CRABILL PLLC

Make Your Complaint Count

Understand what makes a workplace discrimination complaint protected under federal law.

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About This Guide

In my experience representing employees, I often see this problem: They know something unfair happened. They believe it is discrimination but struggle to explain why what they are experiencing is **UNLAWFUL** discrimination.

IMPORTANT: Unfair treatment—even a false reason for firing you—does not, by itself, establish unlawful discrimination. The key is what connects that treatment to a protected characteristic, such as your race, pregnancy, or disability.

That connection also matters when you complain. Reporting unfairness without communicating a discrimination concern may leave you without protection against retaliation under the discrimination laws. Your employer could respond negatively, and your complaint may not provide the protection you expected.

This guide draws on federal court decisions and my experience representing employees. It explains what facts matter, how they can support a discrimination concern, and what may happen after a complaint. The goal is to help you understand what can make a complaint protected under federal discrimination laws. You can then prepare a truthful draft for an employment lawyer to review before you send it to your employer.

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IMPORTANT: EDUCATIONAL PURPOSES ONLY — NOT LEGAL ADVICE

THIS GUIDE PROVIDES GENERAL INFORMATION, NOT LEGAL ADVICE ABOUT YOUR SITUATION. READING IT OR USING ITS EXAMPLES DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP WITH CRABILL PLLC.

AN EMPLOYMENT LAWYER CAN REVIEW YOUR FACTS, EXPLAIN YOUR RIGHTS AND OPTIONS, AND ASSESS WHETHER YOUR PROPOSED COMPLAINT IS LIKELY TO BE PROTECTED. NO WORDING OR TEMPLATE GUARANTEES LEGAL PROTECTION, PREVENTS TERMINATION, OR GUARANTEES A SUCCESSFUL RETALIATION CLAIM.

1. When is a Discrimination Complaint Protected?

Not every complaint you submit to HR or a supervisor is protected by the discrimination laws. Your complaint needs to communicate suspected unlawful discrimination, and your belief must be honest and reasonable.

When is a Discrimination Complaint Protected?

Your employer needs to know you are complaining about discrimination

I have reviewed complaints to HR and supervisors that describe unfairness and personality conflicts but never raise discrimination. Their vague wording gave employers room to argue that the employee only raised a general workplace grievance and did not make a complaint protected by the law.

Your words, understood in context, must communicate that you are objecting to suspected unlawful discrimination. Even though no legal jargon is required, a clear complaint explains what happened and why you connect it to your race, pregnancy, disability, or another protected characteristic. The word “discrimination” alone does not supply that connection.

Although a verbal complaint may trigger protections, a written complaint is much stronger than a verbal complaint because it creates a record of what you reported and when. If you first complain verbally, an accurate follow-up email can document what you said. If you already complained without using the word “discrimination,” a lawyer can assess whether your words and their context communicated that concern and whether a follow-up communication is appropriate.

When is a Discrimination Complaint Protected?

You don’t need perfect proof to make a complaint

You do not need every document, witness, or answer before you complain. For an internal complaint, you generally need an honest belief that you are reporting unlawful discrimination. That belief must also be reasonable given the facts and the law. **IMPORTANT**: Your complaint can be protected even if you are wrong that you are experiencing unlawful discrimination.

An accommodation request can also be protected

Asking for a workplace change because of a disability or pregnancy-related limitation can itself be protected. However, disclosing a pregnancy or disability does not automatically communicate an accommodation request. Make clear that you need a workplace change because of a disability or pregnancy-related limitation.

Waiting is risky

While you wait for perfect proof or hold back because you fear retaliation, your employer can discipline or fire you. A later complaint does not turn earlier discipline or firing into retaliation for that complaint. Missing the opportunity to make a protected complaint can mean losing a potential retaliation claim. That can cause a massive loss in potential case value and substantially reduce your negotiation leverage.

While you wait, your employer may create a record of its version of events before you document your concerns. A written complaint can create a dated record of your account of what happened.

Again, prompt legal review can help you decide whether, when, and how to complain so that you are in the strongest possible position legally. In my experience, going it alone can make an employee’s situation worse.

When is a Discrimination Complaint Protected?

Protection is about generating value and leverage

A protected complaint does not guarantee you will keep your job. Your employer can still fire you even if that firing may be unlawful discrimination and/or retaliation. However, the goal of a protected complaint is to generate more value and leverage to help an employee achieve the best possible result. That could mean a severance payment, strong legal claims, or an improved work environment.

Also, even if you make a protected complaint, you can still face discipline or be fired for legitimate performance problems or misconduct.

Bottom line: A firing after a protected complaint is not automatically unlawful retaliation.

The reasons for the firing and the ability to prove unlawful discrimination/retaliation matter.

2. Explain What Happened and Why You Suspect Discrimination

A clear complaint explains what happened and why you believe it was discrimination.

Put the events in chronological order

Put the key events in date order. Include:

- Comments, decisions, or unequal treatment behind your concern.
- Earlier positive reviews, praise, or work results.
- Earlier complaints to HR or management and the employer’s response.
- Relevant pregnancy or disability disclosures and requests for accommodations.
- A change in supervisor or changes in pay, accounts, responsibilities, or opportunities.
- New criticism, warnings, performance improvement plans, and other discipline.

Explain What Happened and Why You Suspect Discrimination

Make clear whether changes in treatment began before or after a complaint, an accommodation request, a pregnancy or disability disclosure, or a change in supervisor.

For each event, identify the date, the people involved, what was said or done, and the effect on your pay, work, or job security. Include the employer’s explanation and identify supporting witnesses or records.

For any earlier complaint, tell a lawyer what you reported, who received it, when you made it, and whether it was verbal or written. Include earlier conversations that help explain what the employer understood.

Explain the connection to discrimination

Explain why you believe your employer's treatment of you is/was because of your protected characteristic(s). Do not expect your employer to admit to unlawful discrimination. Instead, you are going to have to explain why you believe what is happening to you is discrimination. That said, circumstantial evidence can help prove discrimination. For example, although the fact that you and your supervisor are different races does not, by itself, explain why you believe a decision was race discrimination, that difference may matter when considered with other facts.

Explain What Happened and Why You Suspect Discrimination

Comments or “jokes,” patterns affecting others in your protected group, or a change after a pregnancy or disability disclosure may help explain the connection. If a comment does not name your protected characteristic, explain what about the words or situation connects it to that characteristic. Discriminatory comments can help, but they are not required. **IMPORTANT**: A fact that seems minor alone may matter when viewed in the context of other facts.

A coworker comparison can help, but it is not required in every situation. Compare your work results, time at the company, and industry experience with those of coworkers outside your protected class. Explain whether you share a supervisor, have the same or similar job titles, or perform similar duties.

Explain whether those coworkers received better treatment despite similar or weaker results, less time at the company, or less industry experience. Include rules enforced against you but overlooked for coworkers in similar situations.

IMPORTANT NOTE: In your conversation with an employment lawyer about your draft complaint, tell the lawyer about circumstances that could explain the differential treatment between you and other employees, such as different responsibilities, qualifications, or performance problems. A lawyer can use those facts to assess whether the different treatment may be tied to your protected characteristic.

Explain What Happened and Why You Suspect Discrimination

Hypothetical example: Race discrimination

I am Black and work as a senior account manager on Karen Lee’s team. Alex, a white senior account manager on the same team, and I applied for a team lead opening. The annual sales report shows I reached 125% of my goal, while Alex reached 94% on comparable accounts. I have twelve years of industry experience. Alex told me he has five.

On May 6, Karen selected Alex and said he had more industry experience. I believe race affected the decision because a white coworker was selected despite weaker results and less of the experience Karen said mattered.

THE COMPARISON

	Employee	Alex
Sales goal achieved	**125%**	**94%**
Industry experience	**12 years**	**5 years**

Explain What Happened and Why You Suspect Discrimination

Address criticism and the employer's explanation

Do not leave out a warning or bad review because you think it hurts your position. State what the employer claimed and explain which facts show why you believe it was wrong or unfair. Earlier praise, work records, or different treatment of coworkers may support your explanation.

If the employer's explanation changed or conflicts with records, identify the difference. Explain how the facts connect the criticism or decision to your protected characteristic. A lawyer needs the full picture, including relevant criticism you cannot disprove.

Be accurate

Identify any dates you are estimating. Use quotation marks only for words you remember accurately or can verify. Separate what you witnessed from what someone else told you. Tell a lawyer what remains uncertain.

If you learned an important fact after an earlier complaint, tell a lawyer when you learned it so the lawyer can distinguish what supported your concern then from what you know now.

What a Clear Complaint Can Look Like

3. What a Clear Complaint Can Look Like

If you suspect discrimination and fear you could be fired, your complaint needs to make that concern clear. Have a lawyer review it ASAP and advise you whether and when to submit it.

The examples below show how to identify the concern, explain the facts, and ask for action. These are examples of clear drafting; shorter or less formal complaints may also be protected, depending on their words and context.

