

## Cancer and Employment in California

The California Fair Employment and Housing Act (FEHA) is California's anti-discrimination law. You have the right to a workplace free from discrimination based on any of the following protected categories:

- Race, Color
- Ancestry, national origin
- Religion, creed
- Age (over 40)
- Disability, mental and physical (including cancer)
- Sex, gender (including pregnancy, childbirth, breastfeeding or related medical conditions)
- Sexual Orientation
- Gender Identity, gender expression
- Medical Condition
- Genetic Information
- Marital Status
- Military and veteran

### How am I protected from discrimination as a worker in California?

The Fair Employment and Housing Act (FEHA) is California's anti-discrimination law. It applies to public and private employers, labor organizations, and employment agencies based in California. California state law makes it illegal for employers of five (5) or more employees to discriminate, harass, or retaliate against job applicants or employees in any of the protected categories above.

### I have cancer. Am I protected from discrimination under California law?

California antidiscrimination law (FEHA) defines disability as "having any mental or psychological disorder or condition that limits a major life activity...having any anatomical loss, cosmetic disfigurement, physiological disease, disorder or condition on any human, biological system... [or] any cancer related physical or mental health impairment from a diagnosis."<sup>1</sup> You are also protected under FEHA if you have a history of disability or are regarded as having a disability. If your condition meets this definition of disability and you work for an employer that has at least five (5) employees, you may be protected by FEHA.

California state antidiscrimination law offers protection in addition to any protection available under federal antidiscrimination law, the Americans with Disabilities Act (ADA). There are some key differences in state and federal antidiscrimination law. The ADA provides protection from disability discrimination for those who work for employers of fifteen (15) or more employees. Under the ADA, cancer *may* be considered a disability. The ADA defines disability as "a physical or mental impairment that *substantially* limits one or more major life activities."<sup>2</sup> A major life activity is defined broadly and can include "physical, mental, or social activities, especially those

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<sup>1</sup> Disability Defined: Cal. Gov. Code, §§ 12926(j) & 12926(m)

<sup>2</sup> Disability, Defined: 42 U.S.C.A § 12102(1)

life activates that affect employability...”<sup>3</sup> Cancer, cancer treatment, and the side effects of treatment can be both physically and psychologically disabling, so cancer can be considered a disability under the ADA. The following chart shows the differences between the ADA and FEHA.

**How is California law (FEHA) different from the Americans with Disabilities Act (ADA)?**

Americans with Disabilities Act (ADA)	California Fair Employment and Housing Act (FEHA)
Federal law, applies everywhere in the US	State law, applies to California only
Applies to employers with 15+ employees	Applies to employers with 5+ employees
Physical or mental impairment must <i>substantially</i> limit person’s performance of major life activities	Physical or mental impairment does <i>not</i> need to substantially limit person’s performance, impairment only need to limit major life functions

**What is disability discrimination in the workplace?**

Disability discrimination occurs when an employer treats a qualified employee or job applicant unfavorably because (1) he or she currently has a disability, (2) has a history of disability, (3) the employer believes the individual may have a disability, or (4) the individual has a relationship with a person with a disability.

An employer may not discriminate against a qualified employee with a disability during any part of the employment process, which includes hiring and firing, and job assignments and benefits. A qualified employee is someone who can perform the essential functions of the job, with or without reasonable accommodation. An employer may not fire or refuse to hire a person with a disability because of a disability.

**Am I protected from disability discrimination during the application or interview process?**

When you are applying for a job, employers may not ask anything about your medical history during the interview or on the written application. Employers may not ask about your health, medical history, present medical condition, mental or physical disability, and may not conduct medical or psychological exams or ask you about prior job related medical issues such as absences due to illness.

After the interview process, once a job offer has been made, employers may require a medical exam, but may only do so only if the employer requires all the employees within the same classification to have a medical exam, and if there is a relationship between the exam and the type of job they have offered you. For example, it may be appropriate for an employer to require a medical exam for an employee who will be operating heavy equipment, but it might not be appropriate to require a receptionist to submit to the same exam. Employers can require medical

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<sup>3</sup> Major Life Activities, Defined: 42 U.S.C. § 12102(2)

exams after a job offer has been made, but they cannot request your medical history and records because those are confidential.<sup>4</sup>

### **What are my rights at work if I have cancer?**

If you think you might have difficulty performing your normal job duties because of cancer, treatment, or side effects from treatment, you have the right to ask for a reasonable accommodation. A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. A reasonable accommodation can include, but is not limited to, the following: changing job duties and assigning some non-essential functions to another employee, a change in work shifts or schedules, relocating workspace, providing mechanical or electrical aids, and could also include leave time from work.

An accommodation is reasonable if it does not impose an *undue hardship* on the employer's business. An undue hardship is a significant difficulty or expense. What is considered reasonable is evaluated on a case by case basis. For example, a small business of five employees may not be able to afford to make the same modifications as a big company of 100 or more employees. An accommodation that is reasonable for one employee might not be reasonable for another employee, depending on the nature of their work. Accommodations must be determined based on the needs of each individual. There is no "one size fits all" approach to accommodations.

