

# LEGAL RIGHTS OF PERSONS WITH DISABILITIES

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## ACCESS TO BUSINESSES AND OTHER PUBLIC ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES



**CALIFORNIA OFFICE OF THE ATTORNEY GENERAL**

**PUBLIC RIGHTS DIVISION**

CIVIL RIGHTS ENFORCEMENT SECTION | *DISABILITY RIGHTS BUREAU*



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# ACCESS TO BUSINESSES AND OTHER PUBLIC ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

This publication discusses California and federal laws that prohibit disability-based discrimination in business establishments and other public accommodations. It also describes an individual's options when they have experienced disability-based discrimination in business establishments and other public accommodations.

This publication is for informational purposes only, and is based on the law at the time of publication. Laws regularly change and are subject to differing interpretations. The facts of each and every case may also result in differing applications of the law. Accordingly, the information in this publication must not be considered definitive, exhaustive, or legal advice for any purpose, and does not create an attorney-client relationship with the California Department of Justice. When consulting this publication, check for any updates in the law that may be applicable in any given situation.

## I. LAWS THAT PROTECT PEOPLE WITH DISABILITIES IN BUSINESSES AND OTHER PUBLIC ACCOMMODATIONS

### A. Federal Law

Title III of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12181 et seq.), prohibits disability-based discrimination by any person or private entity that owns, leases, or operates a business open to the public or other “public accommodation.” (42 U.S.C. § 12182(a); 28 C.F.R. §§ 36.104, 36.201.) Section 504 of the Rehabilitation Act of 1973 may also apply to places of public accommodation if they are a program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the United States Postal Service. (See 29 U.S.C. § 794(b).)

The term “public accommodation” includes any business that provides goods or services to the public, such as restaurants, hotels, retail stores, movie theaters, private schools (including housing), theaters, doctors' offices and hospitals, day care centers, gyms, and organizations offering courses or examinations. (42 U.S.C. § 12181(7); 28 C.F.R. § 36.104; [Introduction to the Americans with Disabilities Act](#) U.S. Dep't of Justice [as of Aug. 31, 2023].) It also includes privately operated transit, such as taxis, intercity and charter buses, hotel shuttles, and airport shuttles. (42 U.S.C. § 12184; [Introduction to the Americans with Disabilities Act](#) U.S. Dep't of Justice [as of Aug. 31, 2023].)

Commercial facilities, such as office buildings, factories, warehouses, or other facilities that do not provide goods or services directly to the public are only subject to the ADA's requirements for new construction and alterations. (42 U.S.C. § 12183; [Businesses That Are Open to the Public](#) U.S. Dep't of Justice [as of Sept. 14, 2023].) The ADA does not apply to certain private clubs or religious organizations. (42 U.S.C. § 12187.)

#### 1. General Nondiscrimination Requirements

The ADA requires that public accommodations provide people with disabilities an equal opportunity to access the goods, services, facilities, privileges, advantages, or accommodations they offer. (42 U.S.C. § 12182(a).) These requirements include providing reasonable modifications in policies, practices, and procedures, providing effective communication, removing physical and communication barriers, and permitting service animals. (28 C.F.R. § 36.302.) A public accommodation may not charge a person with a disability the costs of providing an auxiliary aid, removing barriers, or providing reasonable modifications necessary to provide equal access. (28 C.F.R. § 36.301(c).)

### **(a) Reasonable Modifications in Policies and Procedures**

A public accommodation must provide reasonable modifications in policies, practices, or procedures when necessary to afford full and equal access to people with disabilities, unless it can show that providing the modification would fundamentally alter the nature of its good or service. (42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).) Some examples of reasonable modifications include: permitting the use of service animals; ensuring enough accessible check-out aisles at stores; making sure people with disabilities can reserve accessible guest rooms at hotels and other places of lodging in the same manner available to all guests; and making event ticket sale and seating accessible in the same manner available to others. (28 C.F.R. § 36.302.)

