



# Transgender and Nonbinary Workers' Toolkit

**LEGAL  
AID AT  
WORK**



**Beyond  
Binary  
Legal**

# Table of Contents



<b>Who This Toolkit is for</b>	<b>4</b>
<b>Disclaimer</b>	<b>4</b>
<b>Acknowledgments</b>	<b>4</b>
<b>Background Information</b>	<b>5</b>
Definitions of discrimination and harassment	5
Which laws apply to you	5
About the process	7
<b>Getting a Lawyer</b>	<b>7</b>
When do I need a lawyer?	7
What if I don't have the money to pay a lawyer?	8
What if I don't feel comfortable with my lawyer?	9
<b>Discrimination in Hiring &amp; Your Rights as a Job Applicant</b>	<b>10</b>
Providing information on job applications, resumes, and cover letters	10
More about background checks	11
Whether a background check will reveal information about your gender	11
California-specific protections for employee background checks	11
Criminal records history (California-specific protections)	11
<b>Harassment and Discrimination in Employment</b>	<b>12</b>
Employers can be responsible for harassment by co-workers and customers	12
Misgendering	12
Gendered spaces such as bathrooms and locker rooms	13
Dress codes	13
Accommodations for disabilities, including gender dysphoria	14
<b>Other laws that frequently affect transgender and nonbinary workers</b>	<b>16</b>
Rights of undocumented people	16
California hate violence protections	16
California political activity laws	17
Other local laws in California	17
<b>Potential Outcomes</b>	<b>18</b>
Settlement Negotiations	19

<b>Asserting Your Rights</b>	<b>21</b>
1. Find support	21
2. Keep documentation	21
3. Follow your employer’s internal complaint procedure if possible	22
4. File a complaint with a government agency	23
5. Get a lawyer to file a lawsuit if necessary	27
<b>Contract Agreements and Retaliation</b>	<b>28</b>
Arbitration Agreements	28
Attempting to refuse or negotiate arbitration agreements	28
Whether you can still get help from a government agency if you signed an arbitration agreement	28
Non-Disclosure Agreements	29
Protection from Retaliation	29
<b>Sample Letters and Templates</b>	<b>30</b>
Letter to employer requesting use of name, gender, or pronouns (regardless of legal name or gender marker change)	30
Letter notifying employer of legal name or gender marker change	32
Letter to employer regarding access to facilities aligned with your gender identity	33
Letter to employer requesting accommodation for medical needs	34
Letter to employer requesting other trans or nonbinary-related workplace improvements (signed by 2 or more employees)	35
Sample documentation log of harassment/discrimination	36
First notification	38
Reporting continued harassment/discrimination or retaliation	40
Resignation letter after harassment/discrimination	42
Letter requesting wage records and personnel file	44
<b>Other Resources</b>	<b>46</b>
Resources for Job Seekers	46
Post-Employment Supports	46
Other Supports	48



# Who This Toolkit is for

We created this toolkit to make it easier for transgender and nonbinary workers (current employees, job applicants, and ex-employees) to understand their legal rights and how to take action when an employer fails to follow the law.

We originally wrote it for transgender and nonbinary people based in California. However, a lot of the information will apply similarly to transgender and nonbinary workers anywhere in the United States. To make this toolkit as useful as possible to people in other states, we attempted to specify when we're talking about California law versus federal (national) law. The parts based on federal law apply similarly anywhere in the United States. Additionally, some parts where we discuss California law can be a useful starting point for people in other states to figure out whether a similar state law exists there. Wherever you are located, we hope that this toolkit serves as a useful starting point to think about strategies for taking action and to discover what protections may be available for you.

Finally, you do not necessarily have to identify as transgender, nonbinary, or any other particular identity for the laws in this toolkit to apply to you. Most of the laws discussed in this toolkit will protect people from being treated differently because someone thinks you are transgender or gender nonconforming—regardless of whether that perception is true.

## Disclaimer

**This toolkit is intended to provide accurate, general information about the legal rights of workers in California. However, laws and legal procedures often change and are subject to differing interpretations. Legal Aid at Work and Beyond Binary Legal cannot ensure that the information in this toolkit is current, and we cannot be responsible for any use of it. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.**

## Acknowledgments

The creation and distribution of this toolkit were made possible by a California Lawyers Association Labor and Employment Section grant. Project leads Caspian Nash and Jared Odessky thank Nora Cassidy, Kevin Clune, Elizabeth Kristen, Tuli Ospina, Madeleine Rowell, Jessica Spierer, and our dedicated focus group participants for their contributions and support.





# Background Information

If you have questions about any of the legal information in this toolkit, please reach out to an attorney for support. Check out the *Getting a Lawyer* section on page 7.

## Definitions of discrimination and harassment

Most of the laws that we discuss in this toolkit are anti-harassment and anti-discrimination laws. These laws set legal boundaries that prohibit employers from treating employees differently based on gender and other categories.

- *Discrimination* means being treated differently or unfairly.
- *Harassment* is when someone subjects you to unwelcome behavior because of your identity.

These are general definitions. Whether a specific situation meets the requirements to have a remedy through the legal system depends on which specific laws apply. More on page 12.

## Which laws apply to you

Figuring out whether a law could apply in an employment law context mostly depends on:

- Where you work geographically,
- Your identity or how others perceive your identity,
- How you have been treated; and
- Facts about your employer.

## Where you work

Different laws apply to different people based on where they live or where relevant actions occur. In the United States, each state's laws exist in parallel to "federal" law, which is the national law that generally applies to everyone in every state.

When information in this toolkit mentions that it is based on California law, it applies to employees who work in California. When a law is based on federal law, it applies to employees anywhere in the United States, including California and all other states.

This double-coverage can be useful for workers in the employment context because one legal standard may provide protection where another does not. Even if your state is not as supportive of transgender or nonbinary people as California, federal law may still have you covered.

## Gender identity

Historically, gatekeeping of what it means to be a particular gender has excluded many people who are transgender or who do not fit into male/female norms from accessing

medical care, gender-affirming IDs, and other necessities. Fortunately, federal anti-discrimination laws are more inclusive. These laws prevent employers from treating employees differently based on gender stereotypes about what it means to be a man or a woman. As a result, transgender people do not have to have gender-affirming medical care to be considered transgender, and nonbinary people and others who do not fit into binary gender norms are also protected by laws that protect transgender people.

State laws in California are especially clear. California law specifically protects people from discrimination based on gender identity and expression.

For this toolkit, if you identify as transgender, nonbinary, Two-Spirit, gender nonconforming, genderqueer, agender, Fa’afafine, Hijra, Kathoey, Mak nyah, Muxe, Waria, Mahū, or another similar identity—or you are perceived as transgender or gender nonconforming—then you are covered as long as the law applies to your employer too.

### Exceptions for small employers

There are some exceptions for small employers, which do not have to follow anti-discrimination laws if they employ fewer than a certain number of employees:

	For federal law (applies across the U.S.)	For California law
An employer must follow <b>anti-discrimination</b> law	If the employer has 15 or more employees	If the employer has 5 or more employees
An employer must follow <b>anti-harassment</b> law	If the employer has 15 or more employees	No minimum employer size

*Double-check with a lawyer if you think your employer has fewer than the minimum number of employees for an anti-harassment or anti-discrimination law to apply. Sometimes the math can change if there has been a lot of employee turnover, if some employees are out on leave, etc. Also, other laws may apply to protect you even where an employer is small.*

## About the process

The Equal Employment Opportunity Commission (or “EEOC”) and the California Department of Fair Employment and Housing (“DFEH”) are government agencies that address issues like workplace harassment and discrimination. The EEOC enforces federal law across the U.S., and state agencies like the DFEH enforce their states’ laws.

These agencies have processes specifically for employees to bring formal complaints or “claims” against their employers without needing to file a lawsuit in court. Many cases can be resolved at the agency level, which can be faster and less expensive than a lawsuit. Even if you later file a lawsuit in court, you will need to bring your case to one of these agencies first.

## Getting a Lawyer



This toolkit provides general legal information. It is not a substitute for a lawyer! There are some things you can do yourself with legal information. However, your options and potential outcomes ultimately depend on the specific facts of your situation. A lawyer who has experience representing people in employment cases can provide advice that is specific to you.

## When do I need a lawyer?

Whether it’s time to get a lawyer mostly depends on the complexity of your case and whether your case has been filed in court.

### More complicated → get a lawyer

- Several different instances/types of discrimination or other workplace violations.
- Workplace issues overlapping with issues in another area of your life such as domestic violence, an immigration issue, or a criminal legal issue.
- If your case has been filed in court (not a government agency like the EEOC) you should find a lawyer to navigate the court process and to perform technical tasks such as filing legal documents. If you can’t find a lawyer, many courts have self-help centers to assist you in filing documents in court as a non-lawyer.

In most situations, consulting with a lawyer can help you figure out where to file your claim and whether it involves particularly complex legal issues or otherwise warrants further legal assistance. Then, you can make a more informed decision about what to do. Many lawyers will provide an initial consultation at no charge. You also can call free legal aid organizations for help.

## How do I find a lawyer?

- **Lawyer referral services**

Referral services match you with a lawyer based on your situation, language needs, and location in exchange for a small fee.

- In California, the State Bar has a [Certified Lawyer Referral Services Directory](#). There may also be local services such as the [Bar Association of San Francisco](#).
- For other states, ask your state bar association (the state-wide attorney licensing authority) about how to access referral services.
- There are also local bar associations with referral services in some cities and larger metropolitan areas.

- **Searchable directories of employee-side lawyers**

Typically, these directories simply list relevant attorneys in your area who have asked to be in the directory.

- California Employment Lawyers Association: [Find a lawyer directory](#)
- National Employment Lawyers Association: [Find a lawyer directory](#)
- Some local law libraries or county libraries have a directory of local attorneys. If possible, you may want to filter the list by city/location and practice area.

