

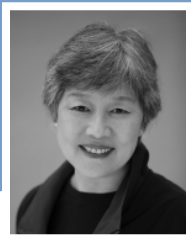
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THE UNRUH CIVIL
RIGHTS ACT
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SPECIAL UNRUH CIVIL RIGHTS ACT ANNIVERSARY ISSUE



MCLE Self-Study Credit
in Elimination of Bias:

The Unruh Civil Rights Act at 60

By Phyllis W. Cheng

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All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations,

advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.¹

The Unruh Civil Rights Act,² enacted in 1959³ and named for its author, Jesse M. Unruh,⁴ regulates equal accommodations for all types of business establishments. This year, the Unruh Act celebrates its 60th anniversary.⁵ This article discusses the historical context, current

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application, and future developments regarding this preeminent civil rights law.

LEGISLATIVE HISTORY

Predecessor Act

California has long barred discrimination in public accommodations. Early common law decisions created a duty to serve all customers on reasonable terms without discrimination.⁶ In 1897, the California Legislature enacted these common law doctrines into the statutory predecessor of the present Unruh Civil Rights Act.⁷ The 1897 act, codified as California Civil Code⁸ section 51, provided “[t]hat all citizens within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities, privileges of inns, restaurants, hotels, eating-houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.”⁹

A 1905 amendment added section 52 to provide remedies for violations of section 51.¹⁰

A 1919 amendment broadened the act to encompass public conveyances.¹¹

In 1923, the California Legislature extended section 51 coverage to “places where ice cream or soft drinks of any kind are sold for consumption on the premises.”¹² In addition, section 52 was amended to provide that anyone who denied customers of such rights was liable for damages.¹³ Thus, up to this time, section 51 had focused on places of public accommodations rather than any enumerated bases of discrimination.

Unruh Civil Rights Act

In 1959, the modern Unruh Civil Rights Act was enacted, substantially expanding section 51 for the first time to prohibit public accommodations on

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enumerated bases of discrimination.¹⁴ The impetus for the Unruh Act was the Legislature’s concern that California Courts of Appeal had narrowly defined the kinds of businesses that afforded public accommodation and had improperly curtailed the scope of the public accommodations provisions.¹⁵ As a result, in enacting the Unruh Act, the Legislature modified the mandate that “All citizens . . . are entitled to the full and equal accommodations” by broadening its scope and intent so that it read thereafter: “All citizens . . . are free and equal, and no matter what their race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations . . . in all business establishments of every kind whatsoever.”¹⁶

Thereafter, the Unruh Act became and continues to be a robust civil rights law. Later amendments further enlarged the state’s preeminent anti-discrimination law.¹⁷ Today, the Unruh Act more broadly prohibits discrimination against “all persons within the jurisdiction of California” on the bases of “sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.”¹⁸ In addition, California

case law has liberally construed the act, finding that the Unruh Act’s “identification of particular bases of discrimination . . . is illustrative rather than restrictive.”¹⁹ Accordingly, the California Supreme Court has held that the Unruh Act’s “language and its history compel the conclusion that the Legislature intended to prohibit all arbitrary discrimination by business establishments.”²⁰

Important to employment attorneys, the California Supreme Court has expressly held that employment discrimination claims are excluded from the Unruh Act’s protection.²¹ The court has explained this exclusion by noting that the Unruh Act was designed to prohibit discrimination by business establishments “in the course of furnishing goods, services, or facilities” to its “clients, patrons, or customers,” but does not extend to claims for employment discrimination because other California statutes are specifically tailored to provide relief for such conduct. The court pointed most notably to the Fair Employment and Practices Act (FEPA),²² which was passed by the California Legislature in the very same session as the Unruh Act.²³ Nonetheless, attorneys and their clients that are business

establishments are bound by the same public accommodations rules under the Unruh Act.

