



IS THAT LEGAL?

A Worker's Guide To Spotting Employment Discrimination

A White Paper Presented by

LAW OFFICES OF
TODD M. FRIEDMAN, P.C.



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A Worker's Guide To Spotting Employment Discrimination

When you think about employment discrimination, you may think of it in terms of hiring and firing decisions.

For instance, you are probably aware that it is against the law for an employer to fire you because of your race or refuse to hire you because of your religion. However, many other types of workplace discrimination are subtler and harder to detect — but equally illegal.

Oftentimes, workers who experience illegal discrimination in its less-obvious forms may feel that something is wrong, but they may have difficulty putting their finger on the issue. Because the first step in standing up for your rights is knowing what they are, it is important that you learn how to spot illegal discrimination if it happens to you.

WHO IS PROTECTED FROM WORKPLACE DISCRIMINATION?

Not every distinction between one group of employees or applicants and another is discriminatory. After all, employers must constantly make decisions about which workers to hire, fire or promote, and these decisions require them to evaluate each person's training, experience, skills and other qualifications. However, certain characteristics are

off-limits and cannot legally form the basis for most employment-related decisions.

Race and sex are two of the most well-known examples of factors that employers must not consider in hiring, firing and other employment decisions. However, state and federal laws also bar employers from making decisions based on a number of other factors, some of which you might never have considered before.



THESE FACTORS ARE OFF LIMITS FOR EMPLOYMENT-RELATED DECISIONS IN CALIFORNIA



When an employee has characteristics that bring him or her into the scope of an anti-discrimination law, he or she is said to be a member of a **protected class**. For example, a person who uses a wheelchair would be considered a member of the protected class of workers with disabilities. Likewise, an individual of Middle-Eastern descent may be considered a member of the protected class of racial minorities.¹

WHAT DOES EMPLOYMENT DISCRIMINATION LOOK LIKE?

Just as you are most likely more familiar with certain protected classes than others, some forms of discrimination may be familiar to you while others are not. For example, you most likely know that a company violates the law when it hires or fires someone because of that person's membership in a protected class. However, did you know that those protections also extend to many other aspects of employment such as providing fringe benefits or training opportunities?

In fact, hiring and firing decisions are just two of the many circumstances in which you may encounter illegal discrimination at work. Compensation is another area in which employment discrimination lawsuits often arise. It is illegal for your employer to pay you more or less than other workers because of your race, gender or any other off-limits characteristic described above.

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Similarly, your employer cannot consider your membership in a protected class when making decisions about other forms of compensation such as vacation time, bonuses, travel opportunities and health care. Employment discrimination is also prohibited with regard to any other term or condition of employment, including promotions and demotions, training opportunities, overtime, leave, assignment of job duties and even scheduling.

DISPARATE IMPACT: WHEN NEUTRAL- SEEMING POLICIES DISCRIMINATE

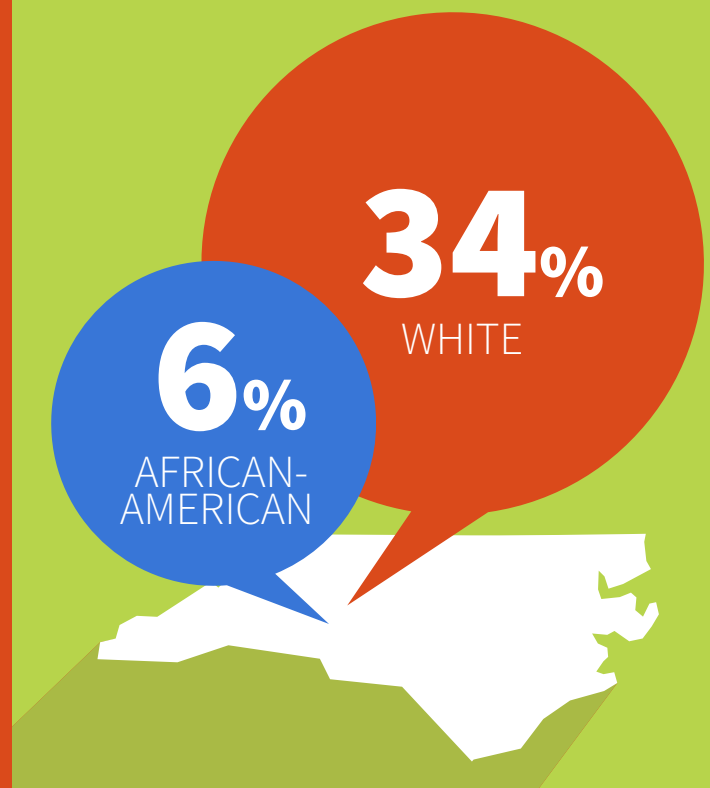
Discriminatory employment practices are not always obvious — even to employers themselves. However, even unintended discrimination can be a violation of both federal statute and California law.

