



KNOW YOUR RIGHTS GUIDE

MARCH 2013

## Sex Discrimination At Work

For sex discrimination to be illegal, it has to involve different treatment that negatively affects the *terms or conditions of employment*.

### What is Sex Discrimination?

Unlawful sex discrimination occurs when an employer treats an applicant or employee differently and less favorably because of his or her sex or gender<sup>1</sup> or because the person is affiliated with an organization or group that is associated with a particular sex. Sex discrimination includes treating an employee or an applicant differently based on sex stereotypes or because he or she does not conform to traditional notions of femininity or masculinity. Sex discrimination also includes unwelcome sexual advances, requests for sexual favors and other verbal or physical harassment of a sexual nature. Sexual harassment may also include offensive remarks made about women or men in general.

For sex discrimination to be illegal, it has to involve different treatment that negatively affects the “terms or conditions of employment.” “Terms or conditions of employment” include things like your employment status (being hired or fired); your job position or duties; your work schedule, shift, or job location; your pay rate or salary; and advancement and training opportunities.

### Examples of Sex Discrimination at Work

The following examples are provided to help you decide if you are being discriminated against because of your sex. You may still have a claim for sex discrimination if your situation does not conform exactly to any of the examples below. If you have additional questions or need information about your rights at work regarding any

of the following issues, please call ERA's Advice & Counseling Hotline at 800-839-4372.

#### > Hiring

You apply for a job as a sales executive. Although you have experience and excellent qualifications, you are not hired because some of the company's long-time clients are more comfortable dealing with men.

#### > Condition of Employment

You want to be a firefighter. The department is taking applicants, but the job description states that all candidates must be able to lift 100 pounds. You believe such a feat is not necessary to carry out the duties of a firefighter, and serves instead to keep women from applying.

#### > Firing

You are told that you are laid off due to company cutbacks and reorganization. However, men in the same position and/or with less seniority keep their jobs.

#### > Promotion

You work as a sales clerk at a retail store for ten years but have been repeatedly denied the opportunity to advance. Men with less experience, some of whom you trained and/or supervised, receive the promotions instead.

#### > Job Classification

You work at a large shipping company where employees hold several different job classifications. You notice that most of the sorting jobs, which are low-paid and offer little opportunity for promotion, are held by women, while most of the better-paying office positions are held by men.

<sup>1</sup> “Sex” refers to the biological and physiological characteristics that define men and women. “Gender” refers to socially constructed roles, behaviors and attributes that a society or culture deems appropriate for men or women.

**> Benefits**

You are required to use your sick and vacation leave to take time off for your pregnancy because your employer does not provide disability leave for pregnancy, but does provide such leave to employees with other temporarily disabling health conditions. A male coworker was on leave for six months because he had a heart attack and he was able to access the benefits under the disability plan. (For more information about your rights as a pregnant employee, see ERA's brochure on Pregnant Workers' Rights.)

**> Pay**

You work your way up from the position of line cook to sous chef. After your promotion, a second sous chef is hired. He has similar training and work experience, but you find out that he is being paid more than you.

**> Sexual Harassment**

Your boss is the vice president of the company. He repeatedly makes unwelcome comments about your body and routinely puts his arm around your waist when discussing work-related matters. You tell him his behavior makes you uncomfortable and ask him to stop. He says, "Maybe you are too uptight for this job. I probably should never have hired you." You now are afraid of losing your job if you don't "loosen up."

**> Gender Identity**

You apply and are hired for a position at a new company. Before beginning your job, you inform your employer that you are undergoing a gender transition and will be presenting as a woman instead of as a man. Your new employer then informs you that the job is no longer available due to budget constraints. You later find out that another person was hired for the position.

**> Sex Stereotyping**

You are a woman who works in the sales department of a major retail chain. You have short hair and dress in pants most days. Although you meet deadlines and sales quotas, you receive poor performance evaluations, which include comments about your lack of femininity and "aggressive" nature. Men with similar personality traits and equally or less impressive sales records to your own receive above average performance evaluations and are promoted more quickly.

**Sex Discrimination is Against the Law****Federal Law**

The federal law prohibiting sexual discrimination in the workplace is Title VII of the Civil Rights Act of 1964 (often referred to as "Title VII"). Title VII applies to private employers, state and local government employers, labor organizations, employment agencies, and joint employer-union apprenticeship programs with 15 or more employees.

**California State Law**

The California Fair Employment and Housing Act (FEHA) prohibits discrimination on the basis of sex and gender in employment. FEHA's prohibition on most forms of sex discrimination applies to all private employers, employment agencies, labor organizations, state licensing boards, and state and local government agency employers that have five (5) or more employees. However, the law's prohibition against sexual harassment is broader, and applies to all employers with one (1) or more employees.

**Other State Laws**

Like California, most states have a law that makes sex discrimination in employment illegal. You can get more information about your rights under your state's laws by consulting a lawyer who practices employment law in your state. Equal Rights Advocates may be able to refer you to an attorney in your area. For more information, please call ERA's Advice & Counseling Hotline at 800-839-4372 or visit the Advice & Counseling Center.

**Retaliation for Reporting or Opposing Sex Discrimination is Also Against the Law**

Not only is sex discrimination against the law; so is retaliating against (punishing) an employee for reporting sex discrimination, opposing an employer's discriminatory practices, or participating in an investigation or legal action related to discrimination. Examples of retaliation in the workplace include being fired or demoted, receiving a pay cut or a reduction in your hours, being forced to take leave, or being reassigned to an undesirable job, shift, or location. See the "What You Can Do" section below for suggestions and options to consider if your employer retaliates against you for reporting or opposing sex discrimination.