CURRENT APPLICATION²⁴

Unruh Claim Elements

An Unruh Act plaintiff must establish the following elements:

1. That the defendant denied, aided or incited, discriminated or made a distinction that denied full and equal accommodations, advantages, facilities, privileges, or services to plaintiff;
2. That a substantial motivating reason for the defendant's conduct was the defendant's perception of the plaintiff's protected basis under the Unruh Act; or that the protected basis of a person whom the plaintiff was associated with was a substantial motivating reason for the defendant's conduct;
3. That the plaintiff was harmed; and
4. That the defendant's conduct was a substantial factor in causing the plaintiff's harm.²⁵

Intentional Discrimination

The Unruh Act requires a showing of intentional discrimination, unless the claim is also for a violation of the Americans with Disabilities Act (ADA).²⁶ This exception applies because the Unruh Act and Disabled Persons Act (DPA)²⁷ incorporate ADA standards, and thus a violation of the ADA also constitutes a violation of both the Unruh Act and the DPA.²⁸ Otherwise, a plaintiff must plead and prove a case of intentional discrimination to recover under the Unruh Act.²⁹

The Unruh Act further makes void all provisions in a written instrument relating to real property that purport to forbid or restrict

conveyance, encumbrance, leasing, or mortgaging of the property to any person due to that person having characteristics within the prohibited classifications.³⁰

Standing

To establish standing for damages under the Unruh Act, parties must show that they were in fact denied equal access.³¹ Where there is no direct evidence of intentional discrimination, statistical evidence can be probative in showing that alleged discriminatory conduct has a discriminatory effect.³² In the absence of direct evidence of intentional discrimination, courts will also use the *McDonnell Douglas Corp. v. Green* burden-shifting test³³ for an Unruh Act claim, to determine whether there is sufficient circumstantial evidence to warrant a finding of intentional discrimination.³⁴

A plaintiff need not prove that s/he belongs to one of the classes protected by the Unruh Act (enumerated or unenumerated). Rather, a plaintiff need only prove that the defendant perceived that the plaintiff belonged to such a class, or perceived that the plaintiff associated with others who belonged to such class.³⁵

Under limited circumstances, the Unruh Act also covers categories not enumerated in the statute.³⁶ Any unenumerated claim, however, must be based on a personal characteristic similar to those listed in the statute. In addition, the court must consider whether the alleged discrimination was justified by a legitimate business reason, and the consequences of allowing the claim to proceed must be taken into account.³⁷ "In addition to the particular forms of discrimination specifically outlawed by the Unruh Act, courts have held the Act 'prohibit[s] discrimination based on several classifications which are not specifically enumerated in the statute.' These judicially recognized classifications

include: unconventional dress or physical appearance, families with children, homosexuality (explicitly incorporated as "sexual orientation in 2005), and persons under 18."³⁸

Business Establishment

The issue of whether the defendant is a business establishment is for the judge to decide.³⁹ The California Supreme Court has broadly interpreted "business" under the Unruh Act to embrace "calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain." The court has interpreted "establishment" to include "not only a fixed location, such as the 'place where one is permanently fixed for residence or business,' but also a permanent 'commercial force or organization' or 'a permanent settled position, (as in life or business)."⁴⁰

As noted above, historically business establishments under section 51 have included "inns, restaurants, hotels, eating-houses, barber-shops, bath-houses, theaters, skating-rinks, and all other places of public accommodation or amusement,"⁴¹ including non-profit organizations that have a business purpose or are a public accommodation, hospitals, public agencies, and retail establishments.⁴²

Selected Examples of Prohibited Discrimination

- **Race Discrimination by Bank:** A bank's refusal to allow an African-American investment advisor to accompany his clients to the bank violated the Unruh Act.⁴³
- **Sexual Orientation Discrimination by Country Club:** The claim of a lesbian couple, registered as domestic partners under the Domestic Partner Act, that a country club's refusal to extend to them certain benefits

it extended to married members of the club, such as golfing privileges, constituted marital status discrimination, and was cognizable under the Unruh Civil Rights Act.⁴⁴

- **Transgender Discrimination by Hospital:** The mother of a deceased transgender son had standing to bring an Unruh Act claim for the hospital's alleged gender discrimination against her son.⁴⁵
- **Disability Discrimination in Standardized Testing:** An administrator of the Law School Admission Test violated the Unruh Act by failing to reasonably accommodate test takers with disabilities and flagging their scores.⁴⁶
- **Associational Discrimination by Housing Provider:** Discrimination by a mobile home park against persons on account of their association with African Americans is actionable under the Act.⁴⁷
- **Arbitrary Discrimination by Shopping Center:** A business could not under the Unruh Act arbitrarily exclude a would-be customer from its premises based on his association with a friend who wore long hair and dressed in an unconventional manner.⁴⁸