- **Public interest organizations**

Some legal aid nonprofits have lawyers on staff who may be able to assist or represent you. Often these organizations specialize in specific areas of law such as discrimination or LGBTQ rights. Even if an organization is unable to represent you directly, many can refer you to private attorneys they know. Some organizations run free legal clinics where you can sign up to discuss your case with a legal counselor or attorney and learn about your options. To contact Legal Aid at Work, call 415-864-8208 or fill out our online intake form for LGBTQ workers: <https://bit.ly/3uSocLL>.

- **Labor union prepaid plans**

If you are in a labor union, you may already have a pre-paid legal plan that provides members with a reduced rate or a specific amount of time with an attorney. Ask your union representative for more information.

## What if I don't have the money to pay a lawyer?

- **Get a free consultation**

Many lawyers offer free initial consultations. Depending on your situation, a free consultation may provide you with the information you need to understand your options. If you are using a lawyer referral service, you can specifically ask for lawyers who offer free consultations.

- **Contingency fee arrangements**

Many lawyers work on what is called a "contingency fee" arrangement where they only charge a percentage of a successful award or settlement. Clients do



not owe anything if the claim is not successful, though you may have to cover certain costs. Contingency fee arrangements can be a great way for people who would not ordinarily be able to afford a lawyer's services to get access to legal representation. However, lawyers who work with a contingency fee arrangement can be extremely selective about the cases that they take. They are unlikely to take a case if they don't think it is strong enough to win or where the amount of money won would be too low. Although the amount varies widely, a 30% to 40% contingency fee arrangement is not uncommon.

- **Legal aid organizations**

Many legal aid organizations provide free legal services to low-income people. Some organizations run free legal clinics where you can sign up to speak with a legal professional to receive free advice about your claims. To make an appointment with Legal Aid at Work's Workers Rights Clinic, call 415-864-8208.

## What if I don't feel comfortable with my lawyer?

It's important to trust and feel comfortable with your lawyer—both for the success of your case and for your own mental health. You have a right to expect competent representation, and you have a right to fire your lawyer at any time for any reason. However, it can be difficult to transition your case to a different lawyer if you decide to do so. Below are some steps we recommend to address any issues with a lawyer's representation while minimizing disruptions to your case:

- 1. Notify your lawyer about your dissatisfaction in writing first.**

Making sure your lawyer is formally aware of your dissatisfaction gives them an opportunity to fix the problem. Keep a copy of any letter you send because it could be used as evidence if there is a case of attorney misconduct later.

- 2. Know what to expect if you fire them.**

Be sure to ask for documents relating to your case. Know that a lawyer might charge a fee for the work they have already done but should not charge you for your file.

- 3. In extreme cases, complain to the lawyer's licensing authority.**

If you believe that your lawyer acted unethically or that their conduct has fallen below professional standards, you can file a complaint with your state's bar association or state supreme court's disciplinary board. The bar or board will either investigate your complaint or refer you to someone who can help. Lawyer discipline can include a range of punishments. In extreme situations, a licensing authority can take away a lawyer's law license permanently.

# Discrimination in Hiring & Your Rights as a Job Applicant

It is illegal for an employer to refuse to hire an applicant simply because they are transgender or nonbinary—under both California law and federal law. However, discrimination in hiring can be hard to prove, which can make it difficult to assert your rights.

## Providing information on job applications, resumes, and cover letters

Job applications often ask for information that can draw unwanted attention to your gender. If you are “outed” through a job application, potential employers might discriminate against you even though it’s illegal for them to do so. So, it can be a very personal decision when to disclose old names and other data. The good news is that you can use a preferred name in most situations even if you have not obtained a legal name change. However, there are important exceptions, as discussed below.

### Failure to answer truthfully

The most common issues come up on background check forms where legal names and previous names are necessary for the employer to complete the background check. If you do not include your legal name, and previous legal names if asked, the employer could view it as a failure to answer truthfully. Failure to answer truthfully would be legal grounds for the employer to refuse to hire you, and it can lead to other legal issues.

### When you have to use your legal name

Under California and federal law, employers should only require you to disclose a name other than your preferred name on internal, confidential forms where the employer needs to know the information. Employers must keep this information confidential, but there is always some risk of disclosure.

#### **You do not have to use your legal name on:**

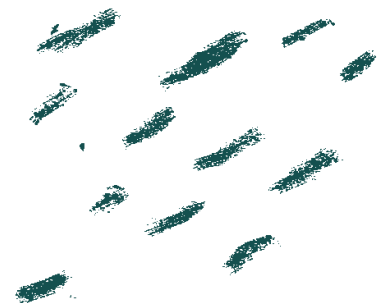
- Resumes
- Cover letters
- Informal communication such as emails

#### **Usually, you do have to use your legal name on:**

- Background checks
- Employment eligibility verification forms (I-9 forms)
- Payroll documents that go to tax authorities
- Health insurance documents

#### **Times you might have to disclose past legal name(s):**

- Background checks



## Whether you have to answer a binary gender question on a job application

In California, an employer can't discriminate against a job seeker for not designating male or female on a job application. In other words, a binary gender question would be optional, but the employer is still allowed to ask. You may decline to answer, but that may reveal information to the potential employer that you do not wish to reveal. This protection may not exist in all states.

## More about background checks

### Whether a background check will reveal information about your gender

A background check could reveal previous information about your gender. The databases that employers use for background checks usually track people by Social Security number to compare multiple sources of data from public agencies and private companies. Old data may still include previous names and gender markers even if you have changed your legal name and/or gender marker with the Social Security Administration.

### California-specific protections for employee background checks

In California, employers must:

- Not do background checks that are not job-related.
- Provide you with notice that they are conducting a background check.
- Supply you with a copy of the background check report after it is completed.

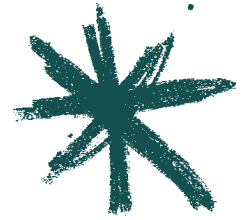
## Criminal records history (California-specific protections)

The California Fair Chance Act forbids most employers from asking questions about a criminal record before giving you a job offer, including on an application or during an interview. Once you have a job offer, the employer must follow certain steps to consider your criminal record history:

1. An employer must look at you as an individual to evaluate whether your specific convictions are directly related to your job duties and how much time has passed since the convictions.
2. If the employer decides to take back your job offer, it must identify the specific convictions it has a problem with and give you a copy of the background check.
3. The employer must give you a minimum of five business days to respond. You should also be told that the response can include evidence of background check errors, rehabilitation, or circumstances of the crime or your current life.
4. After you respond, the employer must consider the new information you submit. They must re-evaluate whether your conviction(s) still justify their decision not to hire you.
5. Finally, the company must inform you of the final decision and of your right to file a complaint with the government about their decision.

For more information about the California Fair Chance Act, see Legal Aid at Work's California Fair Chance Act Toolkit or call Legal Aid at Work at 415-864-8848 to request a copy.

# Harassment and Discrimination in Employment



Harassment and discrimination against transgender and gender nonconforming people can take many forms. In general, employers must respect their employees' gender identity. Refusing to do so can be harassment, discrimination, or both. However, the rights of nonbinary employees are less clear in some situations.

## Employers can be responsible for harassment by co-workers and customers

Under federal law and California law, employers have a duty to provide a harassment-free workplace. Accordingly, they also have a duty to respond to employees' complaints about discrimination and harassment. An employer can be liable for harassment committed by coworkers and third parties such as customers where the employer *knew* about or *should have known* about the harassment.

In California, the law goes a little further. Most employers have an affirmative responsibility to take reasonable steps to prevent workplace harassment, including posting information in the workplace about harassment and discrimination, distributing information about harassment, and providing training.

## Misgendering

Misgendering can be harassment, discrimination, or both. Under California law and federal law, misgendering may rise to the level of harassment if your coworkers, supervisors, or boss address you with the incorrect pronoun after they've been made aware of your gender identity.

- **Chosen names**

Under federal and California law, employees have the right to be called by their chosen name. This is true even if you have not legally changed your name. However, an employer can use your legal name where legally required such as on payroll or tax records. If you want to have your name changed on these documents, an employer might require you to get a court order first. *The process to get a court order for a legal name change varies depending on the state you live in. For more information on getting a court order in California, see [Transgender Law Center's "ID Please!" Guide](#).*

- **Chosen pronouns**

Similar to names, employees have the right to be referred to by the pronouns that they prefer regardless of whether they have had a legal gender marker change. Intentionally using the wrong pronouns after being informed of a worker's gender identity and pronouns is harassment and a form of discrimination.

- **When misgendering crosses the line**

While courts may not find one honest mistake to be unlawful, a pattern of misgendering that occurs multiple times over a long period of time can become legally recognized harassment or discrimination. It all depends on the details of the situation.

## Gendered spaces such as bathrooms and locker rooms

You have a right to use gender affirming bathrooms, changing rooms, and locker rooms.

### **Federal law:**

- Although many people argue that federal law is not settled on these points, several federal courts and the EEOC have decided that federal law prohibits discrimination based on both sex and gender identity. This means that employers can't deny transgender employees access to the bathroom, locker room, and/or changing room facilities that other employees with the same gender identity use.
- This right to access gender-appropriate facilities applies regardless of whether you've medically transitioned or whether co-workers would have negative reactions.
- Employers can't condition the use of appropriate bathrooms on your medical documentation or you getting a court order for gender change.
- Your employer may provide a gender-neutral bathroom for employees to use, but you are not required to use such a bathroom if a gender appropriate restroom is available.

### **California law:**

- In California, all employees have the right to use the restroom that corresponds with their gender identity, regardless of their sex assigned at birth.
- It's unlawful for employers to ask for documentation of medical transition or gender change.
- Your employer may provide a gender-neutral bathroom for employees to use, but you are not required to use such a bathroom if a gender appropriate restroom is available.
- All single-user restrooms in an establishment, including businesses and public agencies, must be labeled as "all-gender" or "gender neutral."

## Dress codes

- Employers may enforce reasonable standards of workplace appearance, grooming, and clothing as long as employees are allowed to dress in a manner consistent with their gender identity.

- This rule means that if your employer enforces dress codes that are based on gender, the dress code must be enforced based on standards appropriate for your gender identity. For example, a transgender woman has a right to dress according to a gender-specific dress code for women.
- In some situations, it can be unclear how binary gender dress codes would apply to nonbinary employees—this is an area of law that is evolving and where you might want to chat with a lawyer for advice.

