



# **BLACK WORKERS MATTER**

**a know your rights guide**

**By Legal Aid at Work & the Los Angeles  
Black Worker Center**





## CONTENTS

Race Discrimination.....	1, 2
Personnel Records Request Template.....	3
Past Criminal Records.....	4
Background Checks.....	5-7
What To Do If Falsely Accused.....	8
Disability Rights.....	9, 10
Parenting at Work.....	11, 12
Transgender Rights.....	13
Wage Theft.....	14
"Gig Workers".....	15
Unemployment & Workers' Compensation.....	16

zine printed summer 2020  
contents focused on California law

for additional information or accessibility options  
please visit <https://legalaidatwork.org/> or call 415-864-8848

Employment is at-will and you can be fired for any reason or no reason at all, *so long as* that reason is not illegal.

**⚠ CAUTION**  
**DISCRIMINATION IS AGAINST THE LAW**

**IT IS ILLEGAL FOR YOUR EMPLOYER TO FIRE YOU BECAUSE YOU ARE BLACK!!!**

**THE LAW**

Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act prohibit employment discrimination, harassment, and retaliation based on membership in a protected class – **Race and Color** (like National Origin, Religion, and Sex) are protected classes.

Your employer cannot discriminate against you in things such as **hiring, pay, benefits, promotion, training opportunities, assignments, and firing.**

**WHAT YOU NEED TO KNOW**

Racial discrimination is unfavorable treatment against an employee because of their race or a race-related characteristic, such as skin tone, hair texture, or facial features. Racial discrimination can occur between people of the same race or ethnicity.

Workplace racial discrimination can be direct and/or indirect.

**Direct:** intentionally discriminatory conduct such as derogatory comments, racial slurs, jokes, harassment, bullying or threats on account of race.

**Indirect:** discriminatory conduct is more subtle and can include disparaging treatment compared to other coworkers and other inequalities like pay, promotions, or job classification. It can also include the denial of employment benefits like training or flexible work hours when those benefits are extended to other coworkers but not you because of your race.

Title VII does not require that you prove your employer purposefully intended to discriminate against you.

**WHAT YOU NEED TO PROVE**

You need to show your employer took a negative employment action against you—such as firing you, failing to promote you, denying you an employment benefit or other retaliatory act—on the basis of your race.

Even if an employer has a legitimate reason for taking a negative employment action, if the decision was partially motivated by racial discrimination, the employer has violated the law.



### WHAT YOU SHOULD DO

You should **document** all relevant interactions with your employer, *preferably in writing*. Printout or save any relevant emails to your personal email account, not your workplace account.

Record all instances of racist conduct, including:

- 1) the date and approximate time;
- 2) what was said or done and by whom;
- 3) who was present, witnessed, or heard the offending comments or conduct, and
- 4) their response to the comments or conduct.

If there is an **employee handbook**, check to see if there is a complaint process outlining who you should approach, such as human resources.

If the person who you are supposed to report to is the perpetrator of the racist conduct, then you should approach someone in upper management, including the owner.

**Document all interactions, preferably in writing.**

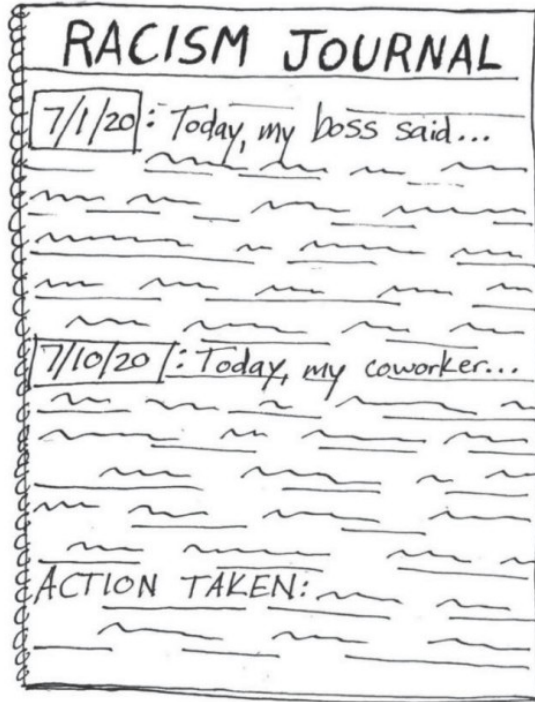
- ★ **Request your personnel record to be sure its accurate!**

If your employer fails or refuses to correct their racially discriminatory conduct or policies, you can file a complaint with the **Equal Employment Opportunity Commission (EEOC)** if your employer has **15 or more employees**, or the **California Department of Fair Employment and Housing (DFEH)** if your employer has **5 or more employees**.

