

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 13

Right to Assistive Technology from Public Entities

From a 17-Chapter Manual
Available by Chapter and in Manual Form

Third Edition, 2007

Written by:

DISABILITY RIGHTS CALIFORNIA

Copyright © 1995 by Disability Rights California

Prepared with funding provided through State Grants for Protection and Advocacy Related to Assistive Technology Program supported by funds from the Rehabilitation Services Administration, U.S. Dept. of Education, Grant # H343A070005B.

These materials are based on the laws and court decisions in effect at the time of publication. Federal and state law can change at any time. If there is any question about the continued validity of any information in this manual, contact Disability Rights California or a legal resource in your community.

(Blank Page)

DISABILITY RIGHTS CALIFORNIA, is a private, nonprofit organization that protects the legal, civil, and service rights of Californians who have disabilities. Disability Rights California provides a variety of advocacy services, including information and referral, technical assistance, and direct representation. For information or assistance with an immediate problem, call:

DISABILITY RIGHTS CALIFORNIA

Toll Free: (800) 776-5746

8:30 AM to 5:00 PM - Monday through Friday

Central Office

100 Howe Ave., Suite 185-N
Sacramento, CA 95825
Legal Unit - (916) 488-9950
Administration - (916) 488-9955
TTY – (800) 719-5798

San Diego Area Office

1111 Sixth Ave., Suite 200
San Diego CA 92101
(619) 239-7681
TTY – (800) 576-9269

Los Angeles Area Office

3580 Wilshire Blvd., Suite 902
Los Angeles, CA 90010
Tel. - (213) 427-8747
TTY - (800) 781-5456

Oakland Area Office

1330 Broadway, Suite 500
Oakland, CA 94612
Tel. - (510) 267-1200
TTY – (800) 649-0154

Disability Rights California receives funding under the Developmentally Disabled Assistance and Bill of Rights Act, the Protection and Advocacy for Mentally Ill Individuals Act, the Protection and Advocacy for Individual Rights Act, and the Assistive Technology Act of 1998. Any opinions, findings, recommendations or conclusions expressed in this publication are those of the authors and do not necessarily reflect the views of the organizations which fund Disability Rights California.

ACCESSING ASSISTIVE TECHNOLOGY

TABLE OF CONTENTS

Chapter 1	Introduction and Overview
Chapter 2	Advocacy Skills
Chapter 3	Private Health Benefit Plans
Chapter 4	Regional Centers
Chapter 5	California Children's Services
Chapter 6	Reasonable Accommodation in Employment
Chapter 7	Vocational Rehabilitation (Including Loan Programs)
Chapter 8	Social Security Work Incentives
Chapter 9	Special Education
Chapter 10	Medi-Cal
Chapter 11	Medicare
Chapter 12	Veterans Administration
Chapter 13	Right to Assistive Technology from Public Entities
Chapter 14	Right to Assistive Technology from Private Businesses
Chapter 15	Right to Assistive Technology in Higher Education
Chapter 16	The Protections of The Lemon Law for Buyers of Assistive Technology
Chapter 17	Resource Guide (with Table of Contents)
Acronyms & Abbreviations	
Glossary	

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 13

RIGHT TO ASSISTIVE TECHNOLOGY FROM PUBLIC ENTITIES

Table of Contents

Question	Page
1. What agencies do these laws cover?.....	6
2. How would I know if I am protected under these laws?	8
3. Which types of actions are discriminatory under the laws?	11
4. I need a special device in order to participate in a public program. How can I get it?.....	12
5. Who decides which type of assistive technology I can get?	13
6. Does a public agency have to provide a telecommunication device for the deaf (TDD)?.....	13
7. Does a public agency always have to provide assistive technology?	14
8. What does an agency have to do if it finds a “fundamental alteration” or an “undue burden?”	14
9. Does a public agency have to provide a personal device?	15
10. Can a public agency make me ask for an accommodation before I need it?15	
11. Do I have to provide proof of my disability to get an accommodation?.....	15
12. What do I do if the agency refuses to give me the accommodations I need, or discriminates against me because of my disability?.....	16
13. How do I file an internal grievance or appeal with a public agency?	16
14. When and how do I file a complaint with a federal agency?	16
15. How do I know which federal agency should handle my complaint?.....	17
16. When and where can I file a lawsuit?.....	18
ATTACHMENT TO CHAPTER 13.....	22

