



Rights of Children with Disabilities in Child Care under 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 (“Unruh”) is a California civil rights law. Unruh guarantees full and equal accommodations, advantages, facilities, privileges, or services in all business establishments to all persons, regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation within California.¹ Unruh also incorporates the federal Americans with Disabilities Act (“ADA”) protections.² Therefore, child care providers cannot discriminate against a child or family based on any of the categories listed above.

2. Do child care providers have to comply with Unruh?

Yes. Unruh applies to all places of public accommodation and to all business establishments “of every kind whatsoever.”³ In most cases, child care providers are both places of public accommodation and business establishments.

3. What makes a child care provider a “place of public accommodation” or a “business establishment”?

A child care provider, whether a family child care or center, is a place of public accommodation because it holds itself out to the public as a business.

3. What places are considered business establishments?

Under Unruh, business establishments include commercial and noncommercial entities open to and serving the general public, without any type of membership screening.⁴

4. Are religiously affiliated child care programs also required to comply with Unruh?

Possibly. As defined by the law, all business establishments must comply, and only very few private organizations and clubs are not considered business establishments. Unruh contains the language “all business establishments of every kind whatsoever” to describe the broad scope of businesses to which the Act applies.⁵ An organization is not excluded from the scope of the Act simply because it is private or nonprofit.⁶ Therefore, a religiously affiliated child care program may be considered a business if it meets certain criteria. (See endnote for more details.)⁷

5. What disabilities are protected by Unruh?

Unruh protections are even greater than those provided by the ADA. Unruh protects six groups of persons with disabilities. They are:

- Persons with an **actual** physical, mental or psychological condition or disorder which limits a major life activity;⁸
- Persons with a **record or history** of a physical, mental or psychological condition or disorder which *limits a major life activity*;⁹
- Persons **regarded or treated**¹⁰ as having or having had a physical, mental, or psychological condition which *makes achievement* of a major life activity difficult;¹¹

- Persons **regarded or treated** as having or having had a physical, mental or psychological condition or disorder *which may become a mental or physical disability*;¹²
- Persons with any other physical, mental or psychological condition or disorder that **require special education or related services**.¹³
- Persons with a **medical condition**.¹⁴

6. What constitutes a “medical condition” protected by Unruh?

Unruh protections extend to persons with a medical condition. A medical condition is defined by California as:

- Any health impairment related to or associated with a diagnosis of **cancer** or a **record or history** of cancer;¹⁵ or
- “**Genetic characteristics**,” defined as a gene or chromosome, or inherited characteristics that are:
 - ✓ **known** to be a cause of a disease or disorder in a person or his/her offspring; or
 - ✓ that are determined to be associated with a **statistically increased risk of development** of a disease or disorder; and
 - ✓ that are **presently not** associated with any symptoms of any disease or disorder.¹⁶

Examples of medical conditions within the meaning of Unruh include: cancer,¹⁷ high blood pressure,¹⁸ AIDS,¹⁹ a respiratory disorder exacerbated by tobacco smoke,²⁰ and a heart condition.²¹

7. How does Unruh differ from the ADA?

Because Unruh’s definition of disability is broader than that of the ADA, Unruh protects more people than the ADA.

Unruh:

- Extends protections to persons with medical conditions;²²
- Only requires that a disability or medical condition *limit* a major life activity, rather than “*substantially limit*” as the ADA requires;²³
- Does not require a disability or medical condition to *presently* limit a major life activity in certain circumstances;²⁴
- Protects persons with disabilities regardless of mitigating measures, such as the use of glasses or medications.²⁵
- Working is considered a “major life activity” under Unruh, whereas the Supreme Court has not definitively decided this under the ADA.²⁶
- Unruh is enforced by the California Department of Fair Employment and Housing, whereas the ADA is enforced by the Federal Department of Justice.
- Unruh provides slightly different remedies than the ADA (see Question 13).

8. What does Unruh require of child care providers?

Unruh prohibits providers from discriminating against persons based on a disability or 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 integrate the child into their program. Once a provider understands the child’s needs, s/he must provide care for the child unless the needed accommodations are not “reasonable.”²⁷ (See the Child Care Law Center’s Questions & Answers about the Americans with Disabilities Act for Child Care Providers for specific ADA compliance requirements.)

9. What types of accommodations are reasonable?

Because Unruh incorporates the ADA, all of the primary types of accommodations established by the ADA are included in Unruh:

- Admissions policies that do not screen out or tend to screen out persons with disabilities;²⁸
- Changes in policies, practices, or procedures;²⁹
- Provision of auxiliary aids and services to ensure effective communication; and³⁰
- Removal of physical barriers in existing program facilities.³¹

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**;³²
- 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);³³ or
- In the case of the removal of barriers in an existing program, the accommodations would require **much difficulty or expense**.³⁴

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 do an individualized assessment of the child’s needs and the program’s ability to accommodate in order to determine what is reasonable.

10. 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.

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

These situations will be 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 mitigated by changing policies, practices or procedures.³⁵ It also includes situations where the accommodations needed would not be reasonable for the program to provide. (See question 9 above for the factors used to determine if an accommodation is reasonable).

12. Can I be sued by other parents for taking a child with a disability?

Not successfully. Only members of one of the protected classes may file a discrimination or retaliation suit under Unruh.³⁶ A high quality program should provide opportunities for parent education about the benefits for typically developing children and those with disabilities to be together in child care. It is also important to note that Unruh prohibits interference with any individual in the exercise of their right to be free from discrimination based on disability or medical condition. For example, a provider

could be sued if he/she excludes a child with a disability or medical condition at the request of another parent.³⁷

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. DFEH will:

- Investigate discrimination complaints; and may:
- Assist parties to voluntarily resolve complaints or
- File for a public hearing or lawsuit if there is enough evidence to establish a violation of the law.³⁸

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.

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 call their Community Care Licensing Child Care Advocate. For more information about your Child Care Advocate, visit the Community Care Licensing website at www.cclcd.ca.gov/ChildCareA_1796.htm. Parents with children in subsidized child care who believe their child or family has been discriminated against due to their child’s disability should contact the Department of Education at <http://www.cde.ca.gov/re/di/or/>.³⁹

For more information on ADA requirements, see the ADA Q&A for Child Care Providers or visit the Child Care Law Center’s website at: 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 5/10/06, 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

- **Call the Child Care Law Center** at **(415) 394-7144** if you would like information about child care legal issues. The Child Care Law Center (CCLC) is a national nonprofit legal services organization that uses legal tools to make high quality, affordable child care available to every child, every family, and every community. We are the only organization in the country devoted exclusively to the complex legal issues that affect child care. We also provide counsel and advice over the telephone. The following are examples of some of our legal services:
 - Answer legal questions regarding child care during our telephone intake hours: Monday, Tuesday and Thursday from 12p.m. to 3p.m PST.
 - Write many useful publications. 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.
 - We only provide legal representation in impact cases.
- **Contact the Department of Fair Employment and Housing** at (800) 884-1684 or (916) 227-0551; TTY (800) 700-2320. Website: www.dfeh.ca.gov.
- **Contact the Human Rights Commission** in your County for more resources: www.cahro.org/html/hrc_by_county.html.
- **Call Protection and Advocacy, Inc.**, a nonprofit corporation designated as California's system to protect and advocate for the rights of persons with disabilities, at (800)776-5746 or (916) 488-9955; TTY: (800) 719-5798. Website: www.pai-ca.org.
- **Contact Parent Training and Information Centers and Community Groups**, 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 or (952) 838-9000; TTY (952) 838-0190. Website at <http://www.taalliance.org/centers/region6.htm>.
- **Contact your local family resource center.** Internet search keywords: family resource center [insert type of disability].

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 2005).

² *Id.* at § 51(f) (West 2005).

³ Cal. Civ. Code § 51(b) (West 2005).

⁴ D’Lil v. Stardust Vacation Club, 2001 WL 1825832 (E.D.Cal.), 23 NDLR P 58 (holding that a timeshare resort was a business accommodation under Unruh because it operated as the functional equivalent of a hotel by allowing members of the general public to rent its rooms for a fee.”; Isbister v. Boys’ Club of Santa Cruz, 707 P.2d 212, 218 (Cal. 1985).

⁵ Cal. Civ. Code § 51(b) (West 2005).

⁶ O’Connor v. Vill. Green Owners Ass’n, 33 Cal. 3d 790, 795-796 (Cal. 1983).

⁷ Whether a religiously affiliated child care facility is subject to Unruh 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 Unruh 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 purposes and programs of 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 child care for a profit 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 (App. 2 Dist. 1995) 46 Cal.Rptr.2d 833, 40 Cal.App.4th 16.

⁸ Cal. Civ. Code § 51(e)(1) (West 2004); Cal. Gov. Code §§ 12926 (i)(1) and (k)(1) (West 2005).

⁹ *Id.*; Cal. Gov. Code §§ 12926 (i)(3) and (k)(3) (West 2005).

¹⁰ A “person regarded as having a disability” means someone who may not have a disability, but is regarded or treated by others as though he or she does have one.

¹¹ *Id.*; Cal. Gov. Code §§ 12926 (i)(4) and (k)(4) (West 2005).

¹² *Id.*; Cal. Gov. Code §§ 12926 (i)(5) and (k)(5) (West 2005).

¹³ *Id.*; Cal. Gov. Code §§ 12926 (i)(2) and (k)(2) (West 2005).

¹⁴ *Id.*; Cal. Gov. Code § 12926 (h) (West 2005).

¹⁵ *Id.* at § 51(e)(2); Cal. Gov. Code §§ 12926 (h)(1) (West 2005).

¹⁶ *Id.*; Cal. Gov. Code §§ 12926 (h)(2)((A)-(B) (West 2005). Emphasis added.

¹⁷ Cal. Gov. Code § 12926 (h)(1) (2005).

¹⁸ American National Ins. Co. v. Fair Employment & Housing Com., 651 P.2d 1151 (Cal. 1982).

¹⁹ Raytheon Co. v. Fair Employment & Housing Com., 261 Cal. Rptr. 197 (Cal. Ct. App. 1989).

²⁰ County of Fresno v. Fair Employment & Housing Com., 277 Cal. Rptr. 557 (Cal. Ct. App. 1991).

²¹ Angell v. Peterson Tractor, Inc., 26 Cal. Rptr. 2d 541 (Cal. Ct. App. 1994).

²² Cal. Civ. Code § 51(b) (West 2005).

²³ *Id.* at § 51(e)(1-2) (West 2005); Cal. Gov. Code §§ 12926(i)(1), (k)(1)(B) (West 2005).

²⁴ 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 2005). *See also* Goldman v. Standard Insurance Company, 341 F.3d 1023 (9th Cir. 2003). *See also* Cal. Gov. Code §§ 12926 (h)(2)((A)-(B) (West 2005).

²⁵ Cal. Civ. Code § 51(e)(1-2) (West 2005); Cal. Gov. Code § § 12926(i)(1)(A); (k)(1)(B)(i) (West 2005).

²⁶ Cal. Gov. Code § 12926 (i)(1)(C); (k)(1)(B)(iii) (West 2005).

²⁷ Id. at § 51(f) "...a violation of the right of any individual under the ADA shall constitute a violation of this section." (West 2005); 42 U.S.C.A. §12182. See also Footnote 28.

²⁸ Id.; 28 C.F.R. § 36.302 (2006).

²⁹ Id.; 28 C.F.R. § 36.302 (2006).

³⁰ Id.; 28 C.F.R. § 36.303 (2006).

³¹ Id.; 28 C.F.R. § 36.304 (2006).

³² 28 C.F.R. § 36.302 (2006).

³³ 28 C.F.R. § 36.303 (2006).

³⁴ 28 C.F.R. § 36.304 (2006). Note, although Unruh does not impose architectural requirements when making accommodations, the ADA does impose significant architectural requirements as does Title 24 of the California Building Code.

³⁵ See Alvarez ex rel. Alvarez v. Fountainhead, Inc., 55 F.Supp.2d 1048 (1999); Burriola v. Greater Toledo YMCA, 133 F.Supp.2d 1034 (2001).

³⁶ The ADA prohibits interference, coercion, or intimidation with any individual in their exercise or enjoyment of any right granted by the ADA. PL 101-336, 1990; 42 USCA § 12203, SEC. 503. Because a violation of the right of any individual under the ADA also constitutes a violation of Unruh, a cause of action for interference is implied under Unruh. Cal. Civ. Code § 51(f) (West 2005)

³⁷ Id.

³⁸ DFEH may litigate the case before the Fair Employment and Housing Commission, or in civil court. Damages may not exceed \$150,000 per complainant in front of the Fair Employment and Housing Commission. However, damages are unlimited in civil court. See DFEH-159 (04/04) Form, available at <http://www.dfeh.ca.gov/Publications/postersEmp.asp>.