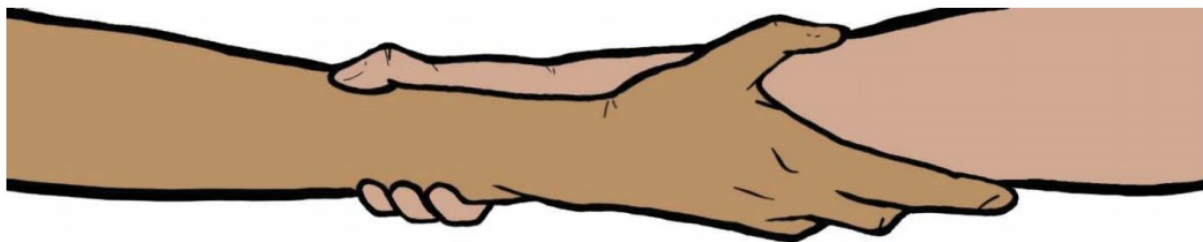
You have 300 days from the last discriminatory action to file with the EEOC. Starting **January 1, 2020**, you have 3 years from the date of the last discriminatory act to file a claim with the DFEH. You still have 1 year to file a lawsuit after receiving a right-to-sue letter from the DFEH. Claims filed before January 1, 2020 are still subject to a 1 year statute of limitations. **You do not need an attorney to file a complaint!**

#### Websites

- ★ <https://www.eeoc.gov/youth/filing-complaint>
- ★ <https://www.dfeh.ca.gov/complaintprocess/>



"Racism Journal" by Andrew Toney-Noland



"Solidarity" by Daisy Leon

## SAMPLE EMPLOYMENT RECORDS REQUEST

[Date ]

[Employer Name]  
[Business Name]  
[Employer Address]

Re: *Employment Records Request*

Dear [Mr./Ms Employer:]

I was formerly employed with [Business Name] 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 the relevant Industrial Welfare Commission Wage Order ("Wage Order").

*Time and Pay Records*

Labor Code § 226 and [applicable Wage Order] 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, an employer must allow a current or former employee the right to inspect or receive the above information "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 for inspection or receipt 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*

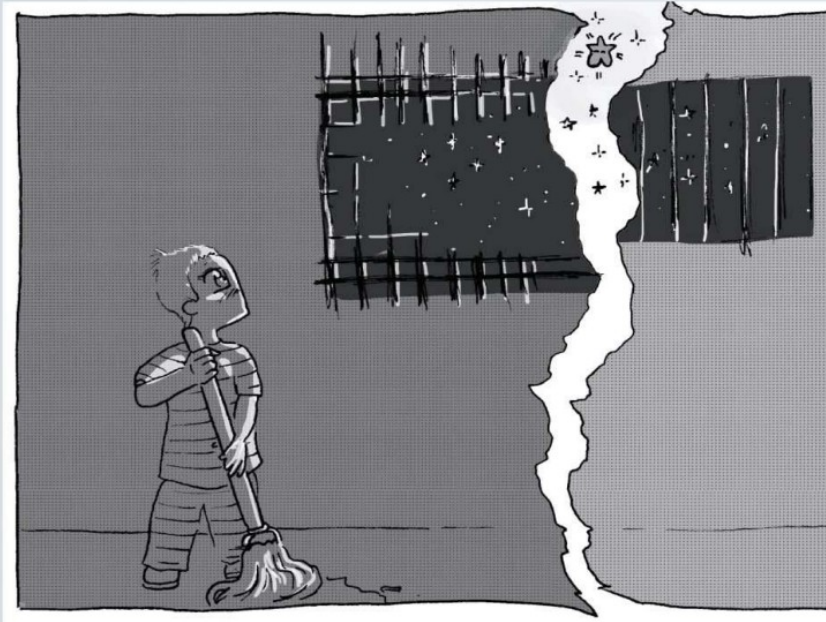
By this letter, I request that you make available all of my time and pay records and personnel records covering the duration of my employment with your company. Labor Code § 226 and § 1198.5 require you to make copies of both my time and pay records and my personnel records upon my request. Please be 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.

