



CHILD CARE LAW CENTER

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Questions and Answers: California's *Unruh Civil Rights Act*: Information for Child Care Providers and Parents

1. What is the Unruh Civil Rights Act?

The Unruh Civil Rights Act is a California law that prohibits discrimination based on certain protected categories and guarantees full and equal accommodations, advantages, facilities, privileges, and services in all business establishments.¹ The protected categories are sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, and sexual orientation.² The law also states that a violation of the Americans with Disabilities Act (the “ADA”) is also a violation of the Unruh Act.³ This Questions and Answers publication deals specifically with disability discrimination.

2. Do child care centers and family child care homes have to comply with the Unruh Act?

Yes. The Unruh Act applies to “all business establishments of every kind whatsoever.”⁴ This definition is very broad. Courts have looked at a number of factors when determining what constitutes a business establishment.⁵ Generally, business establishments include both for profit and non-profit organizations open to and serving the public.⁶ Both child care centers and family child care homes can be considered business establishments. Some private, membership-based organizations do not have to comply.⁷

3. Are religiously-affiliated child care programs also required to comply with the Unruh Act?

It depends. All business establishments must comply, and only very few private organizations and clubs are not considered business establishments.⁸ The court considers a number of factors when determining whether an organization must comply with the Unruh Act.⁹ (See endnote for more details).¹⁰ If you think your organization might not have to comply with the Unruh Act because of religious affiliation, contact a private attorney for formal legal advice.

4. What disabilities are protected by the Unruh Act?

The Unruh Act protects a broad range of people including individuals with an **actual** disability, individuals with a **record** of having had a disability, individuals **regarded as** having a disability (even if they do not) and those with a **medical condition**.¹¹ The law includes people with both physical and mental impairments.¹² To qualify for protection under the Unruh Act, the impairment must limit a major life activity.¹³ The Unruh Act is intended to cover more people than the ADA because its definitions of disability and medical condition are broader.¹⁴

5. If a child receives special education services, is he or she protected by the Unruh Act?

Yes. The Unruh Act specifically includes protections for individuals with a mental, psychological, or health impairment that requires special education or related services.¹⁵ Therefore, if a child has an Individualized Education Plan (IEP) or an Individualized Family Service Plan (IFSP) they are protected from discrimination by the Unruh Act.

6. How does the Unruh Act differ from the ADA?

- The Unruh Act's definition of disability is broader than the definition of disability in the ADA. Specifically, the Unruh Act:
 - Specifically, extends protections to persons with medical conditions;¹⁶
 - Only requires that a disability or medical condition *limit* a major life activity, rather than “*substantially limit*” as the ADA requires;¹⁷
 - Does not require a disability or medical condition to *presently* limit a major life activity in certain circumstances;¹⁸
- The Unruh Act is enforced by the California Department of Fair Employment and Housing, whereas the ADA is enforced by the Federal Department of Justice.
- Individuals who believe they have been discriminated against only have one year from the last discriminatory act to file a complaint under the Unruh Act.¹⁹ There is no time limit if you file a complaint with the Department of Justice for an ADA violation.²⁰
- The Unruh Act provides slightly different remedies than the ADA (see Question 13).

7. What does the Unruh Act require of child care providers?

The Unruh Act prohibits providers from discriminating against persons based on an actual disability, a record of disability, a perceived disability or a medical condition. Providers must make a case-by-case assessment of each child with a disability or medical condition to determine what will be required to fully include the child into their program. Once a provider understands the child's needs, he or she must provide care for the child and make reasonable accommodations so the child can be successfully included into the program.

8. What types of accommodations are required by the Unruh Act?

Providers are required to make four main types of accommodations. They must:

- Ensure that admissions policies do not screen out or tend to screen out persons with disabilities;²¹
- Change policies, practices, or procedures so that a child with a disability can participate;²²

- Provide auxiliary aids and services to ensure effective communication²³ (e.g. provide a sign language interpreter for a parent with a hearing impairment so you can have a meaningful parent-teacher conference); and
- Remove physical barriers when readily achievable in existing program facilities.²⁴ Programs can take their resources in account when determining what is readily achievable.

9. What is considered a reasonable accommodation?

The Unruh Act requires that a provider make reasonable accommodations.²⁵ What is “reasonable” will vary depending on the accommodations requested and the resources available to the program. Generally speaking, less will be required of a family child care home, which typically has fewer resources and staff than a center, but the provider must always make an individualized assessment of the child’s needs and the program’s ability to accommodate in order to determine what is reasonable.

