities, your employer must provide the same privileges to you if you are temporarily disabled by your pregnancy.¹⁶² If your employer has a paid leave policy for temporarily disabled workers but has fewer than fifteen employees, your employer is required to provide paid leave for only six weeks.¹⁶³

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o. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?

No. You are not required to reveal any personal information that is not relevant to your potential job.¹⁶⁴ Furthermore, your interviewer cannot ask you about your pregnancy if the question is not job-related.¹⁶⁵

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p. Can an employer refuse to hire me or decide to fire me because I may become pregnant?

No. Your employer cannot discriminate against you just because there is a possibility that you may become pregnant.¹⁶⁶ Furthermore, the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) specifically forbids your employer from requiring you “to be sterilized as a condition of employment.”¹⁶⁷

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q. Can my employer refuse to select me for a training program because I am pregnant?

As a general rule, an employer cannot discriminate against you with regard to training programs because you are pregnant. However, for training programs leading to promotion, a non-[Title VII](http://www.eeoc.gov/policy/vii.html) (<http://www.eeoc.gov/policy/vii.html>) employer with fewer than fifteen employees may refuse to select you if you cannot complete the program at least three months prior to the estimated date of the start of your pregnancy leave.¹⁶⁸

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r. Can my employer prevent me from working while I’m pregnant or require me to take a certain amount of leave?

Any adverse action that the employer takes against you on the basis of your pregnancy is [disparate treatment](#).¹⁶⁹ However, your employer can ask you to stop working because of your pregnancy if your pregnancy prevents you from performing your job safely and efficiently.¹⁷⁰

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s. Can my employer keep me from working in certain areas or doing certain tasks because of health and safety concerns?

Any adverse action that the employer takes against you on the basis of your pregnancy is [disparate treatment](#).¹⁷¹ However, your employer can legally change your working conditions because of your pregnancy if your pregnancy prevents you from performing your job safely and efficiently.¹⁷²

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t. Can my employer move me to another position while I am pregnant so as not to offend clients or customers?

No. Only safety and efficiency considerations may justify a transfer to another position.¹⁷³

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- u. I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't allow me to take more than 2 breaks a day. Can I file a claim?**

No. Your employer is only required to reasonably accommodate you if you are disabled by your pregnancy, childbirth, or related medical conditions.¹⁷⁴ Circumstances relating to the care of your infant are not considered disabilities.

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- v. Can my employer treat me differently because I am unmarried and pregnant?**

No. California law expressly prohibits discrimination on the basis of pregnancy and marital status.¹⁷⁵

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- w. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?**

Yes. You can take leave for any medical conditions related to your pregnancy or childbirth, but your employer may require you to notify them of when you are leaving and for how long.¹⁷⁶

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- x. My employer's medical plan covers most health conditions, but excludes pregnancy-related costs. Is this legal?**

This is not legal if your employer provides coverage for other temporary disabilities. An employer that provides health benefits for temporarily disabled workers must also provide such benefits for pregnant workers.¹⁷⁷ However, this requirement only applies to employers covered by [Title VII \(http://www.eeoc.gov/policy/vii.html\)](http://www.eeoc.gov/policy/vii.html), having fifteen or more employees.¹⁷⁸

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- y. My employer's medical plan covers most health conditions, but excludes contraceptive devices and medication. Is this legal?**

California's Women's Contraception Equity Act (WCEA, California Health and Safety Code § 1367.25) (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=01001-02000&file=1367-1374.16>) does not require all medical health plans to include coverage for contraceptive devices and medication.¹⁷⁹ However, the act requires that all medical health plans giving prescription drugs benefits cover prescription contraceptive methods approved by the federal Food and Drug Administration.¹⁸⁰ Religious employers who request an exemption, however, may be released from the requirements of the WCEA (California Health and Safety Code § 1367.25) (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=01001-02000&file=1367-1374.16>).¹⁸¹

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z. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate, non-discriminatory reasons for acting against you.¹⁸² For example, an employer could say that it fired you because of poor work performance or that it gave you fewer benefits because you worked fewer hours. You can respond to your employer's denials directly by presenting evidence that your employer's actions were more likely than not motivated by discriminatory reasons or indirectly by presenting evidence that the reasons offered by your employer lack credibility.¹⁸³

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DISCRIMINATORY HIRING: *I wasn't hired because I'm a woman.*

- a. [I think I wasn't hired because I'm a woman, how do I prove it?](#)
- b. [The interviewer asked me some very personal questions. Is that legal?](#)
- c. [The interviewer stated that his customers would prefer to see a man to do this job rather than a woman. Is this a legal reason not to hire me?](#)
- d. [Must I prove that I didn't get the job because of my sex, and not my qualifications? If so how?](#)
- e. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- f. [Does it matter when the discrimination occurred? \(new window to WDTLS\)](#)
- g. [What options do I have if I my employer has fewer than five employees? \(new window to WDTLS\)](#)
- h. [If I prove my hiring discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

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a. I think I wasn't hired because I'm a woman, how do I prove it?

To prove that you were not hired because of your sex, you must show all of the following.¹⁸⁴

- 1) You are a member of a **protected class** (women are part of a protected class);
- 2) You applied for a position for which you are qualified and for which the employer was seeking applicants;
- 3) You were rejected despite your qualifications; and
- 4) The position was left open and your employer continued to seek applicants having your qualifications.

The **FEHA** (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for discriminatory hiring claims.¹⁸⁵

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b. The interviewer asked me some very personal questions. Is that legal?

No. The interviewer may not ask you questions unrelated to your job that may lead to discrimination.¹⁸⁶

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c. The interviewer stated that his customers would prefer to see a man to do this job rather than a woman. Is this a legal reason not to hire me?

No. An employer can only refuse to hire you for **bona fide occupational qualifications**, and customer preference does not qualify as one.¹⁸⁷

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d. Must I prove that I didn't get the job because of my sex, and not my qualifications? If so how?