# WHAT CAN I DO ABOUT A PAST CRIMINAL RECORD?



Drawing by Holly Stuckey

This art was originally published in *Incarceratedly Yours*, issue ii: Don't You Forget About Me

01

Identify your situation



02

Figure Out Your Desired Solution

03

Depending on your situation and desired solution, there are several petitions you can file with the court.



## SEALING YOUR RECORDS

### YOUR SITUATION

### WHAT TO DO

You were arrested, but no case was filed

PETITION the court to destroy and seal arrest records under Penal Code, § 851.8 - <https://oag.ca.gov/sites/all/files/agweb/pdfs/idtheft/forms/bcia-8270.pdf>

You completed probation after being convicted of a misdemeanor.

PETITION the court to dismiss the misdemeanor conviction under Penal Code § 1203.4 - <https://www.courts.ca.gov/documents/cr180.pdf>

You successfully completed a "diversion program" before a case was filed

PETITION for records to be sealed - including of arrest and detention - 2 YEARS after completion under Penal Code § 851.87

You successfully completed a "drug diversion program"

PETITION for records to be sealed - including of arrest and detention - under Penal Code § 851.90

You are in the Department of Justice's DNA and Forensic Identification Database

PETITION for records to be expunged under Penal Code, § 299 - <https://www.courts.ca.gov/documents/cr185.pdf>

See Appendix (Fair Chance Resources) for links to Petition Forms

# CA FAIR CHANCE ACT

It can be difficult to find a job after spending time in the criminal system.



California's Fair Chance Act, enacted in 2018, is meant to help make the employment process fairer for those with past convictions.



## OFF LIMITS INFO:

### EMPLOYERS CANNOT CONSIDER THE FOLLOWING INFO. FOR EMPLOYMENT DECISIONS:

- arrests that did not result in convictions
- pre- or post-trial diversion programs (e.g. drug rehab)
- judicially dismissed convictions (a.k.a. "expunged")
- judicially sealed convictions
- pardons
- certificates of rehabilitation
- juvenile court history

## BAN! THE! BOX!

### EMPLOYERS ARE NOT ALLOWED:

TO ASK YOU ABOUT CONVICTIONS  
ON JOB APPLICATIONS OR IN INTERVIEWS.

TO RUN BACKGROUND CHECKS  
BEFORE THEY OFFER YOU A JOB.





# CA FAIR CHANCE ACT\*

## FAIR CHANCE PROCESS

Once you have a conditional job offer, employers are allowed to run background checks. So what happens next? The Fair Chance Process.

1. Employers have to tell you, through a notice in writing, if they will be taking any actions against you (i.e., cancelling a job offer, firing you, or suspending you) based on your conviction history.



Explanation



Copy of background check



2. The notice must include a copy of the background check report, and they have to give you at least 5 business days to reply.

*WRITE THEM BACK*



3. If the employer insists on cancelling a job offer (or some other action), then they have to give a second notice that highlights the applicant's right to file a complaint with the California Department of Fair Employment and Housing (DFEH, the enforcing agency).



\* Note: there are certain exemptions where the FCA does not apply, such as criminal justice agencies or other employers that are required to conduct background checks by law.