10. When is an accommodation unreasonable?

Child care providers **must** make these accommodations **unless**:

- In the case of changes in policies, practices or procedures, the accommodation would **fundamentally alter the nature of the program**;²⁶
- In the case of auxiliary aids and services, the accommodation would **fundamentally alter the nature of the program or pose an undue burden** (i.e., pose a significant difficulty or expense);²⁷ or
- In the case of the removal of barriers in an existing program, the accommodations would require **much difficulty or expense**.²⁸

11. Who determines what accommodation is needed and whether an accommodation is reasonable?

The approach that is most likely to be successful is one that involves a dialogue between a child care provider and the parents of a child with a disability to determine what accommodations are necessary and whether they are reasonable for the program. It should be the goal of both the parents and the provider to reach an informal resolution whenever possible.

Ultimately, if the parent and the provider cannot agree, it is a court that determines if the needed accommodation is reasonable for the program to undertake. The California Department of Fair Employment and Housing (DFEH), the department enforcing the Unruh Act, can also determine what accommodations must be made.

12. Are there situations in which care can be refused?

Yes, but these situations are very limited. They include situations in which a child poses a direct threat (i.e., there is a *substantial* risk of harm to others), which must be documented by objective

professional or scientific evidence, and where the risk cannot be lessened or eliminated by changing policies, practices or procedures.²⁹ It also includes situations where the accommodations needed would not be reasonable for the program to provide. (See question 10 for times when an accommodation is unreasonable).

13. What can individuals do if they feel they have been discriminated against?

Individuals who feel they have been discriminated against due to a disability may file a complaint with the State of California Department of Fair Employment and Housing (“DFEH”), which enforces the Unruh Civil Rights Act. Complaint information can be found at <http://www.dfeh.ca.gov/Complaints.htm>.

DFEH will:

- Interview the person making the complaint
- Investigate discrimination complaints; and may:
- Assist parties to voluntarily resolve complaints or
- Litigate the complaint in an administrative hearing or in court.³⁰

Complaints must be filed within one year from the last act of discrimination. The law provides a variety of remedies, including out-of-pocket expenses, cease and desist orders, damages for emotional distress, and exemplary damages. Individuals may also file a lawsuit directly in court on their own without contacting DFEH. See DFEH’s handout about public accommodation discrimination at <http://www.dfeh.ca.gov/res/docs/Publications/DFEH-167.pdf>.

Additionally, parents who believe their child or family has been discriminated against by a licensed child care provider due to their child’s disability may also file a complaint with the Community Care Licensing Division of the California Department of Social Services (“CCLD”). Visit CCLD’s website at <http://cclcd.ca.gov/PG408.htm>.

For more information on the ADA, visit the Child Care Law Center’s website at: <http://www.childcarelaw.org>.

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of 10/2011, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

Useful Resources

- **Visit the website of the Child Care Law Center at www.childcarelaw.org** if you would like information about child care legal issues. The Child Care Law Center is a national nonprofit legal services organization that uses legal expertise to secure good, affordable child care for low-income families and communities. We are the only organization in the country devoted exclusively to the complex legal issues that affect child care. The following are examples of some of our legal services:
 - Answer legal questions regarding child care via our Legal Information and Referral Service. Simply go to www.childcarelaw.org, and click the yellow “Get Help” button.
 - Write many useful publications. To view our publications, please visit our website at www.childcarelaw.org.
 - Conduct trainings for parents, teachers, child care providers, community agencies, and others on the Americans with Disabilities Act and other disability laws.
 - Provide legal representation in a small number of impact cases.
- **Contact the Department of Fair Employment and Housing** at (800) 884-1684 or persons with a hearing disability can call DFEH Videophone at 916-226-5285. Website: www.dfeh.ca.gov.
- **Contact the Human Rights Commission** in your County for more resources: www.cahro.org/network/hrc-county/.
- **Disability Rights California**, a nonprofit corporation designated as California’s system to protect and advocate for the rights of persons with disabilities, at (800)776-5746; TTY: (800) 719-5798. Website: www.disabilityrightsca.org. Email: info@disabilityrightsca.org.
- **Contact Parent Training and Information Centers and Community Groups (Parent Technical Assistance Center Network)** for training and information for parents of infants, toddlers, school-aged children, and young adults with disabilities and the professionals who work with their families in your state. To reach the Parent Center in your state, call (888) 248-0822; TTY (952) 838-0190. E-mail: alliance@talliance.org, Website: <http://www.parentcenternetwork.org/parentcenterlisting.html>.
- **Contact your local family resource center.** Internet search keywords: family resource center and your county.

Endnotes

These endnotes are legal citations for the information above. If you are having trouble understanding these citations, please speak with a reference librarian in your local law library. To look up the laws that apply to you, visit your local law library. Do not hesitate to look up the law and know your rights.

¹ Cal. Civ. Code § 51(b) (West 2011).

² Id.

³ Cal. Civ. Code § 51(f) (West 2011).

⁴ Cal. Civ. Code § 51(b) (West 2011).