Not Actionable

Courts have found certain types of discrimination “reasonable” rather than “arbitrary,” hence not actionable under the Unruh Act. These include: minimum income levels to qualify for housing; security-based dress regulations, such as a “no colors” rule, or banning clothes with a motorcycle club affiliation;⁴⁹ non-smokers;⁵⁰ ex-felons;⁵¹ individuals who recently lost jobs or pay;⁵² real estate speculators,⁵³ and customers who damage property, injure others or disrupt a business.⁵⁴

Unruh Claim Defenses⁵⁵

• No Exhaustion of Administrative Remedies

Unlike the employment provisions under the FEHA, which require the timely exhaustion of administrative remedies,⁵⁶ nothing in the Unruh Civil Rights Act requires the aggrieved party to file a complaint with the DFEH before filing a lawsuit.⁵⁷ However, any person claiming to be aggrieved by an alleged unlawful practice violating the Unruh Act or DPA may file a verified complaint with the DFEH for investigation, mediation, and prosecution.⁵⁸

• Government Tort Claims Act

Nonetheless, for government defendants, consistent with the general rule on public entity litigation, “[t]he Tort Claims Act requires that any civil complaint for money or damages first be presented to and rejected by the pertinent public entity.”⁵⁹

• Legitimate Business Interest

California appellate cases have recognized that legitimate business interests may justify limitations on consumer access to public accommodations.⁶⁰

• Unreasonable Modification

Under Title III of the ADA, the failure to accommodate or make modifications does not constitute discrimination when the entity “can demonstrate that making such modifications would fundamentally alter the nature of such

goods, services, facilities, privileges, advantages, or accommodations.”⁶¹

The Supreme Court has clarified that the ADA contemplates three inquiries: (1) whether the requested modification is “reasonable;” (2) whether it is “necessary” for the disabled individual; and (3) whether it would “fundamentally alter the nature of” the goods, services, etc.⁶² These factors are for the defendant to plead and prove as an affirmative defense. See the burdens of proof discussion below.

A plaintiff seeking the removal of architectural barriers under Title III of the ADA, which forbids discrimination in the construction of places of public accommodation, bears the initial burden of production to present evidence that a suggested method of barrier removal is readily achievable under the circumstances; if the plaintiff does so, the defendant then bears ultimate burden of persuasion on the affirmative defense that the barrier removal is not readily achievable.⁶³ Thus, once the plaintiff has shown that the accommodation s/he needs is “reasonable,” the burden shifts to the defendant/employer to provide case-specific evidence proving that providing an accommodation would cause an undue hardship in the particular circumstances.⁶⁴

a. **Undue burden.** Undue burden is defined as “significant difficulty or expense.” Among the factors to be considered in determining whether an action would result in an undue burden are the following:

1. The nature and cost of the action;
2. The overall financial resources of the site or sites involved; the number of persons

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employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;

3. The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
4. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
5. If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.⁶⁵

- b. **Readily achievable.** When a public accommodation can demonstrate that the removal of barriers is not readily achievable, the

public accommodation must make its goods and services available through alternative methods, if such methods are readily achievable. The factors for determining whether removal of barriers are readily achievable are the same as those for undue hardship above.⁶⁶

- **First Amendment**

The Unruh Act “does not aim at the suppression of speech, does not distinguish between prohibited and permitted activity on the basis of viewpoint, and does not license enforcement authorities to administer the statute on the basis of such constitutionally impermissible criteria.”⁶⁷ Whether or not an entity is a public accommodation or business establishment is a potential defense in cases in which the Unruh Act impacts First Amendment freedom of religion and association rights.

