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ELIMINATION OF BIAS IN YOUR LAW OFFICE

ADR SERVICES, INC. | MCLE DAY | SOUTHERN CALIFORNIA

January 12, 2022 | 12:30 pm - 1:30 pm | Webinar

PHYLLIS W. CHENG, ESQ. | ADR SERVICES, INC.

SPEAKER



Phyllis W. Cheng, Esq.

- **Neutral:** ADR Services, Inc. panel, Second District Court of Appeal mediation panel, and U.S. District Court, Central District of California mediation panel.
- **Private Practice:** Partner at DLA Piper; of counsel at Littler Mendelson; and associate at Hadsell & Stormer.
- **Government:** Served in four California Governors' administrations. Former director of Department of Fair Employment and Housing (DFEH); vice chair and commissioner of Fair Employment and Housing Commission (FEHC); member of Commission on the Status of Women and Comparable Worth Task Force. Deputy attorney general at California Department of Justice. Civil Rights Enforcement; senior appellate court attorney at Second District Court of Appeal.
- **Publishing:** Managing editor of *California Labor & Employment Law Review*; columnist on *Cases Pending before the California Supreme Court*; co-editor of *California Fair Housing and Public Accommodations* (The Rutter Group); writer of the *California Labor & Employment Case Law Alert*; and contributor to other publications.
- **Award:** 2012 Ronald M. George Public Lawyer of the Year, State Bar of California.



OVERVIEW

- Introduction to the Unruh Civil Rights Act (Cal. Civ. Code §§ 51-52)
- California Rule of Professional Conduct rule 8.4.1
- Obligations of Law Firms and Attorneys
- Examples and Hypotheticals
- Best Practices





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INTRODUCTION TO THE UNRUH CIVIL RIGHTS ACT (Cal. Civ. Code §§ 51-52)

Legislative History: Unruh Civil Rights Act

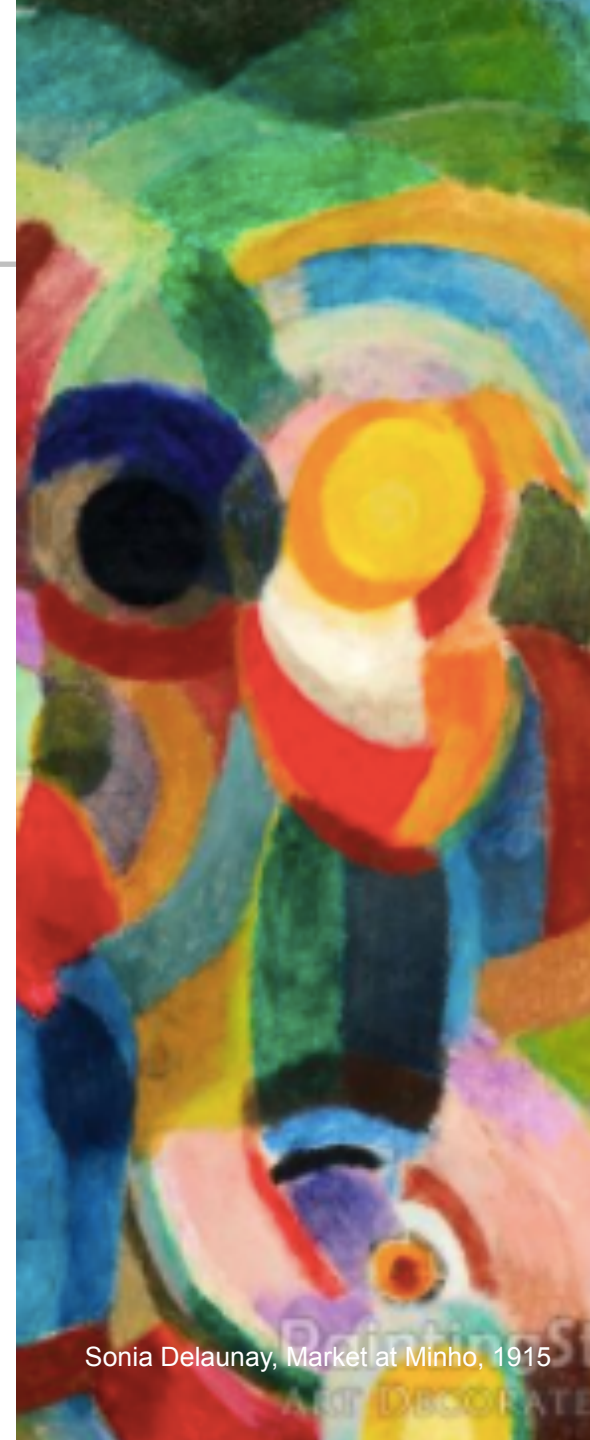
- Early Common Law Doctrines
- Legislative History of the Act
- 1959 Enactment of the modern Unruh Act



