



Transgender and Nonbinary Workers' Toolkit

Know your rights and how to take action against harassment, discrimination, and other abuses at work.



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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 tried 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. This toolkit is intended to provide general information, but does in no way constitute specific legal advice or representation. Nor should anything in this toolkit be interpreted to form an attorney-client relationship between yourself and Legal Aid at Work nor Beyond Binary Legal. Due to the ever changing nature of the law, which could be affected by the policies of the current or future presidential administration, advice in this toolkit may change.



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We acknowledge that Legal Aid at Work is located on the unceded ancestral homeland of the Ramaytush Ohlone peoples who are the original inhabitants of the San Francisco Peninsula. We pay our respects to the Ramaytush Ohlone elders, past, present, and future, who call this place their home.

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 25.

Helpful Definitions

DISCRIMINATION and **HARASSMENT**: Most of the laws that we discuss in this toolkit are anti-harassment and anti-discrimination laws. Discrimination means being treated differently or unfairly because of your identity. Harassment is when someone subjects you to unwelcome behavior because of your identity. Please note 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.

EMPLOYEE: includes the actual employee, an employee of a labor contractor, and an employee, as well as any direct or joint employee. It also includes any entity that acts as an agent of an employer, directly or indirectly, such as a staffing agency, and any entity that selects, obtains, or is provided workers from a pool or availability list.

EMPLOYER: includes the actual employer, a labor contractor, and an employer that is provided workers from a labor contractor, as well as any direct or joint employer.

GENDER IDENTITY: a sense of one's self as trans, genderqueer, non-binary, woman, man, or any other gender or identity, which may or may not align with the sex and/or gender one is assigned at birth.

LABOR AGENCIES: The two agencies we discuss the most are the Equal Employment Opportunity Commission (or "EEOC") and the California Civil Rights Department ("CRD"). These 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 CRD enforce it's California 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 should 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.

LEGAL NAME: a name appearing on legal or official government documents (e.g., payroll, bills for payment, medical identification and records, and federal immigration and tax forms). This is also known as an assigned name. A legal name may be someone's deadname.

LIVED NAME: a chosen name used instead of a legal name (e.g., middle name instead of first name, anglicized name, name in which the individual is in the process of legally changing, name that better represents the individual's gender identity).

MISGENDERING: attributing a gender to someone that is incorrect/does not align with their gender identity. Can occur when using pronouns, gendered language (i.e., "Hello ladies!" "Hey guys"), or assigning genders to people without knowing how they identify.

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

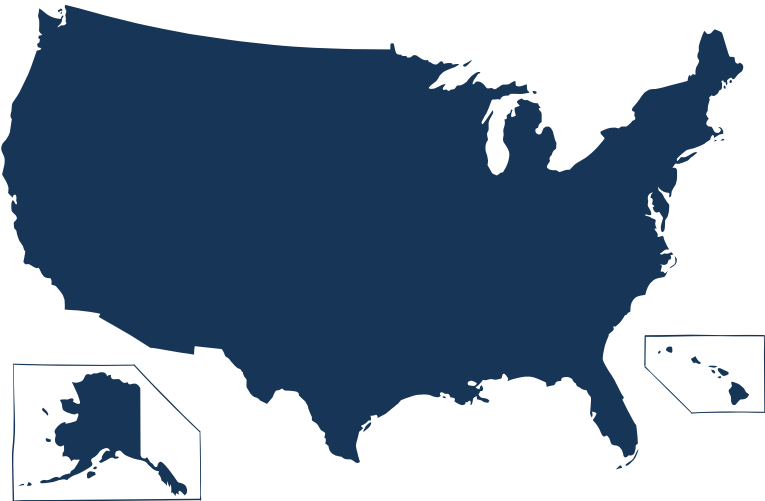
Historically, gatekeeping of what it means to be a particular gender has excluded many people who are transgender or who do not fit into male/female norms from accessing medical care, gender affirming IDs, and other critical services. Fortunately, federal anti-discrimination laws are more inclusive. 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, Mahu, or another gender expansive 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.)		
	An employer must follow anti-discrimination law	If the employer has 15 or more employees
	An employer must follow anti-harassment law	If the employer has 15 or more employees

FOR CALIFORNIA LAW		
	An employer must follow anti-discrimination law	If the employer has 5 or more employees
	An employer must follow anti-harassment law	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.