## Accommodations for disabilities, including gender dysphoria

Sometimes gender dysphoria can be a disability, which can lead to additional legal protections and can entitle an employee to reasonable accommodations. Examples of reasonable accommodations can be found on [Job Accommodation Network: JAN](#).

*There is a sample letter on page 34.*

### Federal disability law

- The Americans with Disabilities Act (or the “ADA”) requires employers to provide reasonable accommodations if an employee’s disability “substantially limits” a major life activity.
- People who need reasonable accommodations can request adjustments or modifications to their job so that they can successfully perform the basic duties of their position.
- If gender dysphoria is a disability under the ADA, reasonable accommodations could include unpaid leaves of absence for gender affirming medical care. The ADA may also require that employers reasonably accommodate the side effects of hormones and other medications associated with gender-affirming medical care.
- However, courts across the country have come to different conclusions about how to interpret the law here. So, the law varies by region of the U.S. The ADA may not provide the strongest protections for gender dysphoria until there is more legal clarity.

### Disability law in California

- In California, FEHA also protects employees with disabilities (defined as a person experiencing physical or mental impairment that limits a major life activity).
- This California definition is more inclusive than the ADA and also covers side effects of gender-affirming medical care, hormones, and other medications.
- Under the FEHA, people with disabilities can ask for reasonable accommodations that help them perform their jobs, and they have the right to engage in a discussion with their employer about the accommodations that would work best for them.
- If you have a disability and can perform the basic duties of the job, you cannot be harassed, demoted, terminated, paid less, or treated worse because of your disability.
- Employers can’t reject qualified applicants based on their disabilities and must provide reasonable accommodations during the hiring process if requested.

- Reasonable accommodations include modification of facilities or modified work schedule, time away for treatment or therapy, an unpaid leave of absence, policy changes (such as getting additional breaks to administer hormones), and others as may be medically necessary.





# Other laws that frequently affect transgender and nonbinary workers

## Rights of undocumented people

Both documented and undocumented immigrants are protected against gender identity harassment and discrimination under the law and have the right to file claims. However, if you are undocumented, it is a good idea to consult with an attorney before filing a harassment or discrimination claim to discuss any immigration consequences to reporting.

### Online resources for finding an immigration attorney

- [Immigration Advocates](#) (available in 12 languages, including Spanish and searchable by zip code)
- [Executive Office for Immigration Review](#)
- [American Immigration Lawyers Association](#) (available in Spanish and searchable by zip code)

Undocumented immigrants may qualify for immigration relief for crime victims under the U-visa program if the harassment they experienced was also a crime such as sexual assault or rape.

Undocumented workers who do not have work permits typically can't get unemployment insurance. This is because workers must be both "able to work" and "available for work" to be eligible for unemployment insurance. In California, the government agency that administers unemployment insurance (the California Employment Development Department or "EDD") considers undocumented workers without work permits to be not "available for work" because they are not legally eligible for work.

However, citizenship and immigration status do not affect eligibility for other state benefits like paid family leave or state disability insurance. Again, consider consulting with an immigration lawyer before deciding whether to apply for these benefits

## California hate violence protections

The California Ralph Civil Rights Act prohibits acts of violence or threats of violence because of a person's actual or perceived sexual orientation, gender, gender identity, gender expression, and other traits. This includes verbal or written threats, physical assault or attempted assault, graffiti, and vandalism or property damage.

- If your supervisor, co-worker, or another person threatens or assaults you or your property, you can make a police report.
- You may also seek a restraining order and/or file a complaint with the state.



## California political activity laws

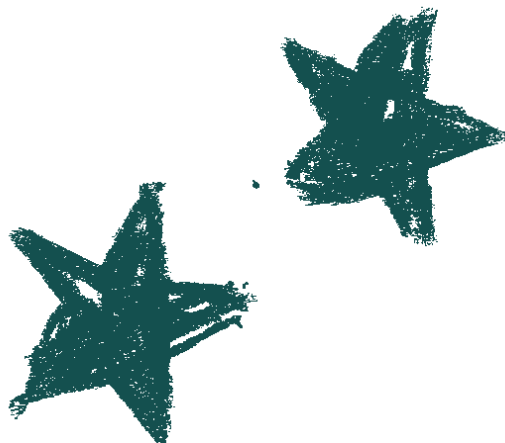
California Labor Code Sections 1101 and 1102 prohibit employers from preventing an employee's political activity or punishing an employee for the employee's political activity.

- For LGBTQ employees, coming out is a protected political activity.
- Similarly, if you disclose your gender identity or your gender transition is visible to others, you may argue that these actions are protected political acts.
- These laws may be especially important if your employer has fewer than five employees because those employees are not covered by California's employment discrimination law (FEHA).

## Other local laws in California

Many localities in California also have passed laws that prohibit sexual orientation and gender identity discrimination in employment, including Los Angeles, San Francisco, Oakland, Sacramento, San Diego, and the County of Santa Cruz. Usually, these ordinances cover only employers within the locality, although some (such as San Francisco) extend coverage to employers who do business with the municipality.

Unfortunately, local laws may not be helpful to employees because California law bars you from actually bringing a lawsuit under local law. So, if you're not satisfied with the result of mediation, the Human Rights Commission or similar agency can't do anything more. Instead, you would have to pursue your complaint with the appropriate state or federal agency. It is important to keep track of time deadlines (discussed further on page 24) so you don't lose your chance to file with a state or federal agency while you pursue matters with your local agency.



# Potential Outcomes

Different actions have the potential for different outcomes—positive and negative. Risks aside, knowing the result you ideally want can help you decide what actions to take. For example, you may want to:

- Stop harassment or discrimination so you can continue working
- Stop harassment or discrimination by leaving your job
- Move a different position or role at the same employer
- Have a harasser fired
- Receive financial compensation for harassment or discrimination you have endured, including money for lost wages and/or emotional distress
- Find someone to talk to about your experiences
- Connect to resources, including mental health services, doctors, advisors, etc.
- Change your employer’s practices to create a harassment or discrimination-free workplace

Here are some anonymous, real-world examples:

- Internal complaint → Reassignment to a different supervisor
  - A transgender woman used her employer’s internal procedure to file a complaint against a supervisor who consistently misgendered her even after she corrected the supervisor on multiple occasions.
  - She asked to be assigned to a different supervisor to not have to interact with her former supervisor.
  - Her employer conducted an investigation and then granted her request.
- Filing DFEH complaint → Settlement for money and reference letter in exchange for withdrawing complaint and quitting job
  - A nonbinary employee experienced frequent negative comments from coworkers about their nonbinary identity. They reported the harassment to management.
  - Management took no action in response. The employee decided they wanted to leave their job, but they also wanted some money as compensation for the emotional distress they experienced.
  - The employee then filed a complaint with the Department of Fair Employment and Housing (DFEH). Learn more about the DFEH on page 25.
  - After the employee filed the DFEH complaint, the employer offered a settlement of six months of pay and a neutral reference letter in exchange for withdrawing the DFEH claim and leaving the job.
- After agency complaints did not reach settlement, filing lawsuit → Settlement for money and future training
  - A transgender man was fired after he came out as a man at work.

- He filed a complaint with the Equal Employment Opportunity Commission (EEOC) as well as the DFEH. Learn more about the EEOC and the concept of “cross-filing” on page 24.
- The employer refused to negotiate and also did not agree to a free mediation with the EEOC. Learn more about negotiation and mediation below
- The EEOC and DFEH gave the employee a “right to sue” letter.
- He filed a lawsuit against the employer in court with the help of an attorney, and they negotiated a settlement with the employer for 12 months of pay. The agreement also required all employees involved in hiring at the former employer to participate in a new training program on transgender and nonbinary identities.

## Settlement Negotiations

- A settlement negotiation is when you or your attorney discuss your legal claims with the other side, the employer or their attorney, to reach a compromise deal.
- A settlement negotiation can happen at any point, before or after you make a complaint with the EEOC or DFEH or file a lawsuit.
- If a settlement negotiation leads to a deal that both sides agree with, you will sign a settlement contract. The contract typically provides that you will refrain from filing or withdraw your complaint or lawsuit. In return, the employer will provide you with something you have asked for, whether that be financial compensation, a neutral reference letter, a change in workplace policies, etc.
- Be wary of non-disclosure and non-disparagement agreements, as discussed on page 29.
- Given the complicated nature of settlement negotiations, it is highly recommended that you get a lawyer to help you. There’s more information about this in the Getting a Lawyer section, page 7.

## Mediation

- Mediation is similar to a settlement negotiation. However, mediation includes an impartial person who has no stake in the case (a “mediator”) who facilitates communication between the two sides of a case.
- Communicating through a mediator—rather than talking with your employer directly as in a regular settlement negotiation—can reduce the emotional intensity of the process.
- A mediator can help each party assess the legal strengths and weaknesses of their side of the case, which can sometimes make a settlement more likely.
- A mediator may also propose what they think a fair settlement would be, but neither side has to accept the mediator’s recommendation.
- Like a regular settlement negotiation, mediation can happen at any point, including before or after you file a complaint with a government agency or file a lawsuit.
- The EEOC and the DFEH often offer free mediation services, but both sides must agree to do the mediation. If you use a private mediator, you will typically have

to pay part of the cost of the mediator's services.

