

The Fair Housing Act and Protecting Families with Children during COVID

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The Fair Housing Act (FHA) is a federal law that protects people from housing discrimination because of that person's race, color, national origin, religion, sex, disability, or familial status.

This article discusses "Familial Status" under the Fair Housing Act which prohibits discrimination against households with children under age 18 and protects the rights of families with children to have an equal opportunity to access housing of their choice.

Familial Status also prohibits discrimination in housing against people who are (or become pregnant) and persons in the process of obtaining legal custody of a minor through adoption or foster care (including unaccompanied, immigrant minors), and an adult housing child(ren) with the written permission of the parent or legal guardian. Further, familial status protects households where adults are raising children placed in their care by Child Protective Services (CPS). Adult couples (whether heterosexual or gay, lesbian, or bisexual) with children in their household are equally protected under the FHA's familial status basis and the protection is provided regardless of marriage or cohabitation.

The composition of households with children are various. For example, a household may be headed by a single mom or dad, a couple, an adult sibling/aunt/uncle, or grandparent providing kin care for minor siblings or grandchildren, a person/couple providing foster care, adult(s) who adopt children, multi-generational households with minors (for example: a grandma, her adult daughter and the daughter's kids) or a blended household with children from prior relationships or marriages now living together in one household.

Examples of familial status discrimination include:

- Refusing to rent to families with children
- Evicting families once a child joins the family through, e.g., birth, adoption, custody
- Requiring families with children to live on specific floors or in specific buildings or areas
- Imposing overly restrictive rules about children's use of the common areas (e.g., pools, hallways, open spaces)
- Advertising that prohibits children

How has the COVID pandemic and the stay home orders bumped up against the Fair housing Act's Familial Status protections?

Since March 2020, in Washington State, the COVID pandemic closed childcare centers and K-12 schools so that for many months, children could not get an education in person. Children and their families have had to adapt to childcare and schoolwork at home with virtual educational lessons online. State COVID mandates shut down businesses and made workers stay home to reduce exposure and spreading of the disease. Some employers adapted and their employees can work remotely from home with computers instead of being at the office or regular place of business. These "remote" employees conduct business with customers by phone, mail or online. Other employers are unable to provide their services from their employee's homes (libraries, restaurants, or gyms for example) and many of these employees have been laid off or permanently let go.

Thus, the COVID pandemic thrust families with children into staying at home 24/7. Many parents are doing double duty working from home while caring for and schooling their

children. Other parents are supervising their children's school attendance and assignments while enduring the stress of a loss of income and navigating unemployment.

As a result, Northwest Fair Housing Alliance in Eastern Washington is experiencing an uptick in calls from families with children seeking help who are afraid of losing their housing. During this unprecedented time, families call needing financial assistance if they have fallen behind on rent or seeking more affordable housing because their rent is too high. Sometimes they need a remedy for repairs or want to know their landlord tenant rights during the eviction moratorium. Northwest Fair Housing Alliance refers these calls to legal aid, the state Attorney General, local resource centers or community-based organizations (like SNAP or Catholic Charities) which provide these services. In addition to these increased needs, NWFHA also has detected a pattern and rise in allegations of discrimination against families with children.

Two common scenarios of a familial status allegation of discrimination follow:

1. A resident is working remotely from home and complains to their landlord or property manager that the resident children are making noise in the unit above/ below their apartment, in common areas, and outside which is disturbing their ability to concentrate on their work from home.
2. An elderly or retired resident who is accustomed to other residents being at work or away at school during the day is now disturbed by other residents' noise with everyone stuck at home. The resident who is acclimatized to a quieter apartment complex lodges noise complaints against the families with children to the landlord or property manager saying that the children are making too much noise while playing outside, bouncing a ball, riding a bike in the common areas, or running on the stairs.

In either scenario, the families with children call Northwest Fair Housing Alliance asking what they can do to protect their housing while they are required to stay home. They fear being forced to move and advise that are trying to keep their child(ren) as silent as possible all day long so as not to become homeless. The families have expressed an especially difficult time as the weather grew colder, as it meant more time trapped inside with no place to go.

It is appropriate for Landlord /Property managers to enforce the provisions of a lease. However, any corrective actions a manager takes should be consistent and not just target children's noise, or it could be perceived as discriminatory toward families with children and in violation of the Fair Housing laws. If a family with children is making excessive noise, it is appropriate to issue a notice to cure (following substance and procedures established by state landlord tenant laws), AND, the same notice should be issued to tenants blasting their video games, holding boisterous gatherings, having raucous parties, or hosting rowdy guests on the weekends.

NWFHA advises families with children that their manager should explain to the upset resident that the standard noise of children's play during regular day light hours (non-quiet hours) does not violate the lease and is acceptable. Further, families with children are protected under the Fair Housing Act from discrimination and only focusing on children's noise is not appropriate.

NWFHA advises the property managers or landlords to issue compliance notices as appropriate, and to refrain from threatening to evict the family with children or declare he/she is not going to renew the family's lease if they receive additional complaints about the kids from other residents as long the family follows the quiet hours of the lease and the noise is not excessive.

Are there any exemptions under the Fair Housing Act for housing for older persons? Yes. The Housing for Older Persons Act (HOPA) exempts three types of housing for older persons from liability for familial status discrimination under the Fair Housing Act. Such exempt housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children *only* if they qualify for the exemption. In order to qualify for the "housing for older persons" exemption, a facility or community must comply with all the requirements of the exemption.

The Housing for Older Persons exemptions apply to the following housing:

1. Provided under any state or federal program that the Secretary of HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the state or federal program);
2. Intended for, and solely occupied by persons 62 years of age or older; or
3. Intended and operated for occupancy by persons 55 years of age or older.

The 55 or older exemption is the most common of the three has specific additional requirements for age verification frequency. ¹ To qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
- The facility or community must comply with HUD's regulatory requirements for age verification of residents.

If you believe you have experienced discrimination in housing because of familial status, contact Northwest Fair Housing Alliance at 509-325-2665 or 1-800-200-FAIR. Our services are free.

1. HUD.gov website:

https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_housing_older_persons#_What_Are_the

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