- **Construction Defect Defenses**

Special defenses can be applied to Unruh Act construction defect claims. California law provides for mandatory alternative dispute resolution for civil “construction-related

accessibility claims.” Specifically, if a civil action alleging physical inaccessibility from non-compliance with technical standards is brought against a public accommodation pursuant to the Unruh Act or the DPA, the attorney filing the complaint must notify the defendant of possible eligibility for a stay and an early evaluation conference upon service of the summons.⁶⁸ A public accommodation will be eligible for a stay and early evaluation conference if it “meets applicable standards,” meaning the property has been inspected and determined to be compliant with all applicable accessibility standards.⁶⁹ Alternatively, if the public accommodation has been inspected and is pending a determination that it meets all applicable accessibility standards, it is still eligible for a stay and early evaluation conference on the construction-related accessibility claim.⁷⁰ In either case, the relevant inspection must be completed by a California Access Specialist (CASp), meaning a person who has been state certified to conduct accessibility inspections.⁷¹

“Demand for money” pre-litigation letters are prohibited, and attorneys who violate the prohibition can be disciplined.⁷² In addition, a demand letter alleging a construction-related accessibility claim for “prelitigation settlement negotiations” must state facts sufficient to allow a reasonable person to identify the basis of the violation(s) supporting the claim, including certain specific requirements, and a copy of the letter must be sent to the California Commission on Disability Access.⁷³

The complaint alleging construction-related accessibility claims must be verified under penalty of perjury by the plaintiff or be subject to a motion to strike.⁷⁴ The attorney filing the complaint must further include a statutory notice to the defendant.⁷⁵ In addition, an attorney who sends or serves a complaint and summons must also send a copy of the complaint to the California Commission on Disability Access within five business days.⁷⁶ Moreover, “high frequency litigants,” defined as a plaintiff or attorney who has filed 10 or more construction-related complaints within the past 12 months, are responsible for a \$1,000 supplemental high-frequency litigant filing fee.⁷⁷

Although statutory damages of \$4,000 may be assessed based on each particular occasion that the plaintiff was denied full and equal access,⁷⁸ defendant’s liability is reduced: (1) to a minimum of \$1,000 for each offense if all construction-related violations were corrected within 60 days of being served with the complaint;⁷⁹ (2) to a minimum of \$2,000 for each offense if the all construction-related violations were corrected within 30 days of being served with the complaint, and if defendant is a small business that has employed 25 or fewer employees;⁸⁰ (3) and no liability if defendant employed 50 or fewer employees within the past three years, the alleged violation had already been inspected by a CASp, if the inspection

predated the claim, and defendant had corrected the violations within 120 days of the inspection.⁸¹

- **Releases and Waivers**

The Unruh Act provides extensive statutory protections regarding releases and waivers, including a waiver for mandatory arbitration agreements.⁸² These special protections may face the possibility of preemption by the Federal Arbitration Act.⁸³

- **Remedies**

Remedies for violations of the Unruh Act include statutory damages, out-of-pocket expenses, cease-and-desist orders, damages for emotional distress, punitive damages, and attorney fees and costs.⁸⁴

Civil Code § 52 is the enforcement mechanism for the Unruh Act, and provides remedies for violations of that statute.⁸⁵ Section 52(a) provides that “[w]hoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.”⁸⁶

Under the Unruh Act, statutory damages are not available on a daily basis from the date a disabled plaintiff first encounters a barrier to a place of public accommodation until that barrier is remedied; rather a plaintiff must be denied full and equal access on a particular occasion.⁸⁷

The Ninth Circuit has extended the right to recover under the Unruh Act to each incident of deterrence, meaning a disabled plaintiff can recover the statutory minimum each time a defendant’s noncompliance with the ADA or the Unruh Act deterred the plaintiff from visiting a particular establishment.⁸⁸

Some courts have determined that the provision for treble damages in the Unruh Act is punitive in nature; therefore, governmental entities are arguably immune.⁸⁹ Election of damages is also required under the Unruh Act or Disabled Persons Act.⁹⁰

FUTURE DEVELOPMENTS

The Unruh Act is on the cusp of defining public accommodations for business establishments’ Internet websites. Two recent cases announce this new development.

