

Common Familial-Status Discrimination Issues: Q & A

Q: I want to limit the number of people who can live in one of my units. Can I do that without violating the Fair Housing Act?

A: Occupancy limits implicate Fair Housing law because they can have an effect on familial status. It is important to apply policies uniformly, and not target one group of people. Occupancy limits may also need to be in compliance with city and county regulations, but these uniform occupancy limits must also be reasonable. For example, allowing only one person to live in a 3 bedroom apartment is not reasonable. Generally, the Department of Housing and Urban Development states that restricting occupancy to two persons in a bedroom is reasonable under the Fair Housing Act.

Q: The second floor units of my apartment building have lanais with railings. I worry that a child will fall over the side of the lanai. Am I able to warn potential tenants with children of this danger or can I recommend a first floor unit?

A: Only warning potential tenants with children that the lanai may be dangerous or recommending a first floor unit for potential tenants with children may be in violation of the Fair Housing Act. Your concern over the low railing is valid, but you cannot target families to warn of this danger. If you have safety concerns about the low railing, warn all tenants considering moving into second floor units, not just those with children. Recommending families move to a first floor unit because of a danger is considered steering and would be a violation of the Fair Housing Act.

Q: Our apartment complex has a rule stating that there is no bicycle riding in the complex. My children ride their bicycles and are reprimanded. However, I see adult tenants riding their bicycles to work and they aren't reprimanded. Is this discriminatory?

A: A house rule that states, "No children can ride bicycles in the common area" is discriminatory on its face. Even a broader house rule stating "no bicycle riding in the complex" can lead to discriminatory acts if it is unfairly enforced against only children. So long as the resident managers, security guards, or anyone else enforcing the rules are doing so to all tenants regardless of age, the rule and their actions are not discriminatory.

Q: My apartment complex has restrictions on children using the pool. Is this legal?

A: A house rule limiting pool use for children may be reasonable. A broad rule stating "No children in the pool unsupervised" is discriminatory because some children can swim in the pool with the same degree of safety as an adult, such as children who are sixteen or seventeen years of age. A rule stating that "No children under the age of 10 can be in the pool unsupervised" is more reasonable and would probably not be in violation of the Fair Housing Act because it is a reasonable restriction placed on younger children due to safety.

Q: I have recently started caring for my two hanai children. My landlord says I need to provide verification that I have legal custody. What should I do?

A: Hawaii State Fair Housing law includes protections for those with "unwritten permission from the legal parent, such as hanai relationships." If the landlord knows these children are your hanai children, requesting additional documentation from you could be discriminatory. In addition, if you are working with the legal parents to obtain written permission or legal custody of the children, then you would still be protected. Hawai'i state law and federal law both protect individuals who are "in the process of securing legal custody of a minor child or children."