EDUCATIONAL EXAMPLES FOR REVIEW WITH A LAWYER

These hypothetical complaints do not prove discrimination or guarantee legal protection. Use these examples as a reference when preparing the first draft of your complaint for an employment lawyer to review.

EDUCATIONAL EXAMPLES FOR REVIEW WITH A LAWYER

Example 1: Pregnancy discrimination

Subject: Formal Complaint of Pregnancy Discrimination

Dear Human Resources and/or Supervisor,

1 Discrimination concern

I am making a formal complaint of pregnancy discrimination.

2 What happened

On April 8, I told my manager, Sarah Collins, that I am pregnant and expect to take twelve weeks of leave beginning in September. On April 22, she permanently transferred two of my largest accounts to another employee. Those accounts generated about one-third of my commissions last year.

3 Employer's explanation

Sarah said the clients needed continuity during my leave. Both renewals are scheduled to close in June, and I remain available to complete that work. When I asked about temporary coverage beginning in September, Sarah said the permanent transfers would remain in place.

Continued

Example 1: Pregnancy discrimination • Continued

4 Coworker comparison

Last year, Sarah arranged temporary coverage when another account manager on our team took twelve weeks of leave for surgery. Under Sarah's written coverage plan, I temporarily covered two of his accounts while he remained the account owner. He resumed handling those accounts when he returned. We hold the same position and are paid under the same commission plan.

5 Connection to pregnancy

I believe I am losing accounts and commission opportunities because I am pregnant, since Sarah used temporary coverage for a coworker taking the same length of leave.

6 Requested action

Please investigate these transfers, restore my accounts, and address any lost commissions. Please confirm receipt in writing and tell me who will handle this complaint.

Sincerely,

[Employee name]

What this example shows

The complaint identifies pregnancy discrimination, explains why the timing and coworker comparison matter, and describes the effect on pay. A lawyer would still need to examine relevant differences in the accounts, client needs, or leave arrangements to assess the strength of the complaint.

EDUCATIONAL EXAMPLES FOR REVIEW WITH A LAWYER

Example 2: Disability discrimination

Subject: Formal Complaint of Disability Discrimination

Dear Human Resources and/or Supervisor,

1 Discrimination concern

I am making a formal complaint of disability discrimination. I have multiple sclerosis and work as a senior analyst on Daniel Price's team.

2 Accommodation request

On January 8, I asked HR to let me work remotely on Tuesdays and Thursdays to reduce fatigue caused by my disability. I explained that the change would let me continue my regular hours and complete my work.

3 Follow-up and discipline

I provided the information HR requested on January 12 and followed up on January 26 and February 9. During the review, Daniel issued two written warnings for late arrivals linked to the fatigue described in my request.

Continued

Example 2: Disability discrimination • Continued

4 Employer's explanation

On February 20, HR denied the request, saying regular in-person collaboration was an essential part of my job and remote work would cause undue hardship. HR did not identify a meeting or task I could not complete remotely.

5 Facts that challenge the explanation

My work involves financial analysis, written reports, and project meetings conducted by video. I performed the same duties from home for six weeks during our office renovation last fall. During that period, I met every deadline, and Daniel's written review praised my work and collaboration. My duties have not changed.

6 Connection to disability

On February 23, Daniel warned that further attendance problems could lead to termination. I believe I am being discriminated against because of my disability and denied a remote work accommodation that would allow me to continue doing my job.

Continued

Example 2: Disability discrimination • Continued

7 Requested action

Please investigate the denial and related discipline, correct any discriminatory warnings, and promptly address my accommodation request. I remain willing to discuss other effective accommodations. Please confirm receipt in writing and tell me who will handle this complaint.

Sincerely,

[Employee name]

What this example shows

The complaint gives the request, follow-up, and denial dates and explains why the employee disputes HR’s reasons. The earlier remote work and positive review provide facts for a lawyer to evaluate alongside the job’s actual requirements and the employer’s explanation. The January 8 request may itself be protected because it connects the requested change to the employee’s disability. A lawyer would assess that request separately from the later discrimination complaint.

EDUCATIONAL EXAMPLES FOR REVIEW WITH A LAWYER

Example 3: Race discrimination

Subject: Formal Complaint of Race Discrimination

Dear Human Resources and/or Supervisor,

1 Discrimination concern

I am making a formal complaint of race discrimination. I am Black and work as a senior account manager on Karen Lee's team.

2 Work results comparison

Alex, a white senior account manager on the same team, and I both applied for a team lead opening. The annual sales report shows I reached 125% of my goal, while Alex reached 94% on comparable accounts.

