



870 MARKET STREET, SUITE 823
SAN FRANCISCO, CA 94103
(415) 865-0176

WWW.TRANSGENDERLAWCENTER.ORG
INFO@TRANSGENDERLAWCENTER.ORG

AB 196: What it Means to You

An information and resource fact sheet
for transgender employees and tenants

What is gender identity discrimination?

Gender identity discrimination occurs when you are denied services, opportunities, equal access, or subjected to a hostile environment because you are or are perceived to be transgender or gender non-conforming. It can occur on its own or in combination with discrimination based on other characteristics (e.g. race, sex, sexual orientation, disability, etc.).

How can it affect me as an employee?

Discrimination occurs when an employer fires, fails to hire, fails to promote, or takes any other negative employment action against you because of your gender identity and/or expression. An employer who discriminates against you in compensation or in terms, conditions, or privileges of employment on this basis is likewise acting in a discriminatory manner.

On-the-job harassment is also a prohibited form of discrimination that occurs when you are subjected to hostile, offensive, or intimidating behavior by a supervisor or co-worker because of your gender identity and/or expression. To be illegal, this kind of behavior has to be either very serious or happen on a regular basis over a period of time. Prohibited conduct can include, but is not limited to, repeated failure to address you by the proper name and pronoun, homophobic and/or transphobic comments and epithets, or invasive inquiries about your medical history or genitalia.

It is also likely discriminatory for your employer to deny you access to the restroom that corresponds to your gender identity. Some employers believe that a person must undergo “sex reassignment surgery” before they can use the restroom that corresponds to their gender identity. We do not believe that this type of policy is legal under California law.

If you are transitioning on the job, you should be able to access the appropriate restroom as soon as you inform your employer that you are transitioning. If you transitioned prior to beginning a job, you should never be restricted from using the appropriate restroom even if you disclose your transgender status, or it is disclosed for you.

If you feel unsafe or uncomfortable using either the men's or women's restroom you should ask your employer to provide you access to a gender neutral option. However, no employer may force an employee to use a gender neutral bathroom.

The other area in which employers often treat transgender employees discriminatorily is in style of dress. If your employer has different dress codes and/or uniforms for men and women, you should be able to dress in accordance with the code or uniform appropriate for your gender identity. And employers should not scrutinize your compliance with the dress code any more closely than they would the compliance of any other employee.

How can it affect me as a tenant?

Discrimination occurs when a landlord or agent of the landlord tries to deny you the opportunity to apply for a lease or tells you an apartment has been rented when it has not. Some landlords will try to require that you sign a lease with terms that differ from those that would be offered to a non-transgender person. Others begin eviction proceedings upon finding out that their new tenant is transgender.

Failing to make repairs in a timely and professional manner or refusing to make them at all because you are transgender is also a form of discrimination. As is verbally harassing you and/or will failing to take action against an employee or other tenant who harasses you. All of these actions, and any other differential treatment that disadvantages you, may be a violation of state law.

Just like in the employment context, a transgender tenant also has the right to equal access of sex- segregated facilities. While it is less common to have public restrooms in a landlord/tenant context, when they do exist and are sex segregated, a transgender tenant has the same rights of safe and appropriate access that a transgender employee has (described above).

Retaliation

California law also prohibits an employer or landlord from retaliating against an employee who complains about employment or housing discrimination or participates in the investigation of another person's complaint. Retaliation can take the form of all of the previously mentioned forms of discrimination and can be the basis for a claim or lawsuit on its own.

California Anti-Discrimination Law

The Fair Employment and Housing Act (FEHA) is the main protection for employees¹ and tenants² under California State Law. As of January 1, 2004 FEHA explicitly prohibits gender identity based discrimination in employment and housing.

As amended, FEHA defines sex to include: a person's "identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the individual's] sex at birth." This means that an employee or tenant can not be

¹ FEHA applies to employers with five or more employees (except for cases of harassment) and does not apply to federal government employees even if they work in the State of California.

² FEHA applies to nearly all housing providers with the only statutory exceptions being those who provide housing within their own dwelling.

discriminated against: because they are transgender (regardless of whether they have undergone or intend to undergo any medical procedure); because their identity, appearance, or behavior does or does not conform to gender stereotypes (regardless of whether the person identifies as transgender); or for any other reason based upon the person's gender-related identity, appearance, or behavior.

Even prior to the above described amendment, transgender people were likely to have been protected under FEHA. Therefore, if you have experienced harassment or discrimination prior to January 1, 2004 you should still seek a remedy by following the steps on the next page.

Steps for Fighting Gender Identity Discrimination³

Step 1: Document the discrimination

The first step you should take if you believe you are being discriminated against based on your gender identity is to write down the dates, times, and individuals involved in suspected incidents, as well as names of any witnesses to the discrimination.

Step 2: Attempt an informal resolution

For all cases, you should try to address instances of harassment or discrimination by speaking with your supervisor or building manager (unless that person is the harasser) or your employer's human resources or personnel office. Follow-up the conversation with a written complaint and keep a copy for yourself.

If the situation is not resolved, you should follow your employer's, union's, or landlord's internal grievance process. Carefully review any document your employer or landlord asks you to sign in relation to this situation. If you are unsure what a document says (especially if it contains language about "arbitration," "release of claims," and/or "waiving the right to sue or to bring a complaint"), get legal advice before signing.

Step 3: Seek legal advice

While it is sometimes difficult to get full legal representation for a claim, even an informal "advice and counsel" meeting can often help you better prepare your case. Transgender Law Center provides free advice and counsel to transgender people and their families through our Community Legal Services Project. Contact us via phone or email (see front cover) for more information.

Step 4: File a complaint

If you are not able to resolve your situation informally, you may consider taking legal action. In the employment discrimination context, this always means filing a complaint with the appropriate state or federal agency(ies). In the housing context, you can begin by filing an administrative complaint, but you are not required to do so.

California Department of Fair Employment and Housing (DFEH) – This agency handles all complaints under FEHA. You can make an appointment with the DFEH by calling **(800) 884-1684** for employment discrimination and **(800) 233-3212** for housing discrimination. Filing a

³ While this pamphlet is designed to highlight employment and housing discrimination based on gender identity, these steps are a helpful guide to fighting any form of employment or housing discrimination.

complaint is free and you can do so without the help of an attorney. You must file your complaint with the DFEH within **1 year** of the date of the last incident of discrimination.

Step 5: “Right to Sue” Letter

If your situation is not resolved through the DFEH and you filed a timely complaint with them, you will be issued a “right to sue” letter. A “right to sue” letter can also be obtained at any point after filing a complaint with the DFEH if you want to move directly to a civil lawsuit.

In an employment discrimination case, this letter allows you to file a lawsuit against your employer in civil court within **1 year**. In a housing discrimination case, you have **2 years** from the date of the incident to file a civil law suit. You can get more information about the California Department of Fair Employment and Housing and your rights under FEHA at www.dfeh.ca.gov.

TLC’s Community Legal Services Project is partially sponsored by:

The Horizons Foundation

The VanLobenSels/RembeRock Foundation

The information in this pamphlet is not meant to substitute for advice from an attorney or appropriate agency. Because of the changing nature of the law, we cannot be responsible for any use to which it is put.

September 2003