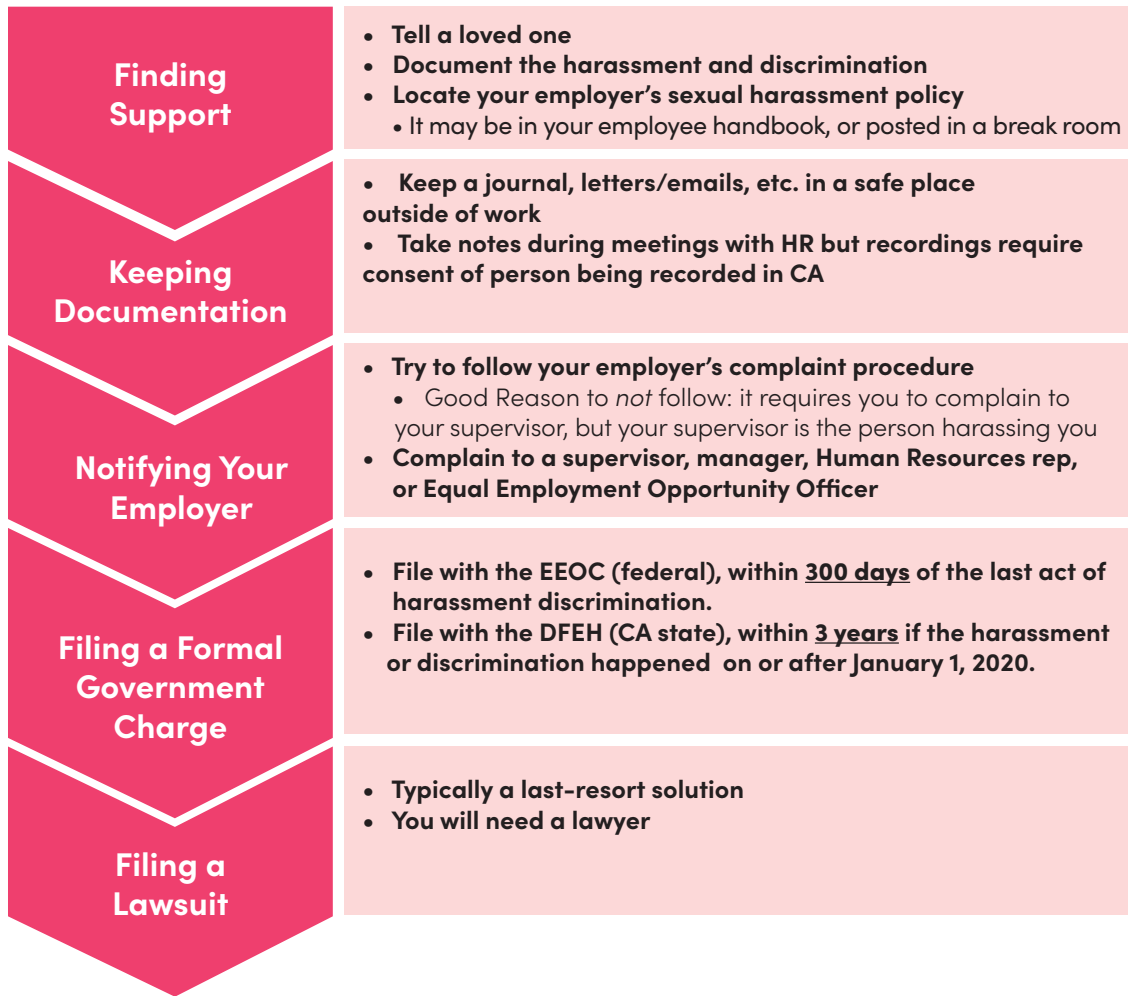
- If a mediation is successful, you and the employer will usually sign a settlement contract, which ends your case. If you do not reach an agreement through mediation, you can continue to pursue settlement negotiations directly with the employer and/or proceed with your legal claims with the EEOC/DFEH or in court.



# Asserting Your Rights



This section is divided into the a sequence of steps to help you figure out what to do if you want to take action against an employer who has violated your rights, including:



## 1. Find support

If you are comfortable, a good first step is to tell a family member or friend about the harassment or discrimination. They can support you through the process and help you decide what other steps you may want to take. If you decide to report the harassment or discrimination and file a complaint, telling someone about the harassment or discrimination while it is happening or soon after can be additional evidence that your complaint is true.

## 2. Keep documentation

It will be helpful for any future complaint or resolution process to have documentation of harassment or discriminatory conduct. This documentation will add extra credibility to your version of what happened. It will help ensure that it is not just your word against a harasser's or employer's story. Even if you are not able to document what happened and it is just your word against a harasser or employer, you can still come forward and seek help.

## Best practices for documenting harassment and discrimination

- Keep a journal recording dates, times, places, and details of any incidents, including the names of any witnesses. There is a sample documentation log on page 36.
- Keep any relevant letters, emails, text messages, voicemails, photographs, videos, or other communications, especially anything sent from a harasser.
- Keep all documentation in a safe place that is not at your work site. For example, forward emails to your personal email account or to a friend, take screenshots of text messages, and keep copies of other materials at home.

## Tips for documenting meetings with HR

- Take notes or obtain some form of a written record after the meeting to remember and confirm what you discussed.
- Ask to have someone else with you at the meeting who can support you and later confirm what was said.
- In California, both parties must agree or consent to being recorded. If you have made a video or audio recording without consent, do not destroy it, but don't make unconsented recordings in the future.

## 3. Follow your employer's internal complaint procedure if possible

You should try to follow your employer's internal complaint procedure if possible. Ideally, your employer should objectively investigate any complaints of harassment or discrimination, and they should take prompt and effective action to remedy the situation. If they do not do so, you may want to file a formal claim through the government complaint process. See page 23.

To follow your employer's procedure, you may have to meet with a manager or a representative from the Human Resources department. Keep a copy of your internal complaint and document any meetings about your complaint according to the Documentation section on page 36.

### A. Finding your employers' internal complaint procedure

Your employer's harassment and discrimination policy should state the complaint procedure, including the name of the person to whom you should complain.

Where to look:

- Your employer may have provided a copy of its harassment and discrimination policy when you started your job.
- It may be posted on a wall in the break room or a similar central location.
- It may also be in your employee handbook.

**California law requires employers to translate any harassment, discrimination, and retaliation policy into any language spoken by more than 10% of its employees.**

## B. Write your internal complaint

Ideally, your complaint should be in writing, and it should describe what happened in detail. Remember to keep a copy of your complaint for your own records.

### What to include in your complaint

- Dates or approximate dates, places, and descriptions of incidents
- How these incidents made you feel (for example: angry, disgusted, afraid, embarrassed, etc.) if you are comfortable doing so
- Your thoughts about what happened
- Finally, what you want to happen next

*There are sample letters on pages 38 and 40*

## C. Other supports for internal complaints

### Talk with your union steward or representative if you have one

If you are a member of a union, you should also talk to your shop steward or union representative. If your union is not being responsive, you may wish to seek support from Pride at Work, the AFL-CIO's LGBTQ constituency group, or your union's LGBTQ caucus:

- SEIU Lavender Caucus: <https://www.seiu.org/lavender-caucus-leadership>
- UFCW OUTreach: <https://www.ufcwoutreach.org/>
- Teamsters LGBTQ+ Caucus: <https://www.facebook.com/TeamstersLGBTQplusCaucus/>
- More here: <https://www.prideatwork.org/about-us/chapters/union-lgbt-caucuses/>

### Alternatives to the usual internal complaint procedure

In some situations, it is not possible to follow the usual internal complaint procedure-- for example, if your employer does not have a complaint procedure or if your supervisor is the person harassing you. In a situation like this, you can complain to a supervisor or manager, human resources, or your company's equal employment opportunity officer.

## 4. File a complaint with a government agency

If your informal complaints to your employer do not work, you may want to file a formal claim of gender identity harassment or discrimination. If you file such a claim, a government agency should investigate your complaint and may help you resolve the problems. It is free to file a complaint with these agencies, and you do not need an attorney depending on the complexity of your case. See Getting a Lawyer on page 7 for more information on when it is a good idea to get attorney support anyway.

### Get a copy of your wage records and personnel file

As you think about preparing a legal case, one of the first steps you may want to take is requesting these documents so you can see what they contain and if there is anything

relevant to your case. In California, you are entitled to receive a copy of your wage records and personnel file from your employer.

*A sample letter of a request for a copy of your wage records and personnel file is available on page 44.*

## Figure out where to file

Gender identity harassment and discrimination complaints can be filed with the California Department of Fair Employment and Housing (DFEH) or the federal Equal Employment Opportunity Commission (EEOC). If you file with one agency, you may request that they file with the other. This is called cross-filing. The two agencies have a work-sharing agreement, so whichever agency first receives your complaint should investigate.

Although you can generally file with either agency, there are some times when you can only file with the DFEH or another state agency, not the EEOC. The following chart compares filing rules for each agency.

Filing with the DFEH (CA state)	Filing with the EEOC while in CA (federal)
If your employer has at least 5 employees, gender identity discrimination is prohibited.	If your employer has 15 or more employees, gender identity discrimination is prohibited.
If your employer has at least 1 employee, gender identity harassment is prohibited.	If your employer has 15 or more employees, gender identity harassment is prohibited.
You can file a claim with the DFEH against an individual harasser and / or your employer for gender identity harassment. You may only file a retaliation claim against your employer, not against the individual who retaliated against you.	You can file a claim against your employer for gender identity harassment and/or retaliation.
You must file a claim with the DFEH within 3 years of the last act of discrimination or harassment if the events happened on or after January 1, 2020.	You must file a complaint within 300 days of the last act of discrimination or harassment.
The DFEH process typically takes a few months up to one year.	The EEOC process typically takes several months to several years

