

LEGAL RIGHTS FOR LGBTQ+ EMPLOYEES & STUDENTS



CALIFORNIA
TEACHERS
ASSOCIATION

www.cta.org

LEGAL PROTECTION FOR LGBTQ+ EMPLOYEES

California law is clear and sweeping in its protection of LGBTQ+ employees from discrimination because of gender identity, sexual orientation, or due to the employer's assumptions about the employee's gender identity or 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 Civil Rights Department (CRD) has jurisdiction over complaints of employment discrimination on the basis of sexual orientation. CRD investigates discrimination complaints and can help parties resolve their disputes without resorting to a lengthy and expensive litigation process. In limited cases, CRD may pursue litigation on behalf of an employee who has filed a discrimination complaint.

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, gender identity, and gender expression. 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 Lesbian,
Gay, Bisexual or
Queer or Not
“Out,” am I
protected By
California Law?**

YES. The California law that prohibits discrimination on the basis of gender identity, gender expression, and/or sexual orientation extends to those employees who have not made a public issue of their gender identity, gender expression, and/or 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 gender identity and/or sexual orientation.

While Gov’t. Code §12926 defines “sexual orientation” to mean “heterosexuality, homosexuality, and bisexuality,” it also makes clear that this includes the perception of a person’s sexual orientation and people who are associated with others who have or are perceived to have a particular sexual orientation.

Gov’t Code §12926(r)(2) defines “sex” to include a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

YES. “Sex” as defined in Gov’t. Code §12926(r)(2) 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.” For example, the Civil Rights Department has determined that under California law, all employees have the right to be reasonably accommodated in gender identity transition plans, and to use restroom and locker facilities that correspond with their gender identity, regardless of their assigned sex at birth, including providing unisex bathroom facilities where possible.

**Does The Law
Protect
Transgender, Non-
Binary or Gender
Expansive
Employees?**



What Can I Do If My Employer Discriminates Against Me?

- Call your CTA staff representative. They 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 complaint of discrimination with the California Civil Rights Department, the administrative agency that enforces the Fair Employment and Housing Act, Gov't. Code §12900, et seq. Filing such a complaint is a prerequisite for filing a lawsuit in court. Complaints must be filed within three years of the date the employee was harmed by the discrimination.
- Take a representative with you to all meetings with your supervisor if you believe those meetings relate to your sexual orientation, gender expression, or gender identity.
- 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 such harassment if it knows or should have known of the 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, gender expression, or gender identity.
- **DO NOT BE INTIMIDATED INTO RESIGNING FROM YOUR JOB.**
- Remember that you are also protected from retaliation and discrimination by your employer for having engaged in protected activities such as bringing complaints and filing grievances under contractual procedures. If your employer retaliates against you, this would be an additional illegal act, and you may have the option to file an additional retaliation complaint against your employer.

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?

The District can be held liable for the discriminatory conduct of parents when the employer adopts or ratifies that conduct, in accordance with Education Code §51500 which prohibits a school district from sponsoring any activity that promotes a discriminatory bias on the basis of gender or sexual orientation. For example, a district cannot accede to a demand from a parent that a student be removed from a lesbian, gay, bisexual, transgender, or queer teacher's class simply because of the teacher's sexual orientation, gender expression, or gender identity. This also likely would be considered unlawful discrimination under FEHA.

Another law, the California Student Safety and Violence Prevention 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]. This requires a school district employer to protect its employees from discrimination by parents or students.

How Do I File a Complaint With the State?

You can file a complaint with the Civil Rights Department (CRD) on-line at calcivilrights.ca.gov or by calling 1(800) 884-1684. You will fill out an intake form, and if CRD determines the conduct is covered by the laws that CRD enforces, it will prepare a complaint form for your signature. CRD will then investigate, which may include contacting witnesses and the employer, and subpoenaing documents, if necessary. CRD 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 may be referred to the legal department of CRD. Department lawyers have the discretion to litigate the case by filing a lawsuit on your behalf.