Yes, you need to show that you were qualified.¹⁸⁸ You can prove that you did not get the job because of your sex by showing that you were fully qualified for the job and that your qualifications equaled or surpassed those of the person actually hired.¹⁸⁹

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e. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate reasons for refusing to hire you. For example, an employer could say that it refused to hire you because you did not possess the necessary skills. You can respond to the employer's denials by showing that the reasons offered by the employer were excuses and that the real reason for the refusal to hire was your gender.¹⁹⁰

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WRONGFULLY DENIED PROMOTION: *I think I was denied a promotion because I'm a woman.*

- a. [I think I did not get the promotion because I'm a woman, how do I prove it?](#)
- b. [Must I show that I was qualified, and that I took proactive steps to get the promotion?](#)
- c. [Must I show that my employer continued to seek applicants with similar qualifications?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter when the discrimination occurred?](#) (new window to WDTLS)
- f. [What options do I have if I my employer has fewer than five employees?](#) (new window to WDTLS)
- g. [If I prove my wrongfully denied promotion claim, what kind of remedies am I entitled to?](#) (new window to Remedies)

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a. I think I did not get the promotion because I'm a woman, how do I prove it?

To prove that you were not promoted because of your sex, you must show all of the following:¹⁹¹

- 1) You are a member of a **protected class** (women are part of a protected class);
- 2) You applied for a position for which you are qualified;
- 3) You were denied promotion; and
- 4) The position was left open and your employer continued to seek applicants having your qualifications.

The **FEHA** (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for wrongfully denied promotion claims.¹⁹²

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b. Must I show that I was qualified, and that I took proactive steps to get the promotion?

Yes. You must show that you were qualified for the position, but you do not necessarily need to have applied for the position. If you can show that you did not apply because you were discouraged by a discriminatory policy at your company, you may still have a claim for wrongfully denied promotion.¹⁹³

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c. Must I show that my employer continued to seek applicants with similar qualifications?

The fourth requirement in proving your case is necessary but flexible. You can show that a man of equal qualifications was given the promotion that you were seeking.¹⁹⁴ You can also show that men of equal qualifications were given promotions in the past.¹⁹⁵ In addition, statistics may offer some evidence of discriminatory promotional practices.¹⁹⁶ For example, if only 35% of women are promoted but 70% of men with equal

qualifications are promoted in your workplace, such a statistical disparity may be relevant evidence.

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d. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate reasons for refusing to promote you. For example, an employer could say that your promotion was denied due to poor performance evaluations submitted by your supervisor. You can respond to the employer's denials by showing that the reasons offered by the employer were excuses and that the real reason for the refusal to promote you was your gender.¹⁹⁷

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DISCRIMINATORY FIRING: *I think I was fired because I'm a woman.*

- a. [I think I was fired because I'm a woman, how do I prove it?](#)
- b. [Are women a "protected class"?](#)
- c. [How do I show that my legally protected class led to my discharge?](#)
- d. [Can I bring a claim even if I was not fired but I quit because of sex discrimination?](#)
- e. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- f. [Does it matter when the discrimination occurred?](#) (new window to WDTLS)
- g. [What options do I have if I my employer has fewer than five employees?](#) (new window to WDTLS)
- h. [If I prove my discriminatory firing claim, what kind of remedies am I entitled to?](#) (new window to Remedies)

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a. I think I was fired because I'm a woman, how do I prove it?

To prove you were fired, you must show all of the following:¹⁹⁸

- 1) That you are a member of a [protected class](#) (as a woman, you are);
- 2) That you were fired; and
- 3) That you were fired because you are a woman (e.g. a man was hired after you were fired).

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) covers employers with five or more employees for discriminatory discharge claims.¹⁹⁹

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b. Are women a "protected class"?

Yes. As a woman, you are a member of a class protected from discrimination.²⁰⁰

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c. How do I show that my legally protected class led to my discharge?

Different kinds of evidence can show that you were discharged because of your gender. For example, if your supervisor makes sexually derogatory comments towards you, this may provide some evidence of discriminatory motive.²⁰¹ If your employer hired a man after you were discharged, this could also constitute evidence that you were fired because you are a woman.²⁰²

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d. Can I bring a claim even if I was not fired but I quit because of sex discrimination?

Yes. If you quit because the sex discrimination at your place of employment was so unbearable, the courts may treat your resignation as if your employer fired you. This is called constructive discharge.²⁰³ The conduct that led to your resignation "must be so intolerable that any reasonable employee would resign rather than endure [it]."²⁰⁴

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e. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate, non-retaliatory reasons for firing you. For example, an employer could say that it fired you because of poor work performance. You can respond to your employer's denials by showing that the reasons offered by your employer were excuses and that the real reason for firing you was the fact that you are a woman.²⁰⁵

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RETALIATION: *I think my employer fired me because I filed a sex discrimination claim.*

- a. [What is retaliation or reprisal?](#)
- b. [How do I prove it?](#)
- c. [For what reasons can I be fired?](#)
- d. [What is “protected conduct”?](#)
- e. [How do I show that my legally protected conduct led to my discharge?](#)
- f. [What is an “adverse action”?](#)
- g. [Must I show that my employer knew about my “protected conduct”?](#)
- h. [What evidence can I show to prove that my “protected conduct” led to my being fired?](#)
- i. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- j. [Does it matter when the discrimination occurred?](#) (New window to WDTLS)
- k. [What options do I have if I my employer has fewer than five employees?](#) (New window to WDTLS)
- l. [If I prove retaliation, what kind of remedies am I entitled to?](#) (New window to Remedies)

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a. What is retaliation or reprisal?

Retaliation occurs when an employer acts negatively against you because you opposed a situation that violated the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) or because you filed a complaint or testified or assisted in an investigation.²⁰⁶ For example, if you see your supervisor sexually harassing a coworker, you cannot be fired because you told your supervisor to stop. The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) covers employers with five or more employees for retaliation claims.²⁰⁷

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b. How do I prove it?

You can prove retaliation by showing that you participated in a protected conduct, that you were subjected to an adverse employment action, and that your protected conduct caused the adverse employment action.²⁰⁸

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c. For what reasons can I be fired?