Sample Doctor’s Letter Supporting a Need for an Accommodation..... 23

Chapter 13

RIGHT TO ASSISTIVE TECHNOLOGY FROM PUBLIC ENTITIES

Federal and state laws guarantee the right of people with disabilities to participate in and receive the benefits of any public service to the same extent as other people. Public agencies that do not provide equal opportunities to people with disabilities are engaging in illegal discrimination.

Public agencies and programs you may be familiar with are: Medi-Cal, California Children's Services (CCS), California Department of Education, California Department of Motor Vehicles, California Department of Rehabilitation, state courts, school districts, city and county agencies, and public transportation.

The main laws that prohibit discrimination based on disability; and require equal opportunities for people with disabilities are:

- Section 504 of the Rehabilitation Act (Section 504);
- The Americans with Disabilities Act (ADA);
- California Government Code Section 11135;
- California's Unruh Civil Rights Act (Unruh Act); and
- California Civil Code Section 54.

1. What agencies do these laws cover?

Section 504

Section 504 prohibits discrimination based on disability in two types of public programs:

- Programs and activities conducted by federal agencies such as the Medicare program, the Social Security Administration and federal housing programs; and

- Programs and activities conducted by any agency that receives federal money. Most public programs receive, directly or indirectly, some form of financial assistance from the federal government.

The ADA

The ADA extends the prohibitions of discrimination based on disability to all public agencies whether or not they receive federal funds. Under the ADA, “public entity” means any state or local government; any department, agency, special purpose district, or other part of a state or local government; the National Railroad Passenger Corporation; and any commuter authority.

The ADA has five titles, like chapters in a book. Title II of the ADA says that public agencies cannot discriminate against people with disabilities in their programs, services, and activities. Besides setting out the specific obligations of public agencies, the ADA has a general requirement known as “program access.” Program access entitles people with disabilities to effective access to the services provided to others. This means that, even if it cannot furnish a benefit as the law requires, an agency must use equally effective alternatives to provide the benefit. For example, if a city provides services in an older building and the cost of making the building accessible is so high that the law excuses the city from making the changes, it must still provide the same services at another accessible location.

We will refer to a manual developed by the United States Department of Justice (DOJ) which explains the ADA’s requirements for public entities. We will cite to this manual as DOJ’s *Title II Tech. Assist. Manual*. If you would like to have a copy of this manual, contact the DOJ’s ADA information line at (800) 514-0301 (TDD: (800) 514-0383) and ask for the Technical Assistance Manual on Title II of the ADA.

Government Code Section 11135

California Government Code Section 11135 is a state law. It provides that no person in the State of California shall on the basis disability be denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Subsection (b) states that program and activities administered by or that receives financial assistance from the state must meet the protections and prohibitions of the ADA and Section 504, unless state law provides stronger protections. Government Code Section 11139 provides for injunctive relief for a violation of Section 11135.

The Unruh Act

The Unruh Act is a state law. It prohibits discrimination based on disability by any business establishment, which includes certain public agencies. The Unruh Act does not specifically provide for assistive technology. But, any violation of the ADA is also a violation of the Unruh Act. This is important since the state law provides remedies different from those under the ADA and Section 504. See Question 16 below for more information.

Civil Code Section 54

Civil Code Section 54 is a state law. It states that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, public buildings, medical facilities, public facilities, and other public places. Like the Unruh Act, Civil Code Section 54 incorporates the ADA. This is important since the state law, like the Unruh Act, provides remedies different from those under the ADA and Section 504. See Question 16 below for more information.

2. How would I know if I am protected under these laws?

To be protected by these laws you must meet two conditions. First, you must be qualified for the program or for the benefit. Secondly, you must have a legally recognized disability.

You are “qualified” if, with or without reasonable accommodations, you meet the basic eligibility criteria for participation. 28 C.F.R. § 35.104. For instance, to get a driver’s license, you must satisfy the safety and competency standards established by the DMV. If you have a disability that prevents you from passing the required practical and writing tests (even if you have reasonable accommodations), you will not qualify for a driver’s license.

You may meet the standard for a legally recognized disability in one of three ways:

- You have a physical or mental impairment that substantially limits one or more of your major life activities (such as learning, working, seeing, hearing, speaking, performing manual tasks, walking, breathing, and caring for yourself);¹ or

¹ In June, 1999, the United States Supreme Court issued a series of decisions that affect this part of the definition of “qualified individual with a disability”: *Sutton v.*

United Airlines, Murphy v. United Parcel Services, and Albertson's, Inc. v. Kirkingburg. These three cases limit who is protected by the ADA.

In these decisions, the Supreme Court held that the effects of any “mitigating measures” taken by the individual to reduce the impact of the disability must be considered when determining whether a person has a disability under the ADA. “Mitigating measures” are things used to control or reduce the effects of an individual’s disability. Some examples of mitigating measures include the use of medication, therapy, or assistive devices (like eye glasses, hearing aids or prosthetic limbs). In *Sutton*, the court held that two individuals with severe vision limitations were not disabled. The court reasoned that because their vision was 20/20 or better with eye glasses, they were not substantially limited in the major life activity of seeing. In *Kirkingburg*, the court found a truck driver with 20/200 vision in his left eye was not disabled. The *Murphy* case concerned a man with high blood pressure who used medication to lower his blood pressure. The court held that once Mr. Murphy took his medication, he was no longer a person with a disability under the ADA because his major life activities were no longer restricted.

In all these cases, the Supreme Court ruled that in deciding whether an individual is disabled, you should look at the person’s actual circumstances, with or without the use of mitigating measures. Thus, for example, if the person is taking medication, wearing eye glasses, or has a prosthetic device, you must consider that in deciding whether he or she is a person with a disability. On the other hand, if the person was not using any mitigating measures at the time of the alleged discrimination, then whether he or she is disabled should be decided without considering the use of the mitigating measure.

As a result of these decisions, many people will have a more difficult time showing a court that they meet the definition of “qualified individual with a disability” and are protected against discrimination by the ADA. The Supreme Court did **not** say in these cases, however, that using a mitigating measure automatically means that you are not a person with a disability. It only means that you have to look more carefully to see if the definition of disability is met.

Even if you use mitigating measures, you still may be a “qualified individual with a disability.” If you can show that the side effects of a medication or other mitigating measure themselves result in a substantial limitation on your major life activities, you may still be “disabled.” The courts also recognize that sometimes mitigating measures do not fully control the effect of the disability. For example, even with medication, a person with a bipolar disorder may still have symptoms on occasion, resulting in periods of substantial limitation. In some situations, you may

- You have a record of such an impairment (such as a disease that is in remission); or

also argue that you have a disability when there are legitimate obstacles to your use of the mitigating measure. For example, although therapy may be a mitigating measure, we believe the court should not consider it in a circumstance in which a person with a mental health condition is prevented from using the mitigating measure because his or her employer refuses to provide a flexible work schedule to attend therapy as a reasonable accommodation.

In addition, you could focus on other parts of the ADA definition of disability by showing that you were discriminated against because you have a record of having an impairment that substantially limits one or more major life activities, or because you are regarded as being substantially limited, even though you are not.

In 2002, the Supreme Court gave more guidance as to what constitutes disability under the ADA. In *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2002) the Court examined an assembly line worker's claim that she has an impairment that substantially limits her in the major life activity of performing manual tasks. Looking at the ADA's definition of disability, it said that "substantially" in the phrase "substantially limits" suggests "considerable" or "to a large degree" and thus precludes impairments that interfere in only a minor way with performing manual tasks. Impairments' impact must also be permanent or long-term. In addition, the Court stated that because "major" means important, "major life activities" refers to those activities that are "central to daily life." Under this ruling, an individual is disabled in performing manual tasks where she has an impairment that prevents or severely restricts her in performing tasks that are central to most people's lives. According to the Court, job-specific manual tasks do not fit into this category. Rather, household chores and caring for oneself are the type of tasks that are important in most people's lives. While this case arose in an employment context, the Court's decision applies to all disability determinations under the ADA.

In contrast to federal law, state law only requires a "limitation" of a major life activity rather than a "substantial limitation" of major life activity. See California Government Code § 12926.1(d). In addition, unlike federal law, state law does not take into account mitigating measures in determining whether a major life activity is limited by a disability unless the mitigating measure itself limits a major life activity. See California Government Code § 12926(i)(1)(A), (k)(1)(B)(i).

- Other people believe you have such an impairment (for example, you have scarring from severe burns, but have no impairments). 42 U.S.C. § 12102(2); 28 C.F.R. § 35.104; California Government Code § 12926.

3. Which types of actions are discriminatory under the laws?

The main purpose of these laws is to ensure that you have access to the same public programs, services and activities as others have. The laws say that public agencies cannot take any action that has the purpose or effect of denying you any right, privilege, advantage, or opportunity enjoyed by others. The ADA and Section 504 establish the following actions as discriminatory:

- Using eligibility criteria that might screen out qualified people with disabilities. 28 C.F.R. § 35.130(b)(8)
- Denying you the right to participate in, or benefit from, any benefit or service it provides to others. The agency must provide you benefits and services equal to those provided to others. They must give you equal opportunity to get the same result or benefits, or to reach the same level of achievement as others. 28 C.F.R. § 35.130(b)(1)
- Providing you different and separate benefits or services than are provided to others, unless such action is necessary to provide you with benefits or services that are as effective as those provided to others. 28 C.F.R. § 35.130(b)(1)(iv). The agency may not deny you the opportunity to participate in its regular programs. 28 C.F.R. § 35.130(b)(2). Moreover, the agency must administer its services, programs and activities in the most integrated setting appropriate to your needs; 28 C.F.R. § 35.130(d)
- Using criteria and methods of administration that deny you access to its programs and activities. 28 C.F.R. 35.130(b)(8). The phrase “criteria and method of administration” includes both the official written policies of the agency and its actual practices;
- Perpetuating discrimination against you by providing significant assistance to an agency that discriminates on the basis of disability in providing any benefit or service to applicants and beneficiaries of the agency; 28 C.F.R. § 35.130(b)(1)(v)

- Selecting sites that have the effect of excluding you, denying you benefits, or otherwise subjecting you to discrimination; 28 C.F.R. § 35.130(b)(4)(i)
- Using criteria that discriminates against you on the basis of disability in selecting contractors. 28 C.F.R. § 35.130(b)(5); and,
- Discriminating against you on the basis of disability in granting licenses and certifications. 28 C.F.R. § 35.130(b)(6).

4. I need a special device in order to participate in a public program. How can I get it?

To make sure its programs and activities are fully accessible to you, a public agency must provide you with appropriate accommodations. One way to accommodate you is to provide assistive technology. This may include any device that enables you to overcome your disability so that you can participate in the program or activity. The ADA and Section 504 do not use the term “assistive technology.” Instead, they use terms such as “auxiliary aids for effective communication and modification to policies, practices and procedures.”

Auxiliary Aids

Public agencies must communicate with applicants and participants with disabilities as effectively as they communicate with others. 28 C.F.R. § 35.160(a). To do so, if necessary, these agencies must furnish auxiliary aids and services. 28 C.F.R. § 35.160(b)(1).

Auxiliary aids and services are a wide range of services and devices such as:

- Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed captioned decoders, open and closed captioning, telecommunications devices, Videotext displays, etc.;
- Qualified readers, taped texts, audio recordings, brailled materials, large print materials, etc.;
- Acquisition or modifications of equipment or devices; and

- Other similar services and actions. 28 C.F.R. § 35.104.

