

California FEHA & FEHC and Federal ADA Comparison Chart

	California Fair Employment and Housing Act (FEHA) and Fair Employment and Housing Commission (FEHC) decisions and regulations	Federal Americans with Disabilities Act (ADA)
Number of Employees	5 or more (1 or more for harassment)	15 or more (private employers) All state and local governments regardless of employee count
Employers Covered	Any person regularly employing five (5) or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, one (1) or more employees for complaints involving harassment based on mental or physical disability, except as follows: it does not include a religious association or corporation not organized for private profit.	Nonprofit, religious organizations engaged are covered by the ADA but they may give employment preference to people of their own religion or religious organization. However, they may not discriminate on the basis of disability against members or nonmembers. Executive agencies of the US government are excluded from the ADA.
Disability Defined	<p>The FEHA forbids employment discrimination against an individual because of his or her physical disability, mental disability, or medical condition. A person is recognized as "disabled" if he/she:</p> <ul style="list-style-type: none"> - Has a physical or mental disability that limits (i.e., it makes the achievement of the major life activity difficult) one or more major life activities (construed broadly to include physical, mental, and social activities and working); or - Has a history of such an impairment known to the employer; or - Is incorrectly regarded or treated as having or having had such an impairment; or - Is regarded or treated as having or having such an impairment that has no presently disabling effects but may become a qualifying impairment in the future. <p>"Physical disabilities" include, but are not limited to, any physiological disease, disorder, condition, cosmetic disfigurement or anatomical loss that affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs (including speech organs), respiratory, cardiovascular, reproductive, digestive, ge</p> <p>"Medical Condition" is defined as including any health impairment</p> <p>"Mental disabilities" include, but are not limited to, any mental</p>	<p>The ADA defines "qualified individual with a disability" as an individual with a disability who can perform the essential functions of a job with or without reasonable accommodation.</p> <p>A person is recognized as "disabled" if he/she:</p> <ul style="list-style-type: none"> - Has a physical or mental impairment that substantially limits one or more of his/her major life activities (caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working); or - Has a record of such an impairment; or Is regarded as having such an impairment. <p>The term 'substantially limits' means materially restricts:</p> <p>"Major life activities" include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.</p> <p>A major life activity also includes the operation of a "major bodily function," including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.</p>

	mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, specific learning disabilities, or any other mental or psychological disorder or condition that requires special education or related services.	
Exclusions from Definition of Disability	<ul style="list-style-type: none"> - Sexual behavior disorders (not currently defined); or - Compulsive gambling, kleptomania, pyromania; or - Psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. <p>Note: California has adopted the definitions under federal law by regulation.</p>	<ul style="list-style-type: none"> - Persons who currently use drugs illegally (those not currently using illegal drugs but in rehabilitation from such use may be covered); - Homosexuality and bisexuality are not considered "impairments" or "disabilities"; - Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments; or - Compulsive gambling, kleptomania, or pyromania; or - Psychoactive substance use disorders resulting from current illegal use of drugs.
Mitigating Measures	Mitigating measures, such as assistive devices, prosthesis, medication, etc., are not considered in determining whether a condition "limits" a major life activity, unless the mitigating measure itself limits a major life activity	<p>Mitigating measures are not considered in determining if a major life activity is "substantially limited."</p> <p>The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.</p>
"Work" as a Major Life Activity	<ul style="list-style-type: none"> - Working is considered a major life activity along with physical, mental and social activities, - To be limited in the major life activity of working, an individual need only be limited in performing the requirements of a single, particular job. 	<ul style="list-style-type: none"> - Working is considered a major life activity along with caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning. - To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. - The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity.
Reasonable Accommodation	A medically necessary, effective method of assisting the employee to perform the essential functions of the job by engaging in an ongoing, interactive process that does not create undue hardship for the employer with the intent of enabling a qualified individual with a disability to perform the essential functions of his or her job	Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Employers are required to provide reasonable accommodation to qualified individuals with disabilities unless to do so would cause undue hardship.

<p style="text-align: center;">Interactive Process</p>	<p>Generally , an employer can make reasonable accommodation for an employee or for an applicant with a known physical or mental disability. This requires a "good faith, interactive process" to determine an accommodation.</p> <p>This requirement does not apply to an applicant or employee with a known medical condition. FEHA incorporates the EEOC guidelines for defining an "interactive process."</p> <p>California courts have yet to define "good faith." The interactive process requires the employee to prove that the employer did not interact in good faith and that a reasonable accommodation was available.</p>	<p>EEOC guidelines outline steps that the employer and employee may take to arrive at an accommodation. See www.eeoc.gov/policy/docs/accommodation.html "Good faith" is evidenced through the employer's engagement in the interactive process; if demonstrated the employer's exposure to punitive and some compensatory damages is limited.</p>
<p>Medical/Psychological Inquiries</p>		
<p style="text-align: center;"><i>Pre-Offer of Employment</i></p>	<p>An employer may not ask or require a job applicant to take a medical examination before making a job offer.</p> <p>Absent a request for reasonable accommodation during the hiring process, it cannot make any pre-employment inquiry about a disability or the nature of the severity of a disability,</p> <p>An employer may inquire into the ability of an applicant to perform job-related functions</p>	<p>An employer may not ask or require a job applicant to take a medical examination before making a job offer.</p> <p>Absent a request for reasonable accommodation during the hiring process, it cannot make any pre-employment inquiry about a disability or the nature of the severity of a disability.</p> <p>An employer may ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how he/she would perform these functions.</p>
<p style="text-align: center;"><i>Post Offer of Employment</i></p>	<p>An employer may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.</p>	<p>An employer may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category.</p> <p>A post-offer examination or inquiry does not have to be job related or consistent with business necessity. However, an employer may not refuse to hire an individual with a disability based on the medical examination results unless the reason for rejection is job-related and justified by business necessity.</p>