Unruh Act: Covered Business Establishments

The California Unruh Civil Rights Act (Cal. Civ. Code §§ 51-52) protects all persons from discrimination by all business establishments (i.e., law and mediation offices) in California, including, but not limited to:

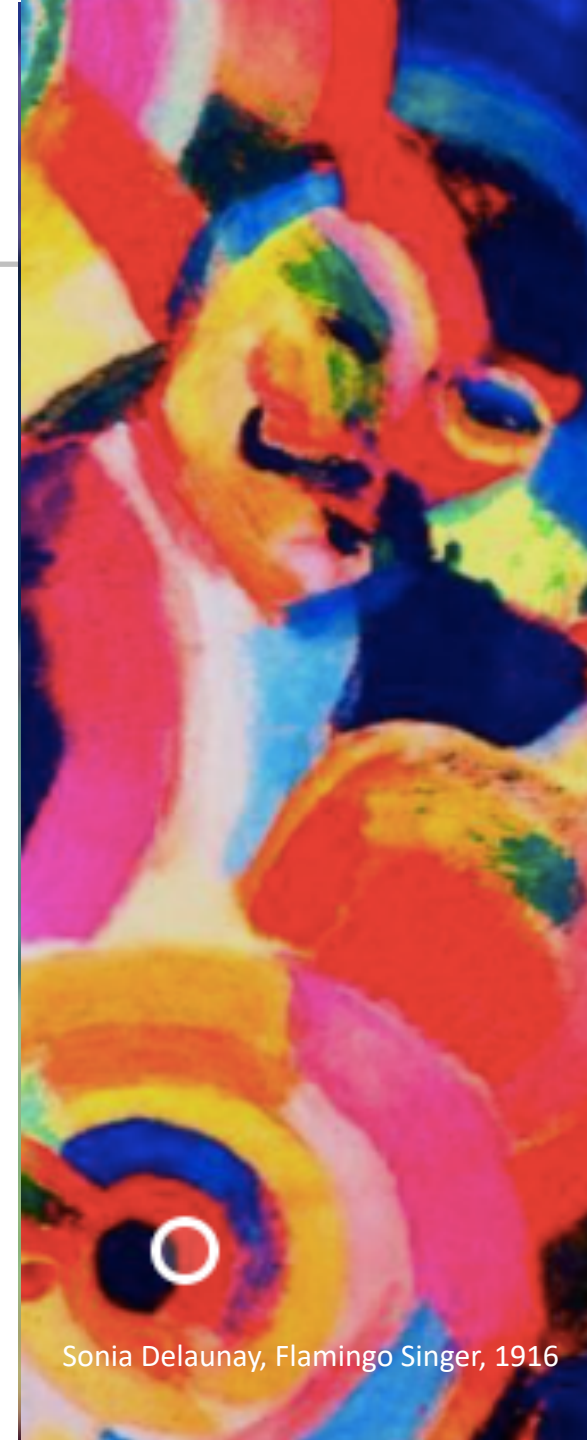
- Hotels and motels
- Non-profit organizations that have a business purpose or are a public accommodation
- Restaurants
- Theaters
- Hospitals
- Barber and beauty shops
- Housing accommodations
- Public agencies (including courts)
- Retail establishments
- Governmental entities
- Law offices



Unruh Act Elements

An Unruh Act plaintiff must establish the following elements:

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

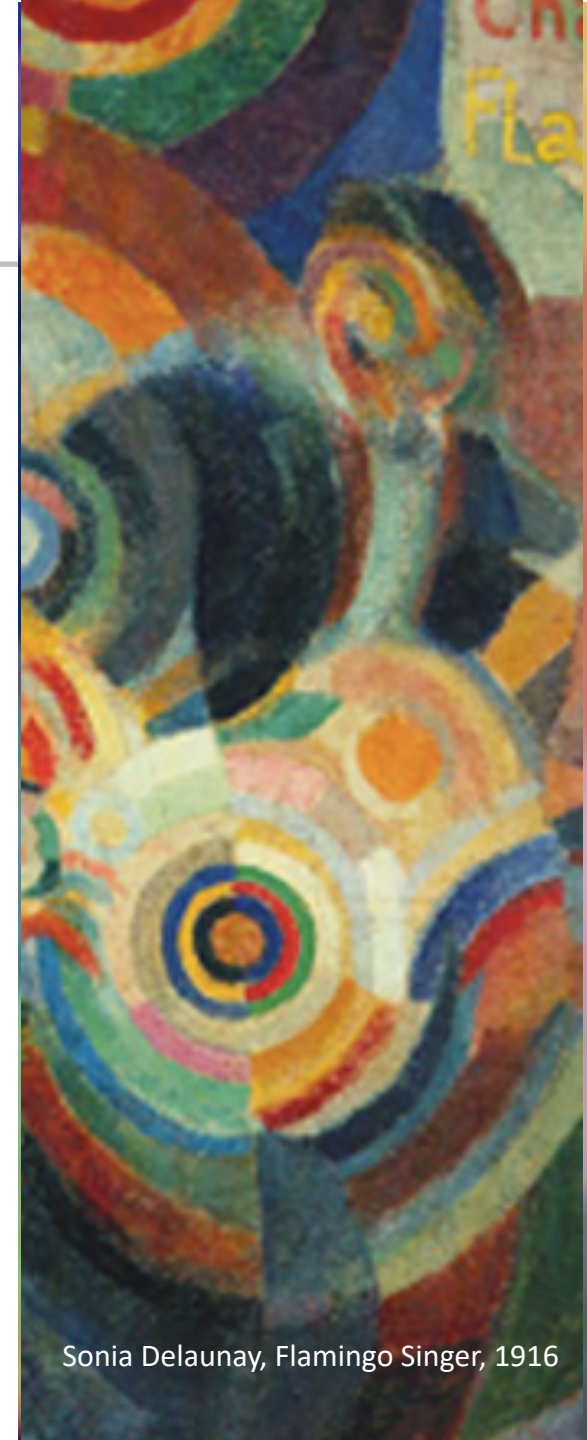


Unruh Act Remedies

- Statutory damages
- Out-of-pocket expenses
- Cease and desist orders (ADA also)
- Damages for emotional distress
- Punitive damages
- Attorney's fees (ADA also) and costs
- Court-ordered damages may include a maximum of three times the actual damages

Affirmative Defenses

- Legitimate business interest
- Undue burden
- Readily achievable
- First Amendment
- Construction defect defense





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California Rules of Professional Conduct

Rule 8.4.1

CA Rules of Professional Conduct Rule 8.4.1

Prohibits discrimination, harassment and retaliation:

- In representing a client, or in terminating or refusing to accept the representation of any client
- In relation to a law firm's operations with employees, applicants and volunteers
- Notify the State Bar of any criminal, civil, or administrative action premised on same conduct
- Provide a copy of disciplinary notice to the DFEH, US DOJ Coordination and Review Section, and EEOC