Reasonable Modifications

Public agencies must make reasonable modifications to their policies, practices, and procedures when necessary to afford equal treatment to people with disabilities. For instance, an agency may have to change its procurement policy to be sure any computer equipment it buys is accessible.

Public agencies cannot make you pay for the actions they take to accommodate you. 28 C.F.R. § 35.130(f).

5. Who decides which type of assistive technology I can get?

Most public agencies have an ADA or Section 504 coordinator who can tell you about the process for requesting accommodations. You and the agency should work together to find the right accommodation.

Public agencies must, however, consider your requests first. 28 C.F.R. § 35.160(b)(2). They must honor your preference unless they can show that an equally effective accommodation exists. See DOJ's *Title II Tech. Assist. Manual*, Section II-7.1100. For example, if you ask for information in Braille instead of audio tapes, the agency should honor your preference for Braille unless they can show that an equally effective accommodation exists.

You should make your accommodation request in writing. Identify yourself as a person with a disability, describe how your disability affects your participation in the program, and set out the specific accommodations (including assistive technology) you need. Your request should also specify a date by which you expect an answer to your request.

6. Does a public agency have to provide a telecommunication device for the deaf (TDD)?

Agencies that communicate with the public by telephone must provide TDDs, or use equally effective telecommunication systems to communicate with people who have impaired hearing or speech. 28 C.F.R. § 35.161. Generally, they can meet this requirement by using relay services. See DOJ's *Title II Tech. Assist. Manual*, Section II-7.2000.

If an agency has telephones for public use, it must also make TDDs available for people who have impaired hearing or speech. For example, a city that provides telephones for public use at its airport, must also install TDDs at the same location. See the Access Board's *Americans with Disabilities Accessibility Guidelines (ADAAG)*, § 4.1.3(17)(c)(i).²

7. Does a public agency always have to provide assistive technology?

No. A public agency does not have to provide assistive technology when it would:

- Fundamentally alter the nature of the program, or
- Create an undue financial or administrative burden.

Fundamental Alteration of a Program

A “fundamental alteration” is one that is so great that it changes the essential nature of the service or program. See generally, DOJ's *Title III Tech. Assist. Manual*, Section III-4.3600.

Undue Financial Burden

An “undue burden” is a significant difficulty or expense on the public agency. 28 C.F.R. § 36.104. To determine whether providing assistive technology creates an undue financial burden, the agency must consider every aspect of its funding and operations.

8. What does an agency have to do if it finds a “fundamental alteration” or an “undue burden?”

When an agency finds that providing the assistive technology you need would fundamentally alter the program, or would create an undue financial burden, it

² Whether a TDD is required to be installed where public phones are located can also depend on when the building in question was constructed. For example, under the ADA, a public entity need only comply with the ADAAG accessibility requirements if the building in question was designed, constructed, or altered by January 26, 1992. See 28 C.F.R. § 35.151. However, public entities still must ensure that their programs are accessible. Thus, a public entity might be required to make a TDD available to ensure program accessibility even though the building in question was built before January 26, 1992.

must provide you with an alternative, if one exists, that would not result in an alternation or burden. The alternative must ensure that, to the maximum extent possible, you can participate in or receive its programs and services. 28 C.F.R. § 35.164.

Under the ADA, if a *public* agency decides that an action would result in a fundamental alteration or an undue burden, the decision must be made by the head of the agency. A written statement of the reasons for reaching the conclusion must accompany the decision. 28 C.F.R. § 35.164.

9. Does a public agency have to provide a personal device?

No.³ Public agencies do not have to provide individually prescribed devices, or other devices of a personal nature. 28 C.F.R. § 35.135. Personal devices are those items that you use regardless of your participation in a public program. Examples include wheelchairs, durable medical equipment, prosthetic devices, etc. Many of these items, however, are available as health benefits under public health insurance plans (including Medi-Cal and CCS.) Beneficiaries of these programs are entitled to these devices if they are eligible.

