

**“KNOW YOUR RIGHTS”
Training on the Legal Rights and Responsibilities of
People with Alcohol and Drug Problems**

**California Laws Regarding Discrimination
(December 2006)**

I. The Basics

Q1. Does California have State laws, like the Federal laws in the *Know Your Rights* Brochure, that protect people from discrimination because they have a history of alcohol or drug problems, or are in treatment or in recovery from the problems?

A1. Yes. The State of California has several major laws that prohibit discrimination against individuals on the basis of disability. We will refer to these laws in the summary as the **California anti-discrimination laws**.

The State’s two main anti-discrimination laws are the **California Fair Employment and Housing Act** (“FEHA”), Cal. Gov. Code, Title 2, Division 3, Part 2.8, and the **Unruh Civil Rights Act** (“Unruh”), Cal. Civ. Code § 51.

The **California Department of Fair Employment and Housing** (“DFEH”) is the agency charged with enforcing California’s anti-discrimination laws pertaining to employment, housing, public accommodations and public service. The DFEH receives and investigates discrimination complaints and provides technical assistance to employers, business establishments and housing providers regarding compliance with the anti-discrimination laws.

- The **Department of Fair Employment and Housing** enforces –
 - **The California Fair Employment and Housing Act** (“FEHA”), Cal. Gov. Code § 12900, et seq., which makes it unlawful for an employer to harass or discriminate against any individual on the basis of a disability, mental and physical;
 - **The Unruh Civil Rights Act** (“Unruh”), Civil Code § 51, et seq., which makes it unlawful for a business establishment, including housing and public accommodations, to discriminate against any individual on the basis of a disability;
 - **The Ralph Civil Rights Act**, Civil Code Section 51.7 (n/a)
 - **The California Family Rights Act** (n/a)

- Q2.** Are people with **alcohol or drug problems** considered individuals with a “disability” protected from discrimination under California laws?
- A2.** Yes, people with alcohol or drug problems are considered individuals with a disability protected from discrimination under California laws.
- Q3.** Do California’s laws define “**disability**” the same way as the Federal non-discrimination laws?
- A3.** California’s anti-discrimination laws provide additional protections beyond the federal American with Disabilities Act (ADA). ADA defines disability as physical and mental impairments that substantially limits one or more of the major life activities. FEHA is broader, defining disability as physical and mental impairments that limits one or more of the major life activities, but the limitation does not have to be **substantial** (Cal. Gov. Code § 12926.1(a)).
- The FEHA definition of disability includes both physical and mental disabilities.
 - “Physical disability” under FEHA includes having “any physiological disease, disorder, condition...or having record of such impairment, or being regarded as having or having had such an impairment that...limits a major life activity without regard to mitigating measure” (Cal. Gov. Code § 12926(k)).
 - “Mental disability” under FEHA includes “any mental or psychological disorder...that limit a major life activity, or having a history of such impairment or being regarded as having or having had such an impairment.” (Cal. Gov. Code § 12926(i)).
 - Working is considered a major life activity under FEHA (Cal. Gov. Code §§ 12926(k)(1)(B)(iii) & 12926(i)(1)(C)).
 - Mental and physical disability excludes disorders resulting from the current unlawful use of controlled substances or other drugs. (Cal. Gov. Code §§ 12926(i)(5) & 12926(k)(6)).
 - Unruh, which provides protection from discrimination by housing and public accommodations, mirrors the FEHA definition of disability.

II. California Fair Employment and Housing Act (“FEHA”)

- Q4.** In what areas of life does FEHA protect individuals from discrimination because of their disability?
- A4.** California’s Anti-Discrimination Acts extends to:
- Employment (FEHA)
 - Housing (FEHA and Unruh)
 - Public Accommodations
 - Public Service

Employment
California Fair Employment and Housing Act (“FEHA”)
Cal. Gov. Code § 12940 et. seq.

