



**WESTERN CENTER**  
ON LAW & POVERTY

# OVERVIEW OF NEW FEHA FAIR HOUSING REGULATIONS

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# GENERAL ISSUES

1. Send questions to:  
[Shalineehunter@dfeh.ca.gov](mailto:Shalineehunter@dfeh.ca.gov)
2. MCLE-Send name, bar number, address, and phone number to [DFEHMCLEProvider@dfeh.ca.gov](mailto:DFEHMCLEProvider@dfeh.ca.gov)
3. Poll questions





## WHAT WE WILL COVER

- Brief history of the regulations
- Overview
- A few key definitions
- Liability under the regulations
- Summary of each subsection
- Enforcement
- More training opportunities





# CIVIL RIGHTS LAWS ENFORCED BY DFEH





# CIVIL RIGHTS LAWS ENFORCED BY DFEH (1 OF 4)

## *Fair Employment and Housing Act*

- Government Code §§ 12940-12951, 12955-12956.2 protect individuals from housing and employment discrimination and harassment on the basis of protected characteristics.

## *Ralph Civil Rights Act*

- Civil Code § 51.7 - protects individuals from hate violence or threats of violence on the basis of protected characteristics.





# CIVIL RIGHTS LAWS ENFORCED BY DFEH (2 OF 4)

## *Unruh Civil Rights Act*

- Civil Code § 51 – protects individuals from discrimination/harassment by business establishments (e.g., stores, restaurants, housing accommodations) on the basis of protected characteristics. The Unruh Act incorporates the Americans with Disabilities Act at Civil Code § 51(f).





# CIVIL RIGHTS LAWS ENFORCED BY DFEH (3 OF 4)

## *Disabled Person's Act*

- Civil Code § 54, et seq. - gives individuals with disabilities or medical conditions the same right as the general public to the full and free use of all public places (e.g., streets, highways, sidewalks, public buildings, hospitals, etc.)





# CIVIL RIGHTS LAWS ENFORCED BY DFEH (4 OF 4)

## *Human Trafficking*

- Civil Code § 52.5 – protects individuals against the deprivation or violation of their personal liberty by a person seeking to obtain forced labor or services, including sex

## *Recipients of State Funding*

- Government Code § 11135, et seq. – protects individuals from discrimination by recipients of state funding or state financial assistance







# FAIR HOUSING





# HOUSING PROTECTED BASES

- Race (hair texture and style, effective 1/1/20)
- Color
- Ancestry
- Religion
- Sex
- Gender
- Sexual Harassment
- Sexual Orientation
- Gender Identity
- Gender Expression
- National Origin
- Source of Income (amended)
- Marital Status





## HOUSING PROTECTED BASES

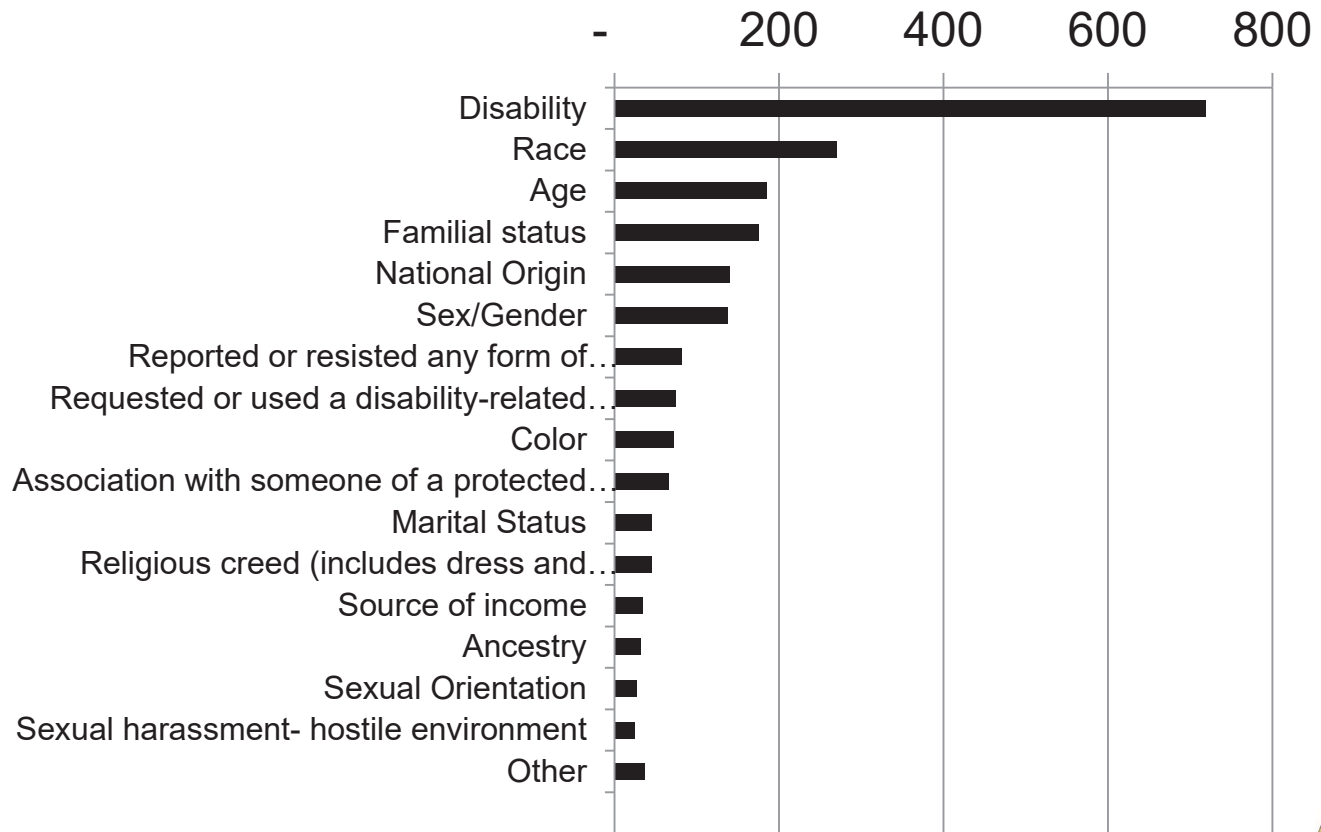
- Familial Status (children under the age of 18, pregnant, or becoming a legal custodian)
- Disability (mental and/or physical)
- Medical Condition
- Military or Veteran (new)
- Genetic Information
- Primary Language\*
- Immigration Status\*
- Age\*
- Citizenship\*

\*Covered under the Unruh Civil Rights Act, which applies to most housing accommodations in California





2018 HOUSING FILINGS = 784 (1 OF 3)  
Total Housing Bases = 2,214





2018 HOUSING FILINGS = 784 (2 OF 3)  
 Total Housing Bases = 2,214

<b>Bases of Housing Complaints</b>	<b>Total</b>
<b>Disability</b>	719
<b>Race (hair texture and style)*</b>	271
<b>Age</b>	185
<b>Familial Status</b>	175
<b>National Origin</b>	140
<b>Sex/Gender</b>	138
<b>Reported or resisted any form of discrimination or harassment</b>	82
<b>Requested or used a disability-related accommodation</b>	75

\* Beginning 1/1/2020, “race” is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.





2018 HOUSING FILINGS = 784 (3 OF 3)  
 Total Housing Bases = 2,214

<b>Bases of Housing Complaints</b>	<b>Total</b>
<b>Color</b>	72
<b>Association with someone of a protected class</b>	66
<b>Marital Status</b>	46
<b>Religious creed (includes dress and grooming practices)</b>	45
<b>Source of income</b>	35
<b>Ancestry</b>	32
<b>Sexual Orientation</b>	27
<b>Sexual harassment- hostile environment</b>	25
<b>Other</b>	81





## A BIT OF HISTORY (1 OF 2)

- First fair housing regulations interpreting FEHA, resulting from lengthy public process incorporating multiple public meetings and comment periods.
- Written by the Fair Employment and Housing Council, which is responsible for promulgating regulations implementing California's employment and housing anti-discrimination laws.





## A BIT OF HISTORY (2 OF 2)

- Explain FEHA's housing provisions in terms accessible to tenants, landlords, and other community members and provide further explanation of fair housing rights and responsibilities.
- Do *not* cover all of FEHA – multiple articles are held open for the Council to fill in with additional regulations.







# OVERVIEW OF THE REGULATIONS

- Article 1: Definitions, Liability
- Article 7: Discriminatory Effect
- Article 11: Financial Assistance Practices
- Article 12: Harassment and Retaliation
- Article 14: Real Estate Practices
- Article 15: Land Use Discrimination
- Article 18: Disability
- Article 24: Criminal History





## THE BASICS (1 OF 2)

- These regulations became effective January 1, 2020 but interpret previously existing law.
- The fair housing regulations are located in the California Code of Regulations, available on Lexis and Westlaw.





## THE BASICS (2 OF 2)

- California Regulations > Title 2. Administration > Division 4.1. Department of Fair Employment and Housing > Chapter 5. Fair Employment and Housing Council
- Citation example: 2 CCR §12177 (2020)
- You can also find the fair housing regulations on the DFEH website:

<https://www.dfeh.ca.gov/legal-records-and-reports/laws-and-regulations/>





## DEFINITIONS (1 OF 2)

- Generally broader than federal law. Examples from §12005:
- “**Adverse actions**” means action that harms or has a negative effect on an aggrieved person (e.g., refusing to rent, evicting a tenant, rent increases). Includes conduct unrelated to housing such as contacting tenant’s employer to file false allegations.
- “**Practices**” includes a single act, failure to act.





## DEFINITIONS (2 OF 2)

- **“Housing accommodation”** includes shelters, structures or portions thereof that are occupied by people; floating homes and RVs, etc.
- **“Owner”** includes broad range of actors including traditional landlords and lessees, trustees, government entities.
- **“Protected classes”** includes all of the classes under FEHA, and people associated with members of those classes or perceived to be a member of those classes.





## EXAMPLE 1

- Jane is staying in a women’s shelter with her friend Brandi, a transgender woman. A worker at the shelter repeatedly questions Brandi about her gender identity and threatened to have her kicked out for not being a “real” woman. Jane told the worker to back off and leave her friend alone.
- The next day, the worker called Jane’s probation officer and told him Jane had been getting into trouble at the shelter and he should check into her behavior. FEHA violation or no?





# A FEW WORDS ABOUT LIABILITY (1 OF 2)

- Article 1, §12010 Liability for Discriminatory Housing Practices
- (a) direct liability includes failure to take prompt action to correct discriminatory practice by employee or agent, or a third party where person had power to correct it.





## A FEW WORDS ABOUT LIABILITY (2 OF 2)

- (b) vicarious liability: liable for employee or agent's conduct regardless of knowledge, and even if it is willful or malicious, or disregards employer's express orders.
  - Exception: if CA agency law requires a different result *that is not in conflict with the Federal Fair Housing Act*







## EXAMPLE 2

A maintenance man sexually harasses a tenant in the common area of an apartment building. Landlord has written policy provided to all employees prohibiting harassment. Landlord has also specifically admonished this maintenance man to avoid contact with female tenants. Can the landlord be held liable under FEHA?





# DISCRIMINATORY EFFECTS (1 OF 2)

Article 7, § 12060, et seq.

- Burden-shifting test: different standard than federal regs
- Includes both disparate impact and perpetuation of segregation
- Complainant (plaintiff) must show that the practice being challenged has a discriminatory effect





## DISCRIMINATORY EFFECTS (2 OF 2)

- Then, burden shifts to respondent (defendant) to show legally sufficient justification
- Less discriminatory alternative (“feasible alternative practice”) is part of the legally sufficient justification (and therefore, respondent’s burden)
- Examples of types of evidence that can be used (e.g., national, state, or local statistics; tenant files/data)





# FINANCIAL ASSISTANCE PRACTICES (1 OF 2)

## Article 11, § 12100

- Explains how intentional discrimination, conduct with a discriminatory effect, and harassment apply to financial practices.
- Prohibits a wide variety of discriminatory practices including applying less favorable terms or failing to offer financial assistance to members of protected classes. Also prohibits practices which have the effect of denying access to assistance, like refusal to provide information about how to apply for financing.





# FINANCIAL ASSISTANCE PRACTICES (2 OF 2)

- Covered conduct includes offering higher interest rates or more fees to members of protected classes, or applying a formula which results in a disproportionate number of people in protected classes to be charged unfavorable terms in loans.





# REAL ESTATE PRACTICES (1 OF 2)

## Article 14, § 12155

- Identifies residential real estate practices with discriminatory effects that are unlawful absent a legally sufficient justification, such as:
  - Establishing terms and conditions with a discriminatory effect





## REAL ESTATE PRACTICES (2 OF 2)

- Determining price related to a real estate-related transaction in a way that has a discriminatory effect
- Notes that residential real estate practices that intentionally discriminate are also prohibited.





# HARASSMENT ( 1 OF 2)

Article 12, § 12120

Two forms of harassment: quid pro quo and hostile environment

- Covers protected classes under FEHA, not just sexual harassment







## HARASSMENT ( 2 OF 2)

- Language outlining quid pro quo and hostile environment harassment largely tracks HUD regulation, but also includes:
  - Illustrations of the types of conduct that can constitute harassment (verbal, visual)
  - A provision affirming individual First Amendment rights
  - Vicarious liability for hostile environment (no Title VII defense)





# RETALIATION (1 OF 2)

## Article 12, § 12130

- Unlawful to take adverse action in retaliation for engaging in a protected FEHA activity (e.g., evicting someone for making a fair housing complaint, for requesting a reasonable accommodation, or for encouraging a fellow tenant to exercise fair housing rights)





## RETALIATION (2 OF 2)

- Burden-shifting
  - (1) Complainant (plaintiff) must show the following to establish prima facie case: (a) engagement in a protected activity; (b) adverse action; and (c) causal link between protected activity and adverse action.
  - (2) Respondent (defendant) must then show legitimate, non-discriminatory reason for adverse action.
  - (3) Complainant must then show reason offered was pretextual/false.





## EXAMPLE 3 (1 OF 2)

- Bob is a tenant at Homes Inc. apartments. He is African American. He emails the new property manager because his sink is leaking. She says she'll get it repaired right away. When he comes to the office to pay rent, she yells at him to pay his rent through the drop box. He leaves. When she doesn't respond to follow up emails, he goes back to the office to ask about his sink. The manager takes out a gun and places it on the desk in front of her, yelling at him to get out. Later he hears her talking loudly to other tenants about getting rid of the problem tenants – and pointing to him.





## EXAMPLE 3 (2 OF 2)

- He writes to the new owner of the building complaining about the manager's behavior, and the owner does not respond. Bob's sink is not repaired despite several follow up requests.
- Any FEHA violations here? What type?





# LAND USE PRACTICES (1 OF 2)

## Article 15, § 12161

- Land use practices prohibited if they discriminate against protected classes:
  - Imposing different requirements in a way that denies, restricts, or makes infeasible housing opportunities
  - Providing inadequate or no government infrastructure services (e.g., water, garbage, sewer) in connection with existing housing or proposed housing
  - Restrictive covenants based on protected classes





## LAND USE PRACTICES (2 OF 2)

- Specific prohibited practices listed in § 12162
  - Requiring eviction based on broad definition of nuisance (e.g. treating 911 calls as nuisance)
  - Requirements that actions be taken against individuals due to immigration status (exception for activities required by federal law)





# ASSISTANCE ANIMALS (1 OF 2)

## Article 18, § 12185

- Service animals
  - Permissible questions
- Support animals
  - Deems online certifications that do not include an individualized assessment presumptively not reliable; requester must be allowed to provide additional information







## ASSISTANCE ANIMALS (2 OF 2)

- No pet fees, no additional rent allowed
- Animal owner may have to cover cost of damage caused by animal
- No breed, size, weight restrictions
- Reasonable conditions may be imposed on the animal
- Request for animal can be denied if animal poses a direct threat





# REASONABLE ACCOMMODATIONS (1 OF 2)

Article 18, § 12176, et seq.

- Confidentiality requirements
- Reasonable accommodation requests
  - Can make request for financial accommodations (e.g., waiving fees, allowing the use of co-signers)
  - Can be made at any time in the unlawful detainer process





# REASONABLE ACCOMMODATIONS (2 OF 2)

- The interactive process
  - Undue delay could constitute denial
- Establishing the necessity of request
  - Third parties can provide info re: disability related need
- When a request can be denied
- Limitations
  - Unlawful to charge fees for granting RA request





## EXAMPLE 4 (1 OF 3)

- Michiko requests an exception to her property's no-pets policy as a reasonable accommodation so that her friend Yoshi, who has a non-apparent disability, is able to visit with his emotional support animal. Should the landlord grant the request?





## EXAMPLE 4 (2 OF 3)

- Answer: Yoshi, as an individual with a disability, is entitled to reasonable accommodations. Michiko may request such an accommodation on behalf of Yoshi. As the disability is non-apparent, the owner may request information establishing the disability and the disability-related need for the animal. Discrimination is prohibited against individuals associated with an individual with a disability. Denying Michiko the right to have visitors of her choice, like other tenants, because her visitor has a disability would constitute discrimination against Michiko because of her association with an individual with a disability.





## EXAMPLE 4 (3 OF 3)

Because without this accommodation Michiko will not be able to receive Yoshi as a visitor at her apartment, which is a standard benefit of being a leaseholder, this accommodation may be necessary to provide Michiko an equal opportunity to use and enjoy a dwelling, and is therefore a necessary accommodation.

- (Note if Yoshi has a service animal, rather than a support animal, the animal would be permitted pursuant to subsection 12185(b) without the need to request an accommodation.)
- Excerpt from: §12180(b)(5)





# CRIMINAL HISTORY (1 OF 2)

*Article 24, § 12264, et seq.*

- Applies the discriminatory effects framework to the criminal history regulations
  - Feasible alternatives
    - Provide opportunity to provide individualized, mitigation information
    - Delay in considering third-party report of criminal history information until other qualifications are verified





## CRIMINAL HISTORY (2 OF 2)

- Mitigating information
  - Whether someone was a minor at time of offense
  - Tenant history
  - Rehabilitation efforts
  - DV survivor status, or experiencing a disability







## CRIMINAL HISTORY (1 OF 2)

- Specific practices related to criminal history information that are unlawful
  - Adverse action based on information about arrests where there has not been a conviction
  - Implementing a blanket ban against all persons with a criminal record





## CRIMINAL HISTORY (2 OF 2)

- Federal or state laws that apply requiring consideration of criminal history information constitutes an affirmative defense
- Regulations do not exempt compliance with more protective local laws





## ENFORCEMENT (1 OF 2)

Interpret existing law under FEHA, which may be enforced in a variety of ways including:

- DFEH complaint process
- Court action filed by someone seeking to enforce fair housing protections
- Court action where the defendant asserts a fair housing defense, like a tenant in an unlawful detainer





## ENFORCEMENT (2 OF 2)

Also other administrative processes such as:

- Pre-unlawful detainer grievance process for tenants
- Local government approval process for housing development





## RESOURCES

- Department of Fair Employment & Housing  
Website: [www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- DFEH Housing Provider Section in new website  
(coming soon)
- SOI - Educational documents (Coming soon)
- Fair Chance Housing Video -  
<https://www.youtube.com/watch?v=fSXlxl-acM0&feature=youtu.be>





## UPCOMING WEBINARS

- Source of Income Law – February 12
- §12176. Reasonable Accommodations for Persons with Disabilities – February 26
- §12265. Criminal History Information in Housing – March 12
- §12162. Specific Practices Related to Land Use – March 25
- § 12060. Discriminatory Effect – April 8
- §12927(c)(1) Harassment – April 22
- Register at: <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/01/FEHARegulationsSeries.pdf>

