

Rental Housing and Children



What is illegal discrimination against families with children?

Q: Is the following example a form of housing discrimination against children?

A single woman calls to inquire about an ad to rent a one bedroom apartment and tells the landlord she has an 8 year old daughter. The landlord tells her the apartment is only a one bedroom and children must have their own bedroom.

Answer: Yes. The landlord has just discriminated against this woman because she has a child. This constitutes familial status based housing discrimination.

Both Federal law (under the Fair Housing Act) and state law (under the California Fair Employment and Housing Act) protect families with children from being discriminated against in residential rental housing. Discrimination against families with children in rental housing includes refusing to rent, different terms or conditions (i.e., higher deposits/ rents or rules just for kids), and discriminatory advertising.

Illegal Discrimination means generally treating someone differently because that person belongs to what the law considers a protected class. Under California law this includes among other things the following as stated in California Government code section 12955 et seq.:

It shall be unlawful:

*(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, **familial status**, source of income, or disability of that person.*

The law pertaining to discrimination against families with children is based on the protected class as bolded out above of “familial status”. The term “familial status” includes a single parent with a minor and a person who is pregnant. For a more expanded definition of who is covered under the definition of familial status, see California Government code section 12955.2.

Examples of discrimination based on familial status:

An advertisement for an apartment reads: "Adults preferred". Unless the complex is designated as housing for "older persons" or "senior housing" as defined by the Department of Housing and Urban Development and California Civil code sections 51.2, 51.3 and 51.4, this advertisement would be considered discriminatory against families with children.

Another example is where a landlord tells a family with children (remember this includes single parents or a person who is pregnant) that the landlord only has an upstairs apartment available and does not want to have children living in an upstairs unit because children are too noisy. This would be considered illegal discrimination based on familial status. It is illegal to refuse to rent any portion of the complex to a family with children.

Discriminatory housing rules against children

In general an owner/ manager of rental housing should not make rules just for kids. The only exception to this general statement is when the rule for children is for health or safety reasons, to protect the children from danger and the rule is not too broad.

Examples of discriminatory rules against children

Rule:

No children less than 5 years allowed in the pool without an adult. This rule would be considered a reasonable health and safety rule and protects the child. But if the rule stated the following:

No children 17 years and under may be in the pool without an adult, then this rule would be considered too broad and exceeding any health and safety reasons. The American Red Cross has a training course to become a certified lifeguard and applicants only need to be at least 15 years old.

The law is murky as to absolute age requirements but the following guidelines would apply based on case law and California Code of Regulations regarding pool rules.

In one case (*United States v. M. Westland Co.* (C.D. Calif., No. CV 93-4141, 1994), a mobile home park owner enacted a set of rules prohibiting all minors from being outside without adult supervision including: playing in the streets, using the billiard room, shuffleboard facility, pool/ jacuzzi and other common areas. The court found that the rules requiring adult supervision for all minors were overly restrictive.

In so deciding, the court stated that the rules far exceeded any health and safety requirements under federal, state or local law. Although the court acknowledged there could be some restrictions for health and safety reasons, a blanket rule not allowing all children to play outside would be considered too broad and too restrictive. A landlord cannot require children to remain indoors.

Rules regarding adult supervision for children in pools based on California Code of regulations Title 22, Article Three, section 65539 states that children under the age of 14 should not use pool without an adult in attendance. Other than the above rule, the following guideline should be kept in mind regarding rules in rental housing for families with children.

Any rule targeted at children and not adults would be considered a form of familial based discrimination unless there is a reasonable health and safety reason for the rule. What is reasonable has to be decided on a case by case basis.

Another example: If an apartment complex had a rule which said all children under the age of 16 must be in their apartment by 8 p.m. or their parents may be evicted, would be considered a form of familial based discrimination because the rule only applies to children. Any rule which allows adults to do something or use some facility and does not allow children to do the same with or without supervision would be considered unreasonable, targeted at children and a form of discrimination against families with children.

If you are a family with a child/children and you feel you have been discriminated against please contact the Human Rights/ Fair Housing Commission at 916-444-6903 or visit our website at www.hrfh.org.