

Final Text

**CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.2 (Hearings and Appeals)
ARTICLE 8 (Discrimination Complaint Process)**

§ 64.1. ~~Discrimination; Harassment; Retaliation; Denial of Reasonable Accommodation~~
Right to File a Discrimination Complaint Based on Disability or Denial of Reasonable
Accommodation with the Board.

Any state civil service employee, or applicant for state civil service employment, who reasonably believes that ~~he or she has~~ they have been subjected to discrimination, harassment, or retaliation based on ~~his or her~~ their medical condition or ~~mental or physical~~ disability, or denied reasonable accommodation for a known ~~physical or mental~~ disability in state employment, may file a complaint ~~by complying with the provisions of~~ with the Board in accordance with Sections 64.2 through 64.6.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.2. ~~Prerequisites for Filing a Discrimination Complaint with the Board~~ State Agency
Discrimination Complaint Process.

~~Any state civil service employee or applicant for state civil service employment who reasonably believes that he or she has been subjected to discrimination, harassment, or retaliation based on his or her medical condition or mental or physical disability, or denied reasonable accommodation for a known physical or mental disability in employment shall first file a written complaint with the appointing power's Equal Employment Opportunity Office, or other office or individual designated by the appointing power to investigate such complaints, prior to filing a discrimination complaint with the SPB.~~

(a) Each state agency shall establish and maintain a written process for investigating complaints of discrimination, harassment, or retaliation when based on a medical condition or disability, or denial of reasonable accommodation for a known disability. This process shall be publicized to employees and shall include:

(1) The right to receive a written decision; and

(2) Notice of the right to file a complaint with the Board and the applicable timeframes.

(b) Upon receipt of a complaint, the state agency shall notify the complainant in writing of their right to file a complaint with the Board and provide the filing timelines set forth in Section 64.5.

(c) Complaints filed with the state agency shall be in writing and contain the facts and circumstances surrounding the complaint, including:

(1) A description of the alleged conduct,

(2) The date(s) of the alleged act(s),

(3) The names of individuals involved, and

(4) The specific relief or remedy sought.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702.1, Government Code.

§ 64.3. Appointing Power Discrimination Complaint Process Filing Prerequisites for Board Discrimination Complaints.

~~(a) Each appointing power shall establish in writing its own internal discrimination complaint process through which a complainant may obtain review of, and a written response to, an allegation of discrimination, harassment, or retaliation based on a medical condition or mental or physical disability, or denial of reasonable accommodation for a known physical or mental disability.~~

~~(b) Each complaint filed with the appointing power shall be in writing and shall state the facts upon which the complaint is based, and the relief requested, in sufficient detail for the appointing power to understand the nature of the complaint and to determine the individuals involved. The complained of act, omission, event, decision, condition, or policy must have occurred no more than one year prior to the date that the complaint is filed with the appointing power. This period may be extended by not more than 90 days in those cases where the complainant first obtained knowledge of the facts of the alleged discrimination more than one year from the date of its occurrence.~~

(a) Prior to filing a discrimination, harassment, or retaliation complaint based on a medical condition or disability with the Board, the complainant shall first file a written complaint with the state agency's Equal Employment Opportunity Office, Personnel Office, or another designated office which investigates such complaints.

(b) Complaints of discrimination, harassment, or retaliation based on a medical condition or disability shall be filed with the state agency within one year of the alleged act(s). This filing deadline may be extended by up to 90 days if the complainant learned of the incident(s) after the one-year period.

(c) If the complaint concerns a denial of reasonable accommodation for a known disability, the complainant may file directly with the Board or may first file a complaint with the state agency.

(d) Except for complaints filed directly with the Board, denial of reasonable accommodation complaints shall otherwise be subject to the same filing prerequisites, timelines, and procedures applicable to complaints alleging discrimination, harassment, or retaliation under this article

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.4. State Agency Response of Appointing Power to Discrimination Complaint.

~~(a) The appointing power state agency shall provide the complainant issue a written decision to the complainant within 90 days of receiving the complaint of discrimination, harassment, or retaliation based on a medical condition or disability or denied reasonable accommodation for a known disability being filed. If the appointing power state agency has not completed its review and/or is unable to provide issue a written decision within the 90 days time period, the appointing power state agency shall, within that same time period, inform notify the complainant in writing as to the prior to the expiration of the 90-day time period and explain the reason(s) it is unable to issue its decision within the required time period for the delay.~~

~~(b) Upon the expiration of the 90 day time period stated in this section If no decision is issued within 90 days, the complainant may thereafter file a discrimination complaint with the SPB Board as provided in section 64.5. However, a discrimination complaint may not be filed with the SPB more than 150 days after the complainant filed his or her complaint of discrimination with the appointing power.~~

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.5. Requirement Timelines and Requirements for Filing Discrimination Complaints with the SPB Board.

~~(a) Any For complaints to the SPB alleging discrimination, harassment, or retaliation, or denial of reasonable accommodation for based on a known physical or mental disability or medical condition, and for denial of reasonable accommodation complaints that are not filed directly with the Board: shall be subject to the following filing requirements:~~

~~(1) The complaint shall be filed with the Appeals Division within 30 days after the state agency issues its decision on the internal complaint; or,~~

(2) If no decision is issued, within 180 days of the date the complaint was filed with the state agency.