**What You Can Do**

When you are deciding what to do in the face of discrimination or retaliation at work, remember that every situation is unique and you must weigh the pros, cons, and risks associated with whatever action(s) you choose to take. It is important that you speak with a lawyer or

legal services organization like Equal Rights Advocates to discuss your options, understand your choices, and get a realistic picture of the potential strengths and weaknesses of your case. For information about your rights at work regarding any of the following issues, call ERA's Advice & Counseling Hotline at 800-839-4372 or visit the Advice & Counseling Center.

Here are a few tips and things to consider doing if you think your rights as an employee have been violated:

- **Write Down What Happened.** As soon as you experience discrimination, make note of it. Write down dates, places, people, times, and possible witnesses to what happened. If possible, ask your co-workers or colleagues to write down what they saw or heard, especially if the same thing is happening to them. Remember that others may (and probably will) read this written record at some point. It is a good idea to keep the record at home or in some other safe place. Do not keep the record at work.
- **Report the Incident(s) or Problem(s) to Your Employer.** Wherever possible, you should consider reporting the sex discrimination or retaliation that you believe you are experiencing to your employer. Review your personnel manual and/or speak to a human resources officer to find out if your employer has any written policies or procedures for complaining about discrimination.
- **Keep A Paper Trail.** When you report the discrimination to your employer, do it in writing. Describe the problem and how you want it resolved. This creates a written record of when you complained and what happened in response to it. Keep copies of everything you send and receive from your employer, including emails, text messages, and voicemails.
- **Involve Your Union.** If you belong to a union, you may want to file a formal grievance through the union and try to get a shop steward or other union official to help you navigate the grievance process. Get a copy of your union's grievance policy and your collective bargaining agreement to see if they discuss the problems you are experiencing. Keep in mind that if you use your union's grievance procedure, you must still file a complaint with a government agency if you want to file a lawsuit in federal or state court.
- **Request to Review Your Personnel File.** It is your right to see and make a copy of your personnel file. In certain states including California, you also have

the right to get a copy of every employment-related document that you have signed.

- **File a Discrimination Complaint with a Government Agency.** If you want to file a lawsuit in federal or state court, you must first file a formal complaint (or "charge") of discrimination with the federal Equal Employment Opportunity Commission (EEOC) or your state's fair employment agency (in California, this is the Department of Fair Employment and Housing). (See Resources section for contact information.) If you are a federal employee, follow federal guidelines on how to lodge a discrimination complaint. You can obtain these guidelines from the Federal Labor Relations Authority at [www.flra.gov/contact](http://www.flra.gov/contact) or (202) 218-7770.
- **Do Not Miss Deadlines with the EEOC or Other Government Agencies.** Do not delay in filing a complaint against your employer with the appropriate state or federal agency! If you feel that your employer's internal process for dealing with the discrimination will not or did not help you, do not wait to file a formal external complaint. This is very important. You cannot bring a lawsuit against your employer unless you have first filed a complaint of discrimination with the EEOC or your state fair employment agency. Under federal law (Title VII), you have 300 days from an act of discrimination to file a formal charge of discrimination with the EEOC. Under your state's fair employment law, you may have as few as 180 days to file a charge. If you are a public employee, you may also have to adhere to notice requirements for filing suit against a public entity. Filing deadlines vary from state to state, so it is important to check with the EEOC or a legal organization to find out the time limits. It is important to note that any internal complaints you make to your employer will not extend these deadlines. Call Equal Rights Advocates or a lawyer to find out what you need to do and when.
- **File a Lawsuit.** Most laws that prohibit sex discrimination do not allow you to go straight to court; generally, you have to file a formal discrimination charge with a federal or state agency before you can file a lawsuit in court. However, you may want to consider early on whether filing a lawsuit is something you would be willing to do. The remedies or relief you can seek in a lawsuit will vary, but may include money damages, getting your job back (if you've been fired or forced out on leave), and/or making your employer change its practices to prevent future discrimination from occurring.

### Equal Rights Advocates Can Help

ERA has a multilingual Advice and Counseling Line that you can call to receive free practical advice and information about your legal rights. All calls are confidential. Call us toll-free at 1-800-839-4372 or visit us at: [www.equalrights.org](http://www.equalrights.org)

### Resources

#### National

U.S. Equal Employment Opportunity Commission (EEOC)

(The federal agency that enforces workplace anti-discrimination laws)

(800) 669-4000: Toll-free phone number that automatically connects you to your local EEOC office.

To find the contact information for your local EEOC office, visit: <http://www.eeoc.gov/field/index.cfm>.

#### California

California Department of Fair Employment and Housing (DFEH)

(The state agency that enforces the state workplace anti-discrimination laws.)

(800) 884-1684: Within California

(916) 227-0551: Outside California

[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

*Disclaimer: The materials contained in this brochure have been prepared by Equal Rights Advocates for informational purposes only and do not constitute legal advice. Transmission of the information is not intended to create, and receipt does not constitute, an attorney-client relationship. Readers acting upon this information do so of their own fruition, and ERA is not liable for any adverse actions taken against the reader. Individual situations vary widely and readers are thus encouraged to seek professional counsel to determine their best individual course of action.*