



California's protection & advocacy system
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How to Get a Private Business to Provide Assistive Technology

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1. What Laws apply to Private Businesses?

There are generally two federal laws and two state laws that may require private businesses to provide you with assistive technology. The federal laws are:

- The Americans with Disabilities Act (ADA)
- Section 504 of the Rehabilitation Act (Section 504)

The state laws are:

- The Unruh Civil Rights Act (Unruh Act); and
- California Civil Code Section 54

Federal Laws

1. Section 504 of the Rehabilitation Act (Section 504)

Section 504 prohibits disability-based discrimination in programs and activities provided by federal agencies, and other agencies that receive federal funds. This includes providing effective access to public programs, and providing people with disabilities reasonable modifications of policies, practices and procedures as necessary to allow them to use public services.

2. The Americans with Disabilities Act (ADA)

Title III of the ADA prohibits disability-based discrimination by public accommodations, which are private businesses that are open to the public. This provision has been interpreted to provide the same protections as Section 504. Places of public accommodation are private businesses open to the public, and include places like hotels, restaurants, theaters, auditoriums, stores, banks, service businesses, hospitals, doctors' offices, transportation depots, museums, zoos, private schools, day care centers, and health clubs.

State Laws

The Unruh Act and Civil Code Section 54 are California state laws that prohibit private businesses from discriminating against people with disabilities, and provide different remedies from those available under the ADA and Section 504.

1. The Unruh Civil Rights Act (Unruh Act)

The Unruh Act prohibits disability-based discrimination by any business establishment. Violations of Section 504 and the ADA will also violate the Unruh Act. Unruh Act, Cal. Civ.Code §§ 51, *et seq.*

2. Disabled Persons Act, California Civil Code Section 54

Civil Code Section 54 gives individuals with medical conditions and disabilities the same right as the general public to benefit from a businesses' services or products. Violations of Section 504 and the ADA will also violate California Civil Code Section 54. Civil Code Section 54 and its related sections cover medical facilities, all common carriers (airplanes, trains, buses, etc.), telephone facilities, adoption agencies, private schools, lodging places, places of public accommodation, and other places to which the general public is invited. Disabled Persons Act, California Civil Code § 54, *et seq.*

2. Who is Protected from Discrimination by Private Businesses?

Under both federal and state definitions of disability, most people with a physical or mental impairment that causes limitations will be protected. The federal and state law definitions of disability are below.

Federal Law

Title III of the ADA protects individuals with disabilities from discrimination by private businesses. Under the ADA, disability means:

1. Having a physical or mental impairment that substantially limits one or more of your major life activities (such as personal care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working).
 - a. This includes limitations of major bodily functions (such as the immune system, normal cell growth, digestive, bowel, bladder, brain, respiratory, brain, circulatory, endocrine, and reproductive functions); or
2. Having a record of such an impairment (such as a condition in remission); or
3. Being regarded as having such an impairment (such as a person who has severe burns but has no impairments).

42 U.S.C. § 12102(2); 28 C.F.R. § 36.104.

State Law

In contrast to federal law, state law only requires a “limitation” of a major life activity rather than a “substantial limitation” of a major life activity. California Government Code § 12926.1(d) California Government Code §§ 12926(j)(1)(A), (m)(1)(B)(i).

3. What types of discrimination do these laws prohibit?

These laws prohibit private businesses from discriminating against people with disabilities. This includes taking actions, or refusing to take appropriate actions, that have the purpose or effect of denying individuals with

disabilities the enjoyment of any right, privilege, advantage, or opportunity enjoyed by individuals without disabilities. Some of these provisions include:

1. Using eligibility criteria that might screen out qualified people with disabilities. 28 C.F.R. § 36.301;
2. Denying you the full and equal enjoyment of the goods or services of a private entity. This includes failing to provide aids, benefits and services that give you equal opportunity to obtain the same result, gain the same benefits, or reach the same level of achievement as students without disabilities. 28 C.F.R. § 36.201(a);
3. Providing you with different or separate benefits or services than are provided to others, unless that is necessary to effectively provide the benefits or services to you. 28 C.F.R. § 36.202(b);
4. Failing to administer services, programs and activities in the most integrated setting appropriate to your needs. 28 C.F.R. § 36.203;
5. Using criteria and methods of administration that deny you access to public programs and activities. 28 C.F.R. § 36.204;
6. Perpetuating discrimination by providing significant assistance to any agency that discriminates on the basis of disability. 28 C.F.R. § 36.204; and
7. Retaliating against you for enforcing your rights. 28 C.F.R. § 36.206.