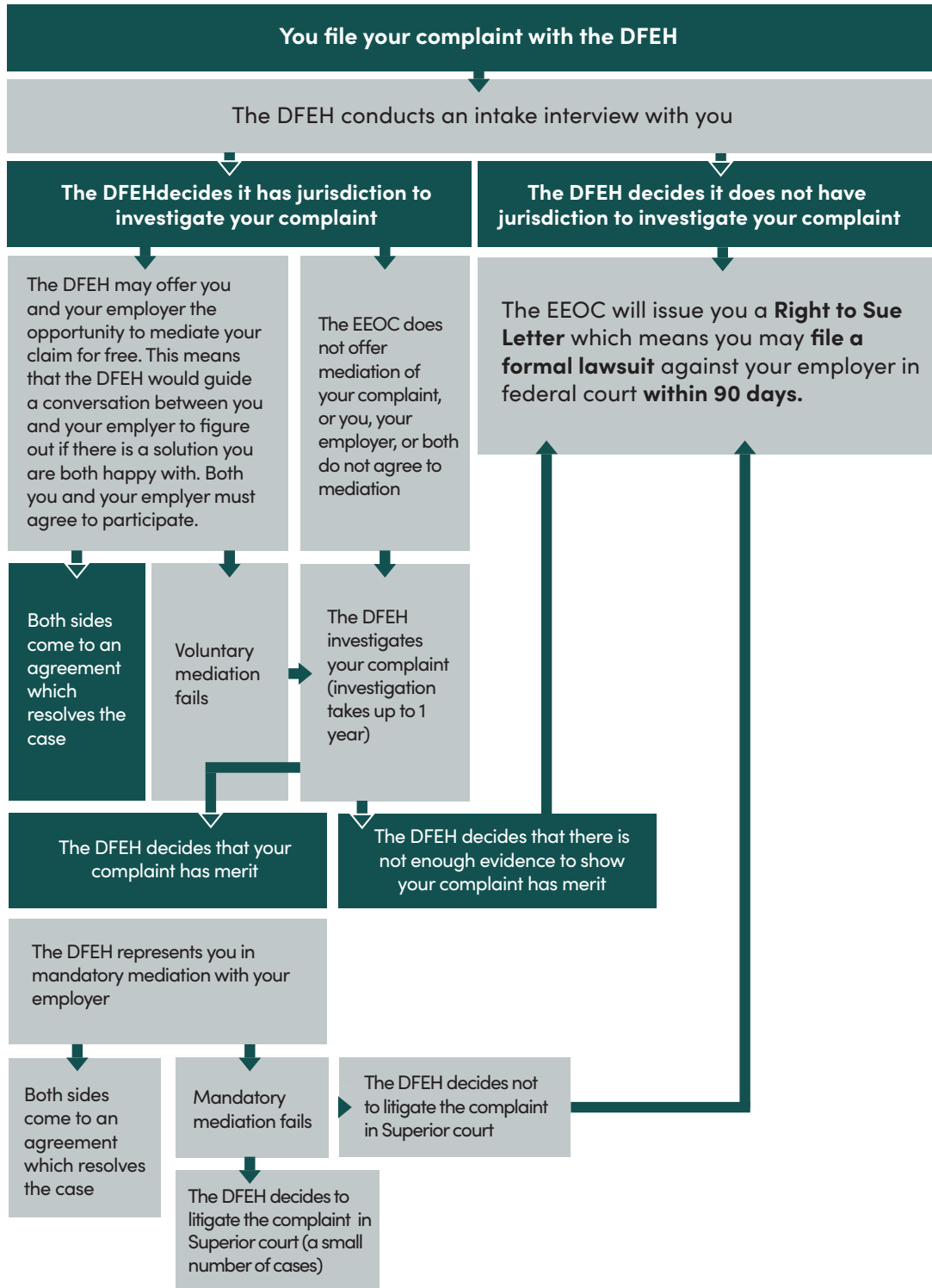


# File a complaint and follow the agency's procedures

## Filing with DFEH

There are two ways to file a complaint with the DFEH:

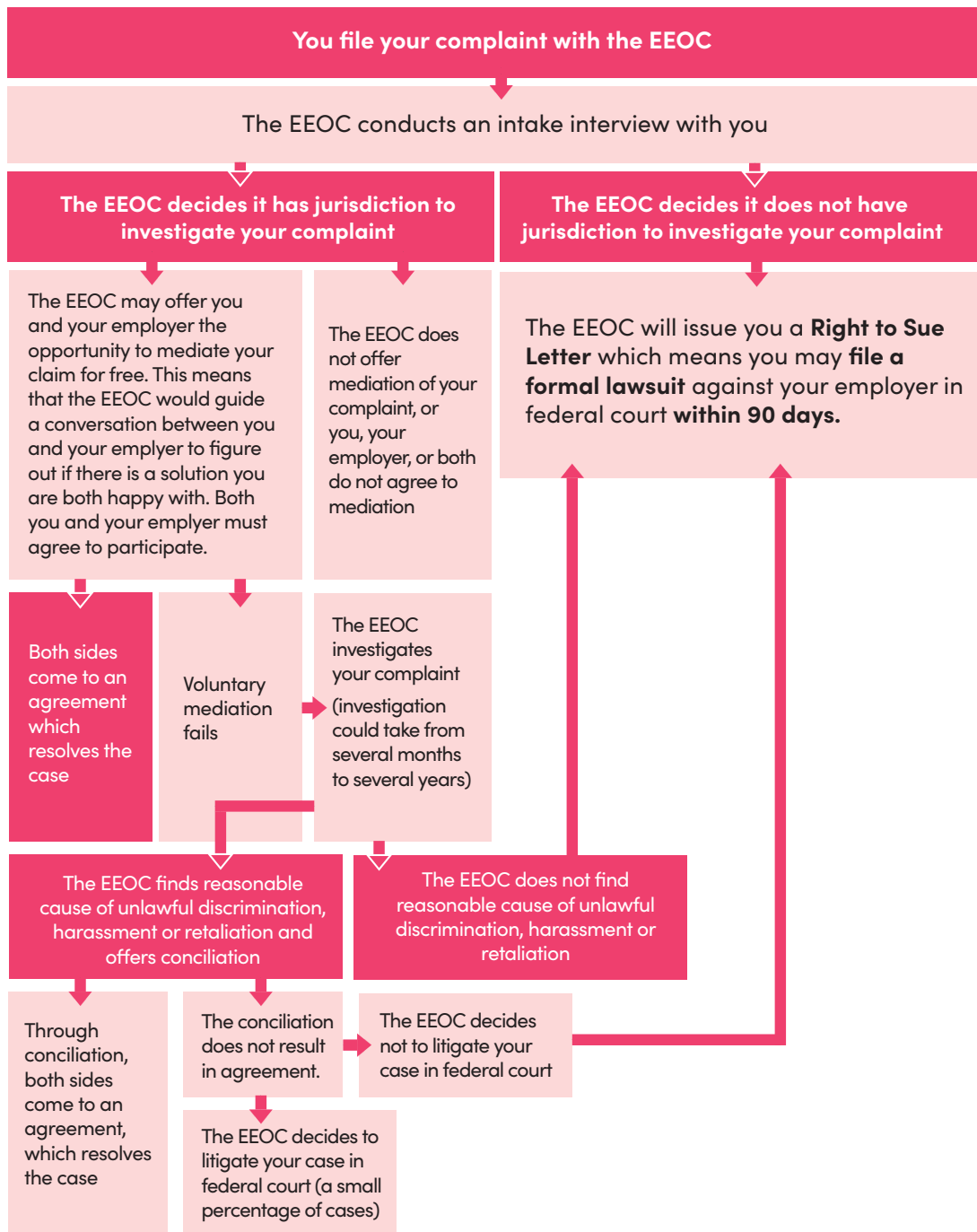
1. Call the DFEH at (800) 884-1684 to make an intake appointment
2. File online at [www.dfeh.ca.gov/complaint-process/file-a-complaint/](http://www.dfeh.ca.gov/complaint-process/file-a-complaint/)



## Filing with EEOC

There are three ways to file with the EEOC:

1. Call the EEOC at (800) 669-4000 to discuss your situation and make an appointment
2. Complete a form online at [www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm)
3. You can also file a form in-person at an EEOC office, though walk-in hours are not currently available during the COVID-19 pandemic. Under normal circumstances, walk-in hours are limited and vary by location, so call ahead. For office locations, visit: [www.eeoc.gov/field/index.cfm](http://www.eeoc.gov/field/index.cfm)



## 5. Get a lawyer to file a lawsuit if necessary

After you have filed a complaint with either the DFEH or EEOC and received a Right to Sue letter, you can file a gender identity harassment or discrimination lawsuit in state or federal court. However, you should certainly make every effort to find a lawyer to represent you at this stage. *There's more information about this in the Getting a Lawyer section, page 7.*

Many people do not realize how much can be accomplished through the EEOC or DFEH process. You can achieve a settlement, including money for lost wages and emotional distress without ever filing a lawsuit. The process is set up this way because government agencies like the EEOC and DFEH use the threat of settlements to enforce employment laws for everyone. The idea is that settlements are a disincentive that deters employers from breaking employment laws in the first place. On the other hand, the process of going through a lawsuit (litigating) in court can be long, expensive, and even more difficult emotionally. So, it can be helpful to consider the EEOC and DFEH process carefully before jumping ahead to a lawsuit in court.



# Contract Agreements and Retaliation

New issues can arise when workers begin to assert their rights. Employers often attempt to protect their interests through legal means such as contracts, although there are also limits to what contracts can do. On the other hand, employer retaliation is illegal under California and federal law.

## Arbitration Agreements

An employment application or employee handbook may contain an arbitration clause. This is a contract that essentially signs away your right to have any future case against your employer decided in court. Signing this agreement is a promise that you will bring any legal claim against your employer through an arbitrator instead. An arbitrator listens to the employee and employer's stories, reviews the evidence, and makes a decision that everyone must follow. The arbitrator's decision is final and enforceable in court, and you usually cannot appeal the decision.

Many advocates and scholars believe that arbitration is not fair to employees. Research shows that employers sometimes pick an arbitrator who they have worked with before and who has previously made decisions that benefit the employer. Similarly, employees often receive less money in damages when the case is decided by an arbitrator rather than by a judge or jury, or through settlement negotiations or mediation.

Sometimes a court will not require you to arbitrate if an arbitration agreement is too one-sided or obtained through an unfair process. However, as a practical note, make sure you read all the paperwork your employer gives to you because sometimes the arbitration agreement can be hidden in other documents. Do not sign any documents saying you agree to the terms of the workplace before you read all of the terms.

## Attempting to refuse or negotiate arbitration agreements

You can refuse to sign an arbitration agreement before you start a job. However, the employer can rescind your employment offer if you do so. An employer can also fire an at-will employee who refuses to sign an arbitration agreement. You can try to negotiate the terms and requirements of the arbitration agreement, but the employer may not agree to the request. You may want to consult with an attorney to help with any negotiations. One term you may request is for a choice of arbitrator by giving you and the employer the right to reject at least one arbitrator. You may also request that the arbitrator give you information about his or her interests or relationship with the employer. This information can help you determine if the arbitrator is biased.

