

WORKPLACE DISCRIMINATION: PROTECTED CHARACTERISTICS & DISPARATE TREATMENT

The framework for asking whether an adverse decision was motivated by a protected characteristic rather than a lawful reason.

WHAT THE EMPLOYER WILL TEST
THE ONE-SENTENCE RULE Unfair is not always unlawful. The useful question is whether protected status substantially motivated an adverse action and whether the employer’s explanation survives the record.
WHEN PROMPT LEGAL REVIEW MAY MATTER Leave, return-to-work, or a requested accommodation is denied or delayed. • The employer demands unclear, excessive, or shifting medical documentation. • Discipline follows notice of disability, pregnancy, medical restrictions, or leave.

THE 60-SECOND ISSUE MAP

Issue	What to ask	Risk / signal	Employee focus
Protected status	Race, color, ancestry, national origin, religion, age 40+, disability, sex, pregnancy, sexual orientation, gender identity/expression, medical condition, genetic information, marital status, military/veteran status, reproductive health decisions?	FOUNDATIONAL	Identify the specific protected characteristic.
Adverse action	Termination, demotion, pay, promotion, schedule, discipline, denial of opportunity?	HIGH	Define the concrete employment consequence.
Comparators	Who was treated better under materially similar circumstances?	HIGH	Similarity matters more than labels.
Comments / bias	Are there statements, patterns, stereotypes, or decisionmaker conduct tied to the protected trait?	HIGH	Save exact words, dates, witnesses.
Pretext	Does the stated reason match prior records and actual practice?	HIGH	Attack the explanation with documents and timing.

FIVE RULES THAT MATTER

1. FEHA prohibits covered employers from discriminating in hiring, compensation, promotion, discipline, termination, and other employment practices because of protected characteristics. 2. A plaintiff generally must connect protected status to an adverse employment action; proving that the decision was simply unfair is not enough.	3. Comparator evidence can be powerful when employees are similarly situated in relevant respects and treated differently. 4. Pretext matters. A false, shifting, or unsupported explanation can be circumstantial evidence of discriminatory motive. 5. Mixed motives can be legally significant. California law distinguishes whether discrimination was a substantial motivating factor and what remedies follow.
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NOT “UNFAIR”; ASK WHETHER THE PROTECTED TRAIT EXPLAINS THE DIFFERENCE

Protected trait	Adverse action	Proof of connection
Identify class / decisionmaker knowledge	Specific lost opportunity or penalty	Comments / comparators / timing / statistics / pretext

DOCUMENTS / ACTIONS TO SAVE NOW

- ☐ Performance history
- ☐ Decision documents
- ☐ Comparator information lawfully available
- ☐ Emails / texts / comments
- ☐ Policies and criteria
- ☐ Promotion / pay / discipline records
- ☐ Complaint and HR records

FROM THE EMPLOYER'S SIDE: the defense will usually supply a neutral noun - performance, restructuring, fit, attendance. Do not litigate inside the noun. Ask what the contemporaneous record shows and whether the same rule was applied to others.
EMPLOYEE RESPONSE: Connect the request or protected condition to employer knowledge, timing, essential duties, alternatives, and the later decision.

RELATED RUGGLES LAW FIRM READING

- Workplace Discrimination Resource Center
- Fair Employment and Housing Act Protections
- Workplace Discrimination in California: Equal Rights

CALIFORNIA STATUTES / REGULATIONS • Government Code section 12940 • Government Code section 12926	PUBLISHED CALIFORNIA CASES • Guz v. Bechtel National, Inc., 24 Cal.4th 317 (2000) • Harris v. City of Santa Monica, 56 Cal.4th 203 (2013)
 SCAN TO READ Workplace Discrimination Resource Center RugglesLawFirm.com	OFFICIAL RESOURCES CRD Employment Discrimination EEOC

“A plaintiff may demonstrate pretext either directly ... or indirectly, by showing that the employer’s proffered explanation is unworthy of credence.”
— Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000)

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