4. When does a private business have to provide me with assistive technology?

A private business must provide you with assistive technology that allows you to participate in its services or programs if the technology: 1) is an “auxiliary aid or service” that allows you to communicate effectively; or 2) is a reasonable modification to the businesses’ policies, procedures or practice, unless that modification constitutes an undue financial burden or a fundamental alteration of the public program. 28 C.F.R. § 36.303. Private businesses must also provide auxiliary aids and services when necessary to make sure that people with disabilities have an equal opportunity to

benefit from their goods and services. However, a private business does not have to provide assistive technology if it is a “personal device” that you would use outside of the business.¹

Auxiliary Aids and Services

Private businesses must give qualified people with disabilities the appropriate “auxiliary aids and services” to enable them to communicate effectively in applying for or participating in a public program. 42 U.S.C. § 12182(b)(2)(iii), 28 C.F.R. § 36.303.

Examples of auxiliary aids and services are:

1. Qualified interpreters, note takers, transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices. Telephones compatible with hearing aids; open and closed captioning, telecommunications devices; videotext displays, etc.;
2. Qualified readers, taped texts, audio recordings; Brailled materials, large print materials, etc.;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

Some technologies that may qualify under this section include JAWS screen reading software, ZoomText, Dragon Naturally Speaking voice recognition software, and CART (Captioned Audio Realtime Transcription). This may also include some other technology to aid communication.

In determining what auxiliary aids and services are necessary, a private business must give primary consideration to the individual’s request. The entity must provide the aids and services in accessible formats, in a

¹ For more information, see U.S. Department of Justice, *Effective Communication*, at <http://www.ada.gov/effective-comm.htm>

timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

Private businesses that communicate with the public by telephone must provide telecommunication systems to communicate with people who have hearing or speech disabilities. 28 C.F.R. §36.303. These may include TTY (text telephone), video remote relay, VRI (video remote interpreting), videophones and similar devices.

Private businesses must also provide auxiliary aids and services when necessary to make sure that people with disabilities have an equal opportunity to benefit from their goods and services. 42 U.S.C. § 12182(b)(2)(iii). This can include providing materials in alternative formats like electronically or in Braille, providing software such as Zoom-Text or JAWS screen-reading software on public computers, or by providing some other technology to aid communication. Providing assistive technology is one of the ways private businesses can assist you.

Reasonable Modifications

Private businesses must make reasonable modifications to their policies, practices, and procedures when necessary to afford equal treatment to people with disabilities. 28 C.F.R. § 36.302.

The individual with a disability has the responsibility to request a reasonable modification, and may be required to provide medical support that the individual has a disability-related need for the modification. The medical support does not have to indicate the nature of the disability. It only has to indicate the limitations that result from the disability and, if possible, suggest reasonable modifications or assistive technology devices that may help provide access. If a reasonable modification is granted, the business must pay for it.

5. How Can I Request Assistive Technology From a Private Business?

We recommend you make your request for assistive technology in writing, explaining: 1) that you are a person with a disability (although you do not need to disclose what the disability is); 2) the ways in which your disability affects your ability to benefit from the businesses services

or products; 3) the specific accommodations that you need, including AT; and 4) the date by which you would a response to your request.

6. Do I Have to Provide Proof of My Disability In Order to Get Assistive Technology From a Private Business?

You might have to provide proof that you have a disability, but you should not have to provide the name of the disability, just the limits that it causes. This information may be necessary if the need for the assistive technology is not obvious as private businesses are only required to provide reasonable modifications, including auxiliary aids and services, for known disabilities. If your disability is not obvious or if the private entity cannot verify your disability because it communicates with you only by phone, it may request proof of your disability and need for a reasonable modification. To show that you are entitled to a reasonable modification, you may need to get a letter from a medical or other professional who is familiar with you and your disability and any desired reasonable modifications or accommodations.

7. What Types of Assistive Technology Can I Get From a Private Business?

Assistive technology includes any equipment, system, or service that helps you access the services of the business. These are often also called auxiliary aids and services under the law. Examples of assistive technology include ramps, amplifiers, open or closed captions, assistive listening devices, videotext displays, and alternative communication systems.

Private businesses do not have to provide individually prescribed devices, or other devices of a personal nature, such as wheelchairs, durable medical equipment, hearing aids, or prosthetic devices. There are some exceptions to this rule, for instance, an entity putting on a conference at a convention center may have to provide assistive listening devices for individuals who are hard of hearing.

Finding the right accommodation, technology, or device to enable you to equally enjoy the business's goods or services should involve an interactive process between you and the private business, in which you both discuss various options. Your request should get primary

consideration, but ultimately the business can choose among various alternatives as long as the result is effective in providing access.

