



Civil Rights
Department
STATE OF CALIFORNIA

Education and Outreach

CRD Updates

Kara Brodfuehrer
Senior Counsel
California Civil Rights Department

CRD disclaimer

This guidance is for informational purposes only, does not establish substantive policy or rights, and does not constitute legal advice.

This information is based on the most recent guidance as of the date of this training. It is the responsibility of the attendee to keep abreast of changing guidance and laws.



Keep California fair
for everyone.

CALCIVILRIGHTS.CA.GOV

Mission

The Civil Rights Department (CRD) is California's civil rights agency. The mission of CRD is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from hate violence and human trafficking.

Effective July 1, 2022, we are now known as the Civil Rights Department, formerly known as the Department of Fair Employment and Housing. This name change better encompasses our full scope of responsibilities.



CRD Updates



Bereavement leave (1 of 3)

- Effective 1/1/23
- Eligible employees get up to five days off for bereavement
- Eligibility:
 - Employer with 5 or more employees
 - Employee must have worked for 30 days or more
 - Applies to state workers and workers at local government

Bereavement leave (2 of 3)

- Eligible family members:
 - Spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law
- Does not have to be taken all at once but must be taken in the 3 months following the family member's death
- Already existing leave policies:
 - Control but must give employees 5 days of leave



Bereavement leave (3 of 3)

- Must allow employee to return/no retaliation
- Does not have to be taken all at once but must be taken in the 3 months following the family member's death
- Leave is unpaid unless employee uses other paid leave time they have available
- Already existing leave policies:
 - Control but must give employees 5 days of leave



Hypo: Daniel

Daniel has been working at his job for two years. His parents are in a car accident and his mother dies. He requests and is given 5 days of bereavement leave. His father is in serious condition and Daniel requests 5 weeks of CFRA leave to care for him. His father passes away after 4 weeks and he is told he should take his last week of CFRA leave to grieve.

A few months later Daniel's father-in-law passes away. Daniel's employer denies his request for 5 days of bereavement leave. They stress that they are very sorry for Daniel's losses this year, but they can't keep accommodating all of this time off.

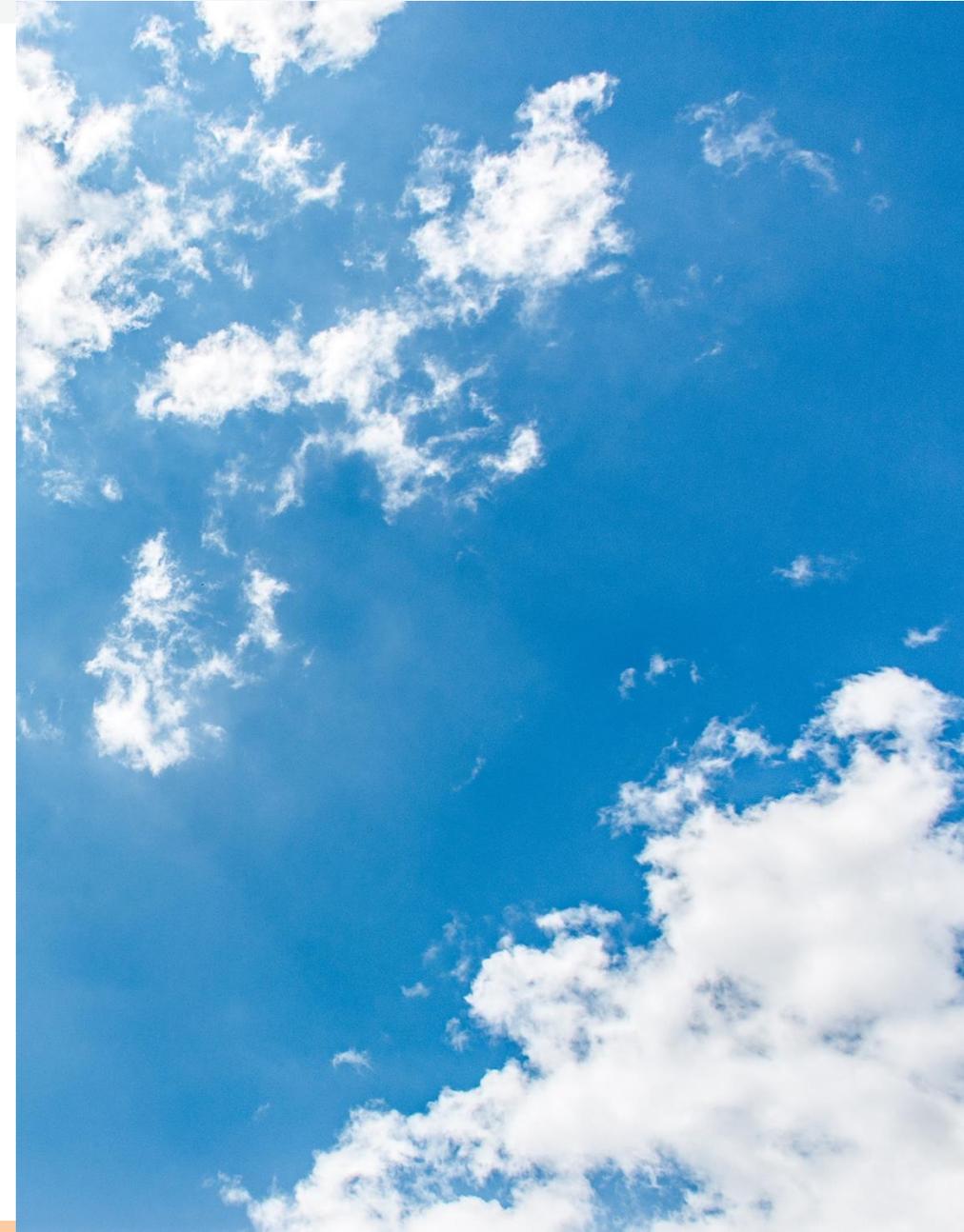


Timing, other leave, and documentation

- There is no cap to the amount of leave an employee can take in a year as long as the death involves one of the covered family members
- The bereavement leave is in addition to other leave such as CRFA and FMLA
- Employer can ask for documentation of the death but it does not have to be provided before the employee starts the leave. Employee has up to 30 days to provide documentation.