- Q5.** Who does FEHA protect from disability-based employment discrimination?
- A5.** FEHA’s employment provisions make it illegal for an employer covered by the law to deny employment to, or otherwise discriminate in employment against, an individual on the basis of physical or mental disability, unless: there is no reasonable accommodation that the employer can make that would allow the individual to perform his or her essential duties, or the individual is unable to perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations (Cal. Gov. Code §§ 12940(a), (a)(1) & (a)(2)).
- Q6.** What employers are covered by FEHA?
- A6.** FEHA defines “employer” as anyone regularly employing five or more persons, any person acting as an agent of an employer, directly or indirectly, and the state or any political or civil subdivision of the state and cities. “Employer” does not include a religious association or corporation not organized for private profit. (Cal. Gov. Code § 12926(d)). Courts have interpreted this to mean that religious nonprofit corporations are exempt while private nonprofit corporations are not.
- Q7.** Are all employees covered by FEHA?
- A7.** Generally all employees are covered by FEHA, except individuals employed by his or her parents, spouse or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility (Cal. Gov. Code § 12926(c)).
- Q8.** Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?
- A8.** Yes, in most respects, FEHA adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish:
- Definition of what constitutes unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment
 - Reasonable accommodation requirements
- Q9.** What types of reasonable accommodations should an employer expect to make for a person in treatment or otherwise in recovery from an alcohol or drug problem?

- A9.** Like the Federal laws, FEHA requires employers to make reasonable accommodations for employees with a disability. “Reasonable accommodations” include job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities (Cal. Gov. Code § 12926(n)).

Additionally, private employers are required to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program if this reasonable accommodation does not create an undue hardship on the employer (Cal. Labor Code § 1025). The employer is also required to make reasonable efforts to safeguard the privacy of the employee enrolled in such programs (Cal. Labor Code § 1026).

- Q10.** Can employers make inquiries about an applicant’s criminal history?

- A10.** Yes, employers may make inquiries about an applicant’s criminal history. However, employers may not ask about arrests or detention that did not result in conviction. (Cal. Labor Code § 432.7). This does not apply to certain employers who are permitted by statute to ask about arrests, for example, peace officers and certain healthcare industries where contact with patients and controlled substances is required.

Employment-related Medical Inquiries and Examinations

- Q11.** Are FEHA’s employment provisions regarding medical inquiries, examinations and drug and alcohol tests similar to those of the Federal laws explained in the *Know Your Rights* brochure?

- A11.** Yes, FEHA’s employment provisions regarding medical inquiries, examinations and drug and alcohol tests are substantially similar to the Federal laws.

Pre-employment Examination and Inquiries

Generally, employers are prohibited from requiring any medical or psychological examination of an applicant, or from making any medical or psychological inquiry of an applicant or inquiry as to whether the applicant has a disability (Cal. Gov. Code § 12940(e)(1)).

Employers may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant’s request for reasonable accommodation (Cal. Gov. Code § 12940(e)(2)).

However, employers are permitted to require a medical or psychological examination or make medical or psychological inquiry of an applicant after an

employment offer has been made, if it is job-related, consistent with business necessity and applied equally to all entering employees prior to the start of employment. (Cal. Gov. Code § 12940(e)(3)).

Employment Examinations and Inquiries

Generally, employers are prohibited from requiring any medical or psychological examination of an employee, or from making any medical or psychological inquiry of an employee or inquiry as to whether the employee has a disability after the commencement of employer duties (Cal. Gov. Code § 12940(f)(1)).

Employers may require any examinations or inquiries that it can show to be job-related and consistent with business necessity (Cal. Gov. Code § 12940(f)(2)).

Housing

Unruh Civil Rights Act (“Unruh”)

Cal. Civ. Code § 51 et. seq.

Fair Employment and Housing Act (“FEHA”)

Cal. Gov. Code 12955 et. seq.

Q12. Does California protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?

A12. Yes. Both California’s Unruh Civil Rights Act and the Fair Employment and Housing Act protections are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure.