10. Can a public agency make me ask for an accommodation before I need it?

Yes. An agency can ask you to request an accommodation a reasonable time before you will need the accommodation so the agency can make appropriate arrangements. In court proceedings, (including mediation, arbitrations and administrative hearings), you must follow established procedures to ask for the device or assistance you need. For instance, if you have a hearing impairment you may request an assistive listening device or computer-aided transcription system. You must, however, give five days advance notice of your need. Cal Civ Code § 54.8(a). See PAI's publication *Access to the Courts*.

11. Do I have to provide proof of my disability to get an accommodation?

You might. Public agencies only have to accommodate known disabilities. If your disability is not obvious, or the agency cannot verify your disability because it

³ The DOJ's *Title II Tech. Assist. Manual*, Section 3.6200 does, however, state: Of course, if personal services or devices are customarily provided to the individuals served by a public entity, such as a hospital or nursing home, then these personal services should also be provided to individuals with disabilities.

communicates with you only by phone, it may ask for proof of your disability. To show that you are entitled to accommodation, it is best to get a letter from a medical professional who is familiar with you and your disability. See Question 16 of Chapter 15 in this manual for suggestions on what your letter should say.

12. What do I do if the agency refuses to give me the accommodations I need, or discriminates against me because of my disability?

If a public agency refuses to provide you with the accommodations you need, or discriminates against you because of your disability, you can:

- File an internal grievance or appeal with the public agency;
- File a complaint with the federal agency that has authority over the agency; or
- File a lawsuit.

13. How do I file an internal grievance or appeal with a public agency?

If you want to file an internal grievance, you should talk to the ADA or Section 504 coordinator to find out what the agency's grievance process is. You should file your internal grievance as soon as possible. You do not have to file an internal grievance before you file a complaint with the federal agency that has authority over the agency.

14. When and how do I file a complaint with a federal agency?

You may file a complaint with the federal agency that has authority to oversee the public agency's compliance with the ADA. 28 C.F.R. § 35.170(a), (c). The federal agency must receive your complaint no later than **180 days** from the date of the alleged discrimination. 28 C.F.R. § 35.170(b). If you don't know which federal agency to file with, you can file with the United States Department of Justice (DOJ). The DOJ will forward your complaint to the appropriate federal agency.

To file a complaint, send a letter to the DOJ that includes:

- Your full name, address, and telephone number;
- The name of the party discriminated against if you are filing on someone else's behalf;

- The name of the agency that you believe discriminated against you;
- A description of the discrimination;
- The dates that the discrimination took place;
- The names of the people who you believe discriminated against you; and
- Any other information that you believe necessary to support your complaint.

The address for the Department of Justice is:

Disability Rights Section
 Civil Rights Division
 U.S. Department of Justice
 Post Office Box 66738
 Washington, D.C. 20035-6738

15.How do I know which federal agency should handle my complaint?

The appropriate federal agency is the one that has jurisdiction over the agency that discriminated against you. The following list shows which federal agencies have jurisdiction over different areas:

- Department of Agriculture: Farming and raising livestock, including extension services.
- Department of Education: Education systems, institutions (other than health-related schools) and libraries.
- Department of Health and Human Services: Schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, (including “grass-roots” and community services organizations and programs); and preschool and day care programs.
- Department of Housing and Urban Development: State and local public housing, housing assistance and housing referral.

- Department of Interior: Lands and natural resources, parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.
- Department of Justice: Public safety, law enforcement, administration of justice (including courts and correctional institutions); commerce and industry (including banks and finance, consumer protection, and insurance); planning, development, and regulation (unless otherwise assigned); state and local government support services; and all other government functions not assigned to other agencies.
- Department of Labor: Labor and the work force.
- Department of Transportation: Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver's licensing.

16. When and where can I file a lawsuit?

From the moment you experience discrimination you have the right to file a lawsuit in court. You do not have to file a grievance with the public agency or file a complaint with a federal agency before you file a lawsuit.. You can go to court even if the federal agency finds no discrimination. It is a good idea to have an attorney represent you in court, although you can represent yourself.