The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) prohibits the discharge of an employee for discriminatory reasons.²⁰⁹ The [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) also makes it illegal for an employer to fire you in retaliation for your participation in a protected conduct.²¹⁰ You can legally be fired for any other reason if you are an “at-will” employee.

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d. What is “protected conduct”?

Under the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), protected conduct is opposing conduct prohibited by the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) or assisting in the enforcement of the [FEHA](http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>).²¹¹

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e. How do I show that my legally protected conduct led to my discharge?

You can show that your legally protected conduct led to your discharge by providing evidence that your employer knew of your protected conduct and that your employer fired you soon thereafter.²¹²

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f. What is an “adverse action”?

An adverse action includes anything an employer might do to negatively affect your employment.²¹³ Some examples are demotions and decreases in salary. California courts have been vague in determining minimum standards for what exactly constitutes an adverse action.²¹⁴ Courts have held that ostracism and transfers to different work shifts, which do not result in material detriment, do not necessarily constitute an adverse action.²¹⁵ However, negative performance evaluations could constitute an adverse action.²¹⁶ In general, if your terms and conditions of employment are materially affected, you probably have faced an adverse action.²¹⁷ It is illegal for an employer to take adverse action against you because you participated in a protected conduct.

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g. Must I show that my employer knew about my “protected conduct”?

Yes. If your employer did not know of your protected conduct, there is no way the employer could have retaliated against you.²¹⁸

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h. What evidence can I show to prove that my “protected conduct” led to my being fired?

Some circumstantial evidence can help you prove that your protected conduct led to your discharge.²¹⁹ For example, if your supervisor had a good working relationship with you, but became dissatisfied with your performance only after learning of your protected conduct, you can use the change in your relationship with your supervisor to show that you were fired in retaliation.

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i. What could my employer do to deny my allegations, and how do I respond to its denials?

An employer could deny your allegations by offering legitimate, non-retaliatory reasons for acting against you. For example, an employer could say that it fired or demoted you because of poor work performance. You can respond to your employer's denials by showing that the reasons offered by your employer were pretext and that the real reason for the adverse action was your protected conduct.²²⁰

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HOW DO I FILE A CLAIM?²²¹

- a. [How do I file a state claim with California’s Department of Fair Employment and Housing \(DFEH\)?](#)
- b. [How do I contact the DFEH?](#)
- c. [Do I have to contact the Fair Employment Housing Commission \(FEHC\)?](#)
- d. [Against whom can I file a claim?](#)
- e. [If I choose to file a claim, what is expected of me?](#)
- f. [How long will the process take?](#)
- g. [Do I need an attorney?](#)
- h. [Where do I find an attorney?](#)
- i. [What if I can’t afford an attorney?](#)
- j. [What will my attorney need from me?](#)
- k. [Do I have to contact the DFEH before hiring an attorney?](#)
- l. [Can’t I sue my employer directly without going through the DFEH?](#)
- m. [Who will investigate my complaint?](#)
- n. [What do I do after my initial contact with the DFEH?](#)
- o. [What happens after I submit my claim?](#)
- p. [What happens if the investigators determine that no “reasonable” or “probable” cause exists on which to base a claim?](#)
- q. [What happens if the investigator determines that “reasonable” or “probable” cause exists on which to base a claim?](#)
- r. [Can I appeal a decision of the DFEH?](#)
- s. [If my case gets litigated, who will hear my case?](#)
- t. [Can I file a federal claim of employment discrimination as well? If so, how?](#)
- u. [What are the advantages and disadvantages of filing a federal claim over a state claim?](#)

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- a. **How do I file a state claim with California’s Department of Fair Employment and Housing (DFEH)?**
You can file a claim by contacting the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) and scheduling an appointment with a [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) consultant. Once you have met with the consultant, s/he will file the necessary paper work if you may have experienced sex discrimination.

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- b. **How do I contact the DFEH?**
You can schedule an appointment with a [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) consultant by calling 1-800-884-1684 if calling from within California or 916-227-0551 if calling from outside of California. Please visit the [DFEH website](#)²²² for more information.

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- c. **Do I have to contact the Fair Employment Housing Commission (FEHC)?**

No. Although the [FEHC](#) has the task of enforcing the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), the [DFEH](#) (<http://www.dfeh.ca.gov>) handles the processing of any claims. You only need to contact the [DFEH](#) (<http://www.dfeh.ca.gov>) to file a claim.

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d. Against whom can I file a claim?

You can file a claim against your employer. If you are employed by a temporary work agency, you can file a claim against both the agency and your current place of employment.²²³ You can also file a claim against any coworker who sexually harasses you²²⁴ or any individual who aids, abets, incites, compels, or coerces discriminatory acts forbidden by the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>).²²⁵

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e. If I choose to file a claim, what is expected of me?

The [DFEH](#) (<http://www.dfeh.ca.gov>) will investigate your claim and may ask you to provide any evidence that may help the investigation.

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f. How long will the process take?

Once filed, the [DFEH](#) (<http://www.dfeh.ca.gov>) can take up to a year to process your claim.

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g. Do I need an attorney?

You do not need an attorney. If the [DFEH](#) (<http://www.dfeh.ca.gov>) investigation yields possible violations of the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) by your employer, attorneys working for the [DFEH](#) (<http://www.dfeh.ca.gov>) can prosecute your claim for you. If the court action is successful, you will be entitled to applicable [remedies](#).

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h. Where do I find an attorney?

One source for finding an attorney is through the [California Employment Lawyers Association](#).²²⁶

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i. What if I can't afford an attorney?

If you cannot afford an attorney, the [DFEH](#) (<http://www.dfeh.ca.gov>) can prosecute your claim on your behalf.

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j. What will my attorney need from me?

An attorney will ask you for information regarding the circumstances of the discrimination you may have faced and any evidence you may have of this discrimination.

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k. Do I have to contact the DFEH before hiring an attorney?