The **Unruh Civil Rights Act** provides that:

- Individuals with a disability are entitled to full and equal access to all housing accommodations offered for rent, lease or compensation in California.
 - “Housing accommodations” includes any real property used as a home, residence or sleeping place for one or more human beings, but does not include any single-family residence in which the occupants rent, lease or furnish for compensation not more than one room therein (Cal. Civ. Code § 54.1(b)(2)).
- Any person renting, leasing or providing real property for compensation may not refuse to permit an individual with a disability, at that person’s expense, to make reasonable modifications of the existing rented premises if the modifications are necessary for full enjoyment of the premises (Cal. Civ. Code § 54.1(b)(3)(A)).
- Any person renting, leasing or otherwise providing real property for compensation must make reasonable accommodations in rules, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises (Cal. Civ. Code § 54.1(b)(3)(B)).

The **Fair Employment and Housing Act** makes it unlawful:

- For the owner of any housing accommodation to discriminate or harass any person because of disability of that person or to making inquiry concerning the disability of any person seeking to purchase, rent or lease any housing accommodation (Cal. Gov. Code §§ 12955(a), (b))
- For any person to indicate any preference, limitation or discrimination based on disability in their advertisement of the sale or rental of a housing accommodation (Cal. Gov. Code § 12955(c))
- For any financial institution that provides financial assistance for the purchase, organization or construction of any housing accommodation to discriminate against a person because of disability (Cal. Gov. Code § 12955(e))
- For any person to aid, abet, incite, compel or coerce any of the unlawful acts in this section (Cal. Gov. Code § 12955(g))

Public Accommodations
Cal. Civ. Code § 54 et. seq.

Q13. Does California’s anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations?

A13. Yes. Unruh prohibits disability-based discrimination by places of public accommodation (such as streets, highways, sidewalks, walkways, public buildings, medical facilities, public facilities, and other public places) and modes of transportation (Cal. Civ. Code §§ 54, 54.1). Anyone who violates the public accommodation provisions of Unruh is liable for the actual damages and any amount as may be determined by a jury or court, up to a maximum of three times the amount of actual damages, but in no case less than one thousand dollars (Cal. Civ. Code § 54.3).

III. Analyzing Discrimination Claims under California Law

While California’s anti-discrimination laws likely protect individuals from discrimination because of drug or alcohol problems, there are no reported court decisions directly applying California’s anti-discrimination laws to individuals with alcohol or drug problems.

IV. Remedies and Resources for Addressing Illegal Discrimination

Q14. What can I do if I think I have been discriminated against because of an alcohol or drug problem?

A14. In addition to the remedies under the federal anti-discrimination laws listed at the end of the *Know Your Rights* brochure, you may:

- File a complaint charging violations of California’s anti-discrimination laws with the Department of Fair Employment and Housing. Complaints for both employment and housing discrimination must be filed within one year from the date of the alleged discriminatory act. (Cal. Gov. Code § 12980 and 12989.1).
- After filing a complaint of employment discrimination with DFEH, two options are available. The DFEH may attempt to resolve the complaint through conciliation and an administrative hearing. Alternatively, the DFEH may issue a “right-to-sue” letter which allows the aggrieved person to file a lawsuit in an appropriate court. However, the aggrieved person must receive the “right-to-sue” letter before a court will hear the case. (Cal. Gov. Code § 12963.7, 12965).
- In cases of housing discrimination, an aggrieved person may file a lawsuit in an appropriate court without first filing a complaint with the DFEC. The complaint must be filed within two years of the discrimination. (Cal. Civ. Code § 55 and 55.1).

Remember: Employment discrimination claims under Federal law:

- If you intend to file an employment discrimination lawsuit under the ADA or Rehabilitation Act, you must first file a complaint with the U.S. Equal Employment Opportunity Commission within 180 days of the alleged discrimination.
- The San Francisco District Office of the U.S. EEOC is located at 350 The Embarcadero, Suite 500, San Francisco, California 94105., tel. (415)-625-5600, and is open Monday – Friday from 8:00am to 4:30p.m. Walk-in services are available Tuesday, Wednesday and Thursday. You can only file a lawsuit after receiving a “right to sue” letter from the EEOC. You may wish to check the EEOC website, www.eeoc.gov, for more information.