

CALIFORNIA LAW is clear and sweeping in its protection of gay and lesbian employees from discrimination because of sexual orientation or due to the employer's assumptions about the employee's sexual orientation. The law, Gov't. Code Sec. 12940, also protects against harassment based on sexual orientation or marital status, and requires employers to take all reasonable steps to prevent harassment from occurring, even when that harassment comes from third parties. The Department of Fair Employment & Housing (DFEH) has jurisdiction over complaints of employment discrimination on the basis of sexual orientation. Employees have both administrative and judicial remedies against employers who discriminate or harass employees based on sexual orientation. The administrative procedures are swift and efficient, thereby minimizing the cost and time involved in resolving employment disputes.

WHAT CONDUCT IS PROHIBITED BY CALIFORNIA LAW?

Under Gov't. Code §12940(a) it is an unlawful practice for California employers, including school districts and county offices of education, to refuse to hire, to refuse to select for a training program leading to employment, to discharge from employment, or to discriminate in compensation or in terms, conditions or privileges of employment on the basis of sexual orientation. Gov't. Code §12940(j) prohibits harassment by employers on the basis of sexual orientation.

Under the Unruh Civil Rights Act [Cal. Civ. Code Sec. 51] it is also illegal for any business to refuse to provide full and equal accommodations, advantages, facilities, privileges, or services on the basis of sexual orientation or marital status.

IF I AM NOT GAY OR LESBIAN, OR NOT "OUT," AM I PROTECTED BY CALIFORNIA LAW?

YES. The California law that prohibits discrimination on the basis of sexual orientation extends to those employees who have not made a public issue of their sexual orientation as well as those who are out. It also protects employees from discrimination motivated by an employer's perception of an individual's sexual orientation. Gov't. Code §12926(m) defines "sexual orientation" to include the perception of a person's sexual orientation and includes people who are associated with others who have or are perceived to have a particular sexual orientation.

DOES THE LAW PROTECT TRANSGENDERED EMPLOYEES?

YES. "Sex" as defined in Gov't. Code §12926(p) includes a person's gender identity and gender related appearance and behavior, whether or not "stereotypically associated with the person's assigned sex at birth."

WHAT CAN I DO IF MY EMPLOYER DISCRIMINATES AGAINST ME?

- Call your CTA staff representative. He or she can help you seek all available remedies, including referring you to a CTA Group Legal Services attorney. They can also be valuable in getting support systems in place for you.
- Consider filing a charge of discrimination with the California Department of Fair Employment and Housing (DFEH), the administrative agency that enforces the Fair Employment and Housing Act, Gov't. Code §12940, et seq. Filing such a charge is a procedural requirement for filing a complaint in court. **Charges must be filed within one year of when the employee first knew of the discriminatory event.**

- Take a representative with you to all meetings with your supervisor if you believe those meetings relate to your sexual orientation.
- Document meetings, harassment, or other examples of discriminatory treatment. This includes harassment by co-workers and by parents. Your employer has a duty to stop co-worker harassment.
- Bring your complaint to the governing board of your school district through its internal complaint procedures.
- File a grievance if your collective bargaining agreement contains a nondiscrimination clause on the basis of sexual orientation.
- **DO NOT BE INTIMIDATED INTO RESIGNING YOUR JOB.**

ARE DOMESTIC PARTNERS ENTITLED TO EMPLOYER-PROVIDED HEALTH INSURANCE?

Generally, yes. Registered domestic partners are entitled to the same health benefits that spouses receive. If your employer does not provide coverage for domestic partners, contact your CTA staff person, who will consult with the Legal Department on how best to enforce this right.

WHAT IF I AM BEING HARASSED BY STUDENTS OR PARENTS?

Based on successful litigation, CTA believes that the employer is liable for the discriminatory conduct of parents when the employer adopts or ratifies that conduct. For example, if parents demand that students be removed from a gay or lesbian teacher's class simply because of the teacher's sexual orientation, and the district accedes to this demand, we believe the DFEH would find that to be an unlawful employment

practice. This would be considered unlawful discrimination.

Another law, the California Student Safety and Violence Protection Act, declares the policy of this state to afford all persons in public schools, regardless of sex, race, national origin or sexual orientation equal rights and opportunities in the educational institutions of this state. (Educ. Code §200, 220). Although not yet tested, we believe that this law, coupled with the Government Code provisions discussed above, require a school district employer to protect its employees from discrimination by parents or students.