Reproductive loss leave

- Operative 1/1/24 (SB 848 2023)
- Allows employees to take up to 5 days for a “reproductive loss event” defined as:
 - Miscarriage
 - Stillbirth
 - Failed adoption
 - Failed surrogacy
 - Unsuccessful assisted reproduction



Eligibility

- Must work for an employer with five or more employees
- Must have worked for the employer for at least 30 days before taking leave
- Employees are eligible as long as they would have been the parent of the child born or adopted – even if their partner experienced the reproductive loss.

Timing

- Eligible employees get a minimum of five days of leave for a reproductive loss event. They can (but do not have to) take their leave days consecutively.
- Leave must be completed within three months.
- When a single reproductive loss event occurs over several days, the law treats it as one event.



Hypo: Mariel

Mariel is undergoing IVF in order to get pregnant. In the last 7 months she has experienced one failed attempt at harvesting her eggs and two failed embryo transfers. After the two failed transfers their doctor recommends Mariel's wife Kim attempts a transfer. Kim gets pregnant on the first try but has a miscarriage at 11 weeks.

Mariel has taken 15 days of leave for the failed egg harvest and embryo transfers. She asks for 5 more days due to the miscarriage. Her employer asks for documentation. When the employer realizes Mariel herself didn't have a miscarriage they deny the request.



Duration

- If an employee experiences more than one reproductive loss event in a year, they are entitled to no more than 20 days of reproductive loss leave in that one-year period (unless an individual employer's leave policy provides for more time).
- If an employer has an existing leave policy that applies to reproductive loss events, the employee must take reproductive loss leave according to that policy.
- Reproductive loss leave is separate from leave under CFRA and PDL. If an employee experiences the reproductive loss event while on another type of leave, they can take reproductive loss leave within three months of finishing the other form of leave.

Pay and benefits

- If an employer does not have an applicable paid leave policy, it must let employees use any available vacation time, sick days, personal days, or PTO to cover their reproductive loss leave so they can get paid.
- Otherwise, reproductive loss may be unpaid.



Confidentiality and documentation

- Employers are required to keep confidential any information an employee provides when exercising their right to reproductive loss leave.
- Employers may disclose this information when required by law or to internal personnel or legal counsel when necessary.
- The law does not require employees to provide documentation of their reproductive loss event.



Protections for recreational cannabis

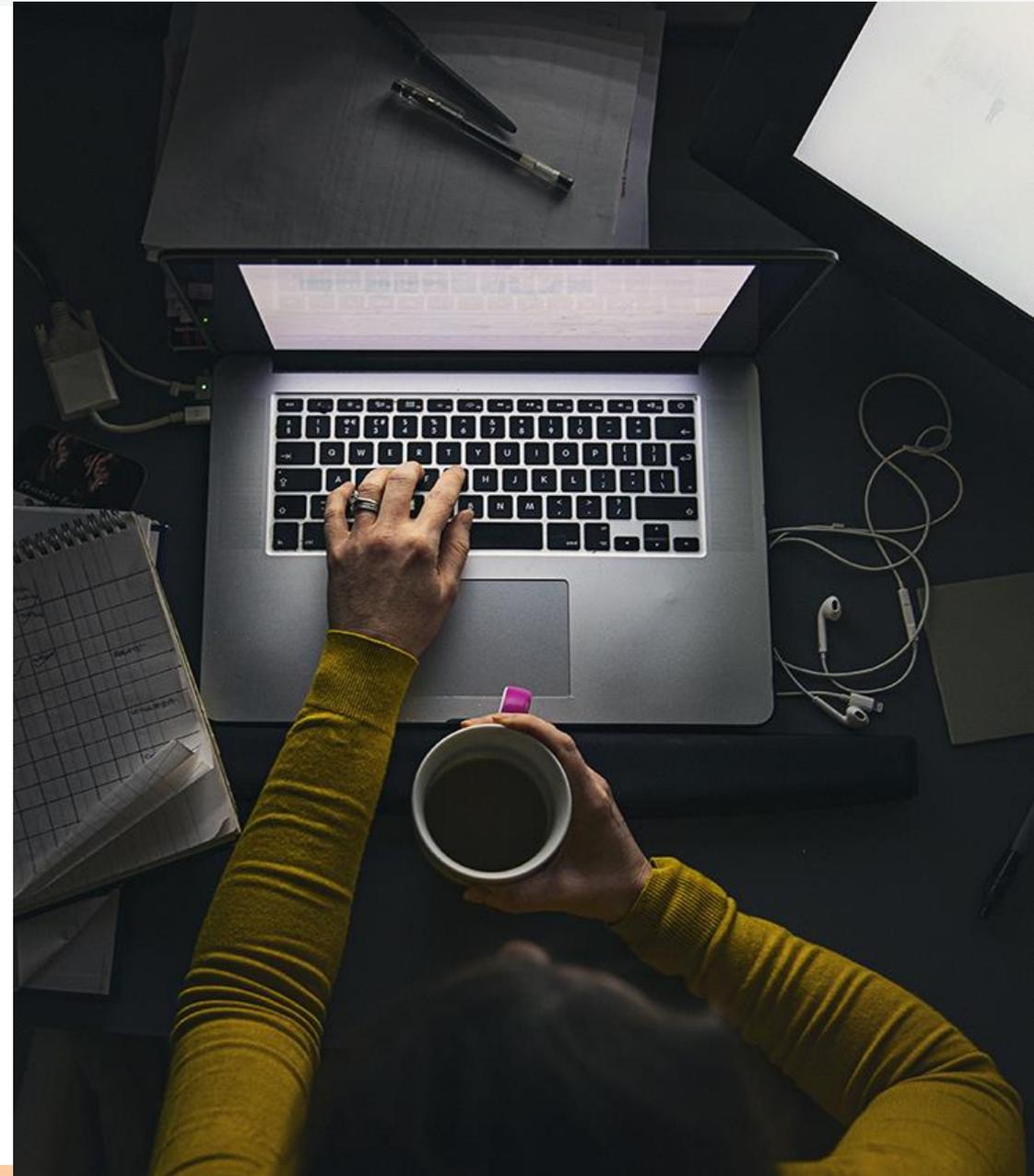
- Operative 1/1/24
- Prohibits discrimination based on:
 - “a person’s use of cannabis off the job and away from the workplace” or
 - “an employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.”