# CRIMINAL RECORDS RESOURCES

## REPORT VIOLATIONS

### CA DEPT OF FAIR EMPLOYMENT/HOUSING (DFEH)

Violations of Fair Chance/Discrimination Laws

1 (800) 884-1684

<https://www.dfeh.ca.gov/>

### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Violations of Discrimination Laws

1 (800) 669-4000

<https://www.eeoc.gov/>

### CA LABOR COMMISSIONER

Violations of Equal Pay Act, Wage Laws

(650) 326-6444

<https://www.dir.ca.gov/dlse/HowToFileRetaliationComplaint.htm>

## GET LEGAL HELP

### LEGAL AID AT WORK

(415) 864-8848

<https://www.legalaidatwork.org>

### RIGHTS OF JOB SEEKERS WITH CRIMINAL RECORDS

<https://legalaidatwork.org/factsheet/criminal-records/>

Art by Joseph Krauter

This art was originally published in  
Incarceratedly Yours, issue II





# ***Falsely Accused?***

**Black workers are more likely to be falsely accused of theft or misconduct on the job.**

## ***Don't let that sh\*t go!***

**1**

### **File a Wrongful Termination Claim**

Wrongful termination claims can be filed alongside discrimination or retaliation claims with:

- DFEH (<https://www.dfeh.ca.gov/complaintprocess>) or
- EEOC (<https://www.eeoc.gov/filing-charge-discrimination>)

**2**

### **Address Retaliation**

If you believe that you were actually fired because you complained about discrimination or engaged in other legal protected activities (in other words, the accusation of misconduct was just an excuse to fire you), you may have a retaliation claim, which can be filed with DFEH or EEOC (for discrimination) or with DLSE (if you complained about pay or wages).

**3**

### **Challenge Misconduct for UI**

If you are denied Unemployment Insurance because your employer falsely accuses you of misconduct, you have the right to appeal EDD's decision! File an appeal and get in touch with Legal Aid at Work if a hearing is scheduled.

**4**

### **Prevent Bad References**

It is illegal for a former employer to make false statements about you to a potential future employer. If an employer lies about you when giving a job reference, then you may be able to sue for libel or slander (depending on whether the statement was written or spoken). See [legalaiddatwork.org](http://legalaiddatwork.org) for a form letter you can use to remind your former employer of your rights.

**5**

### **Contest False Imprisonment**

An employer can confine employees while conducting a "reasonable investigation" of suspected theft. However, unreasonable confinement, even for as short as 15 minutes, is grounds for a false imprisonment lawsuit against your employer.



Jamaal Barber, "To Be Free"

# Disability may result from injustices experienced at any point in life.

Disability is not always something you are born with or develop as you age. Disability can also **emerge** as a result of the racist structures and inequality in our society that disproportionately affect Black communities.

Police violence, military trauma, unsafe working conditions, housing deprivation, environmental hazards, and inaccessibility to fresh foods are just a few examples of systemic racism which can lead to lasting physical and psychological **trauma**. This trauma can eventually lead to **disabilities** such as PTSD, diabetes, anxiety, heart disease, and cancer.



## YOU HAVE RIGHTS AND PROTECTIONS AT WORK

Persons with disabilities of all kinds have rights and protections at the workplace. The next page offers some basics on how to take the next steps to assert your legal rights.

**WE WELCOME YOUR CALL TO THE DISABILITY RIGHTS HELPLINE (877-350-5441)**



in **CALIFORNIA**

# disability + MY JOB

I have rights related to:



**JOB PROTECTION**

**Need time off from your job?**



**WAGE REPLACEMENT**

**Need income while you aren't working?**



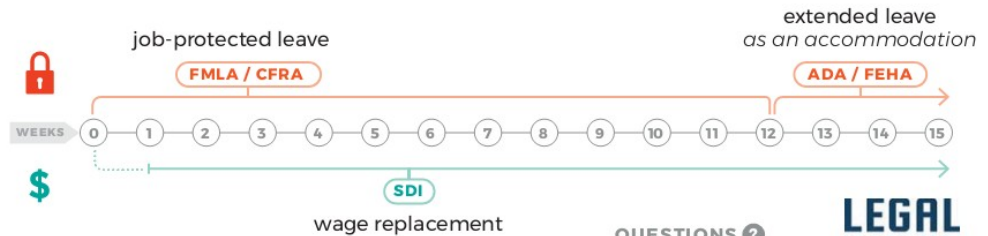
**ACCOMMODATIONS AND EQUALITY**

**Need accommodations? Facing discrimination?**

**HOW THIS MIGHT WORK**

Alex needs 12 weeks off for treatment for his disability. His doctor then extends his leave by 3 weeks.