First, in *White v. Square, Inc.*, a bankruptcy attorney brought a class action against an electronic payments processor, alleging the service agreement, which required users to certify they would not accept payments in connection with “bankruptcy attorneys or collection agencies engaged in the collection of debt,” discriminated against bankruptcy attorneys in violation of the Unruh Act.⁹¹ The Ninth Circuit certified the following question to the California Supreme Court: Does a plaintiff have standing to bring a claim under the Unruh Civil Rights Act when the plaintiff visits a business’s website with the intent of using its services, encounters terms and conditions that allegedly deny the plaintiff full and equal access to its services, and then leaves the website without entering into an agreement with the service provider?⁹²

In response, the California Supreme Court recently held in *White v. Square, Inc.* that “a person who visits a business’s website with intent to use its services and encounters terms or conditions that exclude the

person from full and equal access to its services has standing under the Unruh Civil Rights Act, with no further requirement that the person enter into an agreement or transaction with the business.”⁹³ In its decision, the court ruled on the issue of standing, but did not decide on the issues of discrimination on the basis of occupation or on plaintiff’s adequacy as a representative for a class of bankruptcy attorneys excluded from Square’s services.⁹⁴

Second, in *Thurston v. Midvale Corporation*, a blind user of the restaurant’s website brought an action against the restaurant owner, alleging that the website was inaccessible to the user with screen reader software, in violation of the Unruh Act and the federal ADA.⁹⁵ The court of appeal held that the plaintiff had standing to obtain an injunction.⁹⁶ The court further held that including websites connected to a physical place of public accommodation is not only consistent with the plain language of Title III of the ADA, but it is also consistent with Congress’s mandate that the ADA keep pace with changing technology to effectuate the intent of the statute.

Because a violation of the ADA is a violation of the Unruh Act,⁹⁷ defining the parameters of full and equal accommodations on Internet websites and other electronic forums (i.e., apps on smartphones) will likely be in the Unruh Act’s future.

CONCLUSION

The Unruh Act has significantly shaped public accommodations in California for 60 years. Its impact promises to be as expansive going forward. ⁹⁸

ENDNOTES

1. Unruh Civil Rights Act, Cal. Civ. Code § 51(b).
2. Cal. Civ. Code § 51.
3. 1959 Cal. Stat. 1866, p. 4424, § 1.
4. Jesse M. Unruh (1922-1987) had a political career spanning four decades, during which time he served as Speaker of the California State Assembly for over seven years and later as Treasurer of California for three terms. See Jesse M. Unruh Institute of Politics, available at: <https://web.archive.org/web/20110226053622/http://college.usc.edu/unruh/about/>.
5. Note that the Unruh Civil Rights Act was the progeny of earlier California statutes, which were later incorporated into the Unruh Act: 1905 Cal. Stat. 413, p. 553, § 1; amended by 1919 Cal. Stat. 210, p. 309, § 1; 1923 Cal. Stat. 235, p. 485, § 1. The 1923 version set forth: “All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bath houses, theaters, skating rinks, public conveyances and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens.”
6. See *In re Cox*, 3 Cal. 3d 205, 212 (1970).