Keep in mind that all court actions have very strict timelines, called “statutes of limitations” within which they must be filed. Court actions under the ADA, Section 504, and state disability statutes for discrimination on the basis of disability by a public agency may have a statute of limitations as short as two years⁴ within of the date of discrimination. This timeline may be even shorter if you are seeking money damages. If you are at all considering going to court, you should consult an attorney immediately to determine the specific deadlines applicable to the type of lawsuit you plan to bring.

4 Courts have differed whether a two or three statute of limitations period applies to ADA, Section 504, and Unruh Act claims. *See generally, KS v. Fremont Unified School District*, 2007 WL 915399 (N.D. Cal. 2007) (slip copy) (discussing split of authority of applicable limitations period for ADA and Unruh Act claims).

If you are injured by a public entity and want to sue for money damages, you must first file a claim meeting the requirements of the California Tort Claims Act. California Government (Gov't) Code sections 810-996.6. With very limited exceptions, no lawsuit for money damages may be brought against a governmental entity unless a written claim has been properly filed under the Tort Claims Act. Claims must be filed within six months of your injury.⁵ Even if you are injured by the government and do not currently intend to sue, you should still consider filing a claim in order to protect your rights and to keep your options open.⁶

The Unruh Act states that a violation of the ADA is also a violation of the Act. California Civil Code § 51(f). If you win, you will be entitled to \$4,000, or three times your actual monetary loss, whichever is greater, **and** attorneys fees.⁷ California Civil Code § 52(a). Similarly, a Civil Code Section 54 also states that a violation of the ADA is also a violation of that section. *See* Cal. Civ. Code § 54(c). If you win, you will be entitled to \$1,000, or three times your actual monetary loss, whichever is greater, **and** attorneys fees. Cal. Civ. Code § 54.3(a). A plaintiff cannot recover for a violation of both Civil Code Section 52 and Civil Code Section 54.3. *See* Cal. Civ. Code § 54.3(c).

If you want damages in an amount less than \$5,000, you can file a complaint in small claims court. California Civil Code § 52.2; Code of Civil Procedure § 116.220. Small claims courts have jurisdiction only over monetary claims so you cannot get an order providing you with assistive technology. Attorneys cannot appear in small claims courts. No person may file more than two small claims

⁵ *See* Disability Rights California's publication *Filing Claims Against the Government Under the California Tort Claims Act*.

⁶ *See* Disability Rights California's publication *Filing Claims Against the Government Under the California Tort Claims Act*.

⁷ Courts have differed regarding whether a plaintiff is required to show intentional discrimination to recover statutory damages under the Unruh Act. *Compare Gunther v. Lin*, 144 Cal.App.4th 223, 50 Cal.Rptr.3d 317 (2007) (finding that plaintiff was required to show intentional discrimination to recover statutory damages under the Unruh Act), *with Wilson v. Haria and Gogri Corp.*, --- F.Supp.2d ----, 2007 WL 851744 (E.D. Cal. Mar 22, 2007) (declining to follow *Gunther*). However, we are aware of no court requiring a showing of intentional discrimination to recover statutory damages under Civil Code Section 54. *See id.*

actions in which the amount demanded exceeds \$2,500 anywhere in the state in any calendar year. California Code of Civil Procedure § 116.231.

(Blank Page)

ATTACHMENT TO CHAPTER 13

Sample Doctor's Letter Supporting a Need for an Accommodation

To Whom It May Concern:

[*Your name*] is my patient and has a disability that causes functional limitations.

[*Your name*] has the following functional limitations: [*Your doctor should list your limitations here that apply to your ability to participate in the public program or activity. Example: has limited reach or must use a wheelchair to get around.*]

[*Your name*] may be accommodated for his/her disability in the following way:

[*Your doctor should list the accommodations you need here.*] Example: by using accessible buildings and equipment which he can reach and use effectively.

Sincerely,

Your Doctor