THESE LAWS MAY HELP:	Because they provide for:	Here's what to do:
<b>FMLA/CFRA</b> <b>FAMILY MEDICAL LEAVE ACT / CALIFORNIA FAMILY RIGHTS ACT</b> <ul style="list-style-type: none"> <li>· 1+ year of service</li> <li>· 1250+ hrs of work in previous year</li> <li>· 50+ employees w/in a 75 mile radius</li> </ul>	<ul style="list-style-type: none"> <li>• Job-protected, unpaid leave for a max. of 12 weeks (can be taken intermittently)</li> <li>• Continuation of health benefits</li> </ul>	<b>Request from your employer</b>
<b>ADA/FEHA</b> <b>AMERICANS WITH DISABILITIES ACT</b> <ul style="list-style-type: none"> <li>· 15+ employees</li> </ul> <b>FAIR EMPLOYMENT &amp; HOUSING ACT</b> <ul style="list-style-type: none"> <li>· 5+ employees</li> </ul>	<ul style="list-style-type: none"> <li>• Job-protected leave as a "reasonable accommodation"</li> </ul>	<b>Request from your employer (See sample letters at <a href="http://www.legalaidatwork.org">www.legalaidatwork.org</a>)</b>
<b>SDI</b> <b>STATE DISABILITY INSURANCE</b> <ul style="list-style-type: none"> <li>· Unable to work, or working less, due to disability</li> <li>· Paid into SDI during base period</li> </ul>	<ul style="list-style-type: none"> <li>• Up to 60% or 70% of weekly wages, depending on income, for a max. of 52 weeks, after 1-week waiting period</li> </ul>	<b>Apply at <a href="http://www.EDD.ca.gov">www.EDD.ca.gov</a></b>
<b>PSD</b> <b>CA PAID SICK DAYS</b> <ul style="list-style-type: none"> <li>· Worked at least 90 days</li> <li>· Ill or medical appointments</li> </ul>	<ul style="list-style-type: none"> <li>• Accrue 1 hour for every 30 hours worked up to a max. of 6 days per year</li> <li>• Employer may cap use at 3 days per year</li> </ul>	<b>Request from your employer</b>
<b>UI</b> <b>UNEMPLOYMENT INSURANCE</b> <ul style="list-style-type: none"> <li>· Able to work but unemployed or working less through no fault of your own (laid off/fired, leave not granted)</li> </ul>	<ul style="list-style-type: none"> <li>• Protection from retaliation</li> </ul>	<b>Go to <a href="http://dlse.ca.gov">dlse.ca.gov</a></b>
<b>ADA / FEHA</b> <b>AMERICANS WITH DISABILITIES ACT</b> <ul style="list-style-type: none"> <li>· 15+ EMPLOYEES</li> </ul> <b>FAIR EMPLOYMENT &amp; HOUSING ACT</b> <ul style="list-style-type: none"> <li>· 5+ employees;</li> <li>· 1+ employee for harassment</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to the way you do your job (such as working part-time, telecommuting, or using specialized equipment) or transfer</li> <li>• Protection from discrimination, harassment, and retaliation</li> </ul>	<b>Request from your employer (See sample letters at <a href="http://www.legalaidatwork.org">www.legalaidatwork.org</a>)</b>  <b>Go to <a href="http://eeoc.gov">eeoc.gov</a> or <a href="http://dfeh.ca.gov">dfeh.ca.gov</a></b>



Legal Aid at Work cannot ensure this information is current or be responsible for any use to which it is put. Created with support from the Mount Zion Health Fund & the Skadden Foundation.

**QUESTIONS ?**  
 Call 877-350-5441  
[legalaidatwork.org](http://legalaidatwork.org)  
[disability@legalaidatwork.org](mailto:disability@legalaidatwork.org)



## PARENTING AT WORK

Alicia works in California and just found out she's pregnant with her third child. She is a grocery store cashier at a national chain.