Cal. Govt. Code §12954
(a)(1)(A)&(B).



Protections for recreational cannabis use

- These protections **do not**:
 - Allow someone to possess, be impaired by, or use cannabis at the workplace or while working
 - Impact an employer's legal right or obligation to maintain a drug-free workplace, screen for other controlled substances, or make employment decisions based on those screenings when allowed under California or federal law
 - Override other state laws



Does not apply to some employers

- Those with 4 or fewer employees
- Position involves a federal background investigation or security clearance or
- The employee is in the building and construction trades (but not defined)
 - Exception does not apply in the application process



Employers can still run a background check



- If have five or more employees must comply with the fair chance act
 - Individualized assessment
 - Cant consider certain types of criminal history
 - Arrests not lead to a conviction (some exceptions)
 - Referral to a diversion program
 - convictions that have been sealed, dismissed, expunged or statutorily eradicated pursuant to law
- If an employer conducts a lawful background check that reveals information related to prior cannabis use, the employer may consider that information if permitted by the Fair Chance Act or another state or federal law.

Drug tests

- Employers can still require a drug test
- But cannot discriminate against, deny someone a job, or fire them because drug test detects non-psychoactive cannabis metabolite



What the heck is a non-psychoactive cannabis metabolite?

- Non-psychoactive cannabis metabolites (NPCM): are the by-product of psychoactive THC. Their presence in the body indicates that someone has been under the influence of cannabis at some point in the past.
 - NPCMs can be present in the body for a long time (sometimes several weeks)
 - Because of this, the detection of NPCMs in the body is not an indication that someone is high
 - Most tests for cannabis tests for these
- THC: the psychoactive compound found in cannabis that makes people high.
 - This does not stay in the body long so testing for actual impairment is very difficult



Hypo: Noel

Noel is applying for a job as a construction worker. At her interview, she is asked if she uses cannabis during her free time. Noel lies and says she does not use cannabis recreationally. Noel is given a conditional offer subject to passing a drug test. Noel's urine is tested and it comes back positive. Noel is very upset because she hasn't been under the influence of cannabis for a few weeks. Her conditional offer is rescinded.



PROPOSED Regulations regarding automated decision- making systems (1 of 2)

- Automated decision-making systems:
 - may rely on algorithms or artificial intelligence increasingly used in employment settings to facilitate a wide range of decisions related to job applicants or employees, including with respect to recruitment, hiring, and promotion.
 - Have the potential to exacerbate existing biases and contribute to discriminatory outcomes in violation of FEHA and other civil rights laws



PROPOSED Regulations regarding automated decision-making systems (2 of 2)

- Examples:
 - a hiring tool that rejects women applicants by mimicking the existing features of a company's male-dominated workforce
 - a job advertisement delivery system that reinforces gender and racial stereotypes by directing cashier ads to women and taxi jobs to Black workers



A few of the proposed changes (1 of 2)

- Clarify that it is a violation of California law to use an automated decision-making system if it harms applicants or employees based on protected characteristics.
- Ensure employers and covered entities maintain employment records, including automated decision-making data, for a minimum of four years.
- Affirm that the use of an automated decision-making system alone does not replace the requirement for an individualized assessment when considering an applicant's criminal history.
- Clarify that third parties are prohibited from aiding and abetting employment discrimination, including through the design, sale, or use of an automated decision-making system.

A few of the proposed changes (2 of 2)

- Provide clear examples of tests or challenges used in automated decision-making system assessments that may constitute unlawful medical or psychological inquiries
- Add definitions for key terms used in the proposed regulations, such as “automated-decision system,” “adverse impact,” and “proxy.”



To learn more about the proposed regulations..

- Initial Statement of Reasons: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/05/CRD-Automated-Decision-Regulations-Initial-Statement.pdf>
- Proposed text: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/05/Automated-Decision-System-Regulations-Proposed-Text.pdf>
- To be informed of these and other opportunities to engage in rulemaking actions subscribe here: <https://calcivilrights.ca.gov/civilrightscouncil/>



Criminal history and employment regulation change highlights (1 of 3)

Operative 1/1/23

Final text: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/07/Final-Text-of-Modifications-to-Employment-Regulations-Regarding-Criminal-History.pdf>

Clarifies that:

- that before revoking a conditional offer, an employer must show a direct and adverse relationship with the specific duties of a position, rather than a particular position;
- an employer is not exempt from the prohibition against conducting a pre-offer criminal history background check simply because the law requires
- if an applicant voluntarily raises their criminal history preoffer, an employer is nevertheless prohibited from considering it until a conditional job offer has been made, unless other exceptions apply;
- an employer should conduct both an initial individual assessment as well as a reassessment, after providing the applicant an opportunity to dispute the factual accuracy of a background check and/or provide mitigating or rehabilitative evidence

Criminal history and employment regulation change highlights (2 of 3)

- Adds subfactors that an employer may consider to assist it in evaluating the individualized assessment factors set forth in *Green v. Missouri Pacific Railroad Co.* (8th Cir. 1977) 549 F.2d 1158;
- Clarifies that an employer must consider evidence of rehabilitation or mitigating circumstances during the initial assessment if such evidence is voluntarily provided before or during that assessment;
- Adds additional examples of evidence of rehabilitation or mitigating circumstances, including participation in in-custody programs; being a victim of trauma, human trafficking, duress, or other similar factors; and/or the fact that the applicant is seeking employment;
- Clarifies that an employer is prohibited from the following: refusing to accept evidence of rehabilitation or mitigating circumstances voluntarily provided at any stage of the hiring process; requiring submission of any such evidence or requiring a specific type of documentary evidence; requiring an applicant to disclose their status as a survivor of domestic violence or dating violence, sexual assault, stalking, or comparable statuses; requiring an applicant to produce medical records and/or disclose the existence of a disability or diagnosis;

Criminal history and employment regulation change highlights (3 of 3)

- Clarifies a notice of an employer's preliminary decision, if transmitted through email, is considered to have been received by the applicant two business days after it is sent by the employer;
- Adds factors that an employer may consider when conducting a reassessment of an applicant, including the applicant's conduct during incarceration, employment history since their conviction or sentence completion, community service and engagement, and other rehabilitative or mitigating factors;
- Clarifies in the provisions on adverse impact that, if a background report reveals more than one conviction, an employer must provide notice to the applicant or employee of which conviction(s) were disqualifying under the employer's policy or practice of considering conviction history;
- Clarifies that where federal or state laws, regulations, or licensing requirements merely permit (but do not require) the consideration of criminal history, such consideration by an employer does not constitute a rebuttable defense to an adverse impact claim;

Pay data reporting statistics 2021 overview (1 of 2)

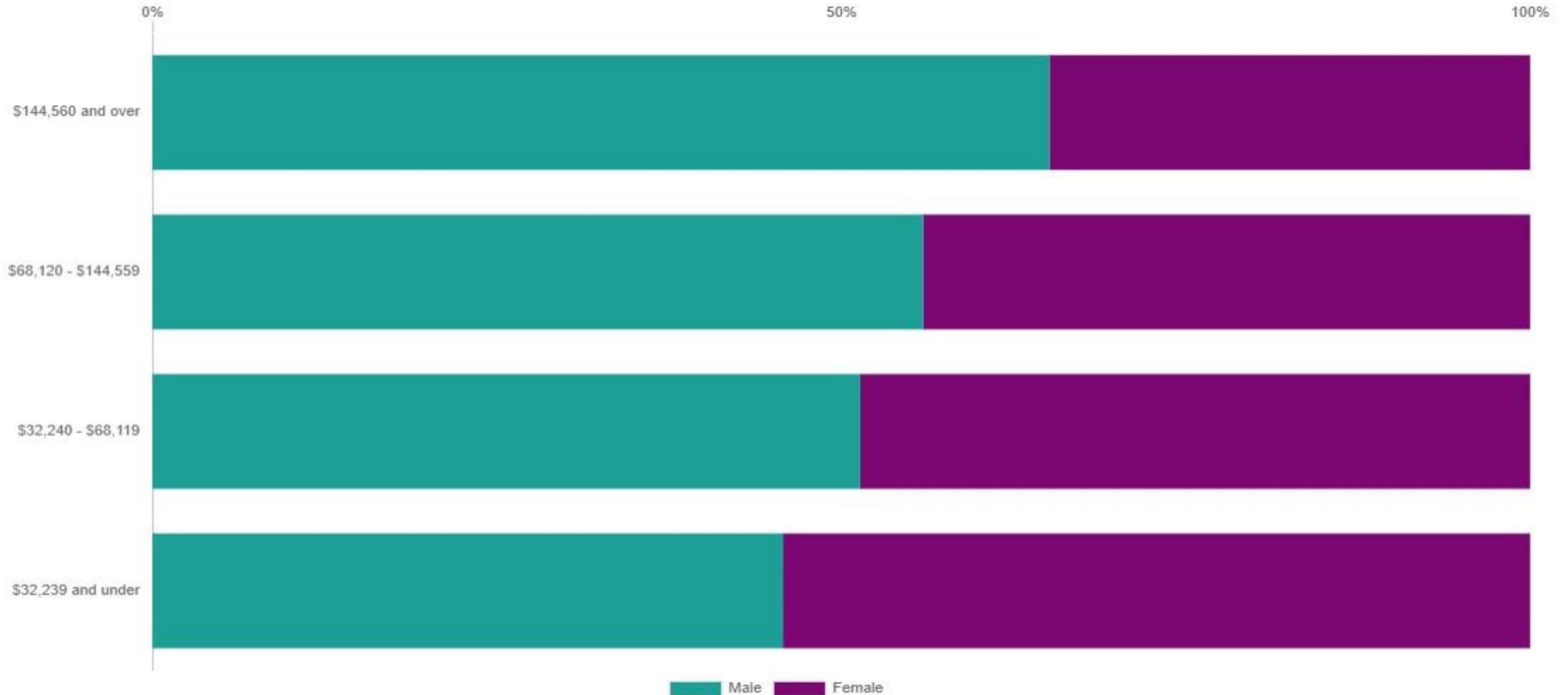
- 2021: 7, 304,092 workers in California reported
 - only represents 40% of CA's workforce
 - does not include individuals who are self-employed, public employers, independent contractors, and employers with fewer than 100 employee
- Gender of CA workforce: 52% Male and 48% Female
- Race:
 - Hispanic or Latino: 38%
 - White: 33%
 - Asian: 17%
 - Black or African American: 6%
 - Two or more races: 4%
 - Native Hawaiian or Other Pacific Islander 1%
 - American Indian or Alaskan Native < 1%



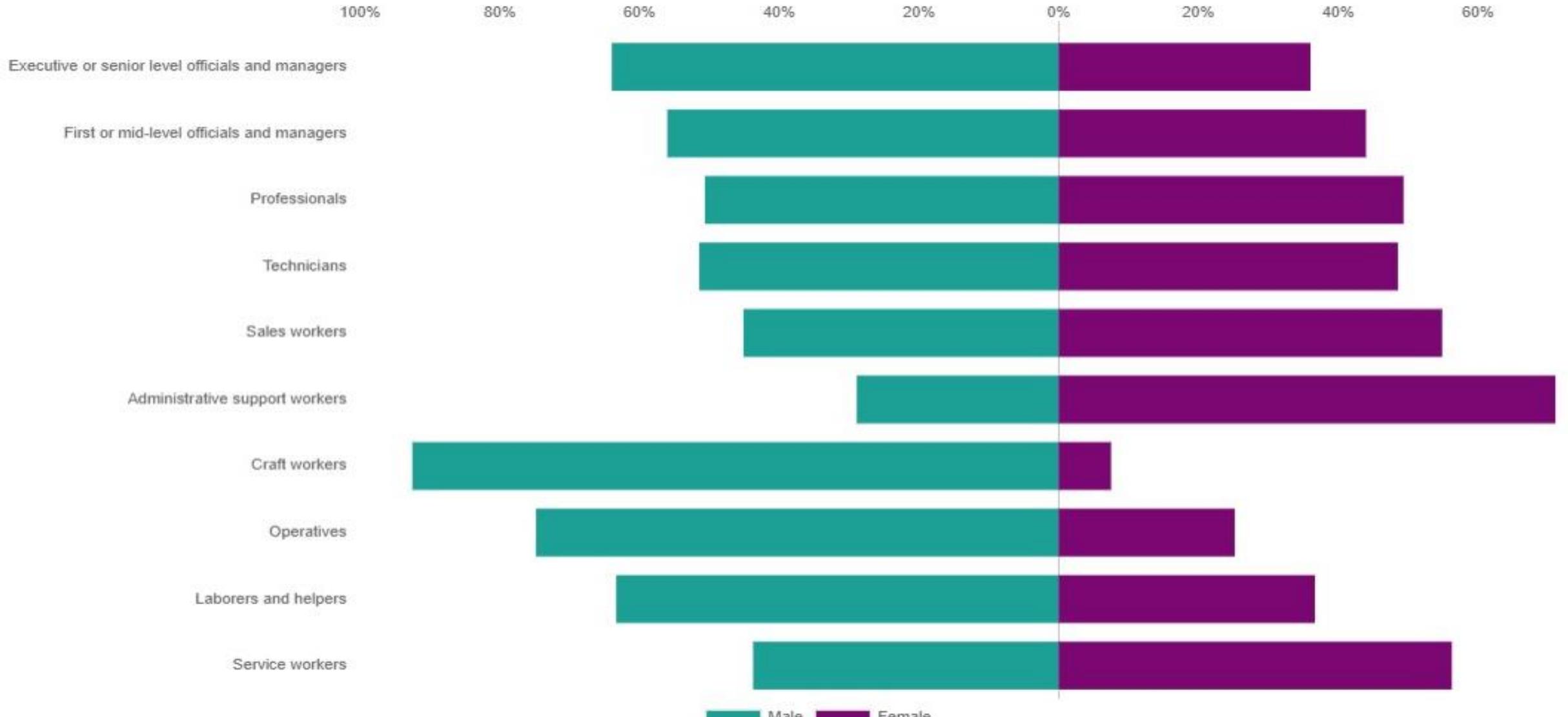
Pay data reporting statistics 2021 overview (2 of 2)

- **81 Cents on the Dollar:** Women — including both part-time and full-time earners — make an estimated 81 cents in California for every dollar men earn.
- **Less Money Across the Board:** Women earn less than men in every industry captured in the data, including finance (71 cents to the dollar), construction (76 cents), and trade (77 cents).
- **Racial Disparities Persist:** The pay gap is even greater for many women of color, with Latinas earning an estimated 44 cents for every dollar white men earn and Black women earning 58 cents.
- **Billions in Lost Earnings:** In the finance sector alone, women lose an estimated \$10.3 billion in pay each year.
- **Lower Pay, Fewer Disparities:** The smallest pay gaps between women and men are found in lower paid jobs, such as service work (98 cents to the dollar) and administrative support (93 cents).

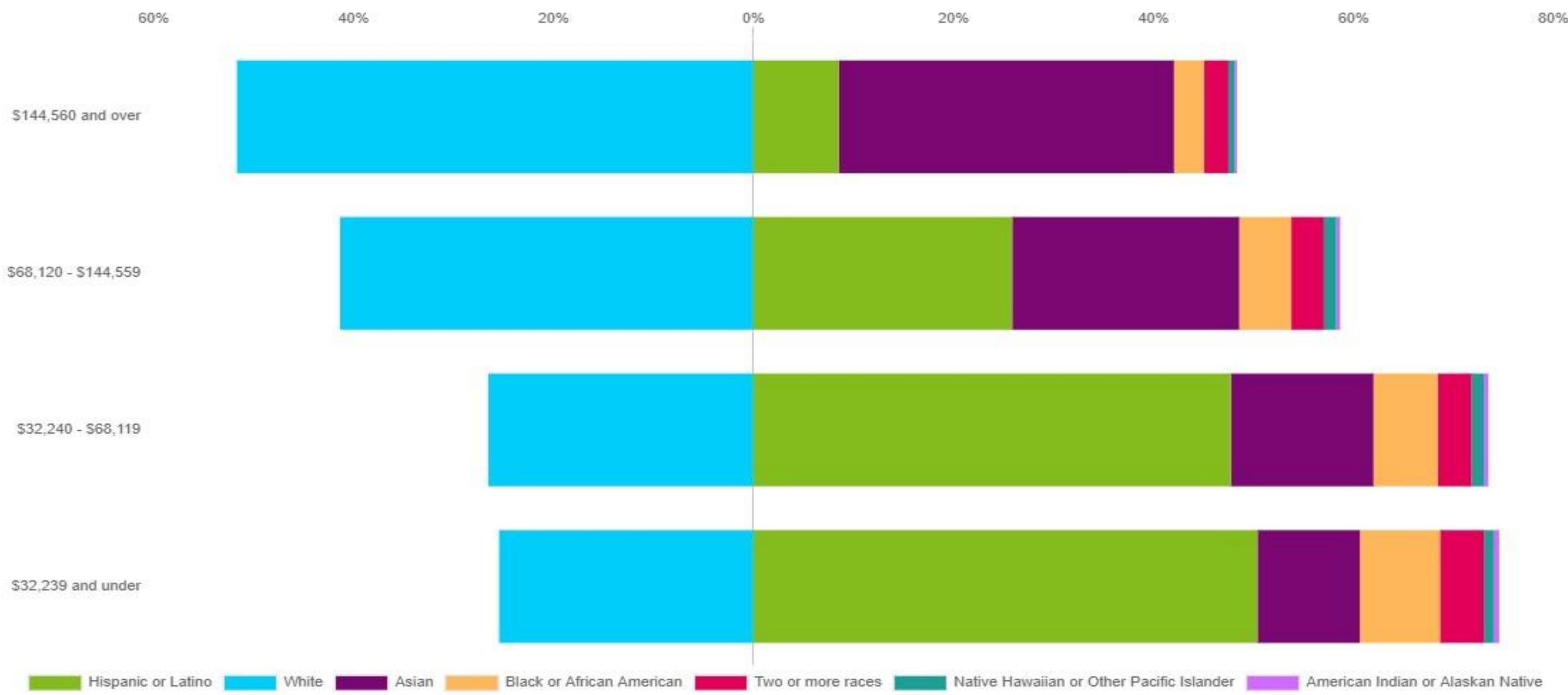
Gender and pay



Gender and job category

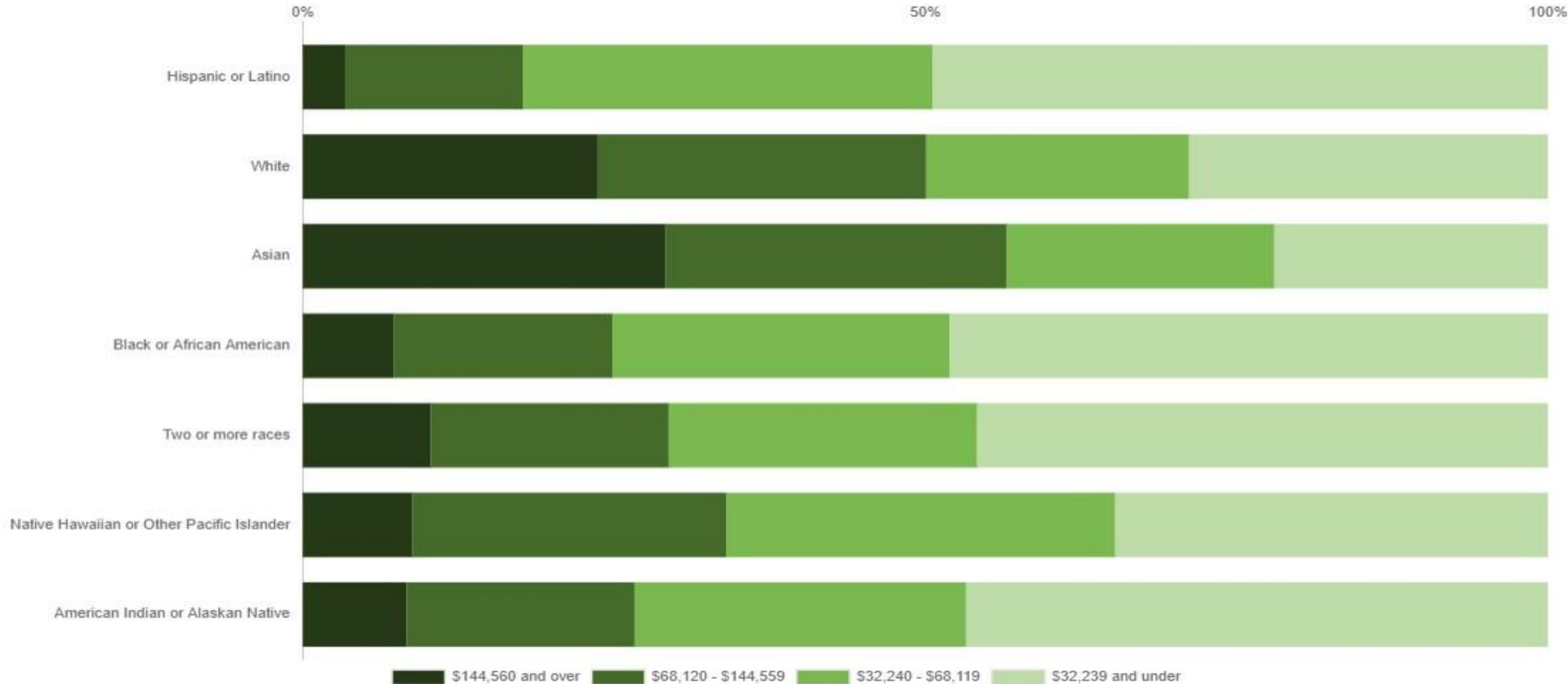


Race and pay

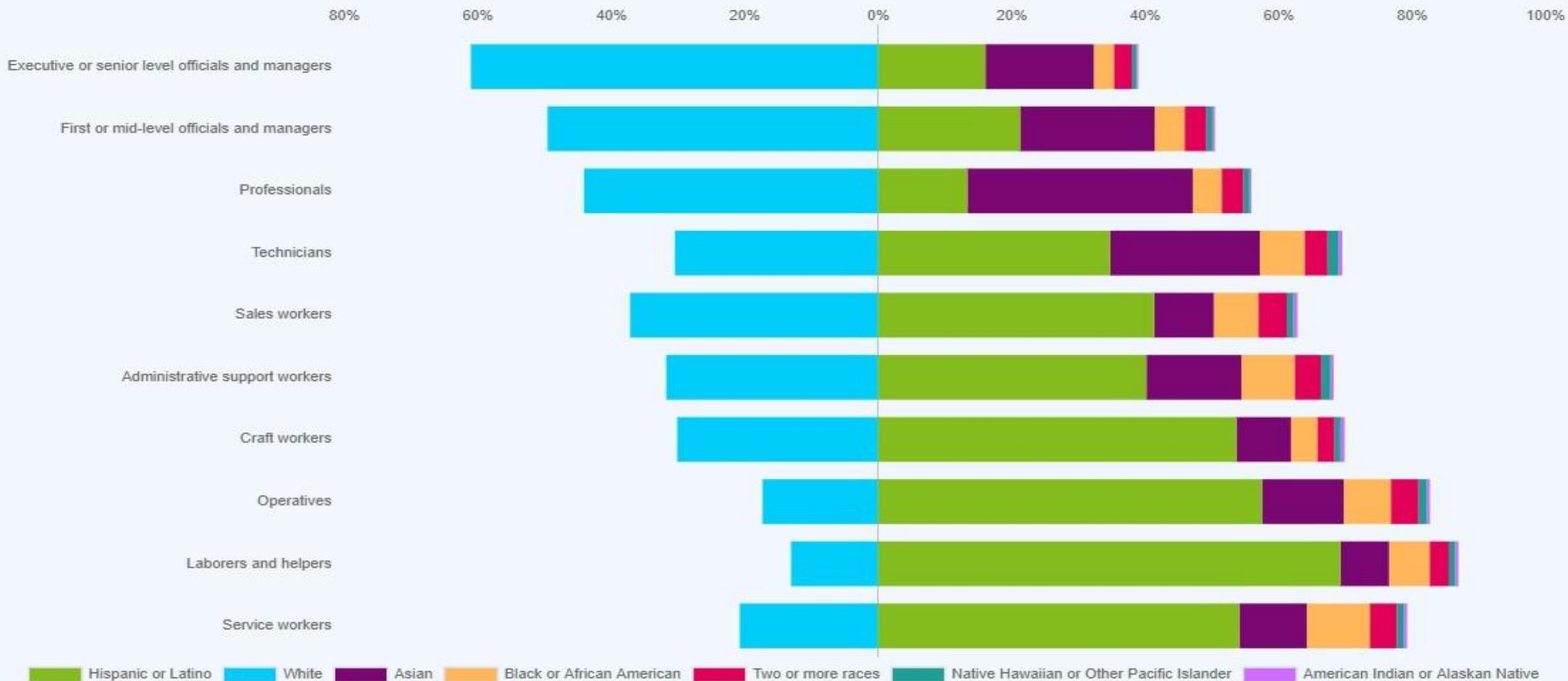




Race and pay



Race and job category



Pay, gender, and race

15%

\$144,560 and over
Male 65% /Female 35%

Hispanic or Latino 9%
White 52%
Asian 34%

Black or African American 3%
Two or more races 2%

Native Hawaiian or Other Pacific Islander < 1%
American Indian or Alaskan Native < 1%

21%

\$68,120 - \$144,559
Male 56% /Female 44%

Hispanic or Latino 26%
White 41%
Asian 23%

Black or African American 5%
Two or more races 3%

Native Hawaiian or Other Pacific Islander < 1%
American Indian or Alaskan Native < 1%

26%

\$32,240 - \$68,119
Male 51% /Female 49%

Hispanic or Latino 48%
White 27%
Asian 14%

Black or African American 6%
Two or more races 3%

Native Hawaiian or Other Pacific Islander 1%
American Indian or Alaskan Native < 1%

37%

\$32,239 and under
Male 46% /Female 54%

Hispanic or Latino 50%
White 25%
Asian 10%

Black or African American 8%
Two or more races 4%

Native Hawaiian or Other Pacific Islander < 1%
American Indian or Alaskan Native < 1%

CRD Employment settlements in 2024 (Snapchat)

6/19/24: \$15 million settlement with Snap (Snapchat) over alleged discrimination, harassment, and retaliation against women at the company.