<p style="text-align: right;"><i>Post Hire</i></p>	<p>An employer may require examinations and inquiries if it can show such to be job-related and consistent with business necessity. An employer may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.</p>	<p>After a person starts work, a medical examination or inquiry of an employee must be job related and consistent with business necessity. Employers may conduct employee medical examinations where: there is evidence of a job performance or safety problem, required by federal law, necessary to determine fitness to perform a particular job, and where part of a voluntary examination that is part of an employee health program.</p>
<p>Undue Hardship Defined</p>	<p>"Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:</p> <ol style="list-style-type: none"> (1) The nature and cost of the accommodation needed; (2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility; (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities; (4) The type of operations, including the composition, structure, and functions of the workforce of the entity; (5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities. 	<p>"Undue hardship" A determination of undue hardship should be based on several factors, including:</p> <ul style="list-style-type: none"> - The nature and cost of the accommodation needed; - The overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility; - The overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity); - The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; - The impact of the accommodation on the operation of the facility.
<p>Who Bears Burden to Prove Discrimination Occurred</p>	<p>The party claiming discrimination occurred and employee was qualified for the position (<i>Green v. State of California</i>)</p>	<p>The party claiming discrimination occurred and employee was qualified for the position</p>
<p>Enforcement Agency —Where Law is Found</p>	<p>California Fair Employment and Housing Commission (http://www.fehc.ca.gov/)— California Government Code and California Code of Regulations</p>	<p>Federal Equal Employment Opportunity Commission (http://www.eeoc.gov/)— United States Code and Code of Federal Regulations</p>

Employer Defenses

Inability to Perform.

It is a permissible defense for an employer or other covered entity to demonstrate that, after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question because of his or her disability. others.

Health or Safety of an Individual with a Disability.

It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation the applicant or employee cannot perform the essential functions of the position in question in a manner which would not endanger his or her health or safety because the job imposes an imminent and substantial degree of risk to the applicant or employee.

Health and Safety of Others.

It is a permissible defense for an employer or other covered entity to demonstrate that after reasonable accommodation has been made, the applicant or employee cannot perform the essential functions of the position in question in a manner which would not

An employer may refuse to hire an employee if the selection standards and criteria are job related and consistent with business necessity and:

No accommodation exists that permits the person to perform the essential job functions;

The person poses a direct threat to the safety of others.

Undue hardship is determined based on the net cost to the employer. Thus, an employer should determine whether funding is available from an outside source, such as state rehabilitation agency, to pay for all or part of the accommodation.

In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if he/she will pay the difference.

If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause undue hardship, then the employer must

	<p>endanger the health or safety of others to a greater extent than if an individual without a disability performed the job.</p> <p>Future Risk</p> <p>However, it is no defense to assert that an individual with a disability has a condition or a disease with a future risk, so long as the condition or disease does not presently interfere with his or her ability to perform the job in a manner that will not immediately endanger the individual with a disability or others, and the individual is able to safely perform the job over a reasonable length of time. "A reasonable length of time" is to be determined on an individual basis.</p> <p>Factors to be considered when determining the merits of the defenses above include, but are not limited to:</p> <p>Nature of the disability;</p> <p>Length of the training period relative to the length of time the employee is expected to be employed;</p> <p>Type of time commitment, if any, routinely required of all other employees for the job in question: and</p> <p>Normal workforce turnover</p>	<p>provide the second accommodation.</p> <p>An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices toward the individual's disability. Nor can undue hardship be based on the fact that provisions of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provisions of a reasonable accommodation would be unduly disruptive to other employee's ability to work.</p>
<p>Remedies</p>	<p>The complainant is entitled to "make whole" remedies if a preponderance of the evidence establishes that the complainant was denied an employment opportunity because of his/her disability or medical condition and no affirmative defense excuses the employer's action.</p> <p>He/she is also entitled to recoup compensatory damages for emotional distress and physical harm suffered as a result of the respondent's conduct.</p>	<p>Under the ADA, employers will not be liable for compensatory and punitive damages if it has been engaged in "good-faith efforts" to identify a possible accommodation.</p>

