

# DFEH Housing Information on COVID-19



# FAQ

A pandemic of respiratory illness caused by a new coronavirus (COVID-19) currently exists in California and beyond. Governor Newsom declared a state of emergency in California on March 4, 2020. The California Department of Fair Employment and Housing (DFEH) is providing this guidance to assist housing providers, tenants, and others with frequently asked questions about keeping housing accommodations safe during the COVID-19 pandemic while also upholding civil rights. This guidance is based on current public health information and may be updated from time to time, and replaces previous guidance issued on April 13, 2020. This guidance is for informational purposes only and does not create any rights or obligations separate from those imposed by the FEHA, its implementing regulations, and other laws.

Housing providers should adhere to the latest government guidance on how to reduce transmission of COVID-19 in their housing accommodations, including guidance from the Centers for Disease Control and Prevention (CDC) and the California Department of Public Health. At the same time, housing providers must adhere to state and federal civil rights law, including the Fair Employment and Housing Act (FEHA). The FEHA [prohibits housing discrimination and harassment](#) on the basis of race, national origin, disability, source of income, and other characteristics.

## GENERAL INFORMATION

### ■ Are civil rights laws covering housing in effect during a pandemic?

Yes. California's fair housing laws prohibit housing providers – including landlords, property management companies, and homeowner associations (HOAs) – from discriminating against or harassing a tenant, resident, home seeker or applicant, homeowner, and others, because of a protected characteristic. The FEHA prohibits discrimination and harassment based on a person's race, color, ancestry, national origin (including geographic places of origin, ethnic groups, and tribal affiliations), religion, mental or physical disability, sex (including pregnancy), gender, sexual orientation, gender identity, gender expression, genetic information, marital status, familial status, source of income, or military or veteran status. In addition, the Unruh Civil Rights Act, which applies to housing providers that are businesses of any kind, protects against discrimination related to age, citizenship, primary language, and immigration status, among other characteristics.

The prohibition on discrimination and harassment extends to conduct that is based on

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a perception of someone's protected characteristic (even if incorrect) or the protected characteristic of another person with whom the discrimination victim associates.

For example, it is unlawful for a housing provider to: refuse to rent to, segregate, provide less favorable terms to, or harass someone because of their actual or perceived race or national origin, or because of their association (including marriage or co-habitation) with someone based on actual or perceived race or national origin.

In addition, California law requires housing providers to generally provide or allow reasonable accommodations and reasonable modifications so that a person with a disability can use and enjoy the dwelling.

A housing provider may not retaliate against someone who exercised their rights under California's fair housing laws or aided or encouraged someone else in doing so, such as by filing a complaint of discrimination with DFEH.

### ■ **Can housing providers be liable for the harassment of one tenant or resident by another tenant or resident?**

Yes. In addition to being liable for their own conduct that results in harassment or another discriminatory housing practice, housing providers can be liable for failing to take prompt action to correct and end harassment or another discriminatory housing practice by the housing provider's employee or agent or by a third party such as another tenant or resident. Housing providers must take reasonable steps to promptly correct and end unlawful harassing conduct at the property. When the housing provider knows or should know of the harassment and where the housing provider has the power to prevent, mitigate, or end the unlawful conduct, the housing provider must act to ensure tenants or residents are not harassed by another tenant, another resident, or other third party.

### ■ **What should a housing provider do if they become aware one tenant is harassing or threatening another tenant because of the victim's actual or perceived race, national origin, disability, or other protected characteristic?**

As explained above, a housing provider must correct and end discriminatory harassment committed by a third party that they know about or should know about, when the housing provider has the power to do so. For example, a housing provider could enforce the terms of a lease or HOA rules to remedy and/or prevent discriminatory harassment. If the harassment is relatively minor, counseling the harasser may be sufficient to end the harassment. If counseling does not promptly end the harassment—or is not reasonably expected to end the harassment—more severe steps may be appropriate, such as imposing fines, issuing cease and desist notices, and even terminating the harasser's tenancy, residency, or work contract, depending on the case. If the housing provider's investigation reveals conduct that may be criminal, such as stalking, making a credible threat of violence, or assault, the issue may require the involvement of law enforcement.

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### SOURCE OF INCOME DISCRIMINATION

#### ■ Are housing providers required to participate in a rent relief program that pays rent to the landlord on behalf of a tenant who is financially impacted by COVID-19?

Because the COVID-19 pandemic has had a devastating financial impact on many Californians, the State of California, some localities, and private organizations have established rental assistance programs to help tenants pay rent and prevent homelessness. The FEHA forbids housing discrimination based on “[source of income](#).” “Source of income” is defined as “lawful, verifiable income paid directly to a tenant, or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers...” (Gov. Code section 12955(p).) Therefore, it is unlawful for a landlord or other housing provider to reject an applicant, terminate a tenancy, or otherwise discriminate against someone because the person uses a federal, state, or local housing subsidy or other lawful assistance to help with paying rent.

Whether a housing provider must participate in a COVID-19 rental assistance program could depend on the program’s requirements, but a housing provider may not have a blanket ban against accepting rent paid from such a program on behalf of a tenant. For example, it is unlawful for a landlord to have a policy of not accepting rent from any state or local rental assistance program. Similarly, if a landlord refuses to accept a partial rental assistance payment on behalf of a tenant, because the landlord does not want to verify certain information such as the rent owed by a tenant, this would constitute “source of income” discrimination.