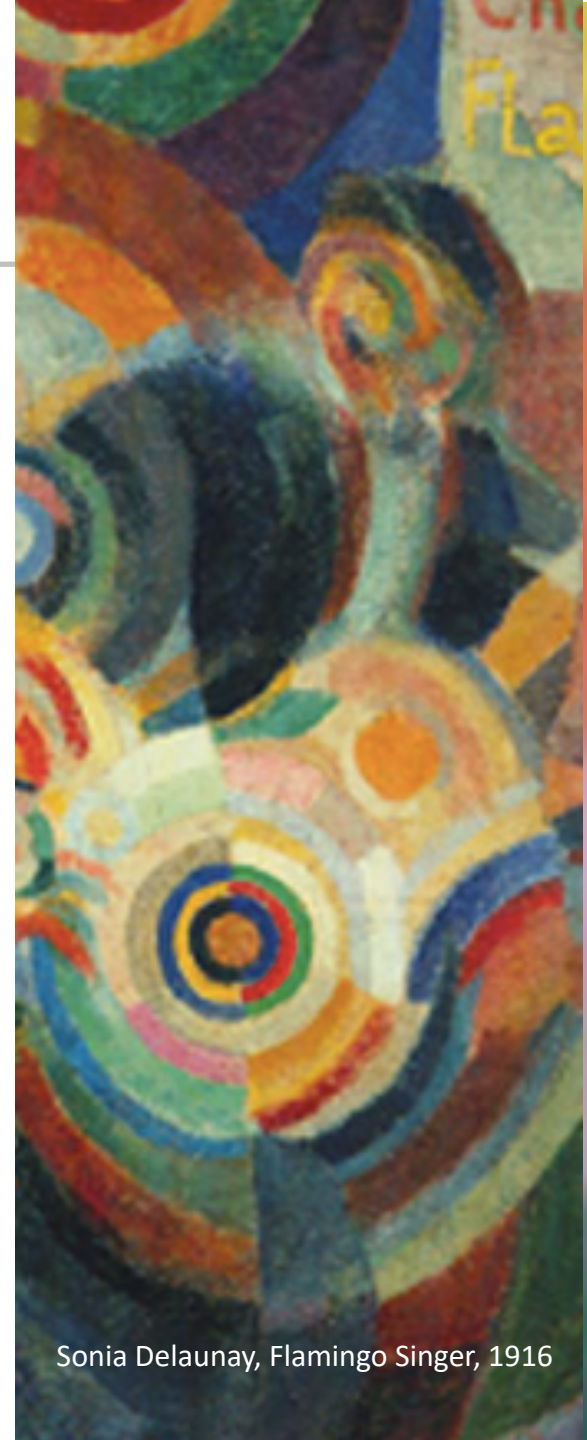


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Examples of Prohibited Discrimination

Example 1: Race Discrimination

Bank refuses to allow African-American investment advisor to accompany his clients, who have accounts at the bank.



Example 2: Sexual Orientation & Marital Status Discrimination

A lesbian couple registered as domestic partners under the Domestic Partner Act. Country club refuses to extend to them certain benefits it extends to married members of the club, such as golfing privileges.



Example 3: Transgender and Associational Discrimination

Mother of deceased transgender son had standing to bring an Unruh Act violation for the hospital's alleged gender discrimination against her son.



Example 4: Disability Discrimination

Administrator of Law School Admissions Test violated Unruh Act by failing to reasonably accommodate test takers with disabilities and flagging their scores.



Example 5: Arbitrary Discrimination

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.



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HYPOTHETICALS

Hypothetical 1

Your law firm sponsors an online seminar for business development in the Shanghai market. The firm directs its invitations directly to attorneys of Chinese ancestry practicing in California. Is this a violation of the Unruh Act?

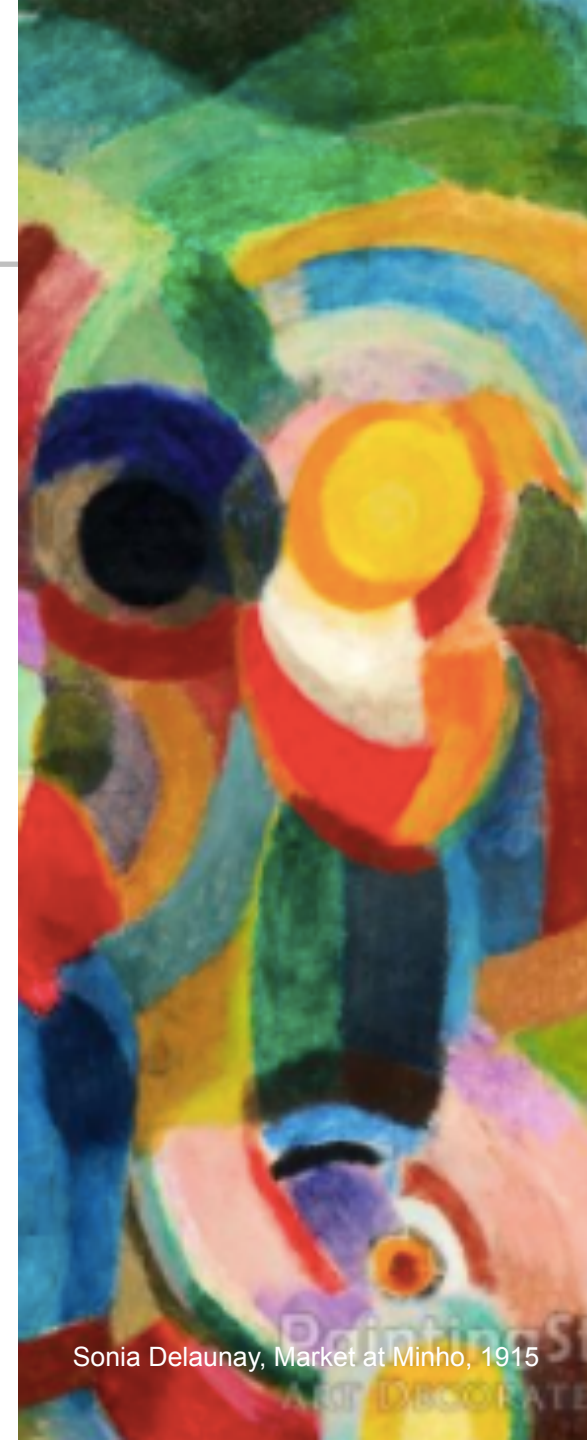


Hypothetical 2

You schedule an intake interview of a potential new client for your law practice. The client is deaf and asks for an American Sign Language Interpreter. Do you have to comply with the request under the Unruh Act?