No. However, your attorney can bring a private lawsuit only after the [DFEH](#) (<http://www.dfeh.ca.gov>) has processed your complaint or issued you with a Right to Sue Letter, a written document that says you can bring a private lawsuit.

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l. Can't I sue my employer directly without going through the DFEH?

No. You cannot sue under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>) without first going through the [DFEH](#) (<http://www.dfeh.ca.gov>).²²⁷ If you want to bring a private lawsuit, the [DFEH](#) (<http://www.dfeh.ca.gov>) must finish processing your claim or issue you a Right to Sue Letter, a written document that says you can bring a private lawsuit.

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m. Who will investigate my complaint?

The [DFEH](#) (<http://www.dfeh.ca.gov>) will investigate your complaint.

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n. What do I do after my initial contact with the DFEH?

You are not obligated to do anything.

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o. What happens after I submit my claim?

The [DFEH](#) (<http://www.dfeh.ca.gov>) will investigate your claim. If [reasonable cause](#) exists and the Department believes that a violation may have occurred, the [DFEH](#) (<http://www.dfeh.ca.gov>) will take action to try to remedy the situation.

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p. What happens if the investigators determine that no “reasonable” or “probable” cause exists on which to base a claim?

If the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) determines that your claim has no “reasonable” cause, they will dismiss your claim. At that time, you can pursue a private legal action against your employer if you still feel that you have been discriminated against.

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q. What happens if the investigator determines that “reasonable” or “probable” cause exists on which to base a claim?

If the investigators find that [reasonable cause](#) exists, the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) will work with you and your employer to privately negotiate any remedies acceptable by all parties. This process is called conciliation. If the attempts at conciliation are unsuccessful, the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) may bring legal action against your employer. You can also pursue private legal action by obtaining a Right to Sue Letter, a written document from the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) that says you can bring a private lawsuit.

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r. Can I appeal a decision of the DFEH?

Yes. If the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) dismisses your claim, you can bring a private court action against your employer.

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s. If my case gets litigated, who will hear my case?

You can either have your case be heard by the [FEHC](#) or in civil court. The administrative hearing held by the [FEHC](#) may produce a faster outcome. However, a civil court hearing has no limits on punitive and emotional distress damages.

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t. Can I file a federal claim of employment discrimination as well? If so, how?

Yes. You just have to indicate to the [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) that you want to file a federal claim as well.

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u. What are the advantages and disadvantages of filing a federal claim over a state claim?

Generally, California law provides more coverage and more [remedies](#) than federal law. In limited circumstances, however, federal law is advantageous. For instance, [Title VII](http://www.eeoc.gov/policy/vii.html) (<http://www.eeoc.gov/policy/vii.html>) does not have an exception for preferential treatment of veterans. The [DFEH](http://www.dfeh.ca.gov) (<http://www.dfeh.ca.gov>) attorney or a private lawyer can help you decide which law helps you the most.

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WHAT AM I ENTITLED TO IF I WIN?

- a. [What am I entitled to if I prove my claim of sex discrimination under the FEHA?](#)
- b. [What are the differences in remedies offered by an administrative hearing as opposed to a civil court hearing?](#)
- c. [What is the difference between actual and punitive damages?](#)
- d. [Will this be the final result?](#)

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- a. **What am I entitled to if I prove my claim of sex discrimination under the FEHA?**
You may be entitled to monetary damages, which includes [back pay](#), [front pay](#), actual damages including damages for emotional distress, [punitive damages](#), [attorney's fees](#), and out-of-pocket expenses. You may also be entitled to hiring, promotion, [reinstatement](#), policy changes, training, reasonable accommodation, and [affirmative relief](#).²²⁸

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- b. **What are the differences in remedies offered by an administrative hearing as opposed to a civil court hearing?**
For claims brought under the [FEHA](#) (<http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>), the [remedies](#) that may be provided by administrative hearings and civil court hearings are the same with one exception. For [remedies](#) provided by administrative hearings, the administrative fines, which are analogous to [punitive damages](#), combined with emotional distress damages cannot exceed \$150,000.²²⁹ However, for [remedies](#) provided by civil court hearings, there are no limits on [punitive damages](#) and emotional distress damages.²³⁰

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- c. **What is the difference between actual and punitive damages?**
Actual damages award you with the compensation that you deserve for any financial or emotional losses you may have experienced because of sex discrimination. [Punitive damages](#) are designed to punish the employer by requiring a payment in addition to actual damages.²³¹ You can get [punitive damages](#) if an employer is guilty of malice, oppression, or fraud.²³²

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- d. **Will this be the final result?**
Unless either party appeals the decision, the results are final.

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LOCAL ORDINANCES: DOES MY CITY HAVE ITS OWN LAWS ABOUT SEX DISCRIMINATION?²³³

- a. [What are the differences between local and state law?](#)
- b. [What are the advantages / disadvantages of the local law?](#)
- c. [What is the procedure of filing a local claim?](#)
- d. [What are the remedies under the local law?](#)

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a. What are the differences between local and state law?

In California, claims for sex discrimination cannot be brought under local ordinances. You can only bring such claims under federal or state law.

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b. What are the advantages / disadvantages of the local law?

San Francisco's CEDAW provides more coverage than state law. Based on U.N.'s international anti-discrimination provisions, CEDAW was designed to uphold the equality of women in all circumstances.

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c. What is the procedure of filing a local claim?

Different cities and municipalities have different filing procedures. Please contact your local commission for more information.

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d. What are the remedies under the local law?

Local laws may provide you with resources to help you persuade your employer to change its practices. For instance, the local commission may contact your employer and help you negotiate possible solutions. However, you cannot bring a lawsuit using local law.