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 is illegal for them to do so. So, it can be a very personal decision when to disclose legal names and other data. The good news is that you can use your lived name in most situations even if you have not obtained a legal name change. However, there are important exceptions, as discussed below.

FAILURE TO DISCLOSE

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 disclose current or previous legal names 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 lived 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
- Work schedules
- Name tags

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 cannot discriminate against a job seeker for not designating male or female on a job application. In other words, answering a binary gender question is 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.

Criminal records history (California-specific protections)



In California, **EMPLOYERS MAY NOT:**

- Do background checks that are not job-related.
- Do a background check until after they make a conditional job offer.

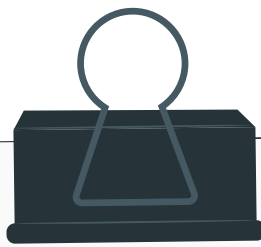


In California, **EMPLOYERS MUST:**

- 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.

For more information about background checks and protections for job seekers with a criminal record, see our California Fair Chance Act Toolkit or call Legal Aid at Work at 415-864-8848 to request a copy.

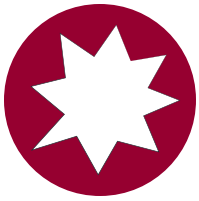




California-specific Protections Once You Have a Job Offer

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 California Civil Rights Department about their decision.



HARASSMENT, DISCRIMINATION, AND RETALIATION 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.

What is harassment?

Gender-based harassment is when the harasser insults someone because of their sex, gender, gender expression, or gender identity. Examples include gender-based insults (such as telling a transgender woman that she is not enough of a woman or calling her a c-t or a b-ch), sexist comments (like that women belong in the kitchen rather than at work or that male nurses are not real men), misgendering (discussed more below), sexual advances, inappropriate and sexualized behavior and comments, or abusive behavior directed at members of one sex and not any other. If you are being subjected to this or other hostile, offensive, humiliating, or intimidating behavior, you may have a claim for gender-based harassment.


Employers can be responsible for harassment by supervisors, co-workers, and customers.

A harasser can be an employer, supervisor, co-worker, customer, client, vendor, or other third party. For example, the law protects you from harassment by a customer at the restaurant where you wait tables; a coworker who works in the fields with you; the head of your company; or another supervisor or manager even if they are not your direct boss.

When the harasser is a supervisor or manager, the employer can be assumed responsible for the harassment. When the harasser is a coworker or third party, the employer can be responsible for the harassment 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 (there is a required poster about the rights of transgender workers), distributing information about harassment, and providing training.

Want to report harassment?
Check out page 21 & page 39.



My experience as a trans and non-binary person in the workplace.

I hope this message is helpful and gives strength to everyone who is afraid like me because of our identity and gender expression. I want everyone to know that we are symbols of strength and resilience.

Since I started in the workforce, it has been difficult for me because I am always being sexualized and expected to submit to expectations that others have about my identity: who I should be and what I should not do just because of my reproductive organs or my physical appearance “by birth.”

My first experience was working at a café when I was 18. While I was at work, I was in charge of the cash register, kitchen, general cleaning of the restaurant, and also had to go get supplies we needed. I was always running and doing most of the work because my supervisor thought that “I am biologically a man and can handle more.” This seemed unjust to me because really I have physically always been a slender person and have many injuries in my bones from jobs I undertook according to my “sexual identity assigned by society.”

With customers I always loved to be a kind person not just because it was my job but because for me it was a new world and one more opportunity. It always made me happy to meet new people and take their orders, but many times they insulted me or made fun of me because of my identity or because they thought that my demeanor was not what they expected from a man. Some told me transphobic comments directly, and others just yelled with the intention that I heard them and felt shame about myself. Others pretended there was something wrong with their order so they could use the opportunity to insult me because of my gender identity. Many people shared these comments, and it seemed normal to them to attack me.

After five months, I told my boss that I was not going to come to work anymore because he did not pay me enough and that I would get a new job (they deducted my salary whenever money was lost because “they had to charge someone”). I am proud that I stood up for myself.

