

Guidance for California Businesses Regarding Covid-19 Safety Measures and Reasonable Accommodations



FAQ

As Californians navigate the COVID-19 pandemic, the Department of Fair Employment and Housing (DFEH) has provided guidance to protect civil rights and mitigate risk of COVID-19 transmission in [employment](#), [housing](#), [healthcare](#), and, in this document, businesses serving the public.

A law called the Unruh Civil Rights Act prohibits all businesses of every kind in California from discriminating based on a person's sex (including gender, gender identity, gender expression, and pregnancy), race, color, religion, ancestry, national origin, disability, medical condition (defined as genetic characteristics or a health impairment related to or associated with a diagnosis of cancer or a record or history of cancer), genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, age (only in connection with the sale or rental of housing, except when permitted for senior and youth housing), or other personal characteristics. For example, a business that refuses to serve or charges a higher price to a customer because of the customer's race violates the Unruh Civil Rights Act and is liable for damages of at least \$4,000 per violation. Among other purposes, this law aims to ensure that all Californians are free and equal by eliminating unlawful discrimination in the marketplace.

DFEH is authorized to enforce the Unruh Civil Rights Act. Someone who believes their rights under the Unruh Civil Rights Act have been violated may file a complaint for investigation by DFEH, or they may file their own lawsuit without involving DFEH.

California businesses must comply with the Unruh Civil Rights Act and other applicable civil rights laws while also following the latest local, state, and federal orders related to COVID-19. DFEH's answers to the frequently asked questions below are based on the Unruh Civil Rights Act and do not address rights or obligations imposed by any other law, such as local or state orders regarding face coverings or vaccination. DFEH understands its answers to be consistent with federal civil rights law – namely, Title III of the Americans with Disabilities Act and Title II of the Civil Rights Act of 1964 – though definitive guidance from federal authorities is not available at the time of this publication. This guidance is based on current public health information and may be updated from time to time. This guidance is for informational purposes only and does not create any rights or obligations separate from those imposed by the Unruh Civil Rights Act.

COVID-19 SYMPTOMS

1 | **Before permitting entry onto its premises, may a business ask customers if they have COVID-19 symptoms and/or take the temperature of customers to determine if they have a fever? May a business exclude or refuse service to someone with COVID-19 symptoms?**

Yes. The Unruh Civil Rights Act permits businesses to have rules serving legitimate business interests. Checking if customers are experiencing COVID-19 symptoms, as a condition of entrance to the premises, protects employees and customers from COVID-19 infection, including transmission from customer to employee or customer to customer. Likewise, a business may refuse entry or service to someone with COVID-19 symptoms, such as coughing, fever, loss of taste, or loss of smell. The business may also deny entry or service to someone who refuses to state whether they have COVID-19 symptoms or to have their temperature taken. The Unruh Civil Rights Act does not require a business to take any of these steps, although a business may decide – or may be required by another law – to do so as part of a comprehensive plan to protect its staff and customers from COVID-19 infection.

2 | **May a business ask only certain types of customers if they have COVID-19 symptoms, take the temperature of only certain types of customers, or deny service to only certain types of customers with COVID-19 symptoms?**

No, if done so based on a personal characteristic protected by the Unruh Civil Rights Act. For example, a business that only takes the temperature of customers perceived to be immigrants, or only excludes customers with high temperatures who appear to be from a particular foreign country, violates the Unruh Civil Rights Act.

COVID-19 VACCINATION AND TESTS

3 | **Before permitting entry onto its premises, may a business require customers to show proof of vaccination against COVID-19? May a business exclude or deny service to someone who cannot show proof of vaccination against COVID-19?**

Yes. As explained in FAQ 1, the Unruh Civil Rights Act permits businesses to implement rules that protect employees and customers from COVID-19 infection. Therefore, a business may decide – or may be required by another law – to mandate that anyone entering the premises show proof of vaccination by an FDA-approved or authorized COVID-19 vaccine, whether or not the business requires customers to comply with other safety measures. According to the [Centers for Disease Control and Prevention](#), “current evidence indicates that fully vaccinated people without immunocompromising conditions are able to engage in most activities with low risk of acquiring or transmitting SARS-CoV-2, with additional prevention measures (e.g. masking) where transmission is substantial or high.” Please review FAQs 8 – 10 for important information about reasonable accommodations.

4 | Before permitting entry onto its premises, may a business require customers to show proof of a recent negative COVID-19 test? May a business exclude or deny service to someone who cannot show a recent negative COVID-19 test?

Yes, for the reasons explained in FAQs 1 and 3. Please review FAQs 8 – 10 for important information about reasonable accommodations.

5 | May a business ask only certain types of customers to show proof of vaccination against COVID-19 and/or a recent negative COVID-19 test?

No, if done so based on a personal characteristic protected by the Unruh Civil Rights Act. For example, a business that only requires negative test results or proof of vaccination from individuals from certain racial or religious groups but not others violates the Unruh Civil Rights Act.

FACE COVERINGS

6 | As a condition of being on its premises, may a business require customers to wear a face covering, such as a mask or face shield, to protect against COVID-19 transmission, and may the business exclude those who refuse?

Yes, for the reasons explained in FAQs 1 and 3. Please review FAQs 8 – 10 for important information about reasonable accommodations. Guidance from the California Department of Public Health regarding face coverings is at: www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx.

7 | May a business ask only certain types of customers to wear a face covering?