For more information about COVID-19 rental assistance programs and other tenant protections in California, please visit the California’s Housing is Key initiative at [housing.ca.gov](http://housing.ca.gov).

#### ■ Can a housing provider accept rental assistance on behalf of some tenants and not others, because of protected characteristic?

No. It is unlawful for a housing provider to refuse to accept rent from (or on behalf of) a tenant because of the tenant’s race, ethnicity, national origin, disability, family status, or other protected characteristic.

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### DISABILITY DISCRIMINATION AND REASONABLE ACCOMMODATIONS

#### ■ **Do California fair housing laws prohibit discrimination and harassment against tenants, both current and prospective, because of actual or perceived disability?**

Yes. It is unlawful for a housing provider to harass, discriminate against, or treat less favorably a tenant or resident, because of the person's actual or perceived disability. A disability is a condition that causes a limitation to a major life activity and includes both physical disabilities and mental disabilities (including mental health conditions). COVID-19 infection can lead to disability, especially if it results in inpatient care, continuing medical treatment, or supervision by a health care provider. COVID-19 infection may also lead to disability if it leads to conditions such as pneumonia. COVID-19 infection may also exacerbate existing disabilities.

#### ■ **May a housing provider inquire into a tenant's actual or perceived disability related to COVID-19 when make a housing decision?**

It is unlawful for a housing provider to ask any prospective or current tenant about the person's actual or perceived disability, including a disability related to COVID-19. Similarly, a housing provider may not require a tenant to move out because the housing provider believes the tenant has a disability related to COVID-19, or require a tenant to show proof that their disability is unrelated to COVID-19.

#### ■ **Must housing providers grant reasonable accommodations to persons with disabilities who require in-home supportive services, such as the assistance of a family member, friend, or health care provider, when necessary to provide care due to the effects of COVID-19?**

Yes. Housing providers must grant reasonable accommodations where necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, unless providing the requested accommodation would constitute an undue financial and administrative burden, a fundamental alteration of the program, or if allowing the accommodation would constitute a direct threat to the health and safety of others or would cause substantial physical damage to the property of others.

Reasonable accommodations include changes to rules, policies, or procedures of the housing provider where necessary to afford the tenant with the disability the equal opportunity and enjoyment of the premises. For example, it would be a reasonable accommodation for a housing provider to waive a rule against overnight guests to accommodate a tenant's request to have a family member, friend, or health care provider stay at the rental unit to care for the tenant because of a disability related to COVID-19.

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- **If a tenant requests a reasonable accommodation for a COVID-19-related disability, are they required to provide verification that they are disabled and that a reasonable accommodation is necessary?**

Housing providers may not request additional information about an individual's disability or need for an accommodation if the individual (or their representative) provides reliable information about the disability and how the requested accommodation is necessary.

Generally, if the need for the accommodation is not readily apparent, then the housing provider can ask for information describing the needed accommodation and how it is necessary to allow the individual equal opportunity to use and enjoy the dwelling. This information can come from the individual or any reliable third party who is in a position to know about the individual's disability or the need for the requested accommodation, including medical professionals, health care workers, support groups, or caregivers.

In a pandemic, it is not always practical for a tenant to provide verification of a disability and the necessity of a specific accommodation from medical professionals or health care workers who are working to address urgent patient needs. Housing providers must treat as confidential any verification information. It may not be disclosed to other tenants.

## AGE DISCRIMINATION

- **May a property that has tenants/residents of all ages restrict usage of common areas by older individuals or otherwise discriminate against or segregate on the basis of age?**

No. Even if a housing provider has a benevolent motivation to protect older tenants or residents, it is unlawful to discriminate against a tenant or resident on the basis of age by refusing to rent, providing less favorable terms, segregating, or harassing a tenant or resident. For example, absent a public health order, it is unlawful to single out older tenants by segregating them based on their age in one area of the rental property, or refusing only older tenants access to common areas, even if the housing provider is concerned about their health. Landlords may, however, require all tenants to abide by local, state, and federal public health orders.

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### REPAIRS AND FACILITIES

#### ■ Do housing providers have to make repairs to a tenant's unit during the COVID-19 pandemic?

Yes. Housing providers must comply with the Health and Safety Code to ensure rental units comply with the law. However, housing providers should use judgment and follow public health orders and recommendations in making repairs to protect their employees and tenants from exposure to COVID-19. Tenants must follow public health orders and recommendations, including those to maintain physical distancing, when cooperating with the housing provider during repairs.

#### ■ During a pandemic, may a housing provider close recreational facilities to prevent the spread of COVID-19?

Yes. Housing providers should follow local, state, and federal public health orders and recommendations, which may require the closing of recreational facilities, including gyms, pools, and clubhouses, to prevent the spread of COVID-19. In following such orders or recommendations, housing provider must treat all tenants in the same way. It is unlawful to grant or restrict access to facilities based on any protected status, including disability, race, national origin, or age.

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If you think you have been a victim of housing discrimination, please contact DFEH.

### TO FILE A COMPLAINT

#### Department of Fair Employment and Housing

[dfeh.ca.gov](http://dfeh.ca.gov)

Toll Free: 800.884.1684

TTY: 800.700.2320

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake 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.