8. When Does a Private Business Not Have to Provide Assistive Technology?

Federal Law

Under the ADA, a private business does not have to provide assistive technology when it would fundamentally alter the nature of the business, or create an undue financial burden. A fundamental alteration is a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, and accommodations of the business. Such situations are rare. An undue burden means a significant difficulty or expense for the business, taking into consideration the business's resources, and the impact of the proposed accommodation on the business's resources, operations, and safety considerations. 28 C.F.R. § 36.104. Businesses also do not have to provide assistive technology if the individual or the technology pose a direct threat to the health and safety of others. 28 C.F.R. § 36.208.

If a private business determines that providing an accommodation would fundamentally alter its business, create an undue burden, or pose a direct threat, it must provide you with an alternative for the assistive technology or reasonable modification, if one exists, that would not result in a fundamental alteration, direct threat, or undue burden.

State Law

Under state law, Section 54 and the Unruh Act do not specifically include the undue burden and fundamental alteration defenses. Any violation of the ADA will also be a violation of state law as state law is broader than the ADA.

9. Can a Private Business Charge Me a Fee for Assistive Technology?

No. A private business cannot impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to

cover the costs of auxiliary aids or reasonable modifications to policies, practices, or procedures. 28 C.F.R. § 36.301.

10. What Can I do if a Private Business Denies My Request for Assistive Technology?

Generally, there are three things that you can do if a private business does not provide you with assistive technology: file an administrative complaint with the United States Department of Justice (for Federal law violations), file an administrative complaint with the California Department of Fair Employment and Housing (for state law violations), or file a private lawsuit. An administrative complaint is not the same as a lawsuit. You may file administrative complaints or a lawsuit without an attorney, but contacting an attorney before filing is recommended, particularly in regards to time limitations for filing.

Federal Law Violations – Administrative Complaint

To make a complaint for a violation of the ADA or Section 504 against a private business you can file a complaint with the Department of Justice. You may file by mail or fax as follows:

1. Write a letter to:
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530
2. Fax a letter to: (202) 307-1197

Additional information about filing ADA complaints with the Department of Justice, including the type of information you should include in your complaint and the amount of time you have for filing, is available at the Department of Justice's Website:

http://www.ada.gov/fact_on_complaint.htm.

State Law Violation – Administrative Complaint

You can pursue a claim under the Unruh Act or Section 54 by filing a complaint with the California Department of Fair Employment and Housing (DFEH). You must file your DFEH complaint within one year of the discriminatory act. You may file online, by telephone, or by mail as follows:

1. Use DFEH's online system at <http://houdiniesq.net/dfeh/intake/>
2. Call DFEH's communication center at (800) 884-1684. If you have a hearing impairment, you may call (800) 884-1684 or TTY at (800) 700-2320.
3. Request a pre-complaint inquiry form or access one online at <http://www.dfeh.ca.gov/res/docs/PCI/Pre%20Complaint%20Inquiry%20-%20DPA.pdf> and mail it to any of DFEH's office locations.
4. E-mail the pre-complaint inquiry form to contact.center@dfeh.ca.gov

Additional information about filing DFEH complaints, including the type of information you should include in your complaint and the amount of time you have for filing, is available at http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm.

Filing a Lawsuit

You do not need to file a complaint with any of the agencies listed above. You can go ahead and file a lawsuit. Under state and federal law, claims should be filed in court within two years of the date of the discriminatory act.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.

11. What are some resources?

Resources

1. http://www.dds.ca.gov/AT/at_network.cfm (California Assistive Technology Network - The Department of Rehabilitation, in conjunction with Assistive Technology (AT) users, AT providers and state agencies, coordinates California's efforts to expand and improve access to AT under the Tech Act of 1993. AT Network primary mission is to:
 - a. Reduce barriers people with disabilities often face in obtaining AT.
 - b. Promote increased public awareness of what AT can do for people with disabilities.
 - c. Develop strategies to decrease duplication among state agencies and other helping organizations.

AT Network maintains a database of AT resources and providers in California, and can help locate sources of AT for specific disabilities. Referrals are made to groups that provide guidance about AT and to potential AT funding sources.

2. California Independent Living Centers. For a list of independent living centers by county, please see:
<http://www.rehab.cahwnet.gov/ILS/ILC-List.html>.
3. www.Askjan.org – While this federal government website is designed for employment situations it also has good information on assistive technology resources.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightscalifornia.org/Documents/ListofGrantsAndContracts.html>.