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- ¹ FEHA, Cal. Govt. Code § 12900 et seq. (West 2005).; link to <http://www.dfeh.ca.gov/Statutes/FEHA%202005.pdf>.
- ² FEHA, Cal. Govt. Code § 12926(c).
- ³ FEHA, Cal. Govt. Code § 12926(d).
- ⁴ FEHA, Cal. Govt. Code § 12926(d); for definitions and exceptions, see FEHA, Cal. Govt. Code § 12926.2.
- ⁵ FEHA, Cal. Govt. Code § 12940(b), (c), (d) and § 12944(a).
- ⁶ FEHA, Cal. Govt. Code § 12940.
- ⁷ FEHA, Cal. Govt. Code § 12926(p); Cal. Pen. Code § 422.56(c).
- ⁸ Cal. Pen. Code § 422.56(c).
- ⁹ FEHA, Cal. Govt. Code § 12926(p).
- ¹⁰ FEHA, Cal. Govt. Code § 12940(a).
- ¹¹ FEHA, Cal. Govt. Code § 12940(j).
- ¹² FEHA, Cal. Govt. Code § 12945(a) and § 12947.5(a).
- ¹³ FEHA, Cal. Govt. Code § 12940(a) (states that employers cannot discriminate on the basis of sex, thus creating the protected class.).
- ¹⁴ Link to Title VII of the Civil Rights Act
- ¹⁵ Link to federal jurisdiction page
- ¹⁶ FEHA, Cal. Govt. Code § 12926(d).
- ¹⁷ FEHA, Cal. Govt. Code § 12960(d).
- ¹⁸ (The FEHA does not specifically state what remedies are available in court. In addition, the courts have not enumerated the available remedies. However, the website for the DFEH explains what remedies are available. See the Remedies section for more detail.).
- ¹⁹ FEHA, Cal. Govt. Code § 12940.
- ²⁰ FEHA, Cal. Govt. Code § 12993(b).
- ²¹ See generally *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
- ²² *Id.*
- ²³ FEHA, Cal. Govt. Code § 12960(b).
- ²⁴ FEHA, Cal. Govt. Code § 12960(d).
- ²⁵ FEHA, Cal. Govt. Code § 12926(d).
- ²⁶ FEHA, Cal. Govt. Code § 12940(j)(4)(A).
- ²⁷ FEHA, Cal. Govt. Code § 12940(h).
- ²⁸ FEHA, Cal. Govt. Code § 12940(c).
- ²⁹ FEHA, Cal. Govt. Code § 12940(i).
- ³⁰ Link to Equal Pay Claims section.
- ³¹ Cal Lab Code § 1197.5.
- ³² Link to Ideas for Change
- ³³ FEHA, Cal. Govt. Code § 12935.
- ³⁴ Link to How do I file a claim
- ³⁵ FEHA, Cal. Govt. Code § 12965(c)(3).
- ³⁶ Link to Remedies
- ³⁷ General Note: Unfortunately, California keeps many helpful cases unpublished and uncitable. So, a number of the cases cited in these sections are Title VII claims or claims for employment discrimination on the basis of race or age. However, they were cited because they are helpful in interpreting sex discrimination prohibited by California's FEHA.
- ³⁸ FEHA, Cal. Govt. Code § 12940(a).
- ³⁹ Cal Lab. Code § 1197.5(a).
- ⁴⁰ Link to the Federal Laws FAQ page concerning Equal Pay claims.
- ⁴¹ FEHA, Cal. Govt. Code § 12926(d).
- ⁴² Cal Lab. Code § 1197.5; 2-40 California Employment Law § 40.11 (3) (I could not find any definition of employer in the relevant portions of the California Labor Code. Also, the California Employment Law practice guide states that there is no minimum number of employees required by the equal pay law. So, it seems that the equal pay law does not require a minimum number of employees.).
- ⁴³ *Bass v. Great Western Sav. & Loan Assn.*, 58 Cal. App. 3d 770, 773 (1976).
- ⁴⁴ Cal Lab. Code § 1197.5(a).

⁴⁵ FEHA, Cal. Govt. Code § 12940(a).

⁴⁶ Merriam-Webster Dictionary of Law (1996).

⁴⁷ See Cal Lab Code § 1197.5(a); *see generally Bartelt v. Berlitz School of Languages, Inc.*, 698 F.2d 1003, 1005-1006 (9th Cir. 1983) (Although *Bartelt* discusses “same establishment” in terms of the federal Equal Pay Act and Title VII, the “same establishment” statutory language is analogous with respect to California’s equal pay law and the FEHA.).

⁴⁸ Link to <http://www.dir.ca.gov/dlse/dlse.html>

⁴⁹ Cal Lab. Code § 1197.5(c).

⁵⁰ Cal Lab. Code § 1197.5(e).

⁵¹ Cal Lab. Code § 1197.5(f).

⁵² *Bass*, 58 Cal. App. 3d at 773 (1976).

⁵³ Cal Lab Code § 1171.

⁵⁴ *See generally Bartelt v. Berlitz School of Languages, Inc.*, 698 F.2d 1003, 1004 (9th Cir. 1983) (involving pay discrimination against female directors as compared to male directors). *Bartelt* is an equal pay claim brought under Title VII. Although some of the legal nuances are different for claims brought under different laws, the basic principle of unequal pay for equal work is similar for all equal pay claims. Therefore, the general “look” of pay discrimination in *Bartelt* is cited.

⁵⁵ *See Stanley v. University of S. Cal.*, 13 F.3d 1313, 1321-1322 (9th Cir. 1994) (holding that woman had no claim for unequal pay because of differences in qualification, experience, and responsibilities).

⁵⁶ Cal Lab. Code § 1197.5(a); *Green v. Par Pools, Inc.*, 111 Cal. App. 4th 620, 622-623 (2003); *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974).

⁵⁷ *See Stanley*, 13 F.3d at 1321-1322.

⁵⁸ *Id.*

⁵⁹ *Maxwell v. Tucson*, 803 F.2d 444, 446 (9th Cir. 1986). (note: no California case law; rely on federal interpretation)

⁶⁰ *Carter v. CB Richard Ellis, Inc.*, 122 Cal. App. 4th 1313, 1321 (2004) (stating that disparate treatment claims involve intentional discrimination by the employer).

⁶¹ Cal Lab. Code § 1197.5(a).

