

Kimball, Tiry & St. John LLP

Legal Alert

Section 8 and Source of Income Protections - SB 329 and SB 222

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Under [SB 329](#) and [SB 222](#), all landlords in California will be required to accept Section 8 and VASH vouchers and other forms of rental assistance and to consider them as part of an applicant's income. Both will go into effect on January 1, 2020.

[SB 329](#) redefines source of income as "lawful, verifiable income paid directly to a tenant or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issues under Section 8 of the United States Housing Act of 1937."

[SB 222](#) adds to the definition of source of income HUD Veterans Affairs Supportive Housing (VASH) vouchers and clarifies that a landlord is not considered a representative of a tenant unless the source of income is a VASH voucher. [SB 222](#) also adds military and veteran status as new protected classes under the FEHA.

Many local jurisdictions, such as Alameda, Berkeley, Corte Madera, East Palo Alto, Fremont, Foster City, Hayward, Los Angeles (City and unincorporated areas), Marin County (unincorporated areas), Santa Clara County (unincorporated areas), City of San Diego, City of San Francisco, City of San Jose, Santa Monica, and Woodland have existing ordinances that include Section 8 and other rental assistance in their definition of source of income.

The passage of [SB 329](#) and [SB 222](#) means that California residential landlords throughout the state will no longer be able to say they don't participate in the Section 8, VASH or other rental assistance programs. It is anticipated that tenant's rights groups will be conducting testing to see whether landlords are aware of and are complying with the law. Although the changes do not go into effect until January 1, 2020, landlords who don't currently participate in rental assistance programs are advised to respond to inquiries about whether they accept Section 8, VASH or other rental assistance that although they do not currently participate, they will be participating effective January 1, 2020.

The FEHA states that it is unlawful to make, print or publish or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on any enumerated protected class, including source of income. Accordingly, it is important that all advertising (including ads posted on third party websites such as Craigslist) be revised to remove any references such as "No Section 8" or "We do not participate in Section 8" before January 1, 2020.

The FEHA retains language that in instances where there is a government subsidy, it is unlawful to use a financial or income standard in assessing eligibility for the rental housing is that is not based on the portion of the rent to be paid by the tenant.

The net effect of this language, when combined with then new definitions of source of income, is that the voucher amount must be considered as part of the tenant's income and any income standard applied by the landlord must be based on the portion of the rent which would be paid by the tenant, rather than the total contract rent.

Nothing in either [SB 329](#) or [SB 222](#) prevents a landlord from requiring a tenant with a Section 8 or VASH voucher or other rental assistance to meet the landlord's other criteria, such as credit and rental history.

Landlords with questions about the Section 8 program should contact the local Housing Authority in the area where their property is located.

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