### **(b) Effective Communication**

Public accommodations must also provide appropriate auxiliary aids and services when necessary to ensure effective communication with people with disabilities, unless a public accommodation can show that doing so would fundamentally alter the nature of the good or service they offer or would result in an undue burden, which means significant difficulty or expense. (42 U.S.C. § 12812(b)(2)(A)(iii); 28 C.F.R. § 36.303(a); [ADA Update: A Primer for Small Business](#) (Feb. 28, 2020) U.S. Dep’t of Justice [as of Aug. 31, 2023].) Even if the public accommodation can demonstrate that providing an auxiliary aid or service would pose a fundamental alteration or undue burden, it must still provide an alternative, if one exists, that would not result in such an alteration or burden but would nevertheless ensure that, to the maximum extent possible, a person with a disability receives the goods or services the public accommodation is offering. (28 C.F.R. § 36.303(h).) “Auxiliary aids and services” include qualified interpreters on-site or through video remote interpreting (VRI) services, open and closed captioning, including real-time captioning, or screen reader software. (28 C.F.R. § 36.303(b).)

### **(c) Physical Access**

Public accommodations must also remove architectural and communication barriers in existing facilities, and transportation barriers in existing vehicles, where removal is readily achievable. (42 U.S.C. § 12182(b)(2)(A)(iv)-(v).) Readily achievable means “easily accomplishable and able to be carried out without much difficulty or expense” and takes into consideration a business’s size and resources. (28 C.F.R. § 36.304(a); [ADA Standards for Accessible Design](#) U.S. Dep’t of Justice [as of Aug. 31, 2023].) Removal of barriers may include installing ramps and accessible door hardware, widening doors, rearranging furniture, and creating designated accessible parking spaces. (28 C.F.R. § 36.304(b).)

Even if a public accommodation shows that barrier removal is not readily achievable, it still has the obligation to make its goods or services available to people with disabilities through alternative methods, if those methods are readily achievable. (28 C.F.R. § 36.305.) For example, the public accommodation may provide curb service or home delivery, retrieve merchandise from inaccessible shelves or racks, or relocate activities to accessible locations. (*Ibid.*)

Public accommodations are also subject to state and federal laws that require physical accessibility in buildings and facilities. (See, e.g., 28 C.F.R. §§ 36.304, 36.305, 36.401 et seq.; Civ. Code, §§ 54, 54.1.) The accessibility requirements of the California Building Code (CBC) also apply. (Cal. Code Regs., tit. 24, § 11B-101 et seq.) However, the way that these laws impact a particular building or facility varies depending on date of construction and/or alteration. (See, e.g., 28 C.F.R. §§ 36.304, 36.305, 36.401 et seq.; 45 C.F.R. §§ 84.22, 84.23.) Recipients of government financial assistance may have additional requirements. (29 U.S.C. § 794; 45 C.F.R. § 84.22; Gov. Code, § 11135.)

#### (d) Service Animals

Public accommodations must permit the use of service animals by people with disabilities in all areas where members of the public are allowed to go. (28 C.F.R. § 36.302(7).) A service animal is any dog that is individually trained to do work or perform a task for a person with a disability. (28 C.F.R. § 36.104.) In some instances, a miniature horse may also qualify as a service animal. (28 C.F.R. § 36.302(c)(9).) The work or tasks performed must be directly related to a person’s disability and may include, for example, retrieving objects for a person who uses a wheelchair, reminding a person with depression to take their medication, or detecting and helping a person who has epilepsy to remain safe during a seizure. (28 C.F.R. § 36.104; [Service Animals](#) U.S. Dep’t of Justice [as of Aug. 31, 2023].) Emotional support, therapy, comfort, companion animals, or service-animals-in-training are not considered service animals and public accommodations are not required to allow them to be present in their facilities under the ADA. (See [Frequently Asked Questions about Service Animals and the ADA](#) (Feb. 28, 2020) U.S. Dep’t of Justice, at Questions 3 and 6 [as of Aug. 31, 2023].) However, unlike the ADA, California’s Disabled Person’s Act extends its protections to service-animals-in-training and allows people with disabilities to take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs, into places of public accommodation. (Civ. Code, § 54.2.)

A public accommodation may only ask an individual with a disability two questions regarding their service animal: 1) whether the animal is required because of a disability, and 2) what work or task has the animal been trained to perform. (28 C.F.R. § 36.302(c)(6).) Public accommodations cannot ask about the nature or extent of a person’s disability, require documentation, such as proof that the animal has been licensed, certified or trained, or require that the dog demonstrate its task. (28 C.F.R. § 36.302(c)(6); [Service Animals](#) U.S. Dep’t of Justice [as of Aug. 31, 2023].)

A service animal may only be excluded from a place of public accommodation if the animal is out of control and the person cannot get the animal under control, the animal is not housebroken, or allowing the service animal would “fundamentally alter” the nature of the goods and services provided to the public. (28 C.F.R. § 36.302(c)(4); ([Frequently Asked Questions about Service Animals and the ADA](#) (Feb. 28, 2020) U.S. Dep’t of Justice, at Questions 25-26 [as of Aug. 31, 2023].) Further, a service animal may be removed if it poses a direct threat to the health or safety of others. (See 28 C.F.R. § 36.302; 28 C.F.R. § 36.208.)

A business may not deny a person with a disability the opportunity to participate in or benefit from goods, services, facilities, privileges, advantages and accommodations of the business unless the individual poses a direct threat to the health or safety of others. (42 U.S.C. § 12182(b)(3); 28 C.F.R. § 36.208(a).) Whether an individual poses a “direct threat” requires an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence. (28 C.F.R. § 36.208(b).) Public accommodations must also look at three factors: 1) the nature, duration, and severity of the risk, 2) the probability that a potential injury will actually occur, and 3) whether reasonable modifications or the provision of auxiliary aids or services will mitigate the risk. (*Ibid.*)

Individuals can find more information on Title III of the ADA on the [U.S. Department of Justice’s website](#).

#### B. State Law

State law also prohibits disability-based discrimination in business establishments and other “public accommodations.” (Civ. Code, §§ 51, 54; Gov. Code, § 11135.) A violation of the ADA is also a violation of state law. (Civ. Code, §§ 51, subd. (f) and 54, subd. (c); Gov. Code, § 11135, subd. (b).)

## 1. Unruh Civil Rights Act

The Unruh Civil Rights Act (Unruh Act) provides that all persons within California, no matter their disability, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civ. Code, § 51.) Courts interpret “business establishments” in the broadest sense reasonably possible. (*Isbister v. Boys’ Club of Santa Cruz* (1985) 40 Cal.3d 72, 78; *O’Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790, 795.) “Business establishments” include hotels and motels, nonprofit organizations that have a business purpose or are a public accommodation, restaurants, theaters, hospitals, barber shops and beauty salons, retail establishments, and in some circumstances, public agencies. ([Discrimination at Business Establishments](#) California Civil Rights Department [as of Aug. 31, 2023].)

The Unruh Act does not apply to “truly private social clubs” or to “membership decisions of a charitable, expressive, and social organization.” (*Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594, 599; *Curran v. Mount Diablo Council of the Boy Scouts* (1998) 17 Cal.4th 670, 697.) To determine if an organization is a “business establishment” under the Unruh Act, courts consider several factors including: the business benefits an individual may derive from membership, the number and nature of paid staff, whether the organization has physical facilities, the purposes and activities of the organization, the extent to which the organization is open to the public, whether there are fees or dues for participation, and the nature of the organization’s structure. (*Harris v. Mothers Against Drunk Driving* (1995) 40 Cal.App.4th 16, 20; see also *Inland Mediation Bd. v. City of Pomona* (C.D.Cal. 2001) 158 F.Supp.2d 1120, 1151.)

A violation of the ADA is also a violation of the Unruh Act. (Civ. Code, § 51, subd. (f).) Where an Unruh Act claim is based on an ADA violation, a showing of intentional discrimination is not required. (See *Lentini v. California Center for the Arts, Escondido* (9th Cir. 2004) 370 F.3d 837, 846 [“It is undisputed that a plaintiff need not show intentional discrimination in order to make out a violation of the ADA.”]; see also *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 670.) However, if an Unruh Act claim is maintained independent of an ADA claim, an individual must show intentional discrimination. (See Civ. Code, § 51, subd (b); see also *Martinez v. Cot’n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1036, *review denied* (Nov. 9, 2022) [“Unless an Unruh Act claim is based on an ADA violation, the act requires a claimant to prove ‘intentional discrimination’”].)

## 2. Disabled Persons Act

Under the Disabled Persons Act (DPA), persons with disabilities have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians’ offices, public facilities, and other public places. (Civ. Code, § 54.) They are also entitled to full and equal access to accommodations, advantages, facilities, and privileges of common carriers and modes of transportation, private schools, hotels, or resorts and other places to which the general public is invited. (Civ. Code, § 54.1, subd. (a)(1).)

A violation of the ADA is also a violation of the DPA. (Civ. Code, § 54, subd. (c).)

## 3. Government Code section 11135

Government Code section 11135 (Section 11135) requires full and equal access for people with disabilities under any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. (Gov. Code, § 11135, subd. (a); Cal. Code Regs., tit. 2, § 11153.) The term “program or activity” refers to projects, procedures, or actions taken either directly or indirectly by recipients of state support with respect to the public generally or any private or public entity. (Cal. Code Regs., tit. 2, § 11150.) Some examples of

“programs or activities” are the provision of employment or goods, education, training, health, welfare, rehabilitation, or housing, and the provision of cash or loan assistance. (Cal. Code Regs., tit. 2, § 11150.)

Recipients of state support may not discriminate against people with disabilities. This type of discrimination could include denying people with disabilities the opportunity to participate in, or benefit from an aid, benefit or service. (Cal. Code Regs., tit. 2, § 11154 [providing list of discriminatory actions].) It is also discriminatory for a recipient to fail to administer programs and activities in the most integrated setting that is appropriate to the needs of a person with a disability. (Cal. Code Regs., tit. 2, § 11189.) Further, it is necessary for a recipient to take appropriate steps to ensure that communications with applicants are also available to persons who have vision or hearing disabilities. (Cal. Code Regs., tit. 2, § 11190.)

A violation of the ADA is also violation of Section 11135. (Gov. Code, § 11135, subd. (b).) Where state law prescribes stronger protections and prohibitions, the programs and activities are subject to the stronger protections and prohibitions. (*Ibid.*)

## II. COMPLAINTS

An individual who believes they have been discriminated against under any of the laws described in this publication may have options to file complaints with a government agency or in court. Please be aware that these complaints may have strict timeframes for filing and other requirements. It is best for an individual wishing to file a lawsuit to consult with a lawyer as soon as possible.

### A. For Violations of State Law

If an individual believes they have experienced discrimination under the Unruh Act, the DPA, or Government Code section 11135, they may file a complaint with the California Civil Rights Department (CRD). (Gov. Code, § 12930.) CRD is authorized to take individual complaints and investigate and enforce these laws to vindicate individual victims’ rights. (Gov. Code, § 12930(f).) Information about how to file a complaint can be found at [CRD’s website](#). The Attorney General, a city attorney, a district attorney, or the Department of Rehabilitation acting through the Attorney General also has authority to enforce these laws. (Civ. Code, §§ 52, 55.1.) An individual may also file a private lawsuit. (Civ. Code, §§ 52, 55; Gov. Code, § 11139.)

### B. For Violations of Federal Law

If an individual believes they have been discriminated against under Title III of the ADA by a business open to the public or other public accommodation, in addition to filing with CRD as stated above, they may file a complaint with the U.S. Department of Justice or they may file their own lawsuit. (42 U.S.C. §§ 12188, 2000a-3(a); 28 C.F.R. § 36.501 et seq.) Information on how to file a complaint with the U.S. Department of Justice is available on [the agency’s website](#). If a public accommodation receives federal financial assistance, an individual may also be able to file a complaint with the federal agency providing the assistance or file a lawsuit. (29 U.S.C. § 794(a).)

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For questions or comments about this publication, please contact the California Department of Justice’s Disability Rights Bureau within the Civil Rights Enforcement Section at [DisabilityRights@doj.ca.gov](mailto:DisabilityRights@doj.ca.gov).

For individual complaints and inquiries, please contact the [California Civil Rights Department \(CRD\)](#), formerly known as the Department of Fair Employment and Housing. Please note that the California Department of Justice, unlike CRD, only pursues systemic violations by local governmental entities or companies directly impacting the general public or large groups of individuals. It does not handle individual

complaints or inquiries. It also does not represent individuals, provide legal advice, or provide updates about its investigations and/or litigation, even to individuals who provided information about those matters. It also does not handle cases involving isolated violations of law, matters against state-level public entities, or out-of-state conduct.

To report a complaint to the California Department of Justice, please contact the Public Inquiry Unit (PIU). PIU staff may not respond to every inquiry, cannot answer legal questions or give legal advice, and cannot act as a personal lawyer for individuals who report a complaint. Complaints may be referred to a more appropriate agency.

For more information about reporting a complaint against a business or company to PIU, visit the [Consumer Complaint webpage](#).

For more information about reporting a complaint against another entity to PIU, visit the [General Comment, Question or Complaint webpage](#).