3 Experience comparison

I have six years at the company and twelve years in the industry. Alex joined two years ago and told me he has five years of industry experience.

4 Employer's explanation

On May 6, Karen selected Alex and told me he had more industry experience. The job posting lists higher pay and responsibility for assigning major accounts.

Continued

Example 3: Race discrimination • Continued

5 Connection to race

I believe race affected the decision because a white coworker was promoted despite weaker results and less of the experience Karen said mattered.

6 Requested action

Please investigate the promotion decision and reconsider my application under the same standards used for other candidates. Please confirm receipt in writing and tell me who will handle this complaint.

Sincerely,

[Employee name]

What this example shows

The complaint identifies race discrimination and compares results and experience with those of the coworker selected. It explains how the employee knows those facts and why the stated reason does not fit those facts. A lawyer would still need to examine the selection criteria, other relevant qualifications, and the accuracy of the information about Alex.

EDUCATIONAL EXAMPLES FOR REVIEW WITH A LAWYER

Example 4: A complaint that likely would not be protected under discrimination laws

Assume no earlier conversation or other context tells the employer that this complaint concerns discrimination.

Subject: Formal Complaint About Unfair Treatment

Dear Human Resources and/or Supervisor,

I am making a formal complaint about Karen Lee's unfair treatment.

She criticizes my work, leaves me out of meetings, and gives better assignments to people she likes. Last week, she said I missed a deadline even though I submitted the report on time.

I work hard and do not deserve to be treated this way. I feel bullied and targeted, and I am worried she is trying to get me fired.

Please investigate and stop this unfair treatment.

Sincerely,

[Employee name]

Example 4 • Continued

What this example shows

Even if every statement is true, this complaint describes unfair treatment without communicating suspected discrimination. It does not connect the treatment to race, pregnancy, disability, or another protected characteristic. Without other context communicating that concern, it likely would not qualify for retaliation protection under discrimination laws.

Calling it a “formal complaint” or asking HR to prevent retaliation does not create that protection by itself. No legal jargon is required, but the discrimination concern must come through in the words or context.

Complaining about unfairness alone does not trigger retaliation protection under federal discrimination laws.

- “criticizes my work”
- “leaves me out of meetings”
- “gives better assignments to people she likes”

Describes unfair treatment

No discrimination concern communicated in the words or context.

For comparison, suppose the employee had already told HR that Karen was treating the employee differently because of race and explained the supporting facts. That earlier conversation could change how HR understood this email, which may make the email a protected activity under federal discrimination laws.

4. What to Address During Review with a Lawyer

Give a lawyer the full background, including earlier complaints and facts you think may hurt your position. If you already complained in writing, give a lawyer the actual complaint and any response or confirmation that it was received. Identify any quotations, dates, or statements that need verification.

Flag any upcoming HR meeting, response deadline, or threatened firing. A lawyer can help decide who should receive the complaint, when it should be sent, and which questions to include.

Ask a lawyer what workplace records you may lawfully copy, keep, or share. You do not need every document or answer before seeking that review.

5. Why Your Employer’s Response Matters

Employees often contact me after a firing and wish they had made a protected complaint while they were still employed. Some never complained, while others described unfairness without explaining why they suspected discrimination.

A protected complaint creates a separate issue if an employee is later fired: whether the employer acted because of the complaint. A retaliation claim based on that response can succeed even if the employee cannot prove the discrimination originally reported. In my experience, this can make retaliation the strongest claim in the case.

After you complain, the employer’s response becomes an important part of the record. A lawyer can help you prepare for HR interviews and respond to new criticism so that your account stays clear and accurate. With that record, a lawyer can assess whether changes in your employment suggest retaliation and help you build the strongest legal position and negotiation leverage possible.

Your Next Step: Speak With an Employment Lawyer

If you suspect discrimination, speak with an employment lawyer before sending a complaint to your employer. A lawyer can review the facts, assess whether a proposed complaint is likely to be protected, and help you decide what to do next.

If you have already complained or been fired, a lawyer can assess the employer’s response and the legal options still available. You do not need a polished draft or every supporting document to start that conversation.

An internal complaint generally does not pause the deadline for filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC). Ask a lawyer which deadlines apply to your situation.

This guide is for educational purposes only and is not individualized legal advice. Reading it does not create an attorney-client relationship with Crabill PLLC. Consult an employment lawyer about your specific situation before relying on the examples.

Crabill PLLC
Offices: Forest Hills, New York · Lakewood Ranch, Florida
727-335-1030
intake@crabilllawfirm.com