**PREGNANCY ACCOMMODATION.** Alicia knows it's illegal for her employer to discriminate against or harass her for her pregnancy but she's worried about having to stand for long periods of time. Because her employer has **5 or more employees**, she has the right to a **reasonable accommodation** for her pregnancy. She follows the company's usual procedure and asks for rest breaks and a place to sit, then follows up with an email to confirm the conversation. Her employer asks for a **letter from her healthcare provider**, so Alicia provides one. She also has the right to **job-protected time off** for prenatal care, morning sickness, and other pregnancy-related conditions and **3 paid sick days a year** under CA law.



**LEAVE.** Because Alicia's employer has **five or more employees**, she can take time off for pregnancy and childbirth. She gives her employer a **certification** from her healthcare provider before her leave to make sure her job is safe. She can take **4 weeks of pregnancy disability leave** before her due date, and **6 weeks** after her due date. If she has a C-section, she can take **8 weeks** off after she delivers. If she experiences complications **before or after** she has her baby and needs more time, she can take up to **four months of pregnancy disability leave total**. She knows her employer can't **retaliate** against her for taking this leave and her **job is protected**, but she's worried about how she's going to get paid for that time. Because she pays into California State Disability Insurance, she can get **60% or 70% of her weekly wages** paid by EDD if she applies at [EDD.ca.gov](https://edd.ca.gov).

**CONTINUED LEAVE.** 6 weeks after her baby is born, Alicia isn't ready to go back to work. If she has worked for her employer for at least a **year**, performed **1250+ hours** of work in the previous year, and if her employer has at least **50 employees within 75 miles**, she qualifies for **12 weeks of job-protected baby bonding leave**. She can take this leave anytime **within one year of the baby's birth**. Baby bonding leave can be used by any parent who needs to take leave to care for a **newborn, adopted, or foster child**, so her baby's father, Joseph, decides to take leave because he meets the requirements too. They apply at **EDD.ca.gov** and receive **60 or 70% of their weekly wages for 8 weeks**. Joseph has been working in **San Francisco** for the past **180 days**, and his company has more than **20 employees**, so his employer is required to pay him the remaining **40% of his wages for 8 weeks**, up to a cap, under the San Francisco Paid Parental Leave Ordinance.



**LACTATION ACCOMMODATION.** When Alicia returns to work, she realizes she needs an accommodation for lactation. Alicia's supervisor tells her she can use the bathroom, but Alicia knows that under the law, she has the right to a space that is not a bathroom and is (1) **safe, clean and private**, (2) has a **surface** to place a breast pump, (3) has a place to **sit**, and (4) has **electricity with a refrigerator and sink** nearby. She informs her employer about this law, and they find an appropriate space for her.

Alicia also knows that she can call Legal Aid at Work's Work & Family Helpline if she wants to learn more about her rights or get legal advice to help her assert her rights at work.

The phone number is **800-880-8047** toll-free in California, or she can go to the website at **www.legalaidatwork.org/wf** to learn more.



# BLACK TRANS FOLX AT WORK



## FAIR EMPLOYMENT AND HOUSING ACT (FEHA)

- Illegal for your boss to fire, fail to hire, or discriminate against you based on your race or for being trans.
- Prohibits harassment by boss, co-workers, or customers.

File a complaint at: <https://www.dfeh.ca.gov/ComplaintProcess/>

## CIVIL RIGHTS ACT (TITLE VII)

- Illegal for your boss to harass or discriminate against you based on your gender identity or race.
- Applies to your workplace conditions including your pay and benefits.

File a complaint at: <https://www.eeoc.gov/filing-charge-discrimination>



## YUP, THAT'S HARASSMENT

### Bathroom accessibility

- You have the right to use the restroom that corresponds with your gender identity.

### Incorrect pronoun usage

- You have the right to be addressed by the name and pronoun that corresponds to your gender identity.
- Your employee documents should be changed accordingly.

### Dress codes

- If an employer enforces a reasonable workplace appearance standard, the dress code must be enforced in a way that judges your compliance based on standards appropriate for your gender identity.