When an employment policy or practice looks neutral on its face but has a disproportionately negative impact on a certain group of people, this is known as disparate impact discrimination. With certain important exceptions, disparate impact discrimination is illegal, even if the employer did not intend for the policy to be discriminatory. This type of discrimination may take place if your employer screens workers or applicants based on factors like education level, written or standardized test scores, or physical characteristics such as height and weight.

GRIGGS V. DUKE POWER CO. CASE



HIGH SCHOOL GRADUATION RATES IN 1960²



For example, the first disparate impact case to go before the U.S. Supreme Court arose from a hiring policy at a power plant that required applicants for a manual labor job to have at least a high school diploma. That case, known as Griggs v. Duke Power Co., was decided in 1971. At

the time, only about 6 percent of African-Americans in the state where the power plant was located had completed high school, compared with about 34 percent of whites.

Thus, although the power plant's hiring policy appeared to be neutral, it had the effect of excluding African-American applicants at a substantially higher rate than white applicants due to widespread differences in education levels. Because the company was unable to show a link between the high school diploma requirement and job performance, the Court ruled that the policy was discriminatory.

DISCRIMINATION BY FAILURE TO ACCOMMODATE

Yet another way that workplace discrimination can occur is if your employer refuses to grant your request for a reasonable accommodation. This situation may arise if you are unable to comply with a certain employment policy or practice because of your religious

beliefs or a medical condition. If you ask your employer to make a minor exception and explain the reason for your request, your employer may be required by law to accommodate you if doing so would not be overly burdensome for the company.

For example, a grocery store that normally requires its cashiers to stand may be required to allow an employee to sit during her shift if she is temporarily disabled by a knee injury. Similarly, a clothing store that prohibits employees from wearing hats may be required to grant an accommodation to an employee who requests that he be allowed to wear a religious head covering.



HARASSMENT, LIKE DISCRIMINATION ITSELF, TAKES MANY FORMS

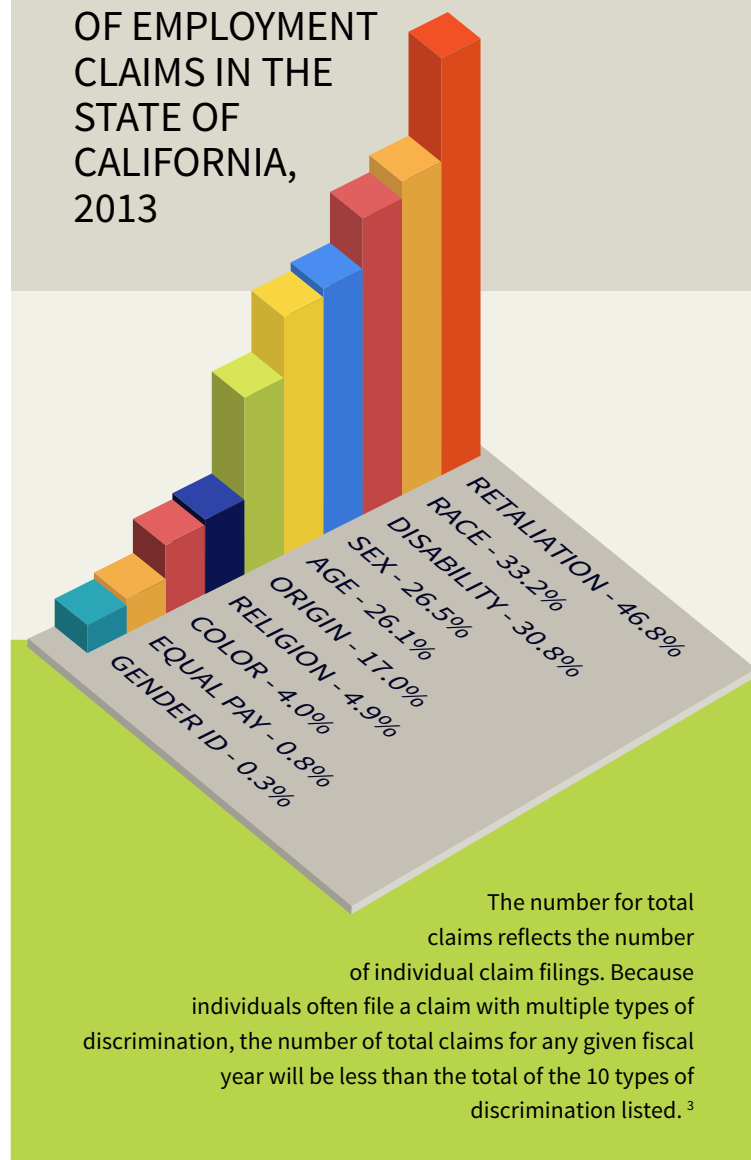
Other times, workplace discrimination may occur in the form of harassment by your supervisor or co-workers. Workplace harassment is often thought of in terms of sexual harassment, but it can also be based on other factors such as race, national origin, disability or religion.

