

LEGAL ALERT



Civil Rights
Department
STATE OF CALIFORNIA

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SUBJECT: Compliance with state fair housing laws with regard to emotional support animals

TO: All California Housing Providers, Tenants, and other interested parties

The California Civil Rights Department (CRD) is issuing this legal alert to notify all Californians that the State's fair housing laws still require housing providers to allow people with disabilities to have emotional support animals that have not been trained or certified, despite HUD's recent guidance reversing its interpretation of tenants' rights to reasonable accommodations in such circumstances.

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

On May 22, 2026, the U.S. Department of Housing and Urban Development (HUD) issued guidance¹ regarding how it will process complaints involving situations where a landlord denies a tenant's request to have an emotional support animal (ESA) as a reasonable accommodation. Under the guidance, HUD states that it is reversing its interpretation of the Fair Housing Act² (FHA) to require housing providers to reasonably accommodate such

¹ Department of Housing and Urban Development, *Enforcement Guidance – Assessing Requests for the Use of an Animal as a Reasonable Accommodation Under the Fair Housing Act* (May 22, 2026), [hud-enforcement-guidance-assessing-requests-for-the-use-of-an-animal-as-a-reasonable-accommodation-under-the-fair-housing-act.pdf](#) (hereinafter "2026 Guidance").

² 42 U.S.C. § 3604, subd. (f).

requests only where the ESA has been “individually trained to perform work or perform tasks directly related to the complainant’s disability³” This is the standard applicable to service animals, which serve completely different functions than ESAs. As a result, HUD has said that its fair housing staff “will find reasonable cause for failure to provide a reasonable accommodation involving the waiver of a pet policy only where” the ESA meets this definition.⁴

Previously, HUD had interpreted the FHA to require housing providers to waive such policies when necessary to accommodate a person’s emotional support animal. The 2026 Guidance memo cancels this guidance.⁵

Notwithstanding HUD’s about-face on the interpretation of federal law, California has robust housing discrimination protections for people with disabilities, including the Fair Employment and Housing Act (FEHA)⁶ and the Unruh Civil Rights Act (Unruh),⁷ both of which remain in effect. Accordingly, California law still mandates that housing providers provide reasonable accommodations for people with disabilities who have emotional support animals, whether or not the animal is trained.

I. Background

The FHA⁸ prohibits housing providers from discriminating “in the sale or rental of housing”⁹ or in “the provision of services or facilities in connection with” housing¹⁰ based on a person’s disability. Such discrimination also includes “a refusal to make reasonable accommodations in the rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”¹¹

HUD is the federal agency charged with enforcing the Fair Housing Act. For at least 13 years, HUD has taken the position that people with a disability-related need for an ESA are entitled to a waiver of a “no pets” policy (or other related accommodations), unless an exception applies. Through the release of several guidance documents in 2013 and 2020, HUD recognized that housing providers had a duty under the FHA to reasonably accommodate two types of assistance animals: ESAs (animals that provide comfort and

³ 2026 Guidance, *supra* note 1, at p. 5.

⁴ *Ibid.*

⁵ 2026 Guidance, *supra* note 1, at pp. 3–4.

⁶ Gov. Code, §§ 12900-12999.

⁷ Civ. Code, § 51(b).

⁸ 42 U.S.C. § 3604, subd. (f).

⁹ *Id.*, subd. (f)(1).

¹⁰ *Id.*, subd. (f)(2).

¹¹ *Id.*, subd. (f)(3)(B).

therapeutic benefit to people with mental health, neurological, and other disabilities) and service animals (animals that are trained to perform a disability-related task).

HUD's former guidance distinguished the responsibilities of housing providers to reasonably accommodate people with assistance animals from the requirements of the Americans with Disabilities Act (ADA). The ADA requires public accommodations, such as businesses and local governments, to allow equal access to people with disabilities and their service animals.¹² To qualify as a service animal, an animal must have specific training to "do work or perform tasks for the benefit of an individual with a disability"¹³ In contrast, for purposes of reasonable accommodation requests under the FHA, the 2013 and 2020 guidance was clear that assistance animals, including ESAs, did not have to be "individually trained or certified."¹⁴

HUD's May 22, 2026, guidance rescinded this prior guidance. Going forward, HUD has announced that it will apply the ADA definition of a service animal when enforcing FHA complaints alleging failure to accommodate an assistance animal. Specifically, HUD has stated it only finds cause on complaints involving "failure to provide a reasonable accommodation involving the waiver of a pet policy . . . where the animal has been individually trained to perform work or perform tasks directly related to the complainant's disability."¹⁵ However, the FHA and its implementing regulations remain in full effect.

II. California's Reasonable Accommodation Protections Extend to ESAs.

California laws that protect the right to a reasonable accommodation for untrained assistance animals, including FEHA¹⁶ and the Unruh Civil Rights Act,¹⁷ are unaffected by HUD's new guidance. California law requires housing providers to grant reasonable accommodations, if "necessary to allow a tenant, resident, or applicant with a disability to have an equal opportunity to use and enjoy housing."¹⁸ Such reasonable accommodations include, for example, waivers of "no-pets" policies, pet fees, and breed restrictions for assistance animals, including ESAs.¹⁹

¹² 42 U.S.C. § 12101 et seq.

