

Disability Discrimination in Housing and What to Do if You Experience It

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Agenda

- What Laws Protect People with Disabilities from Discrimination in Housing?
- What Does Discrimination Look Like?
- The California Civil Rights Department Complaint Process

Housing Discrimination Laws

Federal Laws

- **Fair Housing Act**
- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act

State Laws

- **Fair Employment and Housing Act**
- Unruh Civil Rights Act
- Disabled Persons Act

General Prohibition

Fair housing laws generally provide that no person should be subjected to discrimination because of disability in housing related transactions including the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.



Covered Individuals / Entities

Owners

Managers

Homeowners' Associations

Lenders

Real Estate Agents

Brokers

Governments

Insurers

Developers/Builders

Architects

Contractors

Engineers

All Persons/Entities Involved with
Residential Housing

Covered Dwellings



- Generally defined as a structure or part of a structure designed or intended to be occupied as a residence by one or more families
- Includes vacant land to be used for the construction of such a structure

Examples - Covered Dwellings

Private and
Subsidized
Properties

Single Family
Dwellings

Duplexes

Multi-Family
Buildings

Migrant Housing

Temporary
Shelters

Group Homes

Nursing homes

Assisted Living
Facilities

Other Residential
Housing: "Where I
Live"

University Housing

Prohibited Practices

- Refusal to sell/rent after making a genuine offer
- Discrimination in the terms, conditions or privileges of sale or rental of a dwelling
 - e.g., requiring medical records to show you can live independently
 - e.g., requiring excess deposit
- Make, print or publish a notice or statement that indicates a discriminatory preference
 - e.g., “no wheelchairs” or “active seniors only”

Prohibited Practices (continued)

- Falsely tell someone a dwelling is not for sale or rent based on disability
- Steering people toward or away from particular neighborhoods based on disability
- Discrimination in residential real estate transactions
- Discrimination in provision of brokerage services

24 C.F.R. Part 100, Subparts B and C



Prohibited Practices Specific to Persons with Disabilities

- Refuse to make **reasonable accommodations** in rules, policies, practices or services if necessary for the disabled person to use the housing.
- Refuse to let the person make **reasonable modifications** to the dwelling or common areas, at tenant expense, if necessary for the disabled person to use the housing.

42 U.S.C. §§ 3604(f)(3)(A) & (B)

24 C.F.R. §§ 100.203 & 100.204

2 C.C.R. Article 18, Sections 12176-12181.

Reasonable Accommodations

- Change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling
 - adjustment of the rent due date to accommodate tenant's receipt of public benefits
 - unit transfer to a quieter unit because noise aggravates tenant's disability.
 - waiver of "no pet" policy to accommodate service dogs or comfort animal

Reasonable Modifications

- Physical change to a dwelling or common area.
 - installing a grab bar in a bathroom or widening doorways
 - adding a ramp to make a primary entrance accessible
 - altering a walkway or cutting a curb to provide access to common use areas
 - installing “blinking” doorbells or emergency alarms
- Note: who pays depends on type of housing involved
- Note: restoration may be, but is not always required

Interactive Process

Federal Laws

- Howard v. HMK Holdings, LLC, 988 F.3d 1185 (9th Cir. 2021) - no “standalone” liability
- Rodriguez v. Morgan, No. CV 09-8939-GW CWX, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) - considered in determining whether a housing provider failed to reasonably accommodate
- HUD / DOJ Joint Statement – housing provider “should” use interactive process

State Laws

- Interactive process is REQUIRED
- Purpose is to exchange information to identify, evaluate, and implement a reasonable accommodation or modification
- If a request is unreasonable, housing provider must engage in the interactive process to determine if an alternative is feasible.

2 CCR § 12177

Housing built for first occupancy after March 1991 must include:

- Accessible building entrance on an accessible route
- Accessible and useable public and common use areas;
- Useable doors;
- Accessible route into and through the covered unit;
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- Reinforced walls for grab bars;
- Usable kitchens and bathrooms.





Retaliation

- Coercion, intimidation, threats, or interference with anyone asserting a fair housing right or assisting others who are exercising that right is prohibited.

