

religion, sex (gender), sexual orientation, marital status, national origin (including language limitations), ancestry, familial status (households with children under age 18), source of income*, disability (mental and physical, including HIV and AIDS), medical condition (cancer/genetic characteristics), and age (Government Code section 12955).

Business Establishments

Under the *Unruh Civil Rights Act*, all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all **business establishments**, including both private and public entities. The *Unruh Civil Rights Act* protects all persons against arbitrary and unreasonable discrimination by a business establishment (Civil Code section 51).

Hate Violence

The *Ralph Civil Rights Act* prohibits violence or threats of violence based on an individual's race, color, religion, ancestry, age, disability, sex, sexual orientation, political affiliation, or position in a labor dispute (Civil Code section 51.7).

THE PROCESS

Filing a Complaint

DFEH accepts complaints from persons who believe that they have experienced discrimination in violation of these laws. Complaints must be filed within **one year** of the alleged act of discrimination. However, in cases alleging *hate violence*, complaints must be filed within **one year** of the day the victim becomes aware of the perpetrator's identity, but not more than **three years** from the date of injury.

The person filing the complaint is the **complainant**. The employer, landlord, business, or individual filed against is the **respondent**. The

*Until 12/31/04 unless extended by statute.

complaint is the written document that states what happened and why the complainant believes the action or incident was illegal. An individual seeking to file a complaint should contact DFEH through its Communication Center at (800) 884-1684 for Employment, Unruh, and Ralph act violations and (800) 233-3212 for Housing violations. An intake interview is conducted with the complaining party.

A complaint is accepted for investigation after a careful screening process. The complaint must contain allegations that, if proven, constitute a violation of the law. Acceptance of the complaint by DFEH does not represent any determination that the law has been violated. Filing the complaint initiates the investigative process through which the Department will determine if there is sufficient evidence to support prosecution. During an investigation, DFEH is a neutral fact-finder. DFEH represents the State of California, not the complainant.

Service and Response

After a complaint is filed for investigation, a copy is served on the respondent. The complaint may also be referred to another state or federal agency. A respondent has the right to answer the complaint and should provide a response that answers each allegation in the complaint in detail and includes supporting documentary evidence.

Settlement

A case may be settled at any time after the complaint is filed, and settlements may occur in several ways. If the respondent approaches a complainant directly, the complainant may contact DFEH for assistance. Settlements may also result from negotiations initiated by DFEH.

Efforts to resolve the complaint may include the negotiation of a no-fault settlement. This provides an opportunity to resolve the complaint voluntarily without a determination as to its merits. This process allows the parties to avoid the administrative and financial burden of a complete investigation.

DFEH will discuss all settlement offers with the complainant and the complainant is free to accept or reject them. However, DFEH may take no further action on a complaint if the complainant rejects a settlement offer that DFEH believes is reasonable. A settlement signed by the complainant, respondent, and DFEH is enforceable in a court of law. DFEH will determine appropriate settlement terms for any agreement it signs.

Investigation

If the complaint is not resolved during the preliminary stages, it will be fully investigated by DFEH. The complainant will also be advised of his/her right to file a lawsuit. Throughout the process, both complainants and respondents are given the opportunity to ask questions, provide information, and suggest witnesses.

As the investigation proceeds, DFEH may need to

- Interview the respondent, as well as any other relevant witnesses;
- Access pertinent records and documents for review;
- Make an on-site inspection of facilities and operations; and/or
- Initiate formal discovery, which may include the issuance of subpoenas, interrogatories, or the depositions of witnesses.

Complainant's Responsibilities During the Investigation

- The complainant must cooperate fully with DFEH by providing accurate information, such as names, addresses, telephone numbers, dates, and places.
- The complainant will be asked to identify witnesses and supply documents to support the charges listed in the complaint.
- Complainants must notify DFEH in writing if they decide to withdraw their complaint, decide to file a lawsuit on their own behalf, and/or change their address, telephone number, or contact information.