Changing jobs did not solve anything. In fact, it was worse. I had other jobs, and the transphobia and harassment were always there and continue existing even now that I am in a First World country. Evil has no borders, but remember that love has no borders, too.

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 name or pronoun after they have been made aware of your gender identity.

LIVED NAMES

Under federal and California law, employees have the right to be called by their lived 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 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 bathrooms, changing rooms and locker rooms that are aligned with your gender.

California and federal law prohibit discrimination based on both sex and gender identity. This means that employers cannot deny transgender employees access to the bathroom, locker room, and/or changing room facilities that other employees with the same gender identity use. You have this right regardless of whether you have medically transitioned, and an employer cannot require you to show a medical note or proof of gender change. It also does not matter if co-workers would have negative reactions.



In California, all single-user restrooms in an establishment, including businesses and public agencies, must be labeled as "all-gender" or "gender neutral." 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.

SCAN HERE FOR A SAMPLE LETTER REQUESTING ACCESS TO GENDERED FACILITIES.

Dress codes

Employers may enforce reasonable standards of workplace appearance, grooming, and clothing so 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.

Caretakers have rights, too!



SCAN HERE FOR MORE INFORMATION ON THE WORKPLACE RIGHTS OF CARETAKERS.

Accommodations for disabilities, including gender dysphoria

The federal disability law is called the Americans with Disabilities Act (or the “ADA”). It requires employers to provide reasonable accommodations if an employee’s disability “substantially limits” a major life activity. California’s law, the Fair Employment and Housing act (or the “FEHA”), requires employers to provide reasonable accommodations if an employee’s disability “limits” a major life activity. This California definition is more inclusive than the ADA.

Under both laws, the definition of disability is broad and can include many medical conditions, including diabetes, anxiety, or conditions related to being HIV positive.

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. This applies to job applicants, too! Employers cannot reject qualified applicants based on their disabilities and must provide reasonable accommodations during the hiring process if requested.

Reasonable accommodations might include a leave of absence, a modification of your schedule, a modification of a workplace policy (such as getting additional breaks to administer hormones or additional restroom breaks), time away for treatment or therapy, 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.

Examples of disabilities and reasonable accommodations can be found on the Job Accommodation Network’s website.

SCAN HERE FOR A SELF-HELP LIBRARY WHERE YOU CAN SEARCH FOR DIFFERENT SAMPLE LETTERS DEPENDING ON WHAT ACCOMMODATION YOU NEED. →



Gender dysphoria

California law is clear that gender dysphoria can be a disability. That means you could be entitled to accommodations due to the side effects of gender affirming medical care, hormones, and other medications.

Federal law is still not clear on whether gender dysphoria can be a disability under the ADA because courts across the country have come to different conclusions. 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. Because 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.


Retaliation

It is illegal for a person or company to retaliate against someone who complains about gender-based harassment or discrimination 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, or intensifying the harassment. For example, if you complain to your supervisor that your coworker is misgendering you and then one week later your hours are cut, that may qualify as retaliation.

If anyone (including a coworker or supervisor) retaliates against you for complaining about illegal harassment or discrimination at your workplace, you can file a retaliation complaint with the EEOC or CRD.

You also have the right to participate in an investigation of someone else's workplace harassment or discrimination complaint. For instance, if a coworker complains that they are being misgendered, and you support their complaint by telling Human Resources that you witnessed the harassment, it is illegal for your employer to retaliate against you because of your report. This is true whether or not the harassment your coworker faced was in fact illegal.

Even though it is illegal, retaliation can happen. It is important to protect yourself by documenting any complaints you make about harassment or discrimination. Even if you make the complaint verbally during an in-person conversation or over the phone, follow up after with an email, text message, or letter summarizing what was said during the meeting. That way, if your employer takes action against you after you make a complaint, you have proof that your employer's negative action happened right after you complained. This will make it easier to prove that the employer engaged in illegal retaliation.



My experience as a trans-feminine person in the workplace has not been an easy one.

I've had to put up with constant misgendering, both accidental and intentional—yet they've both had the same impact on me.