- CRD alleged that despite its growth (from 250 to 5K employees from 2011 to 2022) Snap Inc. failed to put into place measures to ensure that women were paid or promoted equally. Instead, women encountered a glass ceiling and were told to wait their turn, were actively discouraged from applying for promotions, or lost promotion opportunities to less qualified male colleagues.
- CRD also alleged that women suffered unwelcome sexual advances and other harassing conduct. When women spoke up, they allegedly faced retaliation, including in the form of the denial of professional opportunities, negative performance reviews, and termination.



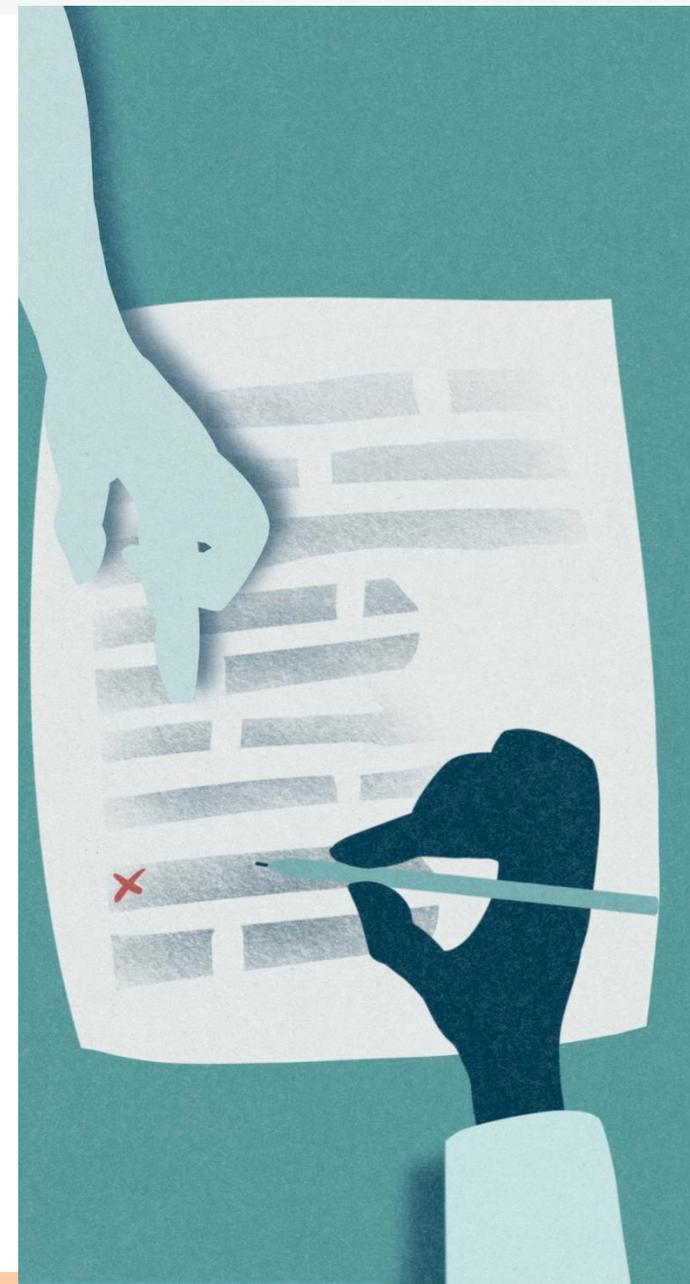
CRD Employment settlements in 2024 (Snapchat)

Settlement requires:

- Pay \$15 million (\$14.5 million directly to workers).
- Snap must retain an independent consultant to evaluate and make recommendations regarding compensation and promotion policies and training materials.
- Ensure that future contracts with staffing agencies require compliance with state protections against workplace discrimination and harassment.
- Contract with a third-party monitor to audit Snap Inc.'s sexual harassment, retaliation, and discrimination compliance and make appropriate recommendations.
- Ensure staff complete training on the prevention of discrimination, retaliation, and sexual harassment in the workplace.
- Provide information to all employees regarding their right to complain of any harassment or discrimination without fear of retaliation.

