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GENERAL ISSUES

Send questions to: Shalinee.hunter@dfeh.ca.gov

For MCLE credit: Send name, bar number, address, and phone number to

DFEHMCLEProvider@dfeh.ca.gov

Regulations are on DFEH website:

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

Citation example: 2 C.C.R. section 12005 (2020)

Poll the audience





WHAT WE WILL COVER

1. Scope of regulations
2. What is a reasonable accommodation?
3. The interactive process
4. Establishing necessity of accommodation
5. Grounds to deny a request
6. Reasonable accommodations in evictions
7. Assistance animals in housing





SCOPE OF REGULATIONS

To whom do these regulations apply?

Almost everyone!

How do these regulations relate to federal anti-discrimination laws?

Largely the same, but California's are more protective in some areas





REASONABLE MODIFICATIONS

Reasonable modifications: a change to the physical structure of a building (e.g., installing a ramp, widening doorways, etc.)

Different rules apply. Not covered in this presentation.

BUT regulations on reasonable modifications are coming soon!





REASONABLE ACCOMMODATIONS

Reasonable accommodation: a change or exception to a rule, policy, practice, or service that is necessary to provide an individual with a disability equal access to, use of, or enjoyment of a housing opportunity or dwelling.

For an accommodation to be “necessary,” there must be a direct and logical connection (“nexus”) between the accommodation requested and the disability.

Do not need to use the magic words “reasonable accommodation”.





§ 12176: REASONABLE ACCOMMODATIONS (1 OF 3)

Request must be made by the individual with a disability or someone authorized to act on their behalf.

Can be made at any time, including in the application for housing and through eviction.

Duty to provide reasonable accommodations is ongoing.

With limited exceptions, all information concerning an individual's disability, accommodation request, and medical verification must be kept confidential.





§ 12176: REASONABLE ACCOMMODATIONS (2 OF 3)

Use of formal procedures:

OK to create forms and procedures, but cannot require them. Must engage in the interactive process regardless of how a request for accommodation is made.

Forms and procedures may not seek information that is not necessary for evaluation of the request.

Forms and procedures are themselves subject to requests for reasonable accommodation.





§ 12176: REASONABLE ACCOMMODATIONS (3 OF 3)

Unlawful detainer (eviction) proceedings

An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action. 2 C.C.R. section 12176(c)(8)(A).

A request for reasonable accommodation can be made **at any time** during the eviction process, including at or after trial, and in certain circumstances even after eviction. 2 C.C.R. section 12176(c)(8)(B).





§ 12177: THE INTERACTIVE PROCESS (1 OF 2)

What is the interactive process?

If a request is not immediately granted, the recipient must engage in a dialogue with the requestor to reach a resolution.

Must be timely and conducted in good faith.

If there is insufficient information about the disability or nexus, the person considering the request cannot deny the request without seeking clarification or additional information.





§ 12177: THE INTERACTIVE PROCESS (2 OF 2)

When a requested accommodation is not granted immediately because it would create an undue financial and administrative burden or would cause a fundamental alteration, or because of a direct threat, the person considering the request must suggest an equally effective alternative accommodation.

“Equally effective” means that it will allow the person with a disability to use and enjoy a dwelling or housing opportunity as well as the requested accommodation would have.

Person with a disability has no obligation to accept an alternative.





§ 12178: ESTABLISHING THAT A REQUESTED ACCOMMODATION IS NECESSARY (1 OF 2)

Person considering request may not seek information beyond what is necessary to evaluate the request (specific diagnoses, medical records, etc.).

May not ask for additional information if:

Requestor provided reliable information about the disability and why the requested accommodation is necessary

OR

Disability or necessity is apparent or known.





§ 12178: ESTABLISHING THAT A REQUESTED ACCOMMODATION IS NECESSARY (2 OF 2)

Information establishing a disability can usually be provided directly by the individual through self-certification.

Information may also be provided by a reliable third party who knows about the disability or the disability-related need for the accommodation.

Does not need to be a medical professional!





QUIZ 1

Samara is a person who uses a power wheelchair, and she requests a reasonable accommodation for her landlord to move the garbage and recycling bins to the other side of the garage so that she doesn't have to go up a step to drop off her garbage and recycling. What additional information can be requested from Samara in order to process her request?





QUIZ 1 – CHOICES

1. Confirmation that Samara has a disability.
2. Confirmation from a reliable third party that the requested accommodation is related to Samara's disability and necessary for her to have an equal opportunity to use the apartment.
3. Both of the above.
4. Neither. Samara's request is sufficient.





QUIZ 1 - ANSWER

Option # 4 – Samara’s request is sufficient.

2 C.C.R. 12178.





QUIZ 2

You are the property manager at an apartment complex. Elena, a tenant, comes to your office with her eight-year-old son Alejandro. She says Alejandro has a developmental disability and noises severely disturb him. She asks to move to a top-floor apartment so there won't be noise from steps and dropped items. You haven't noticed any unusual behavior from Alejandro in the past. What additional information can you request from Elena to process her request?





QUIZ 2 – CHOICES

1. You can require a letter from a medical doctor with Alejandro's diagnosis.
2. You can require Elena to sign a release for you to talk to Alejandro's doctor so that you can ask the doctor questions about Alejandro's disability.
3. You can request verification from a reliable third party that Alejandro has a disability, and that the request to move upstairs is related to that disability.
4. All of the above.
5. None of the above. Elena's request is sufficient.





QUIZ 2 - ANSWER

You can request verification from a reliable third party that Alejandro has a disability, and that the request to move upstairs is related to that disability.

2 C.C.R. 12178





§ 12179: DENIAL OF REASONABLE ACCOMMODATION (1 OF 5)

When can a requested accommodation be denied?

- The requestor does not have a disability.
- There is no disability-related need for the accommodation (i.e., no nexus).
- Fundamental alteration of services or operations.
- Undue financial and administrative burden.
- Direct threat to the health or safety of others or substantial physical damage to the property of others, and the risk cannot be mitigated by another reasonable accommodation.





§ 12179: DENIAL OF REASONABLE ACCOMMODATION (2 OF 5)

A reasonable accommodation cannot be denied because it would be perceived as unfair to others or it might become burdensome if extended to others.

§ 12179(d)





§ 12179: DENIAL OF REASONABLE ACCOMMODATION (3 OF 5)

Whether an accommodation imposes an “undue financial and administrative burden” is a case-by-case determination based on various factors, including:

- Cost of the requested accommodation.
- Financial resources, including those of larger encompassing entity.
- Availability of alternative accommodations and their benefits to person with a disability.
- Whether the need for the accommodation arises from owner’s failure to comply with legal obligations.





§ 12179: DENIAL OF REASONABLE ACCOMMODATION (4 OF 5)

What is a “fundamental alteration”?

Change to the essential nature of the services or operations of the person being asked to provide the accommodation.

Example: If a landlord does not normally provide shopping services for residents, a request to do grocery shopping for a tenant with a disability could be a fundamental alteration.





§ 12179: DENIAL OF REASONABLE ACCOMMODATION (5 OF 5)

What constitutes a “direct threat”?

Must be based on an individualized assessment that relies on sufficiently recent and objective evidence.

Cannot rely on speculation, stereotypes, or unsubstantiated inferences.

Assessment must consider:

- Nature, duration, and severity of risk;
- Likelihood that harm will occur; and
- Whether additional or alternative reasonable accommodations will mitigate or eliminate the risk.





QUIZ 3

Rowan is an individual with a disability who receives Social Security Disability on the sixth day of each month. Rowan's landlord served him with a 3-day notice to pay rent or quit on the 2nd of this month, but Rowan was unable to pay until after the notice expired. Rowan's landlord filed an unlawful detainer action. At trial, Rowan requests an accommodation to pay his rent on the sixth day of the month instead of the first day of the month, including allowing a late payment for the month at issue in the trial.

Is Rowan's request for accommodation timely?





QUIZ 3 - CHOICES

- A. Yes
- B. No





QUIZ 3 – ANSWER

Yes, “[a] request for a reasonable accommodation in unlawful detainer actions can be made at any time during the eviction process, including at or after trial, and in certain circumstances after eviction. A reasonable accommodation request that is made during a pending unlawful detainer action is subject to the same regulations that govern reasonable accommodation requests at any other time.”