## Whether you can still get help from a government agency if you signed an arbitration agreement

You can still file a complaint with the EEOC or DFEH if you sign an arbitration agreement. Additionally, the agency can decide to sue the employer in court on your behalf because the arbitration agreement does not apply to them. However, it is

unlikely that the EEOC or DFEH will decide to sue the employer on your behalf. The EEOC files suit in less than one percent of the charges filed with it each year and in less than five percent of the cases in which it finds reasonable cause. The DFEH received 22,584 complaints in 2019 but only filed suit in court in 4 cases.

## Non-Disclosure Agreements

A Non-Disclosure Agreement (NDA) is an agreement or contract where one or both parties agree to limit what they can say in public about any future disputes between them. They usually say that you may not talk to the media, coworkers, or future employers. However, an NDA does not stop you from going to the police if anyone, including your employer, commits a crime such as sexual assault.

Not all NDAs are the same. An NDA is whatever the employer and employee agree to, so each NDA can be different. For example, an NDA might say that an employee may publicly discuss anything about the dispute, but the amount of money the employer paid the employee will be confidential. Another NDA might prevent the employee from saying anything at all about the dispute and also prevent the employee from participating in other legal action against the employer, such as a class action. In that case, the employee may be prohibited from discussing the dispute even on personal social media accounts.

The penalties for violating an NDA vary widely. If you violate the agreement, then a judge may require you to pay money to your employer for any harm it suffered.

As of January 1, 2022, California law invalidates any part of an agreement between an employer and employee that requires that the employee keep secret and not share the factual information about discrimination, harassment, and/or retaliation that they experienced on the job. This includes experiences of workplace gender identity harassment and/or discrimination. In addition, any non-disparagement clause must contain the language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

## Protection from Retaliation

It is illegal for a person or company to retaliate against someone who complains about gender based harassment in the workplace. Retaliation may include actions such as firing you, moving you to less favorable assignments or shifts, denying you promotions or benefits, giving undeserved negative evaluations, glaring or staring in an intimidating manner, or intensifying the harassment. Retaliation itself becomes a legal claim similar to harassment or discrimination, which you can include in a complaint to the EEOC or DFEH, or in a lawsuit. See sample letters on pages 30-45.

# Sample Letters and Templates



*This section includes sample letters and templates to use as a guide to take action. Word versions of each letter are available to download and edit at [www.legalaidatwork.org/transworktoolkit](http://www.legalaidatwork.org/transworktoolkit)*

## Letter to employer requesting use of name, gender, or pronouns (regardless of legal name or gender marker change)

Under California law, employers must use the name, gender, or pronouns that you want them to use, regardless of whether you have sought a legal name or gender marker change. The only exception is where they have a legal obligation to use a legal name. Your employer also must ensure that its managers, employees, and customers address you correctly, as well.

When making your request, you might consider putting it in writing so that there is a record of it. Do not forget to keep a copy of your letter!

The following letter is a fill-in-the-blank example of how you could request use of the name, gender, or pronouns of your choice.

[TODAY'S DATE]

Re: My Name and/or Pronouns

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

I am writing to request that, starting [DATE YOU WANT EMPLOYER TO BEGIN USING NAME, GENDER, OR PRONOUNS], [NAME OF EMPLOYER], its managers, employees, and customers address me by [YOUR NAME] and [YOUR PRONOUNS] and record my gender as [YOUR GENDER]. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the appropriate individual in our workplace.

Under California law, employers must use the name, gender, and pronouns that an employee requests, regardless of whether an employee has received a legal name or gender marker change. The only exception is where employers have a legal obligation to use a legal name. Employers also have a duty to prevent misnaming and misgendering by managers, supervisors, coworkers, and customers.

At your earliest convenience, I would like to discuss how [NAME OF EMPLOYER] will be

implementing this change. Thank you for your attention to this matter, and I expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE].

Sincerely,

[YOUR NAME]

## Letter notifying employer of legal name or gender marker change

If you have obtained a legal name or gender marker change (and you do not want to be called a different name or gendered differently from your now-legal name and gender marker), then your employer must use that name and gender on all documents without exception.

You might consider notifying your employer in writing of a legal name or gender marker change so that there is a record of it. Do not forget to keep a copy of your letter!

The following letter is a fill-in-the-blank example of how you could notify your employer of a legal name or gender marker change.

[TODAY'S DATE]

Re: Legal Name or Gender Marker Change

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

I am writing to notify you that, as of [DATE THAT LEGAL NAME/GENDER MARKER CHANGE BECAME EFFECTIVE], my legal name is [YOUR NAME] and my gender marker is [YOUR GENDER MARKER]. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the appropriate individual in our workplace.

Under California law, employers must use the name, gender, and pronouns that an employee requests, regardless of whether an employee has received a legal name or gender marker change. Where an employee has received a legal name or gender marker change, there are no exceptions. Employers also have a duty to prevent misnaming and misgendering by managers, supervisors, coworkers, and customers.

At your earliest convenience, I would like to discuss how [NAME OF EMPLOYER] will be implementing this change. Thank you for your attention to this matter, and I expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE].

Sincerely,

[YOUR NAME]



## Letter to employer regarding access to facilities aligned with your gender identity

Under California law, employers must allow employees to use the facility (such as a restroom) that best aligns with their gender identity. In addition, any single-stall restroom with a flush toilet must be labeled as “all gender,” “gender neutral,” or words to that effect. However, employers can’t require an employee (including a transgender or nonbinary employee) to use this restroom in lieu of a restroom that the employee believes best aligns with their gender identity. In California, the law does not require employers to provide a gender-neutral restroom if it only has multi-stall facilities on its premises.

You might consider notifying your employer in writing of your intent to use a particular facility so that there is a record of it. Do not forget to keep a copy of your letter!

The following letter is a fill-in-the-blank example of how you could notify your employer of your use of the facilities of your choice.

[TODAY’S DATE]

Re: Using Facilities Aligned with My Gender Identity

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

I am writing to let you know that, as of [DATE YOU WILL BEGIN USING FACILITIES ALIGNED WITH YOUR GENDER IDENTITY], I plan to use the [GENDER CATEGORIZATION OF FACILITIES] [TYPE OF FACILITY] because it is the facility that best aligns with my gender identity. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the appropriate individual in our workplace.

Under California law, employers must allow employees to use the facility (such as a restroom) that best aligns with their gender identity. In addition, any restroom with no more than one flush toilet and one urinal and with a locking mechanism controlled by the user must be labeled as “all gender,” “gender neutral,” or words to that effect, but employers can’t require an employee (including a transgender or nonbinary employee) to use this restroom in lieu of a restroom that the employee believes best aligns with their gender identity.

I do not expect that there will be any questions or concerns, but please let me know if there is anything you would like to discuss. Thank you for your attention to this matter.

Sincerely,

[YOUR NAME]

## Letter to employer requesting accommodation for medical needs

Federal and California law allow you to seek a reasonable accommodation for a disability. The definition of disability under the law is broad and includes many medical needs. Reasonable accommodations might include a leave of absence, a modification of your schedule, a modification of a workplace policy, etc. An employer does not necessarily need to agree to the accommodation you suggest, but once you make a request for an accommodation, they are obligated to take part in an “interactive process” to determine what accommodation would be the best fit.

Learn more on page 14.

You might consider putting your request in writing so that there is a record of it. Do not forget to keep a copy of your letter!

The following letter is a fill-in-the-blank example of how you could request reasonable accommodation from your employer for your medical needs.

[TODAY’S DATE]

Re: Reasonable Accommodation

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

This is a request for reasonable accommodation under the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the person responsible for reasonable accommodation in our workplace.

I am a person with medical needs that qualify as a “disability” under federal and state laws. Due to my disability, I am requesting a [LEAVE OF ABSENCE, MODIFICATION OF SCHEDULE/WORKPLACE POLICY, ETC]. [EXPLAIN YOUR REQUEST IN MORE DETAIL].

Please let me know if you require reasonable medical documentation of my condition, or if you wish to propose alternative accommodations to those I have requested. I am ready and willing to engage in the interactive process with you so that I may continue in my employment.

Thank you for your attention to this matter, and I expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE]

Sincerely,

[YOUR NAME]

## Letter to employer requesting other trans or nonbinary-related workplace improvements (signed by 2 or more employees)

If you want to request a change in your workplace that employers are not currently required to implement – such as designating a multi-stall restroom as gender-neutral or eliminating the use of honorifics in all company communications – then you might consider finding at least one other interested coworker and writing to your employer to request the change. Federal labor law makes it illegal to retaliate against workers who act together to try to improve their working conditions. More about California political activity protections on page 17.

[TODAY’S DATE]

Re: [IMPROVEMENT YOU ARE REQUESTING]

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

We are writing to request that [NAME OF EMPLOYER] make the following change: [DESCRIBE THE IMPROVEMENT YOU ARE REQUEST]. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the appropriate individual in our workplace.

[EXPLAIN WHY THIS ISSUE AFFECTS YOUR WORKING CONDITIONS].

[EXPLAIN WHY THIS ISSUE COULD POTENTIALLY CONCERN MULTIPLE EMPLOYEES].

Thank you for your attention to this matter, and we expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE].

Sincerely,

[YOUR NAME]

[YOUR COWORKER’S NAME]

## Sample documentation log of harassment/discrimination

Documenting harassment and discrimination that you have experienced can be incredibly important and helpful for any action you may decide to take in the future. By writing down what happened, you can make sure that you do not forget any details or important dates if you choose to complain to your employer or file a complaint with a government agency. It can also help you keep track of any complaints that you do make to your employer and what actions your employer takes in response. One way to document what happened to you is to keep a journal that includes all the important information, including the dates, times, places, and any details of any incidents, like if there were any witnesses. The following template is an example of how to document this information.

Do you know where your employer's harassment/discrimination policy is?