CRD Employment settlements in 2024

- 5/28/24: 100,000 settlement with Ayoquezco Farms over the alleged sexual harassment of a woman who had been employed as a seasonal strawberry picker.
- The complaint alleged that:
 - the owner subjected the employee, just days after she was hired in 2018, to sexual harassment and a hostile work environment, including by making crude sexual remarks and other unlawful misconduct.
 - When the complainant brought the matter to a supervisor, the defendants, rather than investigating or addressing the concerns, allegedly retaliated by escalating the sexual harassment and creating working conditions which were so intolerable that the complainant was forced to resign.



CRD Employment settlements in 2024

- 5/9/24: \$230,000 mediated settlement for a former social work student who alleged mental health discrimination.
- According to the complaint, the former student was allegedly forced out of a federally funded scholarship program after responding to intrusive pre-employment mental health questions required by the Los Angeles County Department of Children and Family Services (DCFS) for an internship and not given an opportunity to obtain a reasonable accommodation.
- the former student allegedly lost an \$18,500-a-year stipend, was forced out of CalSWEC, had to pay back over \$10,000 in stipend funds that already been received, and had to complete the degree without the financial support offered through CalSWEC. The complainant was also allegedly not informed about a petition process that could have waived repayment obligations due to disability.
- the settlement also requires DCFS, CSUN, and University of California Berkeley (UCB), the institution that currently hosts the scholarship program, to update their policies to protect future social work students from discrimination on the basis of mental health.

CRD Employment settlements in 2024

- 4/30/24: \$50,000+ settlement on behalf of an individual complainant against Octapharma Plasma, Inc. over alleged violations of California's Fair Chance Act. The complaint alleged that the company unlawfully rescinded an offer without taking into account significant mitigating factors and evidence of rehabilitation submitted by the complainant. Under the Fair Chance Act, employers may not consider criminal history information until after a conditional job offer has been extended and, after an offer has been made, must consider any mitigation or rehabilitation evidence from an applicant in its review.
- 2/9/24: \$37,500 age discrimination settlement against North Star Gas, Ltd (NSG), a natural gas supply company based in San Diego. The settlement resolves allegations that NSG unlawfully denied work opportunities and terminated a truck driver on the basis of the individual's age.

Fair Chance Act forms

- Fair Chance Act Forms: <https://calcivilrights.ca.gov/fair-chance-act/fca-forms/>
 - Sample advertisement compliance statement
 - Sample conditional job offer letter
 - Sample individualized assessment form
 - Sample preliminary notice to revoke job offer
 - Sample individual reassessment form
 - Sample final notice to revoke job offer
 - * not legally required

Reasonable accommodations forms

Found here: https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2021/07/Request-For-Reasonable-Accommodation-Package_ENG.pdf

- Request for reasonable accommodation sample form
- Healthcare provider certification sample form
- Interactive process sample form
- Implementation of accommodation sample form
- * not legally required

Leave forms

- CFRA healthcare certification form https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/12/CFRA-Certification-Health-Care-Provider_ENG.pdf
- Pregnancy disability leave healthcare certification form https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/09/Pregnancy-Certification-Health-Care-Provider_ENG.pdf
- CFRA certification form (in regulations) 2 CCR § 11097
- Not legally required

Reasonable accommodation examples: **Juaquin (1 of 2)**

Juaquin has worked for a hospital for two years. Recently, he was diagnosed with cancer and needed to take leave from work for treatment and recovery. He has exhausted his 12 weeks of FMLA and his employer asks him for an update on when we will be returning. He gets a note from his doctor stating that he is still disabled as a result of treatment and will need to be out for an additional two months and asks to return at that time. His employer denies the request, stating that it is an undue hardship to hold his position so long. He is subsequently terminated.



Reasonable accommodation examples: Juaquin (2 of 2)

Was it unlawful for Juaquin's employer to deny this request?

At the end of two months, Juaquin gets another letter extending the leave for another two months. Can his employer deny this request?

What about if the original letter stated Juaquin is disabled and needs an indefinite amount of time for leave?

Reasonable accommodations examples: Leila (1 of 2)

Leila works as a programmer for a tech company. She has been working remotely since she started the position (which was at the start of the pandemic) with no issues. Leila lost several family members due to covid and it has caused her to develop an anxiety disorder and agoraphobia due to fear of getting sick.

She receives an email from her supervisor informing her that her team will be expected to return to the office in the next month and that wearing a mask will be voluntary. Leila makes a reasonable accommodation request that she be permitted to continue working from home due to her disability.

Leila's supervisor denies the request stating that she must work in the office to foster better "teamwork" and "camaraderie."



Reasonable accommodation examples: Leila (2 of 2)

Can Leila's supervisor deny the accommodation request?

Reasonable accommodation examples: Armando (1 of 2)

Armando is a graphic designer who has Sensory Processing Disorder, a condition that affects how one's brain processes sensory information and stimuli. Armando has extreme sensitivity to light (which he often thinks is too bright) and sound (which he often thinks seems too loud). He also becomes upset in response to sudden movements and touching from others.

Armando works for a tech start up, which recently moved its offices to a new building. The new office workspace is one shared large, high ceiling warehouse-type room with lots of couches, computer terminals, skateboards, pool tables and video games. He asks his manager for an accommodation, namely that the company build out an office for him with soundproof floor to ceiling walls and a door.



Reasonable accommodation examples: Armando (2 of 2)

Would this constitute a reasonable accommodation? Why or why not?

Is there any alternative accommodation that might be appropriate given Armando's limitations?

Thank you!

For more information or to file a complaint please contact CRD:

Website: www.calcivilrights.ca.gov

Phone: Communication Center: 800-884-1684 (voice)

800-700-2320 (TTY) or

California's Relay Service at 711

Email: contact.center@calcivilrights.ca.gov





Questions?