No, if done so based on a personal characteristic protected by the Unruh Civil Rights Act. For example, a business that only requires individuals who are pregnant or who have a physical impairment to wear masks violates the Unruh Civil Rights Act, even if the business believes it is doing so for a benevolent reason.

REASONABLE ACCOMMODATIONS AND MODIFICATIONS

8 | During the COVID-19 pandemic, must a business reasonably accommodate customers with disabilities?

Yes. The Unruh Civil Rights Act requires businesses in California to reasonably accommodate the known disabilities of customers, such as physical impairments. For example, when serving a deaf customer who uses lip reading and facial expressions to assist in communication, a store employee might wear a clear mask or a clear face shield in lieu of a mask that conceals the lower part of the face. For guidance on handling reasonable accommodations for individuals with disabilities, generally follow FAQ 9.

9 | **When a business requires customers to show proof of COVID-19 vaccination, show proof of a recent negative COVID-19 test, wear a face covering, or comply with another COVID-19 safety measure, must the business reasonably accommodate individuals with a disability that prevents them complying with these safety measures?**

Short answer: Yes, unless the accommodation or modification would create a direct threat to the health or safety of others, an undue burden for the business, or a fundamental alteration to the business's practices.

Explanation: While a business generally may not use screening criteria likely to exclude individuals based on a disability, the specific COVID-19 safety measures discussed in this document are, in light of current public health guidance, necessary for businesses to safely operate. If a customer states that they have a disability that prevents them from being vaccinated against COVID-19, wearing a mask or other face covering, and/or complying with another COVID-19 safety measure, the business must not ask the customer to share personal information about the disability and must not make unnecessary inquiries into the existence of the disability. Instead, at this stage in order to facilitate the business transaction, the business may accept the customer's statement that they have a disability preventing them from complying with the COVID-19 safety measure in order to see if a reasonable alternative exists.

If the customer cannot comply with the business's COVID-19 safety measures due to a disability, the business cannot simply turn away the customer. The business should work collaboratively with the customer to try to identify a reasonable alternative that would allow the business to serve the customer while still protecting its employees and other customers. When engaging in this "interactive process," the business's representative should maintain a safe distance from the customer; when appropriate, the business's representative may request to speak with the customer by phone, through a window, or in another way that protects against potential exposure to COVID-19.

Reasonable alternatives are determined on a case-by-case basis. Considerations include the business's layout, the number of employees on duty, the goods or services offered, the needs of the customer in question, and whether other customers are present. For example:

- If a supermarket requires customers to wear masks while inside the store, and a customer cannot wear a mask because of a disability, a reasonable alternative may be for the customer to wait outside while an employee shops for the customer.
- If a small computer store requires patrons to show proof of vaccination and to wear a mask while inside, and a customer cannot do either because of disabilities, a reasonable alternative may be for the store to serve the customer over the phone, by video, or by text.
- If a bar with indoor and outdoor service requires customers to show proof of vaccination against COVID-19 to come inside, and a customer cannot be vaccinated because of a disability, a reasonable alternative may be simply ensuring the customer can be served outside.

At times, after the business and customer explore possible alternatives, a reasonable accommodation might not be available. This would occur when the possible alternatives create a direct threat to the health or safety of others (such as an employee or another customer), an undue burden for the business, or a fundamental alteration of the business. For example:

- If a restaurant with only indoor dining requires all customers to be vaccinated against COVID-19 and is forbidden by a local ordinance from setting up tables outside, it would not be a reasonable alternative to have the restaurant serve an unvaccinated customer at a

table outside. However, the business may be required to provide the food for pick-up or by delivery to a customer who cannot be vaccinated due to a disability, if the business has those capabilities.

- If a salon or barbershop requires all customers to be vaccinated against COVID-19 and/or to wear a mask at all times when inside the shop, the shop would be justified in denying a haircut, braiding, a shave, or another service that requires close contact between the employee and the unvaccinated/unmasked customer, because such a service would directly threaten the health or safety of the employee and possibly other patrons. In contrast, if the unvaccinated customer only wishes to purchase shampoo or styling cream, then an employee could ask the customer to wait outside while ringing up the order and bringing the product out to the customer.
- If a theater requires all patrons to be vaccinated against COVID-19 and/or to wear a mask at all times when inside the building, the theater would be justified in denying entry to an unvaccinated/unmasked patron. Perhaps the theater is able to set up a screening outside; but unless the theater is already doing this, it would likely be an undue burden and/or a fundamental alteration of the business for the theater to be required to do to this for the unvaccinated/unmasked patron.

10 | **When a business requires all customers to show proof of vaccination against COVID-19 or to comply with another COVID-19 safety measure, must the business reasonably accommodate individuals with a sincerely-held religious reason for not complying with the requirement?**

DFEH is not aware of any published court decision or other source of law clearly establishing that the Unruh Civil Rights Act requires businesses to reasonably accommodate the sincerely-held religious beliefs of customers. However, to facilitate the business transaction, DFEH suggests that businesses generally follow the guidance in FAQ 9 when faced with a customer who asserts a religious reason for not being vaccinated against COVID-19 or for not following any other COVID-19 safety measure. In addition, the following [guidance](#) from the U.S. Equal Employment Opportunity Commission applicable to the employment context may also be useful to businesses facing religious accommodation requests from customers: “EEOC guidance explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.”

— TO FILE A COMPLAINT

Department of Fair Employment and Housing

dfeh.ca.gov / Toll Free: 800.884.1684 / TTY: 800.700.2320

DFEH can assist you by phone or, for individuals who are deaf or hard of hearing or have speech disabilities, through the California Relay Service (711), or you can contact us above.