§ 12176(c)(8)(B)





QUIZ 4 (1 OF 2)

Joann rents an apartment using a Section 8 Housing Choice Voucher. She has a mental health disability that makes it extremely difficult for her to keep her apartment clean. The public housing authority (PHA) that administers Joann's Section 8 voucher just sent Joann a notice that it is terminating her voucher because her apartment failed a Housing Quality Standards inspection.





QUIZ 4 (2 OF 2)

Joann's mental health case manager is helping Joann get connected to resources to help her with her apartment, and Joann asked the PHA for extra time to correct the alleged violations.

Does the PHA need to consider Joann's reasonable accommodation request?





QUIZ 4 - CHOICES

- A. No, PHAs are not covered by FEHA.
- B. No, because the PHA already sent the termination notice.
- C. Yes, but only if this is the first time that Joann's apartment has failed an inspection.
- D. Yes, if the alleged HQS violations are related to Joann's disability, then giving Joann more time to correct them would likely be a reasonable accommodation.





QUIZ 4 - ANSWER

Correct Answer = D

The PHA must consider the request, including considering whether Joann's request for more time to clean the unit would constitute an undue financial and administrative burden or whether granting the accommodation would fundamentally alter program services.

The PHA should not terminate Joann's voucher while the reasonable accommodation request is pending.





§ 12185: ASSISTANCE ANIMALS (1 OF 7)

Assistance animals: an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional, cognitive, or similar support that alleviates symptoms of an individual's disability. 2 C.C.R. § 12005(d).

Includes service animals and support animals.

Not a pet!





§ 12185: ASSISTANCE ANIMALS (2 OF 7)

Service animals: an animal that is trained to perform specific tasks to assist individuals with disabilities (including mental health disabilities). Includes service animals in training.

Examples: guide dogs, signal dogs, miniature horses

Do not need to be professionally trained or certified.

Permitted in all buildings covered by the FEHA.





§ 12185: ASSISTANCE ANIMALS (3 OF 7)

Can only ask two questions:

- 1) Are you an individual with a disability?
- 2) What is the disability-related task the animal has been trained to perform?

Cannot ask for a demonstration of the task!





§ 12185: ASSISTANCE ANIMALS (4 OF 7)

Support animals: animals that provide emotional, cognitive, or other similar support to an individual with a disability (also know as comfort animals or emotional support animals)

Not restricted to dogs or miniature horses.

If animals are otherwise prohibited, person with a disability may ask for a reasonable accommodation.





§ 12185: ASSISTANCE ANIMALS (5 OF 7)

A support animal does not need to be trained or certified.

Animal vests, ID cards, and certificates are not in and of themselves documentation of disability or the need for a reasonable accommodation.

If requesting a reasonable accommodation, a certification from an online service may be considered reliable if it includes an individualized assessment from a medical professional.





§ 12185: ASSISTANCE ANIMALS (6 OF 7)

Regulations that apply to ALL assistance animals

Cannot be required to pay any additional fees, but may be required to cover costs of repairing damage caused by the animal.

May have more than one assistance animal, but each animal must be evaluated separately. Person considering request can consider cumulative impact of multiple animals in the same dwelling unit.

Breed, size, and weight restrictions are not permitted EXCEPT as applied to miniature horses as service animals under the ADA.





§ 12185: ASSISTANCE ANIMALS (7 OF 7)

Regulations that apply to ALL assistance animals:

Reasonable conditions may be imposed so long as they do not interfere with the normal performance of the animal's duties (e.g., leash requirement).

For purposes of considering a reasonable accommodation, a dog determined by a court to be a “potentially dangerous dog” or “vicious dog” under Food & Agric. Code section 31601 et seq. is presumptively considered to pose a direct threat to the health or safety of others.





UPCOMING REGULATIONS

Background information and rationale for adopted regulations and new proposed fair housing regulations can be found on the Fair Employment and Housing Council page of the DFEH website:

<https://www.dfeh.ca.gov/fehouncil/>

Upcoming proposed Fair Housing Regulations include reasonable modifications, intentional discrimination, discriminatory advertisements and statements, and more.





RESOURCES

- Department of Fair Employment & Housing
Website: 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=fSXIxl-acM0&feature=youtu.be>





UPCOMING WEBINARS

March 12: Criminal History Information in Housing

March 25: Specific Practices Related to Land Use

April 8: Discriminatory Effect

April 22: Harassment

Register at: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/01/FEHA_Regulations_Series.pdf

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