

Filing a Charge of Discrimination

U.S. Equal Employment Opportunity Commission (EEOC) and
Department of Fair Employment and Housing (DFEH)

EEOC

If you believe that you have been discriminated against at work because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, you can file a Charge of Discrimination. All of the laws enforced by EEOC, except for the Equal Pay Act, require you to file a Charge of Discrimination with us before you can file a job discrimination lawsuit against your employer. In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity. There are time limits for filing a charge.

Note: Federal employees and job applicants have similar protections, but a different complaint process.

If you file a charge, you may be asked to try to settle the dispute through mediation. Mediation is an informal and confidential way to resolve disputes with the help of a neutral mediator. If the case is not sent to mediation, or if mediation doesn't resolve the problem, the charge will be given to an investigator.

If an investigation finds no violation of the law, you will be given a Notice of Right to Sue. This notice gives you permission to file suit in a court of law.

If a violation is found, we will attempt to reach a voluntary settlement with the employer. If we cannot reach a settlement, your case will be referred to our legal staff (or the Department of Justice in certain cases), who will decide whether or not the agency should file a lawsuit. If we decide not to file a lawsuit, we will give you a Notice of Right to Sue.

In some cases, if a charge appears to have little chance of success, or if it is something that we don't have the authority to investigate, we may dismiss the charge without doing an investigation or offering mediation.

DFEH

Intake

Complainants are first interviewed to collect facts about possible discrimination. Every person wishing to file a complaint will be given a date, time and place where the interview will be held. Prior to the interview, a Pre-Complaint Questionnaire, (DFEH-600-03) English or (DFEH-600-03S) Spanish, for employment related complaints or (DFEH-600-02) English, or (DFEH-600-02S) Spanish, for Unruh related complaints should be obtained and filled out. You can obtain a copy of the questionnaire by contacting DFEH or by viewing the Publications page. This form should be brought to your scheduled interview.

Filing

1. The interviewing Consultant drafts a formal complaint on the DFEH's standard form. It is signed and served on the Respondent.
2. If accepted for investigation, the complaint is also filed with the United States Equal Employment Opportunity Commission (EEOC) if the matter falls within the jurisdiction of that agency. As a substantially equivalent agency, DFEH's findings are usually accepted by EEOC.
3. The Respondent is required to answer the complaint and is given the opportunity to voluntarily resolve it. A no-fault resolution can be negotiated at any time during the complaint process.
4. Complaints can be filed by individuals, the Director of DFEH, or a community organization.

Investigation

1. DFEH investigates every case in a standard, timely manner.
2. DFEH has the authority to issue subpoenas and interrogatories and to take depositions. The California courts enforce DFEH's discovery efforts.
3. If the investigation does not show a violation of the law, DFEH will close the case.

Conciliation

1. Formal conciliation conferences are scheduled by the District Administrator when the investigative findings show a violation of the law.
2. During the conciliation conference, the Department presents information supporting its belief that there has been a violation and explores options to resolve the complaint.
3. If formal conciliation fails, the District Administrator may recommend litigation.

Litigation

After DFEH issues an accusation, DFEH legal staff may litigate the case in a public hearing before the Fair Employment and Housing Commission (FEHC). If emotional distress damages or administrative fines are sought, the Respondent may elect to have the case moved to a civil court. If the case is moved to court, the DFEH prosecutes, but the Complainant is the Real Party in Interest.

Remedies

The FEHC may award or order reinstatement, back pay, out-of-pocket losses, affirmative relief, training, policy changes and emotional distress damages and administrative fines. Emotional distress damages and administrative fines are limited to a total of \$150,000 per Respondent. However, an additional award of up to \$25,000 may be ordered for violations of Civil Code section 51.7 (Hate Violence). In the event the matter is removed to Superior Court, remedies are identical, with three exceptions:

- There is no limit on emotional distress damages.
- Instead of administrative fines, unlimited punitive damages may be awarded.
- The prevailing party may recover their reasonable attorney's fees, expert witness fees and costs.