

Fair Housing Tip of the Month

Tip #12 – Smoking as a Reasonable Accommodation

“I’m a long-time smoker with multiple disabilities, and I live in public housing. It is difficult for me to get around because of my physical disabilities, so I’ve always smoked in my apartment. I know smoking isn’t a healthy habit, but I’ve tried to quit before and it’s only made my mental disabilities worse. Now I’ve been told that HUD banned smoking in all public housing and I won’t be able to smoke anywhere. Am I entitled to a reasonable accommodation?”

The law says: Many public housing authorities (PHAs) already have a smoke-free policy. HUD’s rule requires that all PHAs implement a smoke-free policy within 18 months of February 3, 2017, the date HUD’s rule went into effect. HUD’s rule requires that smoking be banned in units, common areas, and within 25 feet of the building. HUD suggests that, because the smoke-free policies are meant to improve air quality and health of residents, reasonable accommodations to smoke in the unit would not be granted. However, all reasonable accommodation requests are to be decided on a case-by-case basis. Accommodations that pose an undue financial or administrative burden or that constitute a fundamental alteration of the nature of the program would not be considered reasonable. Additionally, if the tenancy would pose a direct threat to the health or safety of others or result in substantial physical damage to the property of others, the PHA would not have to continue that tenancy, unless the threat can be eliminated or significantly reduced by reasonable accommodation.

What to do: You can still request an exception to your PHA’s smoke-free policy as a reasonable accommodation. You should have a letter from a treating professional to support your disability-related need for the exception to the smoke-free policy. Though the PHA will likely not grant such an accommodation, it should engage in an interactive process of negotiation to determine what alternatives, if any, can allow for your disability-related need to be met without posing an undue burden, fundamental alteration, or direct threat to health and safety of others.

If your landlord refuses to consider your request for reasonable accommodation or refuses to engage in an interactive process, you can file a complaint with a local fair housing agency, the California Department of Fair Employment and Housing (DFEH), or the federal Department of Housing and Urban Development (HUD).

To file a complaint with HUD, call [800-669-9777](tel:800-669-9777), or visit https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process

To file a complaint with DFEH, call [800-884-1684](tel:800-884-1684), or visit <http://www.dfeh.ca.gov/complaint-process/complaint-forms/>

Fair housing laws prohibit discrimination in housing based on the following characteristics: Race, religion, national origin, color, sex, marital status*, ancestry*, familial status, disability, sexual orientation*, source of income.*

*Indicates a prohibited basis for discrimination in California, but not under federal law.

Disclaimer: The Fair Housing Tip of the Month program is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.

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