Workplace harassment may take the form of verbal “jokes” or comments; visual images such as signs, cartoons or posters; or written materials such as emails or notes. Sometimes, harassment can be physical or nonverbal, for instance in situations involving unwanted touching, leering or deliberate physical intimidation.

Not all types of teasing or offhand comments constitute illegal harassment. In order to reach illegal levels, the harassment must be so severe or frequent that it creates an offensive or hostile work

environment, or it must result in a negative employment consequence such as being fired or demoted. If you are being harassed at work and report it to your supervisor, the company can be held liable if it fails to take steps to protect you.

PERCENTAGE OF EMPLOYMENT CLAIMS IN THE STATE OF CALIFORNIA, 2013





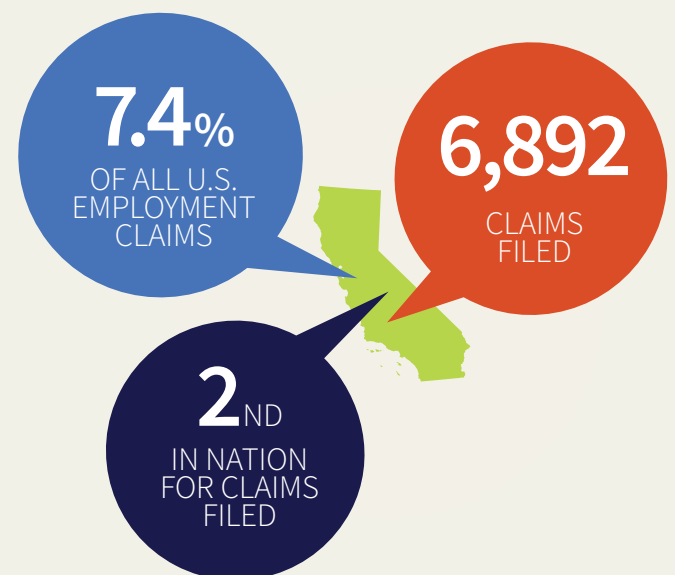
Do Not Let Fear Of Retaliation Stop You From Standing Up For Your Rights

You may fear that speaking up about discrimination or harassment at work could put your job in danger, or that it may expose you to other negative employment consequences such as demotion or reduced work hours. However, just as the law prohibits discrimination, it also prohibits employers from retaliating against workers for asserting their rights and objecting to discriminatory practices.

If you think you have experienced illegal discrimination at work, you do not have to put up with it. As discussed above, there are numerous state and federal laws designed to protect you from many different forms of discrimination, harassment and retaliation. Furthermore, there are employment lawyers who

specifically focus on using those laws to help workers like you stand up for their rights. However, because change is unlikely to happen on its own, the first step is up to you.

CALIFORNIA RANKS HIGH IN EMPLOYMENT CLAIMS FILED³



Discrimination feels bad, and the last thing you may want to do when it happens to you is dwell on it.

Unfortunately, ignoring the problem only allows it to continue. By standing up for yourself and taking action to correct the problem, not only can you help make the workplace better for yourself and others, but you may also be able to recover financial compensation and other remedies. A law firm with experience fighting back against employment discrimination can help you take that important first step and will be there to guide you at every step that follows.

SOURCES:

¹ 29 U.S.C. §§ 206, 621 – 634; 42 U.S.C. §§ 21F, 126, 1981, 12112, 2000e-2; Cal. Gov. Code §§ 12926, 12940; Cal. Labor Code §§ 230, 1102.1, 1144.5, 1197.5, 1735.

² Griggs v. Duke Power Co., 401 U.S. 424, 431 (U.S. 1971) (citing U.S. Bureau of the Census, U.S. Census of Population: 1960, Vol. 1, Characteristics of the Population, pt. 35, Table 47).

³ U.S. Equal Employment Opportunity Commission, FY 2009 – 2012 EEOC Charge Receipts for California, (Jan. 29, 2015, 12:33 PM), http://www1.eeoc.gov/eeoc/statistics/enforcement/charges_by_state.cfm#centercol.



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