

THE RIGHTS OF EMPLOYEES WHO ARE TRANSGENDER OR GENDER NONCONFORMING

FACT SHEET



CALIFORNIA LAW PROTECTS TRANSGENDER AND GENDER NONCONFORMING PEOPLE FROM DISCRIMINATION, HARASSMENT, AND RETALIATION AT WORK. THESE PROTECTIONS ARE ENFORCED BY THE CIVIL RIGHTS DEPARTMENT (CRD).

THINGS YOU NEED TO KNOW

1. Does California law protect transgender and gender nonconforming employees from employment discrimination?

Yes. All employees, job applicants, unpaid interns, volunteers, and contractors are protected from discrimination at work when based on a protected characteristic, such as their gender identity, gender expression, sexual orientation, race, or national origin. This means that private employers with five or more employees may not, for example, refuse to hire or promote someone because they identify as – or are perceived to identify as – transgender or non-binary, or because they express their gender in non-stereotypical ways.

Employment discrimination can occur at any time during the hiring or employment process. In addition to refusing to hire or promote someone, unlawful discrimination includes discharging an employee, subjecting them to worse working conditions, or unfairly modifying the terms of their employment because of their gender identity or gender expression.

2. Does California law protect transgender and gender nonconforming employees from harassment at work?

Yes. All employers are prohibited from harassing any employee, intern, volunteer, or contractor because of their gender identity or gender expression. For example, an employer can be liable if co-workers create a hostile work environment – whether in person or virtual – for an employee who is undergoing a gender transition. Similarly, an employer can be liable when customers or other third parties harass an employee because of their gender identity or expression, such as intentionally referring to a gender-nonconforming employee by the wrong pronouns or name.

3. Does California law protect employees who complain about discrimination or harassment in the workplace?

Yes. Employers are prohibited from retaliating against any employee who asserts their right under the law to be free from discrimination or harassment. For example, an employer commits unlawful retaliation when it responds to an employee making a discrimination complaint – to their supervisor, human resources staff, or CRD – by cutting their shifts.

4. If bathrooms, showers, and locker rooms are sex-segregated, can employees choose the one that is most appropriate for them?

Yes. All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. In addition, where possible, an employer should provide an easily accessible, gender-neutral (or "all-gender"), single user facility for use by any employee. The use of single stall restrooms

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and other facilities should always be a matter of choice. Employees should never be forced to use one, as a matter of policy or due to harassment.

5. Does an employee have the right to be addressed by the name and pronouns that correspond to their gender identity or gender expression, even if different from their legal name and gender?

Yes. Employees have the right to use and be addressed by the name and pronouns that correspond with their gender identity or gender expression. These are sometimes known as “chosen” or “preferred” names and pronouns. For example, an employee does not need to have legally changed their name or birth certificate, nor have undergone any type of gender transition (such as surgery), to use a name and/or pronouns that correspond with their gender identity or gender expression. An employer may be legally obligated to use an employee’s legal name in specific employment records, but when no legal obligation compels the use of a legal name, employers and co-workers must respect an employee’s chosen name and pronouns. For example, some businesses utilize software for payroll and other administrative purposes, such as creating work schedules or generating virtual profiles. While it may be appropriate for the business to use a transgender employee’s legal name for payroll purposes when legally required, refusing or failing to use that person’s chosen name and pronouns, if different from their legal name, on a shift schedule, nametag, instant messaging account, or work ID card could be harassing or discriminatory. CRD recommends that employers take care to ensure that each employee’s chosen name and pronouns are respected to the greatest extent allowed by law.

6. Does an employee have the right to dress in a way that corresponds with their gender identity and gender expression?

Yes. An employer who imposes a dress code must enforce it in a non-discriminatory manner. This means that each employee must be allowed

to dress in accordance with their gender identity and expression. While an employer may establish a dress code or grooming policy in accord with business necessity, all employees must be held to the same standard, regardless of their gender identity or expression.

7. Can an employer ask an applicant about their sex assigned at birth or gender identity in an interview?

No. Employers may ask non-discriminatory questions, such as inquiring about an applicant’s employment history or asking for professional references. But an interviewer should not ask questions designed to detect a person’s gender identity or gender transition history such as asking about why the person changed their name. Employers should also not ask questions about a person’s body or whether they plan to have surgery.

8. Does California law protect transgender and gender nonconforming employees from hate violence?

Yes. Acts or threats of violence against a person because of their gender identity or gender expression is forbidden everywhere, including the workplace. A person targeted for hate violence can file a claim with CRD, and may be eligible for civil remedies, such as money damages and a restraining order. Also, contact the CA vs. Hate Resource Line and Network for information and support for people targeted by hate at stophate@calcivilrights.ca.gov or 833-8-NO-HATE.

9. Can my employer-provided health insurance plan exclude gender-affirming care?

No. Under California law, employer-provided health plans must cover medically necessary gender-affirming care.

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Civil Rights
Department
STATE OF CALIFORNIA

COMMON TERMS

Gender expression means a person's gender-related appearance or behavior, such as their mannerisms, clothes, or hairstyle. How someone expresses their gender may or may not be stereotypically associated with their gender identity or the sex they were assigned at birth. For example, someone who identifies as male may express his gender in stereotypically feminine ways, such as having long hair, wearing make-up, or acting "sensitive."

Gender identity means each person's internal understanding of their gender, such as being male, female, a combination of male and female, neither male nor female, and/or nonbinary. A person may have a gender identity different from the sex the person was assigned at birth.

Gender nonconforming refers to people who do not follow societal norms or stereotypes about gender identity or gender expression. A person of any gender identity can be gender nonconforming, such as a female-identified person who wears clothes typically associated with men and who uses the pronouns "they/them" and "she/her."

Gender transition refers to a process that some people who are transgender or gender nonconforming go through to affirm their gender identity. This can, but does not necessarily, include transitioning socially and/or physically. A person does not need to complete any particular step in a gender transition in order to be protected by the law.

- *Social transition* is a process of socially aligning one's gender expression with the internal sense of self (e.g., changes in name and pronoun, bathroom facility usage, dress, speech, or appearance).

- *Physical transition* refers to medical treatments an individual may undergo to physically align their body with their gender identity (e.g., hormone therapies or surgical procedures).

Non-binary is a general term for any gender identity that falls outside the gender binary of strictly male or strictly female. California officially recognizes non-binary as a gender.

Sexual orientation refers to a person's sexual or romantic attraction to others and may – but does not necessarily – include identification with terms like straight, gay, lesbian, bisexual, or pansexual.

Transgender is a general term that refers to a person whose gender identity differs from the sex they were assigned at birth, such as someone who identifies as male but whose sex on their original birth certificate was marked female.

If you have been subjected to discrimination, harassment, or retaliation at work, please contact CRD.

TO FILE A COMPLAINT

Civil Rights Department

calcivilrights.ca.gov/complaintprocess

Toll Free: 800.884.1684

TTY: 800.700.2320

Have a disability that requires a reasonable accommodation? CRD can assist you with your complaint.

For translations of this guidance, visit:

www.civilrights.ca.gov/posters/employment