HOW DO I FILE A COMPLAINT WITH THE STATE?

To file a charge with the Department of Fair Employment & Housing, which has 11 offices throughout the state, call 1(800) 884-1684 for the address of the office nearest to you. You should also call that number to set up an appointment with an intake officer. Prior to your interview, you will be asked to complete a questionnaire, detailing the incidents of discrimination you are complaining about. This document is available on the DFEH website. If your charge is accepted, the DFEH will investigate it by contacting witnesses, the employer, and subpoenaing documents, if necessary. The DFEH will also offer an opportunity for the parties to conciliate, or attempt to settle the matter informally. If conciliation is unsuccessful, and the investigation concludes that it is probable that discrimination has occurred, the matter will be referred to the legal department of DFEH. Department lawyers have the discretion to litigate the case on your behalf before the Fair Employment & Housing Commission.

If Department attorneys decline to prosecute, or if you would rather litigate the case in civil court, you can obtain a right-to-sue letter from DFEH, which is essentially permission to proceed in court.

For further information about the complaint process, or to get a copy of the pre-complaint questionnaire, visit the DFEH web site: www.dfeh.ca.gov.

WHAT ARE THE REMEDIES FOR SEXUAL ORIENTATION DISCRIMINATION?

There are two avenues of recourse under the law: administrative adjudication with the DFEH representing the complainant (this is contingent on the Department accepting the case for litigation); or litigation in civil court. Potential remedies include:

- (1) an order to employ, or reinstate;
- (2) reimbursement of lost wages and benefits, out-of-pocket losses, plus interest;
- (3) affirmative relief, such as personnel training or policy changes;
- (4) front pay;
- (5) compensation for emotional distress damages and administrative fines, up to \$150,000 for both;
- (6) punitive damages against private sector employers or individuals
- (7) reasonable attorneys fees and expert witness fees and costs.

Contact your local CTA staff representative if you believe you have suffered discrimination on the basis of sexual orientation. The staff representative can assist in working out an informal resolution to the problem. If such a resolution is not possible, the staff representative would be able to:

- (1) file a grievance, if the collective bargaining agreement has been violated;
- (2) help you file a charge with the Department of Fair Employment & Housing, or
- (3) Refer you to a Group Legal Services Attorney. CTA will pay for the first hour of consultation with an attorney for job-related matters, if you are a member, and may also pay for additional legal services.

IS THERE LEGAL PROTECTION FOR GAY, LESBIAN, BISEXUAL OR TRANSGENDERED STUDENTS?

The Student Safety and Violence Protection Act of 2000, Educ. Code Sections 200 and 220, prohibits discrimination against any person on the basis of sex, race, religion, national origin, disability or *sexual orientation* in any school program or activity conducted by an educational institution that receives financial assistance from the state. This law also prohibits discrimination against transgendered individuals.

Federal law - Title IX - also prohibits sexual discrimination and harassment of students in public schools and has been the basis for several large monetary awards on behalf of gay and lesbian students who were harassed by either fellow students or teachers and administrators.

FOR ASSISTANCE, SUPPORT AND MORE INFORMATION:

California Teachers Association

GLBT Issues Advisory Committee
P.O. Box 921, Burlingame, CA 94011-0921
Phone: 650/697-1400 x5370

Gay, Lesbian, and Straight Education Network (GLSEN)

Chapters are located throughout the state. Contact the website for the chapter nearest you.
Web Site: www.glsen.org

Gay-Straight Alliance Network

Web Site: www.gsanetwork.org

Gay & Lesbian Alliance Against Defamation (GLAAD)

1360 Mission Street, Suite 200
San Francisco, CA 94103
Phone: 415/861-4588
Fax 415/861-4893
Web Site: www.glaad.org

National Center for Lesbian Rights

870 Market St., Suite 370
San Francisco, CA 94102
Phone: 415/392-6257
Web Site: www.nclrights.org

Lambda Legal Defense & Education Fund

6030 Wilshire Blvd., Suite 200
Los Angeles, CA 90032
Phone: 323/937-2728
Fax: 323/937-0601

American Civil Liberties Union

Northern California
Phone: 415/621-2493
Web Site: www.aclunc.org

San Jose Office Phone: 408/282-8970

Southern California
Phone: 213/977-9500
Web Site: www.aclu-sc.org

WHAT YOU SHOULD KNOW ABOUT

LEGAL RIGHTS FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER EMPLOYEES AND STUDENTS



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