If CRD determines not to pursue litigation of your case or if you would rather litigate the case in civil court, you can obtain a right-to-sue letter from the CRD, which is essentially permission to proceed in court.

For further information about the complaint process, visit the Civil Rights Department website at calcivilrights.ca.gov.

What Are the Remedies for Sexual Orientation or Gender Identity Discrimination?

When pursuing a complaint for discrimination, 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; punitive damages against private-sector employers or individuals; and
6. reasonable attorneys 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 Civil Rights Department, or
3. refer you to a Group Legal Services (GLS) Attorney. CTA will pay for two hours 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 LGBTQ+ Students?

State law - The Student Safety and Violence Prevention Act of 2000, Educ. Code Sections 200 and 220, prohibits discrimination against any person on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, or sexual orientation in any school program or activity conducted by an educational institution that receives financial assistance from the state. The School Success and Opportunity act requires that pupils be permitted to participate in sex-segregated school programs, activities, and use facilities consistent with their gender identity. School districts have a legal obligation to prevent harassment of students based on gender identity or sexual orientation and to provide an environment that is safe and supportive of LGBTQ+ students.

Federal law - Title IX - also prohibits sexual discrimination and harassment of students in public schools. The U.S. Department of Education's Office for Civil Rights (OCR) has also enforced Title IX to require school districts to treat transgender students in accordance with their gender identity.



For Assistance, Support and More Information

American Civil Liberties Union

Northern California

Phone: (415) 621-2493

www.aclunc.org

San Jose Office

Phone:(408) 282-8970

Southern California

Phone:(213) 977-9500

www.aclusocal.org

California Teachers Association

Sexual Orientation and Gender Identity

Issues Advisory Committee (SOGIIAC)

P.O. Box 921 Burlingame, CA
94011-0921

Phone: (650) 697-1400 x5370

www.cta.org/sogiiac

Equality California

3701 Wilshire Blvd., Suite 725

Los Angeles, 90010

Phone:(323) 848-9801

www.eqca.org

Gay, Lesbian, and Straight Education Network (GLSEN)

*Chapters are located throughout the
state. Contact the website for the
chapter nearest you.*

www.glsen.org

Gay-Straight Alliance Network

www.gsanetwork.org

Gender Spectrum

1271 Washington Ave. #834

San Leandro, CA 94577

www.genderspectrum.org

Lambda Legal Defense & Education Fund

Phone: (212) 809-8585

Fax: (212) 809-0055

National Center for Lesbian Rights

870 Market St., Suite 370

San Francisco, CA 94102

Phone: (415) 392-6257

www.nclrights.org

Transgender Law Center

P.O. Box 70976

Oakland, CA 94612-0976

Phone:(510)587-9696

www.transgenderlawcenter.org

Gay & Lesbian Alliance Against Defamation (GLAAD)

www.glaad.org

Laws/Rights/Responsibilities:

- [Know Your Rights: My School My Rights \(ACLU-California\)](#)
- [Know Your Rights for LGBTQ+ Students \(ACLU-NorCal\)](#)
- [Know Your Rights: LGBTQ Rights \(ACLU\)](#)
- [State Laws protecting LGBTQ+ people](#)