⁶² *Jones v. Tracy School Dist.*, 27 Cal. 3d 99, 105 (1980).

⁶³ Cal Lab. Code § 1197.5(h).

⁶⁴ Cal Lab. Code § 1197.5(b) (The exact language for damages is “the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and in an additional equal amount as liquidated damages.” This formula yields double the lost wages with interest.).

⁶⁵ Cal Lab. Code § 1197.5(g).

⁶⁶ Link to the Remedies page.

⁶⁷ *Carter.*, 122 Cal. App. 4th at 1321.

⁶⁸ FEHA, Cal. Govt. Code § 12926(d).

⁶⁹ *See generally Dothard v. Rawlinson*, 433 U.S. 321 (1977). Although *Dothard* is a Title VII claim originally brought in Alabama, the case is a Supreme Court case cited in California discrimination cases. The case provides a good illustration of a basic disparate impact claim.

⁷⁰ *Id.*

⁷¹ *City and County of San Francisco v. Fair Employment & Housing Commission*, 191 Cal. App. 3d 976, 986 (1987) (quoting *Dothard*, 433 U.S. at 329. *City and County of San Francisco* contemplated a disparate impact claim under the FEHA, based on race, but the case cites *Dothard* which involved a disparate impact claim under Title VII, based on sex. Therefore, it seems that the relevant principles of *City and County of San Francisco* and *Dothard* apply to disparate impact claims under the FEHA, based on sex).

⁷² *See generally, City and County of San Francisco v. Fair Employment & Housing Commission*, 191 Cal. App. 3d 976 (1987).

⁷³ *Carter.*, 122 Cal. App. 4th at 1321.

⁷⁴ 2 Cal. Code of Regs. § 7286.7(b).

⁷⁵ 2 Cal. Code of Regs. § 7286.7(b).

⁷⁶ 2 Cal. Code of Regs. § 7286.7(b).

⁷⁷ 2 Cal. Code of Regs. § 7287.4(e).

⁷⁸ *Carter*, 122 Cal. App. 4th at 1321 (stating that disparate treatment claims involve intentional discrimination by the employer), *Frank v. United Airlines, Inc.*, 216 F.3d 845, 853 (9th Cir. 2000).

⁷⁹ FEHA, Cal. Govt. Code § 12926(d).

⁸⁰ See generally *Bartelt*, 698 F.2d at 1004.

⁸¹ *Laborde v. Regents of University of California*, 686 F.2d 715, 717 (9th Cir. 1982).

⁸² FEHA, Cal. Govt. Code § 12940(a).

⁸³ *Clark v. Claremont University Center*, 6 Cal. App. 4th 639, 663 (1992). (case involves racial discrimination, but PFC is for “employment discrimination for disparate treatment” and therefore applies to sex discrimination as well).

⁸⁴ *Id.*

⁸⁵ link to hiring discrimination section

⁸⁶ link to firing discrimination section

⁸⁷ link to promotion discrimination section

⁸⁸ *Frank v. United Airlines, Inc.*, 216 F.3d 845, 853 (9th Cir. 2000). *Frank* is actually a Title VII claim involving a facially discriminatory policy having to do with weight requirements. However, I used pay scales as an example because it was simpler.

⁸⁹ *Carter*, 122 Cal. App. 4th at 1321.

⁹⁰ *Frank v. United Airlines, Inc.*, 216 F.3d 845, 854 (9th Cir., 2000).

⁹¹ 2 Cal. Code of Regs. § 7286.7(a).

⁹² 2 Cal. Code of Regs. § 7286.7(a).

⁹³ FEHA, Cal. Govt. Code § 12940(a)(4).

⁹⁴ *Clark*, 6 Cal. App. 4th at 663-664.

⁹⁵ *Id.* at 639, 664.

⁹⁶ *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1172 (9th Cir. 2001).

⁹⁷ Gilbert Law Summaries, Pocket Size Law Dictionary, pg. 269

⁹⁸ *Kohler*, 244 F.3d at 1172 (9th Cir. 2001).

⁹⁹ *Id.*

¹⁰⁰ FEHA, Cal. Govt. Code § 12940(j)(1) (“employer...or any other person”).

¹⁰¹ *Porter v. Cal. Dep't of Corr.*, 383 F.3d 1018, 1025 (9th Cir. 2004).

¹⁰² 2 Cal. Code of Regs. § 7287.6(b)(1).

¹⁰³ 2 Cal. Code of Regs. § 7287.6(b)(1).

¹⁰⁴ *Fisher v. San Pedro Peninsula Hosp.*, 214 Cal. App. 3d 590, 608 (1989).

¹⁰⁵ Law office #5’s list of common definitions

¹⁰⁶ *Fisher*, 214 Cal. App. 3d at 608 n. 6.

¹⁰⁷ *Id.* at 610.

¹⁰⁸ *Id.*

¹⁰⁹ *Kohler*, 244 F.3d at 1172.

¹¹⁰ *Id.*

¹¹¹ 2 Cal. Code of Regs. § 7287.6(b)(4).

¹¹² See *Kohler*, 244 F.3d at 1172 (9th Cir. 2001).

¹¹³ FEHA, Cal. Govt. Code § 12940(j)(1).

¹¹⁴ *Kelly-Zurian v. Wohl Shoe Co.*, 22 Cal. App. 4th 397, 415-416 (1994).

¹¹⁵ *Id.*

¹¹⁶ FEHA, Cal. Govt. Code § 12940(j)(1); *Kelly-Zurian*, 22 Cal. App. 4th at 415.

¹¹⁷ FEHA, Cal. Govt. Code § 12940(j)(1).

¹¹⁸ FEHA, Cal. Govt. Code § 12940(j)(1).

¹¹⁹ See *Brooks v. City of San Mateo*, 229 F.3d 917, 924 (9th Cir. 2000).

¹²⁰ FEHA, Cal. Govt. Code § 12940(j)(1).

¹²¹ *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1148-1149 (1998).