### Teasing or degrading comments

- Persistent teasing or degrading comments can be harassment.





# What does wage theft look like?

## Not being paid a minimum wage.

HOURLY RATE OF PAY VARIES ACROSS CA.

FOR THE MOST UP TO DATE MINIMUM WAGE IN YOUR CITY, SEARCH "MINIMUM WAGE [CITY]"

## Not being paid Over Time or Double Time.

OVER TIME: 1.5X HOURLY WAGE AFTER 8 HOURS\*  
DOUBLE TIME: 2X HOURLY WAGE AFTER 12 HOURS\*  
\*CHECK FOR EXCLUSIONS

## Not being given Meal & Rest Breaks.

MEAL BREAK: 30 MIN UNPAID, UNINTERRUPTED  
REST BREAK: 10 MIN PAID, EVERY 4 HOURS



# WHEN PEOPLE THINK OF THEFT...

...they think of an individual taking something valuable -- a phone, a car, a piece of clothing -- from a store or a home.

But there's another kind of theft that's not talked about as much, but that has a much bigger impact on most Americans: **Wage Theft.**

**Corporations steal billions of dollars in wages from workers each year.**



Wage Theft impacts Black workers, who are more likely to have their wages stolen than white workers.

Black workers experience minimum wage violations at a rate **three times** that experienced by white workers.

Black Workers are particularly vulnerable to this problem because many of work in low-wage or under-regulated industries such as janitorial and building services, as security officers, as warehouse workers, in home health and childcare, and in restaurants.

# GO

## YOU HAVE THE RIGHT TO ORGANIZE!

### Under the National Labor Relations Act, you have the right to:

- Form, join, or assist a union.
- Bargain collectively with co-workers to set wages, benefits, hours, and working conditions.
- Take action with co-workers to improve working conditions by raising work-related complaints direction with your employer or with a government agency, and seeking help from a union.

### You can also...

- File a claim with the CA Labor Standards Enforcement:  
<https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>

Los Angeles Black Worker Center  
5550 Crenshaw Blvd  
Los Angeles, CA 90043  
(323) 752-7287

Bay Area Black Worker Center  
9006 MacArthur Blvd  
Oakland, CA 94605  
(510) 330-5600

# I'm a gig worker. What are my rights?

According to the Bureau of Labor Statistics, Black workers are more likely to work in the “gig economy” than any other groups.<sup>1</sup> Gig workers are often *misclassified* as **independent contractors**, when they are actually **employees**. This lets your boss avoid paying payroll taxes and leaves you without benefits or overtime pay.



## Most workers in California are covered by the “ABC Test.”<sup>2</sup>

- A** • Do you get to **control** how you do your tasks at work?
- B** • Is your job **different from** the type of work your employer typically does?
- C** • Do you have a **business or trade** separate from your employer?

**If you answered NO to any of these questions → EMPLOYEE**  
**If you answered YES to all three questions → INDEPENDENT CONTRACTOR**  
**If you are an EMPLOYEE but your boss says you're an INDEPENDENT CONTRACTOR:**

APPLY FOR BENEFITS & FILE CLAIMS AS AN EMPLOYEE (described throughout zine)

→

FILE A FRAUD COMPLAINT your boss is evading payroll taxes. report it to EDD online.

→

VOTE AGAINST PROP 22 IN NOVEMBER!  
 Uber and Lyft are trying to lock gig workers into a permanent underclass without protections.

	EMPLOYEE	INDEPENDENT CONTRACTOR
Unemployment Insurance	✓	✗
Workers' Compensation	✓	✗
Social Security Benefits	✓	✗
State Disability Insurance	✓	✗
Wage Protection	✓	✗
Discrimination Protection	✓	✗
Health and Safety Protections	✓	✗

<sup>1</sup> <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.

<sup>2</sup> Some professions and industries use a different test for determining independent contractor status. Some common jobs that are not covered by the ABC test: doctor, direct salesperson, real estate agent, insurance agent, commercial fisherman, marketer, HR administrator, artist, freelance writer, esthetician, electrologist, manicurist, barber, cosmetologist, and subcontractor. But **even if you don't fall under the ABC test**, your employer generally still needs to prove that they do not control the way you accomplish your tasks at work. In other words, they can control what task they want you to do, but not how you get it done.