Some coworkers address me with he/him pronouns, even though I am dressed in feminine clothing. One coworker kept addressing me as “bro,” “dude,” and “man,” and then every time they'd go, “Oh wait, no sorry.” It happened so often it felt like they were doing it on purpose. Clients misgender me, too. When I talk to clients on the phone, they sometimes assume they are speaking with a man because unfortunately for me, I have too much bass in my voice. It causes problems when clients come into the office and say they want to meet with the man they talked to on the phone, which makes things awkward and uncomfortable for me. Luckily most of them would then correct themselves once they saw me.

Some coworkers have harassed me by making offensive comments or treating me differently than everyone else. One coworker straight up asked me, “Wait so you're a tranny?” and asked if I've had bottom surgery, saying “So are you fully a woman?” He also told me that a few of our coworkers would ask him what I am or if I still had my penis. Other times, coworkers have avoided looking at me and walked past my office door fast like they were being chased.

My supervisors have also singled me out when I am the only trans-feminine person in the workplace. When someone new joined our office, the supervisor would introduce them to everyone but me. One supervisor would always dress code me, reprimanding me for what I was wearing even when other people were wearing similar clothes. I once got in trouble because of the length and color of my nails. Admittedly they were longer than the dress code allowed, but I'm still trying to figure out how a pastel pink is considered a “bold” color! What made it funnier was the fact that a coworker and a supervisor had bright red nails, but they didn't get in trouble.

Instead of reporting the harassment, I quit my job and tried to find a new job where people are more supportive. Now I wish I would have spoken up about the harassment because it was harming me, and that behavior will harm someone else. It's betrayal to one's self if we don't speak up, so in my new job, I am standing up for myself.



OTHER LAWS THAT FREQUENTLY AFFECT TRANSGENDER AND NONBINARY WORKERS

Rights of undocumented workers

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 any legal claim to discuss any immigration consequences to reporting. See page 45 for resources on finding an immigration lawyer.

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. They may also qualify for other immigration relief.

Undocumented workers who do not have work permits typically cannot 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.

Rights of trans and nonbinary parents

California laws provide parents, regardless of their gender identity, sexual orientation, marital status, or biological relationship to a child, the right to time off and wage replacement for parenting. If you are a parent who is pregnant or has given birth, check out our website (legalaidatwork.org/wf) for materials that apply to you because you may have additional rights related to pregnancy and recovery from childbirth.

California laws provide for job-protected time off and pay which you can use within one year after your child’s birth or, if you are adopting or are a resource/foster parent, within one year of when your child is placed in the home. This is also true for workers who are standing in the role of a parent to a child, such as having day-to-day responsibilities to care for or financially support a child. You do not have to have a biological or legal relationship to a child to be in this role, and there is no limit to the number of parents a child can have.



If your child is sick, you can also take leave to care for them—from taking them to the doctor to caring for them when they have a serious medical condition.

Rights of domestic violence survivors

Survivors of domestic violence, stalking, and sexual assault have workplace rights. As a survivor, you are entitled to job-protected, unpaid leave to attend court to ensure your or your child's health, safety, or welfare. If your employer has 25 or more employees, you can also take job-protected, unpaid leave



for medical attention, safety planning, counseling, or other services. You may be able to get paid while on leave by using vacation or paid safe days or through benefits like State Disability Insurance. You are also entitled to reasonable safety-related accommodations, such as removing your name from the company website, changing the locks, or transferring to a new location. It is illegal for your employer to discriminate or retaliate against you for being a survivor. For more information on your workplace rights, please see our factsheet.

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. It is important to keep track of deadlines (discussed further on page 26) so you do not lose your chance to file with a state or federal agency while you pursue matters with your local agency.



ASSERTING YOUR RIGHTS

This section is divided into 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. Think about your goals
2. Find support
3. Document what happened
4. Follow your employer's internal complaint procedure if possible
5. File a complaint with a government agency
6. Negotiate a settlement
7. File a lawsuit if necessary
8. How to protect yourself if you quit

1 Think about your goals

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 to a different position or role with 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

2 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.

You can also consider working with co-workers to take collective action against your employer's illegal practices or organizing with your community against unjust and illegal actions by employers.

Tools to find your local LGBTQ Center for more support are on page 46.

3 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. However, 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 of Harassment/Discrimination (page 36 & 37).
- 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 do not make unconsented recordings in the future.