¹³ 28 C.F.R. § 35.104.

¹⁴ FHEO Notice 2013-01, *supra* note 5, at p. 2; FHEO Notice 2020-01, *supra* note 5, at p. 1.

¹⁵ 2026 Guidance, *supra* note 1, at p. 5. Complaints filed with HUD under the ADA and Section 504 of the Rehabilitation Act are not affected by the guidance. *Id.*, at pp. 1-2.

¹⁶ Gov. Code, §§ 12900–12999

¹⁷ Civil Code § 51(b).

¹⁸ Cal. Code Regs., tit. 2, § 12176, subd. (a).

¹⁹ *Id.*, § 12185. See, e.g., *Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1599 (finding that homeowners' association violated FEHA by failing to permit plaintiff to

Similar to HUD’s prior guidance, FEHA’s implementing regulations recognize that housing providers must allow service animals and must provide reasonable accommodations for support animals.²⁰ The regulations explain that service animals and support animals are two types of “assistance animals,” and that an assistance animal is “not a pet. It is 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 one or more identified symptoms or effects of an individual’s disability.”²¹

When defining “support animals,” FEHA’s implementing regulations are clear that ESAs do not have to be individually trained to perform tasks directly related to the individual’s disability to qualify as an assistance animal: “[s]upport animals are animals that provide emotional, cognitive, or other similar support to an individual with a disability. **A support animal does not need to be trained or certified.**”²² Accordingly, California housing providers are mandated by law to provide reasonable accommodations to people with disabilities who need ESAs, whether or not the animal is individually trained.

III. The Fair Housing Act Does Not Preempt the State From Providing Stronger Housing Discrimination Protections for People with Disabilities.

California has historically provided greater rights and remedies than federal law, including greater disability protections. FEHA explicitly provides that “[a]lthough the federal act provides a floor of protection, this state’s law has always, even prior to passage of the federal act, afforded additional protections [in the area of disability protections].”²³ The FHA indicates that it provides a floor and not a “ceiling” for state regulation, stating that “[n]othing in this subchapter shall be construed to invalidate or limit any law of a State . . . that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State . . . that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.”²⁴

keep a support animal as a reasonable accommodation); *Smith v. Powdrill* (C.D. Cal., Oct. 28, 2013, No. CV 12-06388 DDP RZX) 2013 WL 5786586, at *10 (granting summary judgement to plaintiff on FEHA claim that landlord failed to grant reasonable accommodation for a support animal); *Chhang v. West Coast USA Properties LLC* (E.D. Cal., Feb. 11, 2025, No. 1:23-CV-01335-SAB) 2025 WL 457950, at *7 (denying motion to dismiss FEHA claim alleging failure to grant a reasonable accommodation for a support animal); *Johnson v. Birks Properties, LLC* (S.D. Cal., Jan. 11, 2022, No. 21-CV-01380-GPC-DEB) 2022 WL 104736, at *4 (same).

²⁰ Cal. Code Regs., tit. 2, § 12185, subd. (a).

²¹ *Id.*, § 12005, subd. (d).

²² *Id.*, tit. 2, § 12005, subd. (d)(2) (emphasis added).

²³ Gov. Code, § 12926.1, subd. (a).

²⁴ 42 U.S.C. § 3615.

IV. The Civil Rights Department Will Continue to Accept Complaints from Californians Unlawfully Denied Reasonable Accommodations for ESAs.

CRD will continue to enforce the law, including by accepting and investigating complaints from Californians who have been unlawfully denied reasonable accommodations for support animals, including those that are not trained to perform work or tasks directly related to a person's disability. HUD's new guidance has no impact on the nature or types of complaints CRD will accept and enforce. Accordingly, as with complaints involving other protections under state fair housing law without a federal counterpart, CRD will continue to accept complainants when allegations involve the denial of a reasonable accommodation for an ESA.

V. Conclusion

FEHA requires that California housing providers grant reasonable accommodations for assistance animals, including ESAs, whether or not they are trained to perform tasks related to the individual's disability.

For more information on housing providers' responsibilities regarding the rights of people with disabilities in housing, please consult:

- FEHA's implementing regulations regarding protections for people with disabilities²⁵
- CRD's FAQ on Emotional Support Animals and Fair Housing Law²⁶
- CRD's FAQ on Housing and Reasonable Accommodations for People with Disabilities²⁷

²⁵ Cal. Code Regs., tit. 2, §§ 12005, 12176 et seq.

²⁶ Available at: https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/12/Emotional-Support-Animals-and-Fair-Housing-Law-FAQ_ENG.pdf

²⁷ Available at: https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2026/02/Reasonable-Accommodations_ENG.pdf