42 U.S.C. § 3617

Cal. Gov't. Code §12955(f)

Resources

- Joint Statement on Reasonable Accommodations:
<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>
- Joint Statement on Reasonable Modifications:
https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf
- Joint Statement : <https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>
- HUD Design Manual:
<https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>

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.



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for everyone.

CALCIVILRIGHTS.CA.GOV

Mission

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

CRD responsibilities

- Investigate discrimination complaints and cases of systemic discrimination.
- Facilitate mediation and resolution of disputes involving civil rights.
- Enforce the laws by prosecuting violations in civil court.
- Issue regulations that implement the FEHA and other statutes to provide greater clarity.
- Collect data on the pay and demographics of large employers' workforces.
- Engage in public outreach and provide training and technical assistance to employers, business establishments, and housing providers regarding their responsibilities under the law.



CRD accessibility for people with disabilities

CRD will assist anyone who needs help accessing our services and information, including filing a complaint. Please contact us to arrange an accommodation if you have a disability:

Call: 800-884-1684 (voice)

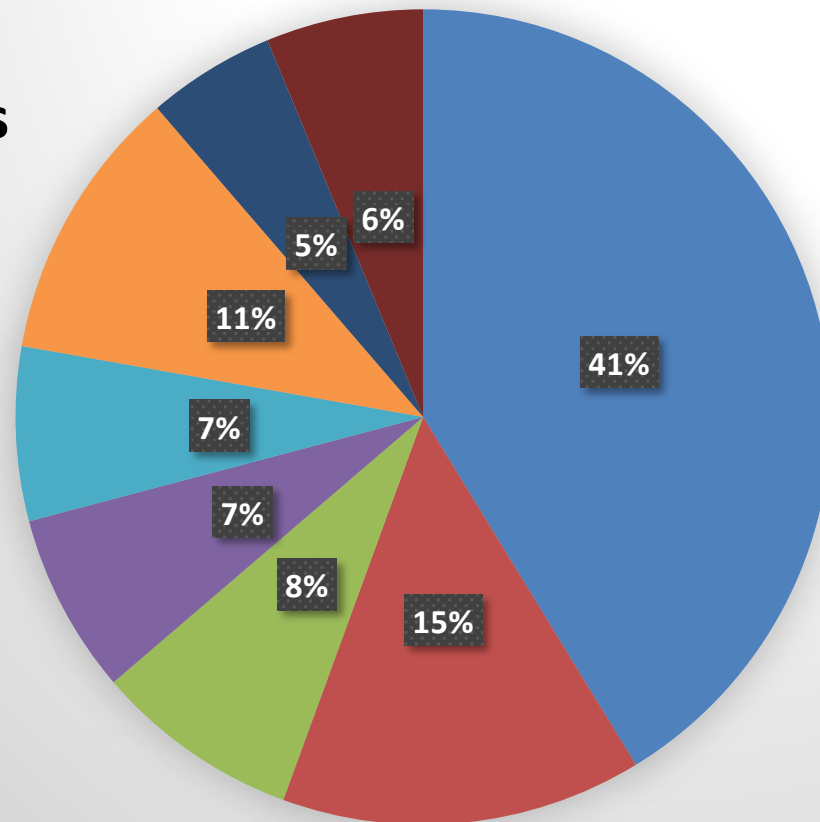
800-700-2320 (TTY) or

California's Relay Service at 711

Email: accommodations@calcivilrights.ca.gov

CRD's 2021 Housing Complaint Data (1 of 2)