¹²² *Mogilefsky v. Superior Court*, 20 Cal. App. 4th 1409, 1418 (1993); *Sheffield v. Dept. of Social Services*, 109 Cal. App. 4th 153, 160-161 (2003).

¹²³ *Ellison v. Brady*, 924 F.2d 872, 878 (9th Cir., 1991).

¹²⁴ *Brooks*, 229 F.3d at 926.

¹²⁵ *Id.*

¹²⁶ *Jacobus v. Krambo Corp.*, 78 Cal. App. 4th 1096, 1103 (2000).

¹²⁷ *Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1171-72 (9th Cir. 2003).

¹²⁸ See *Kohler*, 244 F.3d at 1172.

¹²⁹ Cal Civ Code § 3294(b).

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- ¹³⁰ *Kohler*, 244 F.3d at 1172.
- ¹³¹ *Id.*
- ¹³² *Id.*
- ¹³³ *State Dept. of Health Services v. Superior Court*, 31 Cal. 4th 1026, 1042-1045 (2003).
- ¹³⁴ *Brooks*, 229 F.3d at 923-924.
- ¹³⁵ FEHA, Cal. Govt. Code § 12926(p), § 12940(a) and (j)(4)(C).
- ¹³⁶ FEHA, Cal. Govt. Code § 12926(p), § 12940(a) and (j)(4)(C).
- ¹³⁷ FEHA, Cal. Govt. Code § 12945(a) and (b).
- ¹³⁸ FEHA, Cal. Govt. Code § 12926(d).
- ¹³⁹ FEHA, Cal. Govt. Code § 12926(p).
- ¹⁴⁰ Cal Const, Art I § 1. Privacy is protected for sexual matters and pregnancy/abortion. See generally, *Roman Catholic Bishop v. Superior Court*, 42 Cal. App. 4th 1556, 1567 (1996); *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 326-328 (1997).
- ¹⁴¹ FEHA, Cal. Govt. Code § 12940(d).
- ¹⁴² 2 Cal. Code of Regs. § 7291.10(a).
- ¹⁴³ FEHA, Cal. Govt. Code § 12945(b)(1).
- ¹⁴⁴ FEHA, Cal. Govt. Code § 12945(b)(1).
- ¹⁴⁵ 2 Cal. Code of Regs. § 7291.5(a)(9).
- ¹⁴⁶ FEHA, Cal. Govt. Code § 12945(b)(1).
- ¹⁴⁷ 2 Cal. Code of Regs. § 7291.2(d). (Although the definition of “certification” applies to leave and transfer, the general principle of proof from a health care provider seems to be the same.)
- ¹⁴⁸ FEHA, Cal. Govt. Code § 12945(b)(2).
- ¹⁴⁹ FEHA, Cal. Govt. Code § 12945(b)(3).
- ¹⁵⁰ 2 Cal. Code of Regs. § 7291.6(a)(1); 2 Cal. Code of Regs. § 7291.2(d).
- ¹⁵¹ 2 Cal. Code of Regs. § 7291.6(a)(2).
- ¹⁵² FEHA, Cal. Govt. Code § 12945(a); 2 Cal. Code of Regs. § 7291.8(b)(3).
- ¹⁵³ 2 Cal. Code of Regs. § 7291.8(c); 2 Cal. Code of Regs. § 7291.10(a).
- ¹⁵⁴ 2 Cal. Code of Regs. § 7291.8(c); 2 Cal. Code of Regs. § 7291.10(b).
- ¹⁵⁵ FEHA, Cal. Govt. Code § 12945(a).
- ¹⁵⁶ *California Federal Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 289 (1987); 2 Cal. Code of Regs. § 7291.9(a).
- ¹⁵⁷ This one is a little tricky. 2 Cal. Code of Regs. § 7291.5(b) provides permissible defenses like BFOQ and business necessity, but these don’t fit pregnancy leave perfectly. See also 2 Cal. Code of Regs. § 7286.7(b).
- ¹⁵⁸ FEHA, Cal. Govt. Code § 12945(a) and (b).
- ¹⁵⁹ 2 Cal. Code of Regs. § 7291.14(b).
- ¹⁶⁰ *California Federal Sav. & Loan Ass’n*, 479 U.S. at 276.
- ¹⁶¹ FEHA, Cal. Govt. Code § 12945(a).
- ¹⁶² 2 Cal. Code of Regs. § 7291.11(a)(1).
- ¹⁶³ 2 Cal. Code of Regs. § 7291.11(a)(1)(A).
- ¹⁶⁴ FEHA, Cal. Govt. Code § 12940(d).
- ¹⁶⁵ FEHA, Cal. Govt. Code § 12940(d).
- ¹⁶⁶ *Johnson Controls, Inc. v. Fair Employment & Housing Com.*, 218 Cal. App. 3d 517, 533 (1990); 2 Cal. Code of Regs. § 7291.0(c).
- ¹⁶⁷ FEHA, Cal. Govt. Code § 12945.5.
- ¹⁶⁸ 2 Cal. Code of Regs. § 7291.5(c).
- ¹⁶⁹ FEHA, Cal. Govt. Code § 12940(a).
- ¹⁷⁰ 2 Cal. Code of Regs. § 7291.5(b); 2 Cal. Code of Regs. § 7286.7(a).
- ¹⁷¹ FEHA, Cal. Govt. Code § 12940(a).
- ¹⁷² 2 Cal. Code of Regs. § 7291.5(b); 2 Cal. Code of Regs. § 7286.7(a).
- ¹⁷³ 2 Cal. Code of Regs. § 7286.7(a); see generally 2 Cal. Code of Regs. § 7290.8(a)(3).
- ¹⁷⁴ FEHA, Cal. Govt. Code § 12945(b)(1).
- ¹⁷⁵ FEHA, Cal. Govt. Code § 12926(p); FEHA, Cal. Govt. Code § 12940(a).
- ¹⁷⁶ FEHA, Cal. Govt. Code § 12945(a).
- ¹⁷⁷ 2 Cal. Code of Regs. § 7291.5(a)(5).
- ¹⁷⁸ 2 Cal. Code of Regs. § 7291.5(d).
- ¹⁷⁹ Cal. Health & Safety Code § 1367.25.

