

PENNSYLVANIA HUMAN RELATIONS COMMISSION
“PERSONAL CARE ASSISTANT GUIDANCE”
GUIDANCE ON CERTAIN REASONABLE ACCOMMODATIONS UNDER THE
PENNSYLVANIA HUMAN RELATIONS ACT

1. AUTHORITY

This Guidance is an exercise of the authority granted to the Pennsylvania Human Relations Commission (“Commission”) to formulate policies to effectuate the purposes of the Pennsylvania Human Relations Act (“PHRA”).¹ Further, it is an exercise of the Commission’s legislative mandate to construe the provisions of the PHRA liberally for the accomplishment of the purposes thereof.²

2. SCOPE

This Guidance shall apply to discrimination under the PHRA in the context of public accommodation and/or commercial property which is based on “race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person³, prospective owner, occupant or user of such housing accommodation or commercial property . . . use of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association.”

In issuing this Guidance, the Commission reiterates its longstanding position that this Guidance is not intended to impose hard and fast rules that must be

¹ The Commission has the power and the duty “[t]o formulate policies to effectuate the purposes of [the Pennsylvania Human Relations Act] and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission or school district thereof to effectuate such policies.” 43 P.S. § 957(e).

² “The provisions of [the Pennsylvania Human Relations Act] shall be construed liberally for the accomplishment of the purposes thereof . . .” 43 P.S. § 962(a).

³ This guidance also applies to discrimination against individuals with disabilities who use emotional support animals. See Jackson v. Pennsylvania Hum. Rels. Comm'n, 308 A.3d 900 (Pa. Commw. Ct. 2024) (affirming a Commission decision finding that landlord discriminated against tenant because of her disability in violation of Pennsylvania Human Relations Act by not allowing tenant to have an emotional support animal).

absolutely applied without regard to the specific facts involved. Nothing in this Guidance shall affect statutory or other regulatory requirements.

This Guidance may not be cited as binding legal authority for any Commission ruling, adjudication, or other legally binding action. The rationales set forth in this Guidance may be cited as the basis for Commission action only to the extent the Commission believes the rationale is valid in the context of a specific proceeding.

This Guidance is intended to demonstrate the way the Commission will exercise its administrative discretion in adjudicating cases unless it is convinced otherwise during a specific proceeding. The Commission, as in the past, remains committed to ensuring that its adjudicative determinations are made on a case-by-case basis after consideration of all evidence of record. To this end, this Guidance may be deviated from when the Commission believes that any statute or regulation requires it, or that it is otherwise appropriate to do so.

3. PURPOSE

The purpose of this Guidance is to provide clarity to all Pennsylvanians regarding how the Commission will evaluate cases involving admission of Personal Care Attendants ("PCA") with individuals with disabilities by public accommodations and/or commercial properties.

4. NECESSITY

The PHRA recognizes the grave injury to public health and welfare that discrimination causes. 43 P.S. § 952(a). The Commission finds that it is important for the public to be able to predict how the Commission will evaluate reasonable accommodations involving complementary Personal Care Assistant ("PCA") admissions to afford individuals with disabilities the fair opportunity to benefit from regularly attended events by all members of the public.

5. DEFINITIONS

The term "**public accommodation, resort or amusement**" means any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public . . . but shall not include any accommodations which are in their nature distinctly private."⁴

⁴ 43 P.S. § 954 (l)

The term "**commercial property**" means (1) any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation. . ."⁵

The term "**Personal Care Attendant**", also referred to as a Personal Care Assistant or Aide, means an individual that assists a qualified individual to manage life with the person's disability. A PCA helps the person live a fuller and more inclusive life. PCAs may assist with physical or cognitive needs. A PCA as defined by this guidance does not need to be formally paid and may include family members providing these services to the qualified individual. PCAs provide more personal care and personal safety services for the individual, such as navigating public spaces, bathing, meal prep, among other things.

The term "**Direct Support Professional**" means an individual who helps with the education and learning processes that aid with success and integration for an individual with intellectual or developmental disabilities. These are also qualifying individuals under this guidance.

The term "**Handicapped**" means an individual with a disability that qualifies under the ADA. This guidance utilizes the term Handicapped because it is the term and language used in the original bills and statutes.