# APPLYING FOR UNEMPLOYMENT INSURANCE (UI)

## Eligibility

- ✓ Must have sufficient W-2 earnings in the last 18 months (go to *UI Benefit Calculator*, EDD.ca.gov)
- ✓ Legal residency and work authorization at time of filing
- ✓ Losing your job wasn't your fault
- ✓ Unemployed or Underemployed

## Application

- ✓ Online: EDD.ca.gov
- ✓ Phone: 8am - 12pm
  - English: 1(800) 300-5616
  - Español: 1(800) 326-8937
- ✓ Fax: 1(866) 215-9159
- ✓ Mail: EDD P.O. Box 12906  
Oakland, California 94604

## Certification

- ✓ Re-certify benefits every 2 weeks through *UI Online* (EDD.ca.gov) portal
- ✓ Confirm that you are unemployed or underemployed
- ✓ Are not earning more than 1.33x weekly benefit amount.
- ✓ Must be able, available, and actively seeking work

### Even if you are not eligible for UI, you may be eligible for Pandemic Unemployment Assistance (PUA):

- The application for PUA is the same as UI, apply through EDD.CA.GOV
- PUA is for business owners, self-employed, or independent contractors; or
- Individuals with limited work history

### If you are having issues accessing unemployment...

- For gig workers or those who work for an app-based company like Uber or Lyft:
  - See Page 15, "Gig Workers"
- For those who were deemed ineligible for benefits because they were wrongly terminated:
  - See Page 8, "What to do if Falsely Accused"
- For those struggling to find a job because of conviction history:
  - See Page 5-7, "Fair Chance Act & Ban the Box"
- For those whose employer incorrectly reported their wages:
  - Request a Wage Audit:
  - [https://edd.ca.gov/Payroll\\_Taxes/How\\_to\\_Correct\\_Prior\\_Reports\\_or\\_Deposits.htm](https://edd.ca.gov/Payroll_Taxes/How_to_Correct_Prior_Reports_or_Deposits.htm)

### Additional Questions or Concerns?

Make an appointment with Legal Aid at Work's Helpline Clinic: PHONE-IN clinic is by appointment only. You must call (415) 404-9093 to schedule an appointment.



Lucy Parsons, labor organizer.

"The Labor Movement and the Civil Rights Movement . . . you cannot separate the two of them"



Hattie Canty, labor organizer and strike leader.

## WORKERS' COMPENSATION

### ARE YOU UNABLE TO WORK BECAUSE YOU WERE INJURED ON THE JOB?

- Apply for Workers' Compensation if you suffered from a work-related injury, illness, or disability:
  - The injury can be either *instantaneous* (an accident) OR *cumulative* (ex: carpal tunnel)
  - However, the injury must occur *during AND because of* your employment.
  - Injured workers may be entitled to five main benefits through workers' compensation:
    - reasonable and necessary medical expenses
    - temporary disability benefits
    - permanent disability benefits
    - death benefits
    - supplemental job displacement voucher
  - Your employer must complete the "Employer" section and submit it along with your claim.
  - Submit your claim: <https://www.dir.ca.gov/dwc/fileclaim.htm>

zine team

*Cover Design*

**Raven Quesenberry**

*Race Discrimination*

**Liliana Leon Rivera**

*Past Criminal Records*

**Jenna Waldman**

*Background Checks*

**Molly Lao, Sam Becker, Taylor Evensen**

*Falsely Accused*

**Andrew Toney-Noland**

*Disability Rights*

**Suzanne Dombkowski**

*Parenting at Work*

**Shazzy Kamali, Simone Lieban Levine**

*Transgender Rights*

**Tamar Alexanian**

*Wage Theft*

**Emma Hyndman**

*"Gig Workers"*

**Orren Arad-Neeman**

*Unemployment & Workers' Compensation*

**Emma Hyndman, Orren Arad-Neeman**

*Design Editor*

**Tamar Alexanian**

*Zine Organizer*

**DeCarol Davis**