If a complainant does not respond to DFEH contacts or otherwise fails to cooperate, the complainant's case may be closed.

In an employment case, complainants who allege that they have been illegally fired must continue to look for work and keep records of each contact with a potential employer, including the employer's name and address, the position sought and date of application, and the name of the company representative.

Respondent's Responsibilities During the Investigation

- The law prohibits retaliation against a complainant or any person who provides information to DFEH.
- Respondents must retain any written materials relevant to the complaint until a determination has been reached and all appeals and proceedings have been terminated.
- Respondents must provide DFEH with requested data and any additional relevant information regarding the complaint. DFEH can subpoena records and witnesses if necessary but prefers to work cooperatively with respondents.
- Respondents must file their current address with DFEH and notify DFEH of any change of address that occurs while the complaint is pending.

Employment cases: The law requires employers to maintain all applications, personnel, membership, or employment referral records for a minimum of **two years**. After a complaint is filed, all such records shall be retained until a determination has been reached.

Confidentiality

Offers and counteroffers made in an effort to settle a case, as well as any information disclosed during formal conciliation efforts by DFEH, will be held confidential. All other information gathered in the course

of an investigation is subject to disclosure unless otherwise protected by the individual's right to privacy (e.g., medical records).

Conciliation

If the complaint is substantiated, a formal conciliation conference to settle the complaint may be scheduled with DFEH. Settlement terms may require:

- The previously denied employment, housing, or service be made available
- Compensation for any out-of-pocket losses incurred by complainant because of the discrimination
- Compensation for the complainant's emotional distress
- Correction of other harm(s) resulting from the violation(s)
- Modification of practices that adversely affect persons protected under the law
- Other actions to eliminate the effects of discrimination

The terms of any settlement will be formalized in a written agreement.

Prosecution

If DFEH determines that the law has been violated and is unable to resolve the complaint through conciliation, the director of DFEH may issue an accusation of discrimination. The accusation must be issued within **one year** of the date a complaint is filed (**two years** if hate violence is alleged). In employment complaints, the respondent may elect to have the matter heard by the Fair Employment and Housing Commission, or transfer the matter to court if DFEH is seeking emotional distress damages or administrative fines. In housing complaints, either the respondent or the complainant can also elect to have the matter transferred to court.

In **housing** cases, the accusation should be issued within 100 days of the filing of the complaint, unless it is impracticable to do so. However, the

accusation must be issued within **one year** of the date the complaint is filed. After an accusation is issued, the respondent and complainant have 20 days to choose either to have the matter heard by the Fair Employment and Housing Commission or to transfer the matter to court.

• **Fair Employment and Housing Commission**

If the respondent elects to have the matter heard by the Commission, the Commission will hear testimony under oath, take evidence, render a decision, and issue a legally enforceable order. If the Commission finds there has been illegal discrimination, the order may award to the complainant out-of-pocket losses, hiring or reinstatement (employment cases), offer of previously denied housing (housing cases), changes in a respondent's policies or practices, additional damages for emotional distress, administrative fines paid to the state (employment cases), and civil penalties paid to the complainant (housing cases). In employment discrimination cases, the Commission is limited to awarding a maximum of \$150,000 for emotional distress damages and administrative fines combined.

In cases in which hate violence occurs in violation of the *Ralph Civil Rights Act*, the Commission may order remedies for out-of-pocket and emotional distress damages as well as a civil penalty, which is awarded to the complainant. The Commission's order may be appealed to or enforced by a Superior Court.

• **Court**

If a complaint is transferred to court, DFEH may file a lawsuit on the complainant's behalf and represent complainant's interests during the trial. Damages are unlimited in court.

Right to Sue

Complainants who file private **employment** lawsuits on their own behalf under the FEHA must obtain a Notice of Right to Sue from DFEH. The lawsuit must be filed within **one year** from the date of the