If so, where? \_\_\_\_\_

Do you know whom you can complain to at your place of employment?

If so, who? \_\_\_\_\_

Do you know what your employer's process is for reporting and addressing harassment/discrimination based on gender identity and/or expression?

Description:

---

---

---

---

---

---

---

---

Date & Time: \_\_\_\_\_

Where did the harassment or discrimination occur?

---

---

---

Who was the harasser or other person responsible?

---

---

---

---

What happened?

---

---

---

---

Were there any witnesses? If so, who?

---

---

---

---

Was the encounter video or audio recorded? If so, by whom? *In California, both parties have to consent to be recorded. If you have made a recording without consent, don't destroy it but refrain from making such recordings in the future.*

---

---

---

---

What did you say and/or do?

---

---

---

---

---

---

---

---

---

---

## First notification of harassment/discrimination

If you choose to report harassment or discrimination to your employer, it will be helpful to write down your complaint. By writing it down, you can make sure that your complaint is clear and says everything that you want it to. It also creates a record of what you reported and when. This record can be important if your employer does not immediately fix the problem. If you write down your complaint, it is much harder for your employer to say later that it did not know about the issue.

Your complaint should describe the harassment or discrimination in as much detail as possible. It is important to include who was involved, what happened, when it happened (even approximately), and where it happened. The more specific you can be, the better. If you are comfortable, describe how these events made you feel (angry, disgusted, afraid, embarrassed, etc.) and your thoughts about what happened. If you know, include how you want your employer to respond to your complaint.

Do not forget to keep a copy of your complaint!

The following letter is a fill-in-the-blank example of how to first report harassment based on gender identity and/or expression to your employer.

[TODAY'S DATE]

Re: Reporting Harassment/Discrimination Based on Gender Identity and/or Expression

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

I work at [LOCATION] as a [YOUR POSITION]. [NAME(S) OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] is/are harassing and/or discriminating against me because of my gender identity and/or expression. I am asking you to take prompt, corrective action to end the harassment and/or discrimination and prevent it from recurring. If you are not the appropriate person to receive this request, please notify me immediately, and forward this letter to the appropriate individual in our workplace.

As you know, [NAMES OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] is/are [INDIVIDUAL(S)'S RELATIONSHIP TO YOU – e.g., “my boss,” “my coworker,” etc.].

[NAMES OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] has subjected me to:

- Describe any verbal harassment (including misnaming, misgendering, use of slurs, or any other inappropriate comments linked to your gender identity and/or expression)
- Describe any visual harassment (hand gestures, images, etc.)
- Describe any physical harassment
- Describe any harassment in exchange for a benefit
- Describe any unequal treatment you are experiencing because of your gender identity and/or expression

I have asked [NAMES OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] not to [DESCRIBE ANYTIMES YOU HAVE TOLD THE INDIVIDUAL(S) HARASSING OR DISCRIMINATING NOT TO TREAT YOU DIFFERENTLY OR MAKE UNWELCOME COMMENTS, TOUCHING, ETC.] on [DATE(S)]. However, [their/her/his/etc.] conduct has persisted.

The harassment and/or discrimination makes me feel [DESCRIBE HOW THE HARASSMENT/DISCRIMINATION MADE YOU FEEL] and makes it difficult for me to do my job.

Under the law, an employer must take all reasonable steps necessary to promptly correct harassment and/or discrimination and prevent its recurrence. In order to stop the harassment and/or discrimination, prevent its recurrence, and remedy the situation, I would like you to [DESCRIBE HOW YOU WANT YOUR EMPLOYER TO RESPOND TO YOUR COMPLAINT].

Thank you for your attention to this matter, and I expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE].

Sincerely,

[YOUR NAME]

## Reporting continued harassment/discrimination or retaliation

After you report the harassment or discrimination based on gender identity and/or expression to your employer, whether in person or in writing, your employer is supposed to quickly and effectively end the issue. However, sometimes employers either do not try to fix it or the employer's efforts are not enough. Sometimes, employers retaliate against employees for reporting harassment or discrimination even though retaliation is illegal. If the harassment or discrimination did not end after you reported it, or if you have been retaliated against, you may want to report to your employer again. Or, if you initially complained to your supervisor but your supervisor has not fixed the problem, you may want to complain to Human Resources or another manager.

Your complaint should include a description of the harassment or discrimination, who you have complained to about it, and what their reaction was. You also should include any steps you have taken to try to fix the situation. Then, be sure to describe any harassment, discrimination or retaliation that happened after you reported, including who the individual(s) harassing or discriminating were, what happened, when it happened, and where it happened. If anyone has mistreated you or retaliated against you after you reported, it is important to include specific information about who was involved, what happened, when it happened (even approximately), and where it happened.

Do not forget to keep a copy of your complaint!

The following letter is a fill-in-the blank example of how to report continued harassment, discrimination, and/or retaliation to your employer.

[TODAY'S DATE]

Re: Reporting Continued Harassment/Discrimination Based on Gender Identity/  
Expression [and/or Retaliation]

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR  
OTHER MANAGER]:

On or around [DATE THAT YOU REPORTED THE HARASSMENT/DISCRIMINATION  
(OR YOUR BEST ESTIMATE)], I notified [NAME OF THE PERSON TO WHOM YOU  
REPORTED THE HARASSMENT/DISCRIMINATION] in person/by email/by phone that  
I was harassed and/or discriminated against on the basis of gender identity and/or  
expression by [NAME(S) OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING].

[NAME OF THE PERSON TO WHOM YOU REPORTED THE HARASSMENT/



DISCRIMINATION] told me that [DESCRIBE THE RESPONSE OF THE PERSON YOU REPORTED TO, INCLUDING ANY PROMISES TO FIX THE PROBLEM AND ANY NEGATIVE RESPONSES].

Since then, I have attempted to resolve the situation by [DESCRIBE ANY STEPS YOU HAVE TAKEN TO RESOLVE THE SITUATION].

However, [NAME(S) OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] continue(s) to harass and/or discriminate against me such that it is difficult for me to do my job. Under the law, an employer must take all reasonable steps necessary to promptly correct harassment and/or discrimination and prevent its recurrence. [DESCRIBE ANY CONTINUED HARASSMENT/DISCRIMINATION].

Under California law, it is unlawful for an employer to retaliate or discriminate against an employee for reporting harassment and/or discrimination based on gender identity and/or expression. [IF APPLICABLE: DESCRIBE ANY RETALIATION YOU HAVE EXPERIENCED].

Please tell me what [EMPLOYER] will do to comply with the law by stopping the harassment, discrimination, and/or retaliation and ensuring the harassment and/or discrimination does not reoccur in the future. [IF APPLICABLE: "Please also tell me what [EMPLOYER] will do to remedy the retaliation."] [DESCRIBE ANY ACTIONS YOU WISH YOUR EMPLOYER TO TAKE].

I expect to hear from you [LIST WHEN YOU WOULD LIKE A RESPONSE].

Sincerely,

[YOUR NAME]

## Resignation letter after harassment/discrimination

If you are enduring harassment or discrimination, you may eventually feel forced to resign because it is too hard to continue working for your employer. If you decide to resign due to an intolerable work environment, you should consider giving your employer a resignation letter explaining why you have to quit. As a side note, you should also explore what California considers “good cause” for still receiving unemployment insurance even if you quit a job: [https://www.edd.ca.gov/uibdg/voluntary\\_quit\\_vq\\_5.htm](https://www.edd.ca.gov/uibdg/voluntary_quit_vq_5.htm).

In your resignation letter, it is important to explain 1) what was happening at work to make you have to quit and 2) what you did to try to fix the situation before you finally quit. Try to be as specific as possible and include details like who you reported the harassment or discrimination to, when you reported it, and what the response to your complaint was. It is also important to state anything you did to try to deal with the harassment or discrimination. Be sure to describe any harassment or discrimination that happened after you reported, including who the harasser or person responsible was, what happened, when it happened, and where it happened.

Do not forget to keep a copy of your resignation letter!

The following letter is a fill-in-the-blank example of a resignation letter to your employer if you faced harassment or discrimination. There is an optional paragraph you may add if you have experienced retaliation, as well.

[TODAY’S DATE]

Re: Resignation

To [NAME OF HUMAN RESOURCES DIRECTOR, SUPERVISOR, PROGRAM DIRECTOR, OR OTHER MANAGER]:

I am resigning from my position at work at [YOUR POSITION] for [NAME OF EMPLOYER] effective [DATE YOU ARE RESIGNING].

On or around [DATE THAT YOU REPORTED THE HARASSMENT/DISCRIMINATION (OR YOUR BEST ESTIMATE)], I notified [NAME OF THE PERSON TO WHOM YOU REPORTED THE HARASSMENT/DISCRIMINATION ] in person/by email/by phone that I was harassed and/or discriminated against on the basis of gender identity and/or expression by [NAME(S) OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING].

[NAME OF THE PERSON TO WHOM YOU REPORTED THE HARASSMENT/

DISCRIMINATION] told me that [DESCRIBE THE RESPONSE OF THE PERSON YOU REPORTED TO, INCLUDING ANY PROMISES TO FIX THE PROBLEM AND ANY NEGATIVE RESPONSES].

Since then, I have attempted to resolve the situation by [DESCRIBE ANY STEPS YOU HAVE TAKEN TO RESOLVE THE SITUATION].

Even though I reported the harassment and/or discrimination, [NAME(S) OF INDIVIDUAL(S) HARASSING OR DISCRIMINATING] continue(s) to harass and/or discriminate against me. [DESCRIBE ANY FURTHER CONVERSATIONS YOU HAD WITH YOUR EMPLOYER ABOUT THE CONTINUED HARASSMENT/DISCRIMINATION]. [IF APPLICABLE: DESCRIBE ANY RETALIATION YOU HAVE EXPERIENCED].

The harassment and/or discrimination makes me feel [DESCRIBE HOW THE HARASSMENT AND/OR DISCRIMINATION MAKES YOU FEEL. FOR EXAMPLE: "SCARED," "EMBARRASSED," OR "HUMILIATED"]. Due to this harassment and/or discrimination and [NAME OF EMPLOYER]'s failure to promptly correct and remedy the harassment and/or discrimination and prevent its recurrence as California law requires, I feel forced to quit.