⁵ Harris v. Mothers Against Drunk Driving 40 Cal.App.4th 16, 20 (1995).

⁶ Warfield v. Peninsula Golf & Country Club, 10 Cal. 4th 594, 611 (1995).

⁷ Id. at 615-616.

⁸ Id.

⁹ O'Connor v. Vill. Green Owners Ass'n, 33 Cal. 3d 790, 795-796 (Cal. 1983).

¹⁰ Whether a religiously affiliated child care facility is subject to the Unruh Act depends on the extent to which it is commercial, and open to the public. It is unclear whether a religiously affiliated child care program will qualify as a “business establishment” in every case under the Unruh Civil Rights Act. However, courts guide the determination of whether an organization falls within the definition of “business establishment” under the Unruh Act by considering several factors, including: (a) what, if any, business benefits one may derive from membership; (b) the number and nature of paid staff (in the context of child care, for example, a program that employs paid staff with significant child care duties would make it more likely that the program is a business establishment); (c) whether the organization has physical facilities and whether they are incidental to the purposes and programs of the organization; (d) what are the purposes and activities of the organization (in the context of child care, for example, if the primary purpose of the program is to provide care and education for children rather than a primary goal of inculcating the children with particular religious beliefs or values, it is more likely that the program is a business establishment); (e) the extent to which the organization is open to the public; (f) whether there are any fees or dues for participation or membership and what percentage of members pay them (in the context of child care, for example, if the child care program does not charge “membership” fees, it is more likely that the program is a business establishment); and (g) the nature of the organization's structure. Inland Mediation Bd. v. City of Pomona, C.D.Cal. 2001, 158 F.Supp.2d 1120. See also Harris v. Mothers Against Drunk Driving 40 Cal.App.4th 16.

¹¹ Cal. Civ. Code § 51(e)(1) (West 2011); Cal. Gov. Code § 12926 (West 2011).

¹² Cal. Civ. Code § 51(e)(1)(West 2011); Cal. Gov. Code §§ 12926(i)(1) and (k)(1) (West 2011).

¹³ Id.

¹⁴ Cal. Civ. Code § 51(e)(1)(West 2011); Cal. Gov. Code § 12926.1(c).

¹⁵ Cal. Gov. Code § 12926(i)(2) and (k)(2) (West 2011).

¹⁶ Cal. Civ. Code § 51(b) (West 2011).

¹⁷ Id. at § 51(e)(1-2) (West 2011); Cal. Gov. Code §§ 12926(i)(1), (k)(1) (West 2011); Cal. Gov. Code § 12926.1(c).

¹⁸ The Unruh Act does not require a disability or medical condition to *presently* limit a major life activity, where the person is “regarded or treated...as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability.” or where the person is “regarded or treated...as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability.” Cal. Govt. Code §§ 12926(i)(5) and (k)(5) (West 2011). See also Goldman v. Standard Insurance Company, 341 F.3d 1023 (9th Cir. 2003). See also Cal. Gov. Code §§ 12926 (h)(2)(West 2011).

¹⁹ Cal. Code Regs. tit. 2, § 10002(b) (2011), *Cf.* Cal. Code Regs. tit. 2, § 10018(DFEH will take complaints after the one year statute of limitations if there was department error).

²⁰ 42 U.S.C. § 12188 (West 2011).

²¹ 42 U.S.C. § 12182(b)(2)(A)(i) (West 2011); 28 C.F.R. § 36.301(a) (2011).

²² 42 U.S.C. § 12182(b)(2)(A)(ii) (West 2011); 28 C.F.R. § 36.302(a) (2011).

²³ 42 U.S.C. § 12182(b)(2)(A)(iii) (West 2011); 28 C.F.R. § 36.303 (2011).

²⁴ 42 U.S.C. § 12182(b)(2)(A)(iv) (West 2011); 28 C.F.R. § 36.304 (2011).

²⁵ Cal. Civ. Code § 51(f); 42 U.S.C. § 12182(b)(2)(A).

²⁶ 42 U.S.C. § 12182(b)(2)(A)(ii) (West 2011); 28 C.F.R. § 36.302 (2011).

²⁷ 42 U.S.C. § 12182(b)(2)(A)(iii) (West 2011); 28 C.F.R. § 36.303 (2011).

²⁸ 42 U.S.C. § 12182(b)(2)(A)(iv) (West 2011); 28 C.F.R. § 36.304 (2006). Note, although the Unruh Act does not impose architectural requirements when making accommodations, the ADA does impose significant architectural requirements as does Title 24 of the California Building Code.

²⁹ 42 U.S.C. § 12182(b)(3) (West 2011). See Burriola v. Greater Toledo YMCA, 133 F.Supp.2d 1034, 1039-1040 (2001).

³⁰ See DFEH website for complaint flowchart at http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm