




Fair Housing Part II Accommodating Disabilities

Presented by Kelly G. Richardson,
Esq.
April 10, 2024






Richardson Ober LLP 4-10-24

1

Disclaimer

- This is a presentation of suggested best practices for responding to and minimizing exposure to liability.
- Nothing in this presentation is meant to convey any promise that the concepts in the presentation will prevent liability or claims.
- When a claim arises, seek guidance from experienced and qualified legal counsel immediately.




Richardson Ober LLP 4-10-24

2

§12176 – Reasonable Accommodations

(a) It is a discriminatory housing practice for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be 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 ... undue financial or administrative burden or a fundamental alteration of its program, or ... would constitute a direct threat to the health and safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others...





Richardson Ober LLP 4-10-24

3

Disability Discrimination

- What is a disability?
 - A mental or physical impairment, disorder, or condition that limits a **major life activity**.
 - **Major life activities** include, but are not limited to, physical, mental, and social activities and working.
 - A record of having or being perceived as having a mental or physical disability.
 - Can be permanent or temporary

Richardson Ober LLP 4-10-24

4

It's all Confidential ! §12176(b)

(b) Confidentiality Regarding Reasonable Accommodations

(1) All information concerning an individual's disability, request for an accommodation, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation unless disclosure is:

- (A) Required to make or assess the decision to grant or deny the request for accommodation;
- (B) Required to effectively administer or implement the requested accommodation;
- (C) Authorized by the individual with the disability in writing; or
- (D) Required by law.



Richardson Ober LLP 4-10-24

5

Requests For Accommodation §12176(c)

- 1) The individual ... **must make a request** for such accommodation.
- (2) The request ... may be made by the individual ... a family member, or someone authorized ... to act on their behalf ("representative").
- (3) **A request for a reasonable accommodation need not be made in a particular manner or at a particular time.** An individual makes a reasonable accommodation request at the time they request orally or in writing, or through a representative, an exception, change, or adjustment to a practice because of a disability, regardless of whether the phrase "reasonable accommodation" is used as part of the request.
- (4) The duty to provide reasonable accommodations is an ongoing one. Some ... require only one reasonable accommodation, while others may need more than one.
- (5) Adopting a formal procedure may aid individuals with disabilities in making requests ... make it easier to assess those requests and keep records of the considerations given the requests. ... However, **a person may not refuse a request ... because the individual ... did not use the preferred forms or procedures.** ...
- (6) A person responsible for responding to accommodation requests must treat a request... for assistance in completing forms or in following procedures, or a request for alternative methods of communication ..., as a request for reasonable accommodations that must be responded to in the same manner as any other request....



Richardson Ober LLP 4-10-24

6

The Interactive Process §12177(a)-(f)

- o Try to figure out an accommodation (a)
- o If more information is needed, ask for it (b)
- o If the requested accommodation won't work, try to find a different one (c)
- o Be prompt in responding (d,e)
- o Failure to agree = denial. If requestor fails to give necessary information, denial is OK. If info provided later, request must be reconsidered (f)



Richardson Ober LLP 4-10-24

7

Establishing Necessity §12178(a)-(b)

[can ask for information about disability and necessity.]

"(a) If an individual ... makes a **request for an accommodation that provides reliable information about the disability and how the requested accommodation is necessary ...** then the person considering the request may not request any **additional information** about the individual's disability or the disability-related need for the accommodation. "

[unless it's obvious]

"(b) If the disability of the individual ... is apparent or known by the person considering the request, and it is also readily apparent or known how the requested accommodation is necessary ..., then ... may not request any additional information about the requestor's disability "



Richardson Ober LLP 4-10-24

8

Establishing Necessity §12178(c)(d)

[disability obvious but need for accommodation is not...]

"(c) If the disability is apparent or known, but the need for the requested accommodation is not readily apparent or known, then, the person considering the request may request only information that:

- (1) Describes the needed accommodation; and
- (2) Shows the relationship between the individual's disability and how the requested accommodation is necessary "

[disability not obvious...]

"(d) If the disability of the individual requesting an accommodation is not readily apparent to the person considering the request, the person may request only information that:

- (1) Is necessary to establish that the individual has a disability;
- (2) Describes the needed accommodation; and
- (3) Shows the relationship between the individual's disability and how the requested accommodation is necessary ... "

R | O

Richardson Ober LLP 4-10-24

9

§12178(e) – what you CAN'T ask ...

(e) A person considering a request for an accommodation may not seek information about:

- (1) ...particular diagnosis ...
medical condition, ...
severity of the disability,
medical records,
medical history,
other disability or medical issues unrelated to the request, or
other disability or health related information beyond the information identified in
subdivision (d) above.
- (2) Information unrelated to the inquiry in subdivision (d) above.

R | O

Richardson Ober LLP 4-10-24

10

Establishing Necessity §12178(f)

Who can document necessity -

"..any reliable third party who is in a position to know about the individual's disability or the disability-related need for the requested accommodation... including:

- (1) A medical professional;
- (2) A health care provider, including the office of a medical practice or a nursing registry;
- (3) A peer support group...
- (4) A non-medical service agency or person, including In-Home Supportive Services.. providers; or
- (5) Any other reliable third party who is in a position to know about the individual's disability... this could include a relative caring for a child with a disability, a relative... or others in a caregiving relationship..."

[So.... Just about anybody!]

R | O

Richardson Ober LLP 4-10-24

11

Denying Requests - §12179(a)

1. Requestor is not disabled
2. No disability-related need for accommodation
3. Accommodation would fundamentally alter services or operations of the responder
4. Accommodation imposes undue financial or administrative burden
5. Direct threat to health and safety of others, or cause substantial physical damage to property

R | O

Richardson Ober LLP 4-10-24

12

Denying Requests - §12179(d)

(d) A person cannot deny a request for a reasonable accommodation based on the person's or another individual's fears or prejudices about the individual's disability, nor can a denial be based on the fact that provision of a reasonable accommodation might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations.



Richardson Ober LLP 4-10-24

13

Responding to Accommodation Requests

Is an accommodation being requested?
 Is the disability obvious, or is documentation needed?
 Does the accommodation do any harm to anyone else in the complex?
 Is there any cost to the accommodation, is requestor agreeing to pay?
 Does accommodation relate to the disability, respond to the disability?
 Can the accommodation be restored after the need ceases?
 Is there a reasonably satisfactory alternative to the request?

Have you responded appropriately and in writing?
PURSUE AN INTERACTIVE PROCESS!!!



Richardson Ober LLP 4-10-24

14

Assistance Animals – def. §12005(d)

(d) "Assistance animal" means an animal that is necessary as a reasonable accommodation for an individual with a disability. . . . Assistance animals include service animals and support animals. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional support. . . .

(1) "Service animals" are animals that are trained to perform specific tasks . . . not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

- (A) "Guide dog," . . . trained to guide a blind individual or . . . with low vision.
- (B) "Signal dog," . . . trained to alert a deaf or hard-of-hearing individual. . . .
- (C) "Service dog," . . . other animal . . . trained to requirements of a disability.
- (D) "Miniature horses"
- (E) "Service animals in training,"

(2) "Support animals" are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.



Richardson Ober LLP 4-10-24

15

Assistance Animals – what can you ask?

12185(b)

"... The only permissible questions that can be asked of an individual to determine if the animal is a service animal are:

- 1) "Are you an individual with a disability?" and
- 2) "What is the disability-related task the animal has been trained to perform?" It is not permitted to ask the individual with a disability to demonstrate the task. "



Richardson Ober LLP 4-10-24

16

12185(c)(2) – no on-line “certs”

(2) A support animal certification from an online service that does not include an individualized assessment from a medical professional is presumptively considered not to be information from a reliable third party under section 12178(f). An individualized assessment means an assessment based on information that demonstrates that the individual has a disability, describes the needed accommodation (including the species of animal), and describes the relationship between the individual's disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity. A person provided with such a certification must provide an opportunity to the individual requesting the accommodation to provide additional information that meets the requirements of section 12178 before denying a request for reasonable accommodation.



Richardson Ober LLP 4-10-24

17

12185(d) – applies to ALL assistance animals:

- (1) An individual with an assistance animal may also be covered by other legal obligations relating to assistance animals, such as the American with Disabilities Act, ...;
- (2) ... individual with ... animal shall not be required to pay any pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance...;
- (3) ... Individual ... may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear;
- (4) ...individual may have more than one assistance animal. may consider whether the cumulative impact of multiple animals ...constitutes an undue burden ...;
- (5) No breed, size, and weight limitations may be applied to an assistance animal...;
- (6) Reasonable conditions may be imposed on the use of an assistance animal to ensure it is under the control of the individual ... or ...who may be assisting the individual ..., so long as the conditions do not interfere with the normal performance of the animal's duties.;
- (7) Animal vests, identification cards, or certificates are not... documentation of either disability or the need for a reasonable accommodation...;



Richardson Ober LLP 4-10-24

18

12185(d)(9) – denying animal requests

- (9) (A) ... an assistance animal may be denied if:
- (i) ...poses a direct threat to the health or safety of others that cannot be sufficiently mitigated ... or
 - (ii) ...would cause substantial physical damage to the property of others that cannot be sufficiently mitigated ...;
- (B) A determination that an assistance animal poses a direct threat ...must be based on an individualized assessment that relies on objective evidence that is sufficiently recent ..., about ...actual conduct, not on mere speculation or fear...
- (C) The assessment of whether ...animal poses a direct threat must consider:
- (i) The nature, duration, and severity of the risk...;
 - (ii) The probability that a direct threat ...will actually occur; and
 - (iii) Whether ...any reasonable accommodations ...will eliminate the threat
- (D) ...A dog that has been finally determined by a court ...a ... "potentially dangerous dog" or "vicious dog" pursuant to Food & Agric. Code section 31601 et seq. ...



Richardson Ober LLP 4-10-24

19

HUD assistive animal guidelines

Announced 1-28-20

Catching up to DFEH in some respects

New standards – “unique” animals

Does California property owner obey state regs or HUD regs?



Richardson Ober LLP 4-10-24

20