4 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 as discussed in step 5.

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.

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 you with 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.

DID YOU KNOW?

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

Writing 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. There are samples and sample letters on pages 33-41.

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
- What you want to happen next



What could this look like:

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 and to not have to interact with her former supervisor.

Her employer conducted an investigation and then granted her request.

If this is your second complaint, you should include a description of the harassment or discrimination, who you have complained to about it, and what their reaction was. You should also include any steps you have taken to try to fix the situation. 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.

Remember to keep documentation

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 as discussed in step 3.

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://teamster.org/about/human-rights-commission/lgbtq-caucus/>
- 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.



What could this look like:

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 Civil Rights Department (CRD).

After the employee filed the CRD complaint, the employer offered a settlement of six months of pay and a neutral reference letter in exchange for withdrawing the CRD claim and leaving the job.

5 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 30 for more information on when it is a good idea to get attorney support anyway.*

Many people do not realize how much can be accomplished through the EEOC or CRD process. You can achieve a settlement, including money for lost wages and emotional distress, without ever filing a lawsuit.

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 from your employer 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 40.*

Figure out where to file

Gender identity harassment and discrimination complaints can be filed with the California Civil Rights Department (CRD) 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 CRD or another state agency, not the EEOC. The chart on page 26 compares filing rules for each agency.

6 Negotiate a settlement

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 CRD or file a lawsuit.

If a settlement negotiation leads to a deal that both sides agree with, you will likely sign a settlement contract. The contract typically provides that you will not file a complaint or lawsuit or that you will withdraw your complaint if you already filed. 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. Ultimately, the vast majority of employment law claims settle.

Some settlement contracts include non-disclosure and non-disparagement agreements that restrict what you can say about your claims or the employer. But under California law, an employee has a right to share the factual information about discrimination, harassment, and/or retaliation that they experienced on the job, and can't be required to give that up in a settlement contract with their employer. 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."

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 30.*

7 File a lawsuit if necessary

After you have filed a complaint with either the CRD 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 30.* The process of going through a lawsuit in court (also known as litigating) can be long, expensive, and emotionally difficult. So, it can be helpful to consider the EEOC and CRD processes carefully before jumping ahead to a lawsuit in court.

So, it can be helpful to consider the EEOC and CRD processes carefully before jumping ahead to a lawsuit in court. You may also have already waived your right to go to court because you signed an employment application or employee handbook that contained an arbitration clause.

Arbitration

Arbitration is essentially a private court system where you argue claims in front of an independent, third-party arbitrator.

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.



FOR MORE INFORMATION ABOUT ARBITRATION, SCAN OR CLICK THE QR CODE.

8 How to protect yourself if you decide to quit

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. 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.



SCAN HERE FOR A SAMPLE RESIGNATION LETTER.





Part of the reason for the resignation letter is to help protect your eligibility for unemployment insurance. For more information on establishing "good cause" our factsheet on what survivors of violence should do if they must quit could be helpful.

IF YOU HOPE TO QUALIFY FOR UNEMPLOYMENT INSURANCE, SCAN HERE TO EXPLORE WHAT CALIFORNIA CONSIDERS "GOOD CAUSE" FOR STILL RECEIVING UNEMPLOYMENT INSURANCE EVEN IF YOU QUIT A JOB.

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






	
FILING WITH THE CRD (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 CRD 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 CRD within 3 years of the last act of discrimination or harassment.	You must file a complaint within 300 days of the last act of discrimination or harassment.

File a complaint and follow the agency's procedures

HOW TO FILE WITH THE CRD AND WHAT HAPPENS NEXT

There are three ways to file a complaint with the CRD:

-  Call the CRD at (800) 884-1684 to make an intake appointment.
-  File online: <https://calcivilrights.ca.gov/ComplaintProcess>
-  Print an intake form and change to mail it to the CRD: <https://calcivilrights.ca.gov/complaintprocess/FileByMail/>

What is mediation? 

Mediation is a settlement negotiation where an impartial person who has no stake in the case (a "mediator") facilitates communication between the two sides of a case. 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.

The EEOC and the CRD often offer free mediation services, but both sides must agree to do the mediation.

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/CRD or in court.

YOU FILE YOUR COMPLAINT WITH THE CRD.

THE CRD CONDUCTS AN INTAKE INTERVIEW WITH YOU.

The CRD decides it **has** jurisdiction to investigate your complaint.

The CRD decides it does **not** have jurisdiction to investigate your complaint.

The CRD may offer you and your employer the opportunity to mediate your claim for free. This means that the CRD would guide a conversation between you and your employer to figure out if there is a solution you are both happy with. Both you and your employer must agree to participate.

The CRD does **not** offer mediation or your complaint, or you, your employer, or both parties do not agree to mediation.

The CRD will issue you a Right to Sue Letter that means you may file a formal lawsuit against your employer in state court within 1 year.

Both sides come to an agreement that resolves the case.

Voluntary mediation fails.

The CRD investigates your complaint.

The CRD decides that your complaint has merit.

The CRD decides there is **not** enough evidence for it to know whether your complaint has merit.

The CRD represents you in mandatory mediation with your employer.

Both sides come to an agreement which resolves case

Mandatory mediation fails

The CRD decides **not** to litigate the case in state court.

The CRD decides to litigate the case in state court (a very small number of cases).

HOW TO FILE WITH THE EEOC AND WHAT HAPPENS NEXT

There are three ways to file a complaint with the EEOC:



Call the EEOC at (800) 669-4000 to discuss your situation and make an appointment.



Complete a form online at <https://www.eeoc.gov/how-file-charge-employment-discrimination>



You can also file a form in-person at an EEOC office.
For office locations, visit: [eeoc.gov/field-office](https://www.eeoc.gov/field-office)



YOU FILE YOUR COMPLAINT WITH THE EEOC.

THE EEOC CONDUCTS AN INTAKE INTERVIEW WITH YOU.

The EEOC decides it **has** jurisdiction to investigate your complaint.

The EEOC decides it does **not** have jurisdiction to investigate your complaint.

The EEOC may offer you and your employer the opportunity to mediate your claim for free. This means that the EEOC would guide a conversation between you and your employer to figure out if there is a solution you are both happy with. Both you and your employer must agree to participate.

The EEOC does **not** offer mediation or your complaint, or you, your employer, or both parties do not agree to mediation.

The EEOC will issue you a **Right to Sue Letter** that means you may file a formal lawsuit against your employer in federal court within 90 days.

Both sides come to an agreement that resolves the case.

Voluntary mediation fails.

The EEOC investigates your complaint.

The EEOC finds reasonable cause for unlawful discrimination, harassment or retaliation and offers conciliation

The EEOC does **not** find reasonable cause of unlawful discrimination, harassment, or retaliation.

Through conciliation, both sides come to an agreement that resolves the case.

The conciliation does **not** result in agreement

The EEOC decides to litigate the case in federal court (a very small number of cases).

The EEOC decides **not** to litigate your case in federal court.



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 is 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

If you have 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 or negotiating a settlement agreement. If you cannot 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.
- 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, including San Francisco.

- **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 (cela.org/?pg=FindAMember)
- National Employment Lawyers Association: Find a lawyer directory (exchange.nela.org/memberdirectory/findalawyer)
- Some local law libraries or county libraries have a directory of local attorneys. If possible, you may want to filter the list by practice area to find employment law attorneys.

- **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 and only help low-income workers. 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 415-864-8848 or visit our website: <https://legalaidatwork.org/>.

- **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 do not 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 do not 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) 404-9093.

What if I do not feel comfortable with my lawyer?

It is 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.



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

LETTER TO EMPLOYER REQUESTING USE OF NAME, GENDER, OR PRONOUNS

(Regardless of Legal Name or Gender Marker Change)

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

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 by **[DATE 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 by **[DATE 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. The National Labor Relations Act, a federal labor law, makes it illegal to retaliate against workers who act together to try to improve their working conditions.



[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 REQUESTING]**. 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 by **[DATE WHEN YOU WOULD LIKE A RESPONSE]**.

Sincerely,
[YOUR NAMES]



SAMPLE DOCUMENTATION LOG OF HARASSMENT/ DISCRIMINATION/RETALIATION

Documenting harassment, discrimination, and retaliation that you have experienced can be very 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 Sample Documentation Log of Harassment/Discrimination/Retaliation on the next page is an example of how to document this information.

When documenting harassment, make sure to think about:

Where is your employer's harassment/discrimination policy?

Who can you complain to at your place of employment?

What is your employer's process for reporting and addressing harassment/discrimination



LOG SAMPLE

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? * _____

What did you say and/or do? _____


* In California, both parties have to consent to be recorded. If you have made a recording without consent, do not destroy it but refrain from making such recordings in the future.



REPORTING HARASSMENT OR DISCRIMINATION TO YOUR EMPLOYER

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, who you reported it to specifically, 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 they 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 ANY TIMES 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 by **[DATE WHEN YOU WOULD LIKE A RESPONSE]**.

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 claims.

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]

Re: Requesting Wage Records and Personnel File

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

I **[was formerly employed OR am employed]** with **[NAME OF EMPLOYER]** between approximately **[DATE]** and **[DATE]**. The purpose of this letter is to request my employment records. It is an employer's duty to maintain these records and comply with this request is regulated by the California Labor Code ("Labor Code") and the Industrial Welfare Commission Wage Orders.

TIME AND PAY RECORDS

Labor Code § 226 and the Wage Orders 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]



RESOURCES

The following is a directory of community organizations and resources. It includes how to get job search help, how to apply for state benefits when you are not working or on leave, how to find an immigration attorney, and how to find help with other issues like health care, housing, paying utilities, finding LGBTQ Centers and more.

Resources for Job Seekers

MORE ABOUT THE CALIFORNIA FAIR CHANCE ACT

- Legal Aid at Work's California Fair Chance Act Toolkit at legalaidthatwork.org/guides/ca-fair-chance-toolkit 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 — transemploymentprogram.org/about
- Trans Economic Empowerment Project at the Los Angeles LGBT Center — lgbtcenter.org/about-the-center/clients-stories/transgender-economic-empowerment-project
- Trans Can Work — transcanwork.org
- Transgender Job Bank — tjobbank.com
- Find a local LGBTQ center near you — lgbtcenters.org/LGBTCenters
- Some job seekers use Human Rights Campaign's Corporate Equality Index to find information about potential employers (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 24.

State Benefits and Financial Assistance

You may be eligible for these California benefit programs if you are not working or are on leave from work. There are also some organizations that help people who need emergency financial assistance.

SUPPORTS FROM THE CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

Unemployment Insurance

In California, the Employment Development Department (EDD) administers unemployment insurance.

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: edd.ca.gov/unemployment/Certify.htm
- By phone: 1-800-300-5616 (English and Spanish)
- By mail:
 - English: edd.ca.gov/pdf_pub_ctr/1101i/de1101id.pdf
 - Spanish: edd.ca.gov/pdf_pub_ctr/1101i/de1101ids.pdf

To learn more, visit EDD's website at 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.

SCAN HERE FOR SDI INFORMATION.



Unlike unemployment insurance, it is available to undocumented workers.

SCAN HERE FOR HOW UNDOCUMENTED WORKERS CAN APPLY FOR SDI OR PFL

The fastest and easiest way to apply for SDI is online through the EDD's website, www.edd.ca.gov. You can also file your SDI claim by mail. You will have to request that a copy of the application be mailed to you via the EDD website or by calling the EDD at 1-800-480-3287 (English) or 1-866-658-8846 (Spanish).

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. **Unlike unemployment insurance, it is available to undocumented workers.** For more information, visit EDD's website: 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: legallaidatwork.org/wf.

MUTUAL AID AND EMERGENCY FUNDS

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

IMMIGRATION SERVICES

Directories for finding an immigration attorney

- American Immigration Lawyers Association (available in Spanish and Searchable by county) <https://www.aila.org>
- Central Valley Immigrant Integration Collaborative — <https://cviic.org/immigration-services-directory>
- Executive Office for Immigration Review — <https://www.justice.gov/eoir/find-legal-representation>
- Immigration Advocates (available in 12 languages, including Spanish and searchable by zip code) — <https://www.immigrationadvocates.org>

Legal assistance for detained LGBTQ immigrants

- Immigration Equality — Call (917) 654-9696 | M-W 9:30 - 5:30pm & Th 1:00 - 5:30pm

Non-profit legal assistance for LGBTQ immigrants

- Los Angeles LGBT Center (immigration legal help in LA County for LGBTQ people) — <https://lalgbtcenter.org/services/legal-services/immigrant-legal-services>
- National Center of Lesbian Rights (immigration assistance for LGBTQ people) — <https://www.nclrights.org/our-work/immigration-asylum> or call (800) 528-6257
- Oasis Immigration Legal Services (mostly asylum assistance for LGBTQ people in California) <https://www.oasislegalservices.org>

Assistance for migrants to the United States located in Mexico

- Al Otro Lado - alotrolado.org/Mexico

Legal information for LGBTQ immigrants

- Immigration Equality — <https://immigrationequality.org/selfhelp/self-help-manuals/selfhelp-manual-en>
- Immigrant Legal Resource Center — <https://www.ilrc.org/lgbt-immigrant-rights>
- Transgender Law Center — <https://transgenderlawcenter.org/resources/immigration-2>

Other Supports

CAL FRESH

CalFresh is California's food stamps (SNAP) program. To apply, visit getcalfresh.org or call (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 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 usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm.



EDUCATION

- Toolkit on the rights of LGBTQ+ students in California — aclusocal.org/en/know-your-rights/lgbtq-student-rights-k-12-california-public-schools

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 coveredca.com.
- For information on the U.S. Medicare program for people over age 65 or with disabilities, see [medicare.gov](https://www.medicare.gov).
- LGBTQ+ Health Directory — <https://lgbtqhealthcaredirectory.org>

HEALTH CARE (MENTAL HEALTH SUPPORT)

- Mental Health America has guidance on finding LGBTQ-friendly therapy: [screening.mhanational.org/tag/lgbtq](https://www.mhanational.org/tag/lgbtq)
- Trans Lifeline is a 24/7 confidential hotline staffed by transgender people for transgender people. See translifeline.org/ or call (877) 565-8860.
- Comprehensive list of support hotlines for LGBTQ people, including crisis intervention and suicide prevention hotlines: pflag.org/resource/support-hotlines

HELP WITH PAYING PG&E AND UTILITY BILLS

- PG&E's California Alternative Rates for Energy (CARE) Program – For more information see [pge.com/care](https://www.pge.com/care); call 1-866-743-2273; or email: 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.
- Tenant rights in Alameda, San Mateo, Santa Clara, and Stanislaus Counties: housing.org/contact
- Tenant rights in the Central Valley: crla.org/get-help/housing
- Tenant rights in Los Angeles County: stayhousedla.org or call (888) 694-0040
- Tenant rights in San Diego County: lassd.org/resources or call (877) 534-2524
- Avoiding Home Foreclosures: hud.gov/offices/hsg/sfh/hcc/fc or call 800-225-5342.

LGBTQ+ CENTERS

- National Directory of LGBTQ Centers — lgbtqcenters.org/LGBTCenters
- **LGBTQ Centers in the Central Valley**
 - CalPride - calpride.org
 - Central Valley Pride (Merced County) — <https://centralvalleypride.org>
 - Somos Familia (Merced County) — <https://somosfamiliavc.org>
 - Fresno EOC LGBTQ+ Center (Fresno County) — <https://fresnoeoc.org/lgbtq>
 - The Source (Tulare County) — <https://www.thesourcegbt.org>
- **Transgender Health and Wellness Center (Riverside and San Diego Counties)**
<https://trans.health>
- **Los Angeles LGBT Center (LA County)**
<https://lalgbtcenter.org>

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 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://legallaidatwork.org/our-programs/project-survive>

SUBSIDIZED OR SUPPLEMENTAL INCOME FOR INDIVIDUALS WITH DISABILITIES

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



About Legal Aid at Work

We envision a world where all people are treated with dignity at work and have the opportunity to thrive.

We partner with people to help them understand and assert their workplace rights, and we advocate for employment laws and systems that empower low-paid workers and marginalized communities. Recognizing the high incidence of poverty in the LGBTQ community, particularly as experienced by people of color and in rural and underserved areas, Legal Aid at Work works to eliminate barriers to full and equal participation in employment based on sex, sexual orientation, gender identity, gender expression, and interlocking types of oppression.