6. ENTITIES COVERED BY THIS GUIDANCE

This guidance specifically applies to public accommodations and/or commercial properties which sell tickets or admission directly to the public. This guidance does not apply to third-party ticket or admission resellers. A person complaining to be aggrieved relying on this guidance must make purchases directly from the public accommodation or commercial property ticketing or admissions office or platform.

This guidance applies to the primary market and does not apply to the secondary market or ticket resellers.

7. LEGAL STANDARD

The PHRA does not guarantee free or discounted admission for the PCA of individuals with disabilities in all instances. However, in certain situations it may be a reasonable accommodation for PCAs to receive free admission.

⁵ 43 P.S. § 954 (j)

To establish discrimination premised upon the failure of an entity covered by this guidance to make a reasonable accommodation pursuant to the PHRA, an aggrieved individual bears the initial burden of establishing that they have a disability and that the requested accommodation is reasonable and necessary. If this burden is met the burden shifts to the other side, which must show that the requested accommodation would fundamentally alter the nature of the program or impose an undue hardship.⁶

8. EVALUATING A FUNDAMENTAL ALTERATION OF ENTITIES' PROGRAM OR UNDUE HARDSHIP

In evaluating whether a requested accommodation would fundamentally alter the nature of an entities program or create an undue burden, the Commission considers the following non-exhaustive list of factors⁷:

- (i) The overall size and nature of a business, organization, program or public accommodation, including number of employees, structure and composition of workforce, and number and type of facilities. However, financial capability to make reasonable accommodations shall only be a factor when raised as part of an undue hardship defense.
- (ii) Good faith efforts previously made to accommodate similar handicaps or disabilities.
- (iii) The extent, nature and cost of the reasonable accommodation needed.
- (iv) The extent to which handicapped or disabled persons can reasonably be expected to need and desire to use, enjoy or benefit from the employment or public accommodation which is the subject of the reasonable accommodation in question.
- (v) Legal or proprietary interest in the subject of proposed reasonable accommodations including authority to make the accommodations under the terms of a bona fide agreement, such as a lease, governing or describing rights and duties with respect to the subject.

9. EXAMPLES OF POTENTIAL ACCOMMODATIONS

In some circumstances providing free admissions or waiving a cover charge for a PCA will almost always constitute reasonable accommodations. These include:

- (i) General admission to a venue that does not require reserved seating such as amusement parks, museums, and outdoor events.
- (ii) Admission to a venue with accessible seating areas where a PCA could remain close by without needing reserved seating.

⁶ Anderson v. Franklin Institute, 185 F.Supp.3d 628 (E.D. Pa. 2016).

⁷ 16 Pa. Code § 44.4

- (iii) Admission to a venue where a PCA could remain a reasonable distance to the individual with a disability that still allows the PCA to perform their duties without the need to reserve a seat.
- (iv) Admission to a venue which is not sold out or otherwise at capacity.
- (v) Admission to a club or lounge that requires a cover charge for entry.

10. INFORMATION THAT MAY BE REQUESTED

An entity evaluating a request for a reasonable accommodation may request documentation confirming that the individual has a disability and disability-related need only if the disability or disability-related need is not readily apparent. The entity may not require the individual to disclose their diagnosis, but may require the information to be:

- (i) In writing
- (ii) Be reliable and based on direct knowledge of the person's disability and disability-related need. This could include, but is not limited to, a recommendation from an individual's doctor, therapist, or social worker.

An entity may not require any certification, license, or third-party registration relating to the individual's disability, need for a PCA, or to show that the PCA is qualified.

11. ADDITIONAL CONSIDERATIONS FOR COMPLIANCE

In order to best assist the public with the utilization and compliance with this guidance, the following information is also being provided.

- (i) PCAs may be required to be seated or situated immediately next to the individual they are assisting. This should be determined by the needs of the ticketed qualifying individual and not the venue/operator.

Refusing this accommodation may be considered noncompliance with the policy in some circumstances and possibly constitute a safety issue for the ticketed individual and possibly the public.

- (ii) PCAs may not consume alcohol or other intoxicating substances while attending to an individual and in service of their role as a PCA.
- (iii) Venues and operators may choose that PCAs are ineligible for gifts, prizes, or other associated with ticketed attendance.
- (iv) Venues may wish to reserve a small number of tickets for at-door purchase to ensure space available for needed PCAs.