898 complaints
involving 1401
protected
characteristics



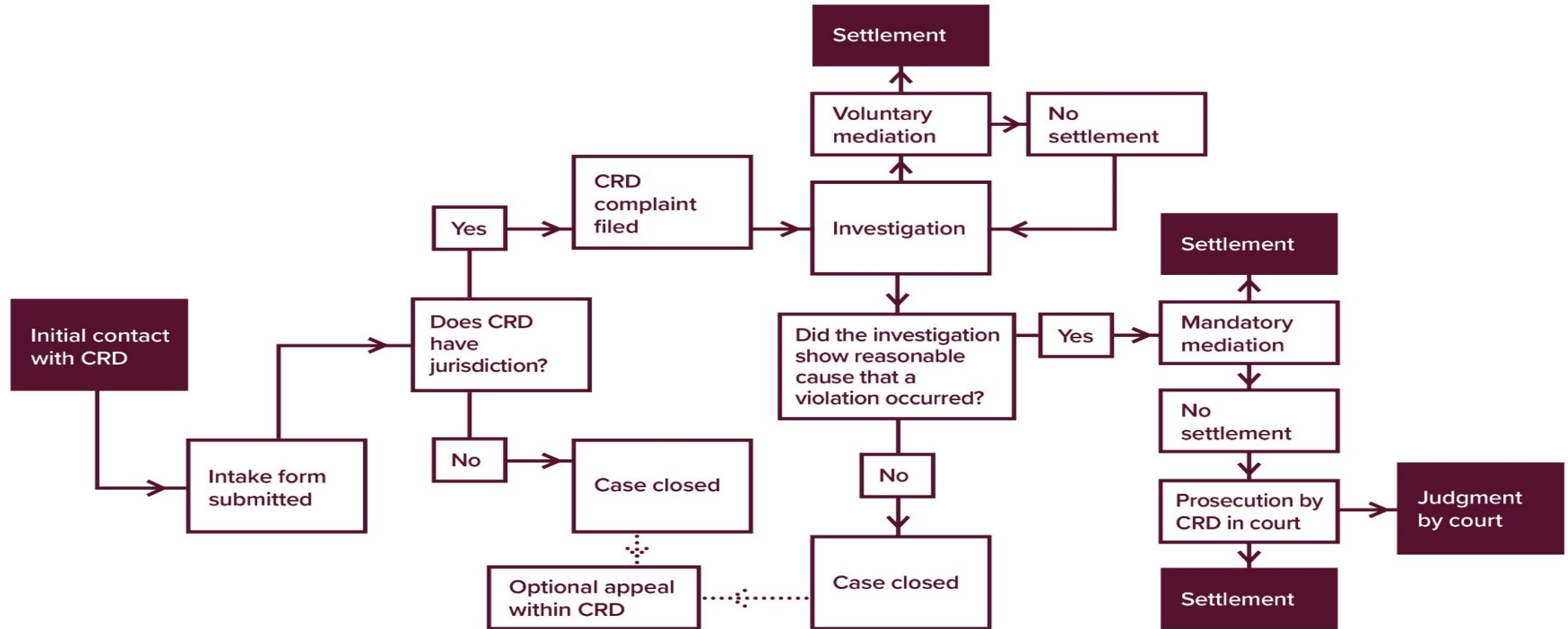
- Disability
- Race
- Reasonable Accommodations
- Familial Status
- Color
- Source of Income
- Sex/gender
- national origin

CRD's 2021 Housing Complaint Data (2 of 2)

Bases of Housing Complaints	Total
Disability	496
Race	172
Requested or used a disability-related accommodation	98
Sex/gender	61
Familial status (Children)	86
National origin (including language restrictions)	75
Source of income	131
Color	83

Bases of Housing Complaints	Total
Reported or resisted any form of discrimination or harassment	50
Military or Veteran Status	8
Sexual orientation/gender identity/gender expression	35
Association with a member of a protected class	33
Religious creed (includes dress and grooming practices)	20
Marital status	12
Other	8
Ancestry	28
Sexual Harassment (quid pro quo)	5

Non-Employment Complaint Flowchart



Civil litigation and exhaustion requirements

- For housing complaints, an individual may file a lawsuit on their own within two years of the alleged discriminatory act. Housing complainants do not need a “right-to-sue” letter from CRD and no complaint has to be filed.
- For employment complaints, the complainant may file a lawsuit on their own behalf within three years of the alleged discriminatory act, after requesting and receiving a “right-to-sue” letter from CRD.



Hypo: Rabiah (1 of 2)

Rabiah is a single parent of two small children. Her family lives in a large apartment complex in Fresno. The complex has two pools and a common area with grass, concrete pathways, and grills. One of her daughters has Down syndrome.

Rabiah (2 of 2)

She has received two written complaints from management about her children. One said that her children are not permitted to play in the common area's pathways or play on the grass. The other said that children are not permitted to use the pool except from Monday to Friday 9am to 3pm, when the children are usually in school. Her manager told her that if she causes any more "trouble" she will be evicted.

Rabiah has seen other families with kids using the pool on the weekend, including her neighbor who has a three-year-old daughter. When Rabiah asked her neighbor if she has ever been told her daughter isn't allowed in the pool she says no. The neighbor also adds that the manager has mentioned on several occasions that she feels uncomfortable around Rabiah's daughter because she has Down syndrome and that she thinks it would be better if she lived in "some sort of group home."

Rabiah googles housing discrimination and finds the CRD website. She decides she wants to file a complaint.

Step 1: Complete and submit intake form (“Complaint”) (1 of 2)

- Online filing at civildrights.ca.gov.
- For online filing must register for an account with CCRS :
- The California Civil Rights System also known as ‘CCRS’ allows users to:
 - submit an intake form and choose from available intake appointment date/times,
 - come back and update the intake form before the intake interview,
 - reschedule the intake appt if needed,
 - upload documents to the case file,
 - and, view the case status and assigned investigator when the case is accepted for investigation.

Step 1: Complete and submit intake form (“Complaint”) (2 of 2)

- Intake form can also be printed and mailed
- Alternatively, an intake form can be out filed via telephone by a Department representative by calling:
 - 800-884-1684 (voice)
 - 800-700-2320 (TTY) or
 - California’s Relay Service at 711



Language access and reasonable accommodations (1 of 2)

Rabiah decides to file a complaint online but she is confused by the CCRS system because the instructions are in English and her preferred language is Farsi.

Rabiah can call or email CRD to request translation services:

- 800-884-1684 (voice)
- 800-700-2320 (TTY)
- California's Relay Service at 711
- contact.center@calcivilrights
- Note: we also have google translate on our website

Language access and reasonable accommodations (1 of 2)

If Rabiah has a disability and needs a reasonable accommodation to access CRD she can call or email:

- 800-884-1684 (voice)
- 800-700-2320 (TTY)
- California's Relay Service at 711
- accommodations@calcivilrights

Step two: intake interview & complaint (1 of 3)

Rabiah is contacted by CRD and is given an appointment to speak with an investigator over the phone. The investigator determines that the housing provider's action, as described, could constitute housing discrimination based on disability and familial status in violation of FEHA (enforced by CRD). These are protected characteristics under the FHA too, so the complaint will be dual filed with HUD.

The investigator sends a copy of the CRD complaint to Rabiah for her signature. The complaint will also be sent to the housing provider within 30 days.



Step two: intake interview & complaint (2 of 3)

- CRD then assigns the intake to an investigator who conducts an initial interview with the complainant to determine whether we have jurisdiction to accept the complaint because it involves laws enforced by CRD)
- To help with the intake interview process, the complainant should know or have available:
 - specific facts and dates about any alleged incidents,
 - names and contact information of the entity or person(s) that they believe harmed them,
 - names and contact information of any witnesses,
 - and, copies of documents, emails, or any other evidence related to the complaint.

Step two: intake interview & complaint (3 of 3)

- If CRD has jurisdiction to accept the case, the investigator will draft a formal complaint and send it to the complainant for signature.
- The investigator also determines if the complaint meets criteria for federal dual filing status with the EEOC/HUD pursuant to our work sharing agreements. If so, the complaint will also be assigned an EEOC/HUD case number.
- Then, CRD will serve the complaint on the respondent(s) and provide time for the respondent to respond to the allegations. We typically ask the RP to respond within 30 days but do allow reasonable extensions.
- If CRD does not accept jurisdiction over a complaint, a person may appeal this decision.

Step three: investigation (1 of 2)

Rabiah gives the investigator the contact info for her neighbor to act as witnesses. She also sends him copies of the notices she has received from the manager.

The investigator speaks to Rabiah's witness and reviews the documents she submitted. He also speaks with the manager and asks them for several documents including any written rules enforced by the complex.