¹⁸⁰ Cal. Health & Safety Code § 1367.25(a)(1).
¹⁸¹ Cal. Health & Safety Code § 1367.25(b).
¹⁸² Clark, 6 Cal. App. 4th at 663-664.
¹⁸³ *Id.* at 664.
¹⁸⁴ *County of Alameda v. Fair Employment & Housing Com.*, 153 Cal. App. 3d 499, 504-505 (1984). *County of Alameda* is actually a race discrimination case, but the standards apply to employment discrimination claims in general.
¹⁸⁵ FEHA, Cal. Govt. Code § 12926(d).
¹⁸⁶ FEHA, Cal. Govt. Code § 12940(d).
¹⁸⁷ 2 Cal. Code of Regs. § 7286.7(a); 2 Cal. Code of Regs. § 7290.8(a)(3).
¹⁸⁸ *Sada v. Robert F. Kennedy Med. Ctr.*, 56 Cal. App. 4th 138, 151 (1997). *Sada* is a national origins discrimination case, but principles apply to sex discrimination.
¹⁸⁹ *Sada v. Robert F. Kennedy Med. Ctr.*, 56 Cal. App. 4th 138, 152 (1997).
¹⁹⁰ *County of Alameda*, 153 Cal. App. 3d at 504-505.
¹⁹¹ *Clark*, 6 Cal. App. 4th at 663.
¹⁹² FEHA, Cal. Govt. Code § 12926(d).
¹⁹³ *Reed v. Lockheed Aircraft Corp.*, 613 F.2d 757, 761-762 (9th Cir. 1980).
¹⁹⁴ *Lindahl v. Air France*, 930 F.2d 1434, 1438 (9th Cir. 1991). *Lindahl* is a California Title VII case but the principle should apply to the FEHA.
¹⁹⁵ *Laborde*, 686 F.2d at 717.
¹⁹⁶ *Id.* at 717-718.
¹⁹⁷ *Clark*, 6 Cal. App. 4th at 663-664.
¹⁹⁸ *Jones v. Los Angeles Community College Dist.*, 702 F.2d 203, 205 (9th Cir. 1983). *Jones* is a Title VII claim, but California courts use Title VII interpretations as guides for interpreting FEHA claims.
¹⁹⁹ FEHA, Cal. Govt. Code § 12926(d).
²⁰⁰ See generally *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Harris v. Capital Growth Investors XIV*, 52 Cal. 3d 1142, 1170 (1991).
²⁰¹ *Carr v. Barnabey's Hotel Corp.*, 23 Cal. App. 4th 14, 18-19 (1994).
²⁰² *Jones*, 702 F.2d at 205.
²⁰³ *Regents of University of California v. Superior Court*, 33 Cal. App. 4th 1710, 1722 (1995).
²⁰⁴ *Id.*
²⁰⁵ *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 270-271 (9th Cir. 1996).
²⁰⁶ FEHA, Cal. Govt. Code § 12940(h).
²⁰⁷ FEHA, Cal. Govt. Code § 12926(d).
²⁰⁸ *Mathieu v. Norrell Corp.*, 115 Cal. App. 4th 1174, 1185 (2004).
²⁰⁹ FEHA, Cal. Govt. Code § 12940(a).
²¹⁰ FEHA, Cal. Govt. Code § 12940(h).
²¹¹ *Id.*
²¹² *Fisher*, 214 Cal. App. 3d at 615.
²¹³ *Helgeson v. American Int'l Group, Inc.*, 44 F. Supp. 2d 1091, 1097-1098 (S.D. Cal. 1999).
²¹⁴ *Soo v. UPS*, 73 F. Supp. 2d 1126, 1130 (N.D. Cal. 1999).
²¹⁵ *Id.*
²¹⁶ *Id.*
²¹⁷ *Id.*
²¹⁸ *Fisher*, 214 Cal. App. 3d at 615.
²¹⁹ *Id.*
²²⁰ *Sada*, 56 Cal. App. 4th at 155-157.
²²¹ All information in this section is from <http://www.dfeh.ca.gov> and common sense. See <http://www.dfeh.ca.gov/complaintEmployment.asp> for the details of filing a complaint.
²²² Link to <http://www.dfeh.ca.gov>
²²³ Mathieu, 115 Cal. App. 4th at 1184.
²²⁴ FEHA, Cal. Govt. Code § 12940(j)(3).
²²⁵ FEHA, Cal. Govt. Code § 12940(i).
²²⁶ <http://www.celaweb.org/>
²²⁷ *Romano v. Rockwell Internat., Inc.*, 14 Cal. 4th 479, 492 (1996).

²²⁸ See *Commodore Home Systems, Inc. v. Superior Court*, 32 Cal. 3d 211, 215. (1982). The court in *Commodore* states that remedies available under the FEHA are remedies available under any non-contractual civil action. However, the court does not enumerate. See 2 Cal. Code of Regs. § 7286.9 (Remedies that can be provided by the FEHC). See also, <http://www.dfeh.ca.gov/questionsEmp.asp>

²²⁹ <http://www.dfeh.ca.gov/questionsEmp.asp>

²³⁰ <http://www.dfeh.ca.gov/questionsEmp.asp>

²³¹ Gilbert Law Summaries, Law Dictionary, pg. 266.

²³² Cal. Civ. Code § 3294(a).

²³³ Research for local ordinances proved to be a great challenge. I could find no state statutes or case law that governs local ordinances. I suggest that this section dealing with local ordinances be left out of the FAQ because local ordinances do not seem very useful. However, some sources provided glimpses of how local ordinances operate. See http://www.sfgov.org/site/sfhumanrights_index.asp for San Francisco; see <http://oaac.co.la.ca.us/AAMain.shtml> for Los Angeles. See also <http://www.las-elc.org/sftransgender.pdf> although this document deals with gender identity discrimination.

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