7. The 1897 act was also codified as Civil Code section 51. See Klein, *The California Equal Rights Statutes in Practice*, 10 STAN. L. REV. 253, 255–58 (1958).
8. All code sections refer to the California Civil Code, unless otherwise indicated.
9. 1897 Cal. Stat. 108, p. 137, § 1.
10. 1905 Cal. Stat. 413, p. 553, § 2.
11. 1919 Cal. Stat. 210, p. 309, § 1.
12. 1923 Cal. Stat. 235, p. 485, § 1; see *Cox*, *supra* n.6, 3 Cal. 3d at 213.
13. Cal. Civ. Code § 52. Section 52 was added to provide that anyone who denied the rights provided in section 51 was liable for damages. (*Cox*, 3 Cal. 3d at 214, n.6.)
14. See Horowitz, *The 1959 Equal Rights in Business Establishments Statute—A Problem in Statutory Application*, 33 So. CAL. L. REV. 260, 265 (1960).
15. *Cox*, 3 Cal. 3d at 214, citing to *Reed v. Hollywood Professional School*, 169 Cal. App. 2d Supp. 887, 890 (1959); cf. *Swann v. Burkett*, 209 Cal. App. 2d 685, 690–691 (1962); Colley, *Civil Actions for Damages Arising out of Violations of Civil Rights*, 17 HASTINGS L.J. 189, 194–195 (1965); Horowitz, *The 1959 California Equal Rights in Business Establishments’ Statute—A Problem in Statutory Application*, 33 So. CAL. L. REV. 260 (1960).
16. *Cox*, 3 Cal. 3d at 214.
17. 1974 Cal. Stat. 1193, p. 2568, § 2; 1976 Cal. Stat. 366, p. 1013, § 2; 1976 Cal. Stat. 1293, p. 5778, § 2.5; 1978 Cal. Stat. 1212, p. 3927, § 1; 1981 Cal. Stat. 521, § 1, eff. Sept. 16, 1981; 1986 Cal. Stat. 244, § 1; 1987 Cal. Stat. 159, § 4; 1989 Cal. Stat. 459, § 1; 1991 Cal. Stat. 607 (S.B. 98), § 2; 1991 Cal. Stat. 839 (A.B. 1169), § 2; 1992 Cal. Stat. 913 (A.B. 1077), § 3.6; 1994 Cal. Stat. 535 (S.B. 1288), § 1; 1998 Cal. Stat. 195 (A.B. 2702), § 4; 1999 Cal. Stat. 964 (A.B. 519), § 2; 2000 Cal. Stat. 98 (A.B. 2719), § 2; 2001 Cal. Stat. 261 (A.B. 587), § 1; 2005 Cal. Stat. (A.B. 378), § 1; 2014 Cal. Stat. 910 (A.B. 2617), § 3, eff. Jan. 1, 2015.