For Assistance, Support and More Information

SUPPORTING STUDENTS

- WELCOMING SCHOOLS
 - [Creating safe and welcoming schools for all families](#)
- [Trevor Support Center in School](#)
- NEA [Supporting LGBTQ Youth](#)
- GLSEN [National School Climate Survey](#)
 - Find out what students are saying that they are concerned about on school campuses.
- [Learning for Justice](#)
- GLAAD [A Beginners guide to being an ally to trans people](#)
- [Teachers as LGBTQ Allies](#)
 - Teachers play a crucial role in supporting and advocating for LGBTQ students, ensuring they are able to learn and explore in a safe classroom space.
- [Erasure and Resilience: The Experiences of LGBTQ Students of Color, Latinx LGBTQ Youth in U.S. Schools](#)
 - One of a series of reports on LGBTQ students of color examines the school experiences of Latinx LGBTQ youth. Other reports in this series examine the experiences of AAPI, Black, and Native, and Indigenous LGBTQ youth.
- [Beyond 'he' and 'she':](#)
 - 1 in 4 LGBTQ youths use nonbinary pronouns, survey finds
- [What Does It Mean to Misgender Someone?](#)
- Learning for Justice: [Best Practices for Serving LGBTQ Students](#)
- Learning for Justice: [Tool Kit for "Being There for Nonbinary Youth"](#)
- Learning for Justice and the Trevor Project:
 - [Supporting LGBTQ Students During Social Distancing](#)
- [Trevor National Survey on LGBTQ Youth Mental Health 2021](#)
- National Center for Transgender Equality [Know Your Rights – Schools](#)



SUPPORTING FAMILIES

- FOR PARENTS [Quick Tips for Supporting Your LGBTQ Kids—and YOURSELF—During the Coming-Out Process](#)
- HRC [Transgender Children and Youth – Understanding the Basics](#)
- [What NOT to Say to Parents of Trans Kids...](#)
- [How to Support Your LGBTQ+ Kid When He, She or They Come Out](#)
- [Supporting your Young Gender Non-Conforming Child](#)
- [A Parent's Quick Guide for In-School Transitions](#)





For Assistance, Support and More Information

SUPPORTING GROUPS AND HOTLINES

- SUPPORT HOTLINES
 - PFLAG Chapters and Meetings
 - THE TREVOR PROJECT
 - If you ever feel like the stress of being bullied is too much, please call the Trevor Lifeline: 1-866-488-7386. Our counselors are here 24/7 and are ready to help! You can also chat with us Monday through Friday at select times by visiting www.TrevorChat.org.
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SUPPORT ORGANIZATIONS

- GLSEN was founded by a group of teachers in 1990, who knew that educators play key roles in creating affirming learning environments for LGBTQ youth.
 - CTA LGBTQ+ Caucus
 - LGBTQ Center OC
 - Human Rights Campaign (HRC)
 - PFLAG – The extended family of the LGBTQ family
 - Equality California brings the voices of LGBTQ+ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ+ people.
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Training and Webinars:

- CTA Human Rights Cadre Training covers 5 content areas:
 - Transformative Social-Emotional Learning
 - Racial Justice Advocacy
 - Black, Indigenous, and People of Color (BIPOC) Leadership Advocacy
 - Lesbian, Gay, Bisexual, Transgender, and Queer+ (LGBTQ+) Leadership Advocacy
 - Women’s Leadership Advocacy (includes “What Is Rape Culture and What Can We Do as Educators to End It?”).
 - *For more information and additional session titles and descriptions, see HR Cadre Training Program Overview*
- Gender Spectrum school-based professional development
- GLSEN professional development
- HRC Foundation’s Welcoming Schools professional development
- Learning for Justice professional development webinars, including “LGBTQ Best Practices: Classroom Culture and Curriculum” and “Gender Savvy: Creating an Inclusive School Climate”
- The Trevor Project Ally Training and CARE Training





For Assistance, Support and More Information

EDUCATION CODES, SENATE BILLS, AND OTHER LAWS

- State Laws, Regulations, and Guidance
- Senate Bill 48: The bill added language to Education Code Section 51204.5, which prescribes the inclusion of the contributions of various groups in the history of California and the United States.
 - Resources created by CTA member Melanie Bean
- United States Supreme Court Prohibits Terminating Employees Because of Sexual Orientation or Gender Identity
- U.S. Supreme Court rejects challenge to transgender student accommodations