If you have a disability and ask for a reasonable accommodation to help you perform the essential functions of your job, your request begins the interactive process, or the process of negotiations between you and your employer to attempt to come up with the best solution for your situation. The employer may not have to give you the specific accommodation you request, but they do have to explore accommodation options.

If there is no reasonable accommodation that would help you perform the essential functions of your job, then you might not qualify for protection under antidiscrimination laws and can be legally terminated. You must be able to perform the essential functions of your job, with or without reasonable accommodations. An employer can still fire someone for performance-related reasons, which is why it is important to ask for accommodations before your work is affected. If your employer is unaware of your need for accommodation, they can legally terminate or take negative action against you.

### **How Do I File a Discrimination Complaint?**

If you feel that you have been discriminated against by your employer or a prospective employer with five (5) or more employees in California, you can file a complaint with the Department of Fair Employment and Housing (DFEH). It is important to note that this process involves investigation by DFEH and is not the same as filing a lawsuit in court. It is a good idea to consult with an employment attorney before filing a complaint. You may choose to sue your employer *instead of* having your case investigated by the DFEH. In order to sue, you will need to consult an attorney

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<sup>4</sup> Employment Inquiries: [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH\\_PEI-Guidelines.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_PEI-Guidelines.pdf)

and request a “Right to Sue” notice from DFEH<sup>5</sup>. If you do not wish to sue and instead wish to file a complaint against your employer to DFEH, the following applies:

To file a discrimination complaint with DFEH:

1. You will need to contact DFEH **within one (1) year** of being discriminated against and file a form titled “pre-complaint inquiry.”
2. Within 60 days, you will be called by an investigator to go over the details of the discrimination. You will need to provide the following information:
  - a. The specific facts and any records about the incident(s); and
  - b. Copies of any documents that support your complaint.
3. DFEH will evaluate the facts and decide whether to accept the case for investigation.
  - a. If your case is accepted, DFEH will prepare a complaint form for you to sign.
  - b. When you return the signed complaint, it will be delivered to the employer or person that you believe discriminated against you (the respondent).
  - c. If your case is not accepted, your case will be dismissed.

### **Where Should I File A Complaint If I Work For An Employer With 15 Or More Employees?**

If you work for an employer of 15 or more employees, you are likely eligible for protection under both federal law (ADA) and state law (FEHA). You can file the charge with either the Equal Employment Opportunity Commission (EEOC), which enforces the ADA, or you can file with DFEH, which enforces FEHA. You should consult with an employment law attorney in California to determine which agency to file with. You should act as quickly as possible, since time limitations exist.

If you file a complaint with DFEH, and you are also eligible for protection under federal law because you work for an employer of 15 or more employees, DFEH will file the complaint with the EEOC because the agencies have a work sharing agreement. Similarly, if the charge is initially filed with EEOC and California law also applies, EEOC will dual file the charge with DFEH<sup>6</sup>.

### **When Should I File My Complaint?**

You have a limited amount of time to file a charge of discrimination. Under California state law, you need to file a charge within **one year** from the day the discrimination took place. If you are filing a complaint under federal law with the EEOC, you need to file a charge within **180 calendar days** from the day the discrimination took place. This same deadline does not apply to federal government employees and federal government job applicants. Federal employees have a different complaint process, and generally must contact an EEO Counselor within 45 days, with extensions granted under certain circumstances. It is always best to consult with an employment law attorney as quickly as possible after the discrimination occurred to determine the best course of action for your specific situation.

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<sup>5</sup> Right to Sue:: [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/PCI\\_RTS.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/PCI_RTS.pdf)

<sup>6</sup> Dual Filing Agreements <https://www.eeoc.gov/employees/fepa.cfm>

## Resources

**For more information on California Fair Employment and Housing Act (FEHA) or to file a complaint of discrimination, please contact:**

Employment Office  
California Department of Fair Employment and Housing  
(800) 884-1684  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

**For help with questions about reasonable accommodations, including specific guidance on the type of accommodations you may ask for:**

Job Accommodation Network (JAN)  
(800) 562-7234  
<https://askjan.org/>

**For practical questions about being an employee with cancer:**

Cancer and Careers  
(646) 929-8032  
[cancerandcareers@cew.org](mailto:cancerandcareers@cew.org)  
<https://www.cancerandcareers.org/en>

**For possible legal assistance:**

California State Bar Lawyer Referral Services  
If you are calling from within California: (866) 442-2529  
If you are calling from out of state: (415) 538-2250  
[LRS@calbar.ca.gov](mailto:LRS@calbar.ca.gov)  
<http://www.calbar.ca.gov/Public/Need-Legal-Help/Lawyer-Referral-Service>

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