[Include the next paragraph if you are afraid your employer will retaliate against you by giving you a bad reference:]

It is illegal under California law for an employer to retaliate against an employee by providing a poor reference or otherwise harming an employee's reputation or prospects for new work. An employer, and its employees, may not make false statements about a former employee to prevent the former employee's reemployment. Suggesting through innuendo, omitting positive facts, making false statements, or reporting rumors all could be grounds for legal liability.

If contacted, please only disclose my former job title and dates of employment.

Sincerely,

[YOUR NAME]

## Letter requesting wage records and personnel file

Under California law, you are entitled to receive a copy of your wage records and personnel file from your employer. As you think about preparing a legal case, one of the first steps you may want to take is requesting these documents so you can see what they contain and if there is anything relevant to your case (more on page 23).

Do not forget to keep a copy of your request!

The following letter is a fill-in-the-blank example of a letter requesting your wage records and personnel file from your employer.

[TODAY'S DATE]

To [NAME OF HUMAN RESOURCES DIRECTOR OR OTHER MANAGER]:

I was formerly employed with [NAME OF EMPLOYER] between approximately [DATE] and [DATE]. The purpose of this letter is to request my employment records. An employer's duty to maintain these records and comply with this request is regulated by the California Labor Code ("Labor Code") and Industrial Welfare Commission Wage Order ("Wage Order") # [FIND THE APPROPRIATE WAGE ORDER FOR YOUR INDUSTRY HERE: <https://www.dir.ca.gov/dlse/whichiworderclassifications.pdf>].

### Time and Pay Records

Labor Code § 226 and Wage Order # [FIND THE APPROPRIATE WAGE ORDER FOR YOUR INDUSTRY HERE: <https://www.dir.ca.gov/dlse/whichiworderclassifications.pdf>] require that employers keep the following information on file for each employee for a minimum of three years:

- The employee's dates of employment.
- The employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate.
- When the employee begins and ends each work period (including meal periods and split shift intervals).
- Total hours worked by the employee.
- All deductions.
- Gross wages earned.
- Net wages earned.

Labor Code § 226 further states that, upon reasonable request, the above information

is to be made available to a former employee for copy or inspection “as soon as practicable, but no later than 21 calendar days from the date of the request.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty dollar (\$750) penalty from the employer.

#### Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code § 1198.5. This statute applies to both former and current employees. Section 432 of the Labor Code further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code § 1198.5 also requires that the file be made available within a “reasonable” amount of time, “but not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty dollar (\$750) penalty from the employer.

#### Compliance with this Request

By this letter, I request that you make available all of my time and pay records and personnel records covering the duration of my employment with your company. Please be aware that it is unlawful to destroy or alter records that may be used in litigation, including but not limited to time and personnel records.

Please send the records described above immediately. The records should be addressed to me and mailed to:

[YOUR ADDRESS]

Thank you for your attention to this matter.

Sincerely,

[YOUR NAME]

# Other Resources

## Resources for Job Seekers

### More about the California Fair Chance Act

- Legal Aid at Work’s California Fair Chance Act Toolkit at <https://online.fliphtml5.com/jrwkd/rnik> or call Legal Aid at Work at 415-864-8848 to request a copy.

### Finding a job and support through the application process

- Trans Employment Program at the San Francisco LGBT Center <https://transemploymentprogram.org/about/>
- Trans Economic Empowerment Project at the Los Angeles LGBT Center <https://lalgbtcenter.org/about-the-center/clients-stories/transgender-economic-empowerment-project>
- Trans Can Work <https://transcanwork.org/>
- Transgender Job Bank <https://tjobbank.com/>
- Find a local LGBTQ center near you here: <https://www.lgbtcenters.org/LGBTCenters>
- Some job seekers use Human Rights Campaign’s Corporate Equality Index to find information about potential employers (<https://www.hrc.org/resources/corporate-equality-index>). However, the Index has some flaws. For example, it does not account for employers’ forced arbitration policies, which can limit their employees’ ability to pursue their discrimination claims in court. You can read more about arbitration on page 28.

## Post-Employment Supports

### Supports from the California EDD

#### Unemployment Insurance

In California, the Employment Development Department (EDD) administers unemployment insurance. The information here pertains to unemployment insurance under normal circumstances, but you can check for any updates due to special circumstances (such as COVID-19) at <https://edd.ca.gov/Unemployment/Eligibility.htm>.

When applying for unemployment insurance benefits, you must have earned enough wages during the base period to establish a claim. A base period is a specific 12-month term the EDD uses to see if you earned enough wages to establish a claim. You must also be:

- Totally or partially unemployed.
- Unemployed through no fault of your own.
- Physically able to work.
- Available for work.
- Ready and willing to accept work immediately.

The weekly benefit amount ranges from \$40 to \$450 based on prior earnings, available for 26 weeks. Unfortunately, you cannot receive unemployment insurance if you are undocumented.

To request benefit payments, you must certify for benefits by submitting a certification online, by phone, or by mail.

- Online: <https://www.edd.ca.gov/unemployment/Certify.htm>
- By phone: 1-800-300-5616 (English and Spanish)
- By mail:
  - English: [https://edd.ca.gov/pdf\\_pub\\_ctr/1101i/de1101id.pdf](https://edd.ca.gov/pdf_pub_ctr/1101i/de1101id.pdf)
  - Spanish: [https://edd.ca.gov/pdf\\_pub\\_ctr/1101i/de1101ids.pdf](https://edd.ca.gov/pdf_pub_ctr/1101i/de1101ids.pdf)

To learn more, visit EDD's website at <https://www.edd.ca.gov/unemployment/>.

### **State Disability Insurance**

State Disability Insurance (SDI) is a California state program administered by the Employment Development Department (EDD). SDI provides partial wage replacement when workers are unable to perform their regular or customary work due to physical and mental injuries, illnesses, and other health conditions. **Unlike unemployment insurance, it is available to undocumented workers.** For more information, visit Legal Aid at Work's fact sheet: <https://legalaidatwork.org/factsheet/state-disability-insurance-sdi/>

### **Paid Family Leave**

Paid Family Leave (PFL) is a California state program administered by the Employment Development Department (EDD). It provides benefit payments to people who need to take time off work to:

- Care for a seriously ill family member.
- Bond with a new child.
- Participate in a qualifying event because of a family member's military deployment.

If eligible, you can receive benefit payments for up to eight weeks. Payments are about 60% to 70% of your weekly wages earned 5-18 months before your claim start date.

**Unlike unemployment insurance, it is available to undocumented workers.** For more information, visit EDD website: <https://edd.ca.gov/disability/paid-family-leave/>

For more information about how paid family leave intersects with your right to return to your job after time off, visit Legal Aid at Work's Work and Family Program materials here: <https://legalaidatwork.org/our-programs/work-and-family-program/>

## Mutual Aid and Emergency Funds

- Trans Lifeline Microgrants <https://translifeline.org/microgrants/>
- Bay Area Mutual Aid <https://www.bayareamutualaid.org/>
- Bay Area Workers Support <https://bayareaworkerssupport.org/grants>
- Trans Disaster Relief Fund <http://tdrfund.us/getting-help-from-the-trans-disaster-relief-fund/>

## Other Supports

### Cal Fresh

- CalFresh is California's food stamps (SNAP) program. To apply, visit <https://www.getcalfresh.org/> or call 1-877-847-3663.

### Credit Counseling/Bankruptcy Advice

- For a complete list of Consumer Credit Counseling Service non-profit organizations, visit the National Foundation for Credit Counseling at <https://www.nfcc.org/> or call (800) 388-2227. For Spanish speakers: (844) 359-3825.
- The Department of Justice also has an approved list of credit counselors online at [www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

### Health Care Support

- Healthcare for the Uninsured or Unemployed: For Medi-Cal (California's Medicaid Program) and low-cost health insurance options through Covered California, call (800) 300-1506 or visit <https://www.coveredca.com/>.
- For information on the U.S. Medicare program for people over age 65 or with disabilities, see [www.medicare.gov](http://www.medicare.gov).

### Help with Paying PG&E and Utility Bills

- PG&E's California Alternative Rates for Energy (CARE) Program -- For more information see [www.pge.com/care/](http://www.pge.com/care/); call 1-866-743-2273; or email: [CAREandFERA@pge.com](mailto:CAREandFERA@pge.com)
- Relief for Energy Assistance through Community Help (REACH), sponsored by PG&E, offers one-time help and is facilitated by the Salvation Army. To apply for REACH assistance in your area, contact the REACH Program at 1-800-933-9677.

### Housing Support

- Tenant and Rental Housing Preservation Advice: Bay Area Legal Aid or call their advice line at (800) 551-5554.
- Avoiding Home Foreclosures: <http://www.hud.gov/offices/hsg/sfh/hcc/fc/> or call 800-225-5342.

### Loan Deferments

- Some loans, such as educational loans, qualify for Economic Hardship or Unemployment Deferments. A deferment can only apply if your loans are in repayment and in good standing. Contact your lender for more information.



### **Low-Income Home Energy Assistance Program**

- LIHEAP is a federally funded assistance program administered by the California Department of Community Services and Development (CSD). For more information, visit <https://www.csd.ca.gov/Pages/LIHEAPProgram.aspx>.

### **Resources for Survivors of Domestic Violence, Sexual Assault, and Stalking**

- For more information on the rights of survivors of domestic violence, sexual assault, and stalking to keep their jobs, take time off, and obtain accommodations while seeking safety or medical or legal help, visit Legal Aid at Work's Project SURVIVE materials here: <https://legalaidatwork.org/our-programs/domestic-violence-survivors/>

### **Subsidized or Supplemental Income for Individuals with Disabilities**

- See [www.ssa.gov/ssi/](http://www.ssa.gov/ssi/) or call 1-800-772-1213. For early retirement due to disability, see <http://www.ssa.gov/dibplan/index.htm>.