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18. Cal. Civ. Code § 51(b) and (e). The Unruh bases of discrimination generally track those defined under the Fair Employment and Housing Act. Cal. Civ. Code § 51(e)(1); Cal. Gov't Code §§ 12926(j)-(n) and 12926.1(c)-(d).
19. *Cox*, 3 Cal. 3d at 216; *Munson v. Del Taco, Inc.* 46 Cal. 4th 661, 666-68 (2009).
20. *Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 725 (1982), citing *In re Cox*, 3 Cal. 3d at 216; *Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 167 (2007) (the Unruh Act “must be construed liberally in order to carry out its purpose” to “create and preserve a nondiscriminatory environment in California business establishments by ‘banishing’ or ‘eradicating’ arbitrary, invidious discrimination by such establishments.”).
21. *Alcorn v. Anbro Eng'g, Inc.*, 2 Cal. 3d 493, 500 (1970); *Rojo v. Kliger*, 52 Cal. 3d 65, 77 (1990).
22. The California Fair Employment and Practices Act (FEPA) (former Cal. Lab. Code §§ 1410 *et seq.*) was the predecessor statute to the California Fair Employment and Housing Act (FEHA) (Cal. Gov't Code §§ 12900 *et seq.*).
23. *Alcorn*, 2 Cal. 3d at 500 (employment discrimination claims are excluded from the Unruh Act); *accord, Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116 (E.D. Cal. 2008).
24. See generally Phyllis W. Cheng, Ann M. Noel, and Susan Saylor, California Fair Housing and Public Accommodations, § 15 (The Rutter Group–Thomson Reuters 2018).
25. CACI No. 3020.
26. 2 U.S.C. §§ 12101 *et seq.*
27. Cal. Civ. Code § 54.
28. Cal. Civ. Code §§ 51(f) (Unruh) and 54(c) (DPA); *Johnson v. Guedoir*, 218 F. Supp. 3d 1096, 1100 (E.D. Cal. 2016); *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1023 (N.D. Cal. 2012); *National Fed'n of the Blind of Cal. v. Uber Technols., Inc.*, 103 F. Supp. 3d 1073, 1081 (N.D. Cal. 2015); *Kalani v. Starbucks Corp.*, 81 F. Supp. 3d 876, 892 (N.D. Cal. 2015); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 78 F. Supp. 3d 1289, 1297 (C.D. Cal. 2015).
29. *Harris v. Capital Growth Investors XIV*, 52 Cal. 3d 1142, 1149 (1991) (minimum income requirement that landlord imposed evenhandedly on all prospective tenants, without regard to their race, color, sex or other personal characteristics, did not violate Unruh Act, even though it allegedly had disparate impact on female tenants); *Duronslet v. County of Los Angeles*, 266 F. Supp. 3d 1213, 1217 (C.D. Cal. 2017) (no showing of Unruh Act intentional discrimination by county jail that housed male-to-female transgender youth in male side of facility when plaintiff did not allege that county knew of her transgender status.)
30. Cal. Civ. Code § 53.
31. *Donald v. Cafe Royale, Inc.*, 218 Cal. App. 3d 168, 183 (1990) (DPA); *Boemio v. Love's Restaurant*, 954 F. Supp. 204, 207 (S.D. Cal. 1997) (Unruh).
32. *Everett v. Superior Court*, 104 Cal. App. 4th 388, 392-94, (2002), citing *Harris*, 52 Cal. 3d at 1175 (statistical evidence that an amusement park's facially neutral policy was applied disproportionately to African-Americans was sufficient to defeat summary judgment motion.)
33. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).
34. *Green v. Rancho Santa Margarita Mortg. Co.*, 28 Cal. App. 4th 686, 694-99 (1994) (African-American couple denied a mortgage when white buyers making less money were qualified for a mortgage established discriminatory motive; mortgage broker did not adequately rebut the inference that plaintiffs were denied mortgage because of their race.)
35. Actual or perceived membership in the enumerated bases include: sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, and immigration status. Cal. Civ. Code §§ 51(b) and (e).
36. *Cox*, 3 Cal. 3d at 216 (Unruh listed bases of discrimination are illustrative rather than restrictive).
37. *Semler v. General Elec. Capital Corp.*, 196 Cal. App. 4th 1380, 1392-93 (2011); *Harris*, 52 Cal. 3d at 1165.
38. *Hessians Motorcycle Club v. J.C. Flanagans*, 86 Cal. App. 4th 833, 836 (2001) (internal citations omitted).
39. *Rotary Club of Duarte v. Board of Directors*, 178 Cal. App. 3d 1035, 1050 (1986).
40. *O'Connor v. Village Green Owners Assn.*, 33 Cal. 3d 790, 795 (1983) (internal citations omitted).
41. Former Cal. Civ. Code § 51 (1897 Cal. Stat. 108, p. 137, § 1).
42. Department of Fair Employment and Housing, Unruh Civil Rights Act Pamphlet, DFEH-U01P-ENG/ April 2019.
43. *Jackson v. Superior Court*, 30 Cal. App. 4th 936, 942 (1994).
44. *Koebke v. Bernardo Heights Country Club*, 36 Cal. 4th 824 (2005).
45. Cal. Civ. Code § 51(e)(5).
46. *Department of Fair Emp't and Housing v. Law Sch. Admission Council Inc.*, 896 F. Supp. 2d 849, 875-76 (N.D. Cal. 2012).
47. *Winchell v. English*, 62 Cal. App. 3d 125 (1976).