(b) This subdivision applies only to complaints alleging denial of reasonable accommodation for a known disability that are filed directly with the Board.

(1) The complaint may be filed with the Appeals Division after the state agency denies the request; or,

(2) Thirty (30) days after the reasonable accommodation request was made, whichever occurs first.

(3) The complaint shall be filed within one year of the date the reasonable accommodation request was made.

(c) Complaints filed with the Appeals Division shall include:

(1) A written statement of the facts that form the basis of the complaint. The statement shall:

(A) Identify the protected classification or activity at issue under Government Code sections 19701 or 19702.

(B) Describe each act, decision, or omission that the complainant believes was discriminatory.

(C) Include the date(s) the acts occurred.

(D) Name any individual(s) involved in the act(s), including their job titles or roles, if known, and,

(E) Include any supporting information or documents that shows a connection between the conduct and the alleged discrimination or denial of reasonable accommodation.

(2) The names and business addresses of all known respondents. If none are named, the state agency will be considered the respondent.

(3) A copy of the initial complaint or reasonable accommodation request filed with the state agency and any written response(s) or decision. If no decision or response(s) was received, the complainant must state this.

(4) The specific relief or remedy sought.

(5) A maximum of 15 pages of double-spaced typed or printed text. Additional pages may be allowed upon a showing of good cause, submitted as a separate document with

the complaint stating the reasons for good cause. This limit does not apply to attachments or exhibits attached to the complaint pursuant to the requirements of subdivision (a)(1)(E) of this section.

(d) These procedures do not apply when discrimination is raised solely as an affirmative defense in another Board hearing. In such cases, the party must comply with Sections 64.2 through 64.6 to receive relief under Government Code section 19702.

~~(a) The complaint shall be filed with the Appeals Division within 30 days of the date the appointing power served its decision concerning the complaint of discrimination on the Complainant. If the appointing power has failed to provide a decision to the Complainant within 90 days of the complaint being filed, the Complainant may file a complaint with the Appeals Division within 150 days of the date the Complainant filed his or her complaint of discrimination with the appointing power.~~

~~(b) The Complainant shall submit to the Appeals Division a complaint and any attachments.~~

~~(c) The complaint shall be in writing, and shall:~~

~~(1) identify the facts that form the basis for the complaint, including, but not limited to the specific protected classification or activity as set forth in sections 19701 or 19702 of the Government Code; all discriminatory acts experienced by the Complainant, including the date that each act occurred; the name and job title of each person who allegedly subjected Complainant to each discriminatory act; and all information that the Complainant possesses that shows that the complained of employment action(s) were the result of discriminatory conduct;~~

~~(2) identify all Respondents known to the complainant (i.e. the appointing power as well as all state employees alleged to have discriminated against the complainant), and identify the business address of each Respondent named as a party to the complaint. Unless the complainant names some other known Respondent, the Complainant's appointing power shall be considered the sole Respondent;~~

~~(3) attach a copy of the Complainant's complaint of discrimination filed with the appointing power, together with a copy of the decision or other response of the appointing power to the complaint. If the appointing power failed to provide the Complainant with a written decision or other response to the discrimination complaint within the time period set forth in section 64.4, the Complainant shall so state in the complaint;~~

~~(4) specify the relief and/or remedies sought by the Complainant; and~~

~~(5) be limited to a maximum of 15 pages of double-spaced typed or printed text. Additional pages may be allowed upon a showing of good cause. The Complainant shall~~

~~submit a separate document with the complaint stating the reasons for good cause. The 15 page limit does not apply to any documents attached to the complaint pursuant to the requirements of subdivisions (3) of this section, or any other exhibits.~~

~~(d) The above procedures do not apply in those cases where an appellant raises discrimination as an affirmative defense to any case scheduled for hearing. A party who raises discrimination solely as an affirmative defense shall not be entitled to the relief specified in section 19702 of the Government Code, unless that party has also complied with all filing requirements set forth in sections 64.2 through 64.6.~~

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

§ 64.6. Acceptance of Complaint; Notice Discrimination Complaint Review and Notification.

~~(a) If, after review of the complaint, the Appeals Division determines that the complaint of discrimination, harassment, or retaliation based on a medical condition or disability or denied reasonable accommodation for a known disability does not meet all filing requirements, the Appeals Division it shall notify the Ccomplainant in writing of the reasons for its determination. The Ccomplainant may file an amended complaint within 20 days of receipt of the notice of rejection of the complaint.~~

(b) Upon acceptance of the complaint or amended complaint, the Appeals Division shall serve the operative complaint on the named Respondents by mailing a copy of the complaint to:

~~(1) †The legal or designated office, or other designated office, of the appointing power state agency, and~~

~~(2) ††The business address of any individually named respondent.~~

(c) The provisions of Article 6 of these regulations apply to discrimination complaints accepted by the Appeals Division.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.