Step three: investigation (2 of 2)

- CRD then independently investigates the case. The investigation and assessment can include:
 - conducting a response review with the complainant
 - interviewing parties and witnesses
 - reviewing supporting documentation and evidence from complainant, respondents, or other sources.
- In most cases CRD has 1 year from the case file date to complete the investigation.

Step four: mediation/conciliation (1 of 2)

While the investigation is being conducted, Rabiah is contacted by the investigator to see if she is interested in mediating her complaint. She is nervous about this because she doesn't have an attorney but the investigator explains that it will not affect her complaint and she is not obligated to agree to anything.

Rabiah agrees to participate and is asked to tell them what she would like to happen in order for the complaint to be resolved. She says she just wants her kids to be able to play in the common areas (including the pool). She also wants the manager to be fired. The housing provider refuses to agree to this and ends the process. They also refuse to participate in formal mediation with the dispute resolution department.

Step four: mediation/conciliation (2 of 2)

- Mediations are always voluntary unless cause is found for the complaint (unless small employer mediation pilot program)
- Mediators will always communicate with a party through the party's attorney if the party is represented.
- Success tends to rely more on the attitudes of the individuals involved than on the facts or complaint allegations.
- The mediation process assumes disagreement over facts and events. The work of mediation is to identify common interests and find a resolution despite this disagreement.
- Mediation requires good faith participation in order to succeed.

About the dispute resolution department

- The exclusive role of the Division is to mediate complaints, and to provide mandatory dispute resolution services for cases the Department intends to prosecute.
- CRD settled 706 cases in 2020 for a monetary value of \$11,176,865.59.
- In addition to case-specific settlement terms, mediation settlements can also allow for non-monetary remedies such as training and policy and protocol revisions.



Step five: determination (1 of 2)

The investigation is completed and the investigator finds that there is cause to believe the housing provider has violated FEHA based on disability and familial status. Rabiah and the housing provider must participate in the dispute resolution process. During the process, the parties agree that the complex must permit children to play in the common areas of the building and will have equal access to the pool. They do not agree the manager will be fired but they agree that all of the staff must participate in fair housing training. The property will also distribute fair housing literature to all residents.

Step five: determination (2 of 2)

- At the completion of the investigation, if there is no reasonable cause to believe a violation has occurred (insufficient evidence), the matter will be closed.
- If a person disputes the Department's decision to close the case, an appeal can be submitted, verbally or in writing.
- If the Department determines that there is reasonable cause to believe that a violation occurred, CRD notifies the parties and they parties must participate in mandatory mediation.

Step six: civil litigation

- If the matter cannot be resolved through mandatory mediation, the Department may file a lawsuit in civil court on behalf of the complainant.
- Factors considered by the department when determining whether to proceed with a civil action include:
 - The strength and sufficiency of the evidence of unlawful conduct;
 - The availability and allocation of department resources;
 - Whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law;
 - Whether filing the civil action and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission

Possible remedies

- Reimbursement for actual losses and compensation for emotional distress
- Access to previously denied housing
- Hiring or reinstatement
- Back pay or promotion
- Training and policy changes
- Monitoring and ongoing reporting
- Civil penalties
- Punitive damages
- Attorney's fees and costs to CRD prevails



Director's complaints

- The Director of the Civil Rights Department can file a complaint on behalf of a group or class to eliminate discriminatory practices. Director's complaints may stem from an individual complainant, an outside organization, or an issue identified by the Department itself.
- Factors CRD may consider:
 - Whether the respondent employs a large workforce that may be affected by the alleged unlawful practice, such that the anticipated remedy would impact a large number of persons or an entire industry; and/or
 - Whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law; and/or
 - Whether resolution of the complaint would impact civil rights in a manner consistent with the department's mission.

Resources

- Civil Right's Department website: civildrights.ca.gov
- Frequently Asked Questions (FAQs):
 - Housing: civildrights.ca.gov/housing/#faq
 - Employment: civildrights.ca.gov/employment/#faqA
- Intake form:
 - Housing: civildrights.ca.gov/wp-content/uploads/sites/32/2023/01/CRD-Intake-Form_Housing_ENG.pdf
 - Employment: civildrights.ca.gov/wp-content/uploads/sites/32/2023/01/CRD-Intake-Form_Employment_ENG.pdf