48. *Cox*, 3 Cal. 3d at 217-18.
49. *Hessians Motorcycle Club*, 86 Cal. App. 4th at 839; *Gatto v. County of Sonoma*, 98 Cal. App. 4th 744, 768 (2002).
50. *King v. Hofer*, 42 Cal. App. 4th 678, 683 (1996).
51. *Semler v. General Electric Capital Corp.*, 196 Cal. App. 4th 1380, 1395-96 (2011).
52. Cal. Civ. Code § 51.13.
53. *Frantz v. Blackwell*, 189 Cal. App. 3d 91, 95-96 (1987).
54. *O'Connor*, 33 Cal. 3d at 794, quoting *Cox*, 3 Cal. 3d at 217.
55. See generally Cheng et al., California Fair Housing and Public Accommodations, § 16.
56. Cal. Gov't Code § 12960(d).
57. Cal. Civ. Code § 51.
58. Cal. Gov't Code § 12948; Cal. Civ. Code § 52.
59. *Gay-Straight Alliance Network v. Visalia Unified Sch. Dist.*, 262 F. Supp. 2d 1088, 1109 (E.D. Cal. 2001) (recognizing the application of the Tort Claims Act to Unruh Act claims).
60. *Harris*, 52 Cal. 3d at 1161.
61. 42 U.S.C. § 12182(b)(2)(A)(ii).
62. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 683 (2001), quoting 42 U.S.C. § 12182(b)(2)(A)(ii).
63. Americans with Disabilities Act of 1990, §§ 301(9), 302(b)(2)(A)(iv), (v), 42 U.S.C. §§ 12181(9), 12182(b)(2)(A)(iv), (v).
64. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 404-05 (2002).
65. ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, III-4.5100 General, available at <https://www.ada.gov/taman3.html>.
66. ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, III-4.5100 General, available at <https://www.ada.gov/taman3.html>.
67. *Rotary Club of Duarte v. Board of Directors*, 178 Cal. App. 3d 1035, 1065, (1986).
68. Cal. Civ. Code § 55.54.
69. Cal. Civ. Code § 55.52(a)(4).
70. Cal. Civ. Code § 55.52(a)(5).
71. Cal. Gov't Code § 4459.5.
72. Cal. Civ. Code §§ 55.2, 55.3; Cal. Bus. & Prof. Code § 6106.2.
73. Cal. Civ. Code §§ 55.2, 55.5, 55.27.
74. Cal. Civ. Proc. Code § 425.50(b).
75. Cal. Civ. Code § 55.54(a)(1).
76. Cal. Civ. Code § 55.54.
77. Cal. Civ. Proc. Code § 425.55(b); Gov't Code § 70616.5.
78. Cal. Civ. Code § 55.54(e).
79. Cal. Civ. Code § 55.56(g)(1).
80. Cal. Civ. Code § 55.56(g)(2).
81. Cal. Civ. Code § 55.56(i).
82. Cal. Civ. Code. § 51.7(b)(8).
83. 9 U.S.C. §§ 1-14. See *Saheli v. White Memorial Med. Ctr.*, 21 Cal. App. 5th 308, 328-29 (2018) (statutory preconditions to arbitration of Ralph and Bane Act claims preempted by federal law).
84. Cal. Civ. Code § 52; Department of Fair Employment and Housing, Unruh Civil Rights Act Pamphlet, DFEH-U01P-ENG/April 2019.
85. Cal. Civ. Code § 52. See *Harris*, 52 Cal. 3d at 1153.
86. Cal. Civ. Code § 52(a).
87. *Kohler v. Rednap, Inc.*, 794 F. Supp. 2d 1091, 1094 (C.D. Cal. 2011).
88. *Feezor v. Del Taco, Inc.*, 431 F. Supp. 2d 1088, 1090 (S.D. Cal. 2005) (disabled individual was entitled under the Unruh Act to recover the statutory minimum damages for each time he visited the restaurant and encountered architectural barriers).
89. See *Botosan v. Fitzhugh*, 13 F. Supp. 2d 1047, 1052-53 (S.D. Cal. 1998) (the language of the treble damages provisions in Civil Code § 52(a) was punitive in nature; plaintiff could not also recover punitive damages under Cal. Civ. Code § 3294); *Harris*, 52 Cal. 3d at 1172 (“the damages provision [of the Unruh Act] allowing for an exemplary award of up to treble the actual damages suffered with a stated minimum amount reveals a desire to punish intentional and morally offensive conduct.”).
90. Cal. Civ. Code § 54.3(c) states: “A person may not be held liable for damages pursuant to both this section and Section 52 for the same act or failure to act.” Recognizing the substantial overlap between the Unruh Act and the Disabled Persons Act, the Legislature has expressly prohibited double recovery under Civil Code §§ 52 and 54.3(c). *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 675 (2009).
91. *White v. Square, Inc.*, 7 Cal. 5th 1019 (2019).
92. See *White v. Square, Inc.*, 891 F.3d 1174, 1175 (9th Cir. 2018); Cal. Rules of Court, rule 8.548, (a) and (f)(5).
93. *White*, 7 Cal. 5th at 1032-33.
94. *White*, 7 Cal. 5th at 1032.
95. *Thurston v. Midvale Corp.*, 39 Cal. App. 5th 634 (2019).
96. *Id.* at 652.
97. Cal. Civ. Code §§ 51(f) (Unruh) and 54(c).