Hypothetical 3

Your law office is in a high crime area with gang activity. Your client brings her teenage son to a meeting with you. He is wearing the colors of one of the rival gangs. The building management does not let the son into the building. Is there an Unruh Act violation?



Hypothetical 4

Your law firm hires an outside trainer to provide training to your staff. The trainer makes explicitly racial remarks to an African-American staff member. Your staff member complains of race discrimination. Is this actionable under the Unruh Act?



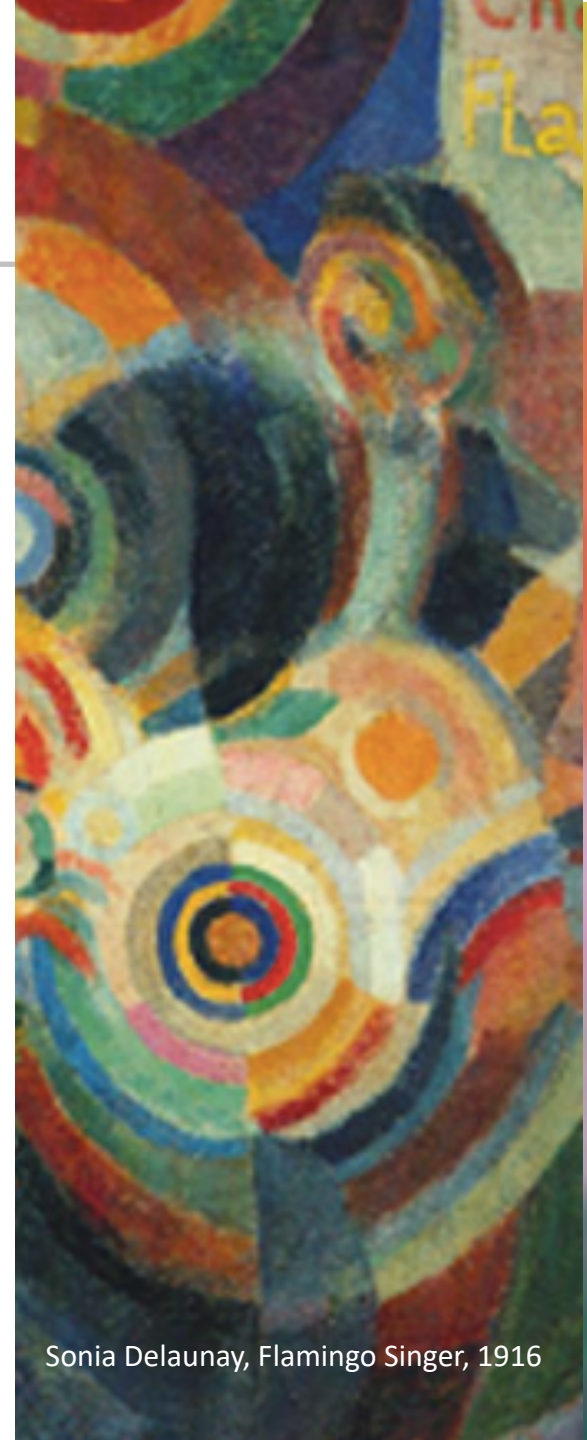
Hypothetical 5

You schedule a deposition in your office. The deponent uses a wheel chair. She complains that the parking lot lacks disabled parking and signage, the grade of the ramp coming into the building is not compliant with the ADA, and other features in the common area's bathroom also do not comply with the ADA.

If true, are there Unruh Act violations?

What are the potential monetary risks?

Who is liable?



Hypothetical 6

Your firm's third-party electronic payments processor requires users to certify they would not accept payments in connection with "bankruptcy attorneys or collection agencies engaged in the collection of debt." Is there an Unruh Act violation?





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BEST PRACTICES

Best Practices

- Develop policies and practices to ensure compliance with the Unruh Act and California Rules of Professional Conduct 8.4.1
- Conduct regular training for all supervisors and employees
- Ensure office leases include indemnification clause
- Be aware of all office operations
- Develop a complaint procedure
- Adopt a protocol for investigating and resolving complaints



THANK YOU

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