DATES TO REMEMBER

- No Name-Calling Week (January/February)
 - A week organized by K-12 educators and students to end name-calling and bullying in schools
- National Day of Silence (April)
 - a national student-led demonstration where LGBTQ students and allies all around the country—and the world—take a vow of silence to protest the harmful effects of harassment and discrimination of LGBTQ people in schools.
- Harvey Milk Day (May 22)
 - a day to educate your school about an extraordinary leader whose courageous work to ending discrimination against the lesbian, gay, bisexual, and transgender community in the 1970s set the stage for many of the civil rights advances we see today
- LGBTQ+ Pride Month (June)
- LGBTQ+ History Month (October)
- National Anti-Bullying Month (October)
- National Coming Out Day (October 11)
- Transgender Day of Remembrance (November 20)



INCLUSION

- Queering the Orange – An exhibit in the Langson Library at UC Irvine on Orange County's history with the LGBTQ community
- NOGLSTP – National Organization of Gay and Lesbian Scientists and Technical Professionals Inc.
- Queer Bio.com This database lists over 17,000 contemporary and historical figures who identify as lesbian, gay, bisexual, transgender, queer, intersex, two-spirit, or gender fluid (LGBTQ) and includes artists, sports figures, politicians, entertainers, business leaders, academics, activists, and more.
- 500 Queer Scientists
- Senate Bill 48: The bill added language to Education Code Section 51204.5, which prescribes the inclusion of the contributions of various groups in the history of California and the United States.
- Reading LGBTQ-Inclusive Children's Books in Schools



For Assistance, Support and More Information

ARTICLES

- Scientific American:
 - [Stop Using Phony Science to Justify Transphobia](#)
 - Scientific American:
 - Sex Redefined: [The Idea of 2 Sexes is Oversimplistic](#)
 - Science ABC:
 - [What's the Difference Between Sex and Gender?](#)
 - Pediatrics:
 - [Mental Health of Transgender Children Who Are Supported in Their Identities](#)
 - SCIENMAG:
 - [Gene Variants Provide Insight Into Brain, Body Incongruence In Transgender](#)
 - Learning for Justice:
 - [Honoring LGBTQ Voice During Hispanic Heritage Month](#)
 - Learning for Justice:
 - [Teaching Stonewall](#)
 - Learning for Justice:
 - [Nothing About Us Without Us Is for Us](#)
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BOOKS

- [Red A Crayon's Story](#) (pre-K to 3)
 - [The Prince and the Dressmaker](#) (grades 7-12)
 - [Transgender Reading List for Children](#)
 - Parents looking for age-appropriate reading material for younger children who are transgender, gender expansive, or simply have a lot of questions
 - [A Queer History of the United States for Young People](#) by Michael Bronski
 - [Before I Had the Words](#) by Skylar Kergil
 - [And Tango Makes Three](#) by Justin Richardson and Peter Parnell (grades pre-K-12)
 - [The Stars Beneath Our Feet](#) by David Barclay Moore (grades 6-8)
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VIDEOS

- [Just Because He Breathes](#)
- [The Science of Being Transgender](#)
- [Unclobber Lectures](#)



For Assistance, Support and More Information

OTHER RESOURCES

- [The Safe Zone Project](#)
- HISTORY UNERASED unerased.org
- [LGBTQ-related terms](#)
- LGBTQ+ COMPREHENSIVE [Health & Well-Being Guide](#)
- [The Gender Unicorn](#)
- Learning for Justice – [The gender spectrum](#)
- [How to find an LGBT Friendly College](#)
- [Disciples LGBTQ+ Alliance:](#)
 - Setting a place at the table for persons of all gender expressions and sexual orientations
- Learning for Justice: [Queer America Podcast](#)
- LGBTQ+ Caucus <http://www.cta-lgbtqc.org/>
- Women's Caucus <https://sites.google.com/view/ctawomenscaucus/home>
- [The Orange County Gay Agenda](#)
 - [A community calendar designed for the Orange County Lesbian, Gay, Bisexual, and Transgender Community to find and post events](#)

