

DOMESTIC VIOLENCE AND FAIR HOUSING LAWS

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National and local statistics show that 90-95% of victims of domestic violence are women. When a housing provider has a policy of denying tenancy to or evicting anyone who is involved in a domestic violence incident, the housing provider's neutral policy could have a "disparate impact" on women. **Because women are far more likely to be the victims of domestic violence and not the perpetrators, domestic violence policies such as these negatively affect women far more than men, and are likely to be a violation of fair housing laws.**

Housing providers may establish policies and procedures to screen prospective tenants and to evict tenants; however, if those policies that appear neutral in fact have a disproportionately negative impact on a protected class of tenants, then the policy could be discriminatory. This type of discrimination is analyzed under the "disparate impact" theory of discrimination.

Disparate impact cases in housing do not need to show intent. In other words, a tenant or prospective tenant need only establish that the housing providers' policies or practices had a significantly greater adverse impact on the tenant's protected class. Statistical evidence (preferably figures gathered locally) is used to prove that the policy had a discriminatory impact.

Once a tenant has shown sufficient evidence of a discriminatory impact, the burden shifts to the housing provider to demonstrate a "business necessity" to justify the policy or practice. The housing provider must supply objective evidence that the policy has a strong relationship to a legitimate and substantial goal, not merely generalizations or subjective evidence. Housing providers must also be able to show that no alternative policy exists that could accomplish that goal with less impact on the protected class.

Here are a few examples to show how this policy issue plays out in practice.

Q: A woman applied for an available unit at our apartment complex. Her screening report indicated that she had been involved in a domestic violence incident. We do not want violence or other problems associated with domestic violence at our complex so we have a policy of not accepting applications from prospective tenants with a history of domestic violence on their screening report. Is this a violation of the fair housing laws?

A: When you receive an indication of domestic violence during the screening process, you should ask the prospective tenant about the circumstances. If she can show that she was the victim of domestic violence, then your refusal to take her application could be a violation of fair housing laws.

Typically, policies such as yours are based on a concern for the safety of residents in your complex. The policy, however, has an adverse impact on women based on sex, because a disproportionate number of victims of domestic violence are women. The assumption that former victims of domestic violence

would bring trouble to the complex or introduce a safety concern is not enough to justify your policy, and has been found to be a violation of the fair housing laws.

Q: The police were called to our complex in response to a domestic violence incident involving a husband and wife who live in our complex. We have a zero tolerance policy for any type of violence, and have issued an eviction notice to the household. Does our policy violate fair housing laws?

A: Your policy has a disproportionate adverse impact on women, because 90-95% of victims of domestic violence are women. You may assert that zero tolerance for violence at your complex simply represents concern for the health and safety of your tenants. Such a rule, however, may not be supported by business reasons based on overly broad generalizations that fail to take into account the individual circumstances of the female domestic violence victim.

A housing provider currently has some options in this type of situation that would assist them in complying with the fair housing laws. Authorities support the argument that a housing provider could evict the perpetrator and allow the tenancy to continue for the victim of domestic violence. Housing providers may also offer a separate, available unit at their complex to the victim of domestic violence. The key is to take steps to work with the tenant in this situation to help prevent any further harm or damages.

Housing providers, domestic violence advocates and fair housing agencies are working together to develop clearer guidelines for housing providers on how to manage domestic violence situations. If you have any questions about the fair housing laws in domestic violence situations, feel free to contact your local fair housing agency.

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