



Fitness for Duty: Disability Discrimination In Employment

November 14, 2025

Presented by:

Aaron V. O'Donnell, Partner

Jacquelyn Takeda Morenz, Senior Counsel

Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego



Agenda

- Reasons to Provide Accommodations
- Definitions Related to Disabilities
- Medical Examinations and Inquiries
- Disability Discrimination
- The Interactive Process
 - Triggers
 - Effective Communication and Problem Solving
 - Finding Reasonable Accommodations
- Potential Interactions with Other Laws

Reasons to Provide Accommodations

Why Accommodate?

Laws Governing Disability Discrimination

- Americans with Disabilities Act (ADA)
- ADA Amendments Act (ADAAA)
- Rehabilitation Act of 1973
- California Fair Employment & Housing Act (FEHA)
- Family Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- Workers' Compensation laws
- Pregnancy Disability Leave Act (PDLA)
- Pregnant Workers Fairness Act (PWFA)
- Equal Employment Opportunities Commission (EEOC) Guidelines
- California Rights Department (CRD formerly DFEH) Guidelines



Why Accommodate?

Disability Lawsuits Are Expensive

- ❑ The cost of defending a case through discovery and a ruling on a motion for summary judgment (employer wins): \$75,000 to \$125,000.
- ❑ If employer loses summary judgment (more often than not): \$250,000 or more to take case to trial.
- ❑ If employer loses at trial, *unlimited* damages available to plaintiff in California (\$300,000 limit under federal law).
- ❑ If employer loses, must pay plaintiff's attorney fees and costs.
- ❑ Cost of appeals adds thousands to the total bill.

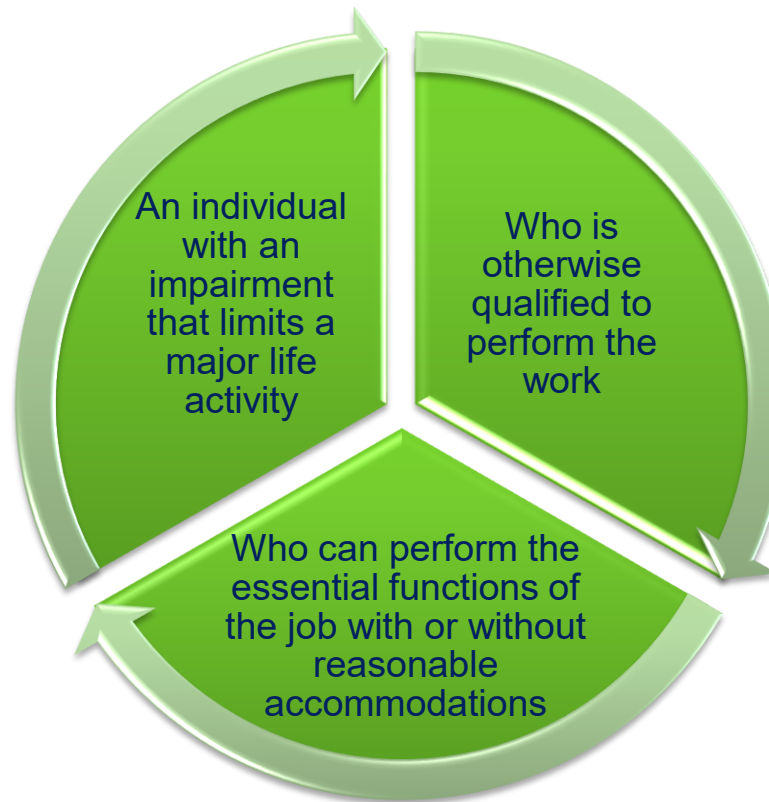
Why Accommodate?

- A Stronger, More Diverse Workforce
 - Accommodations enable employers to hire the most qualified workers despite their impairments.
 - Accommodations give individuals with disabilities access to productive work.
 - Students see disabled individuals working in desirable jobs.
 - Staff members become more comfortable around individuals with disabilities.
 - The cost of accommodation is typically minimal.

Definitions Related to Disabilities

Who Is Covered?

The ADA & FEHA protect *qualified individuals with disabilities*, defined as:



Who Is Covered?

- **ADA** — All employers that affect commerce with at least 15 or more employees in 20 or more calendar weeks in the current or preceding calendar year.
- **FEHA** — Any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; the state or any political or civil subdivision of the state; and cities.

Who Is Covered?

- Any employee — permanent, probationary, temporary, and substitute — who is a **qualified individual with a disability**, is protected by the ADA & FEHA.
 - Accommodations for a temporary or substitute employee may be different from accommodations for a regular worker.
- Management, part-time, seasonal, and non-bargaining unit employees are all covered.
- Applicants are also protected.
 - The law does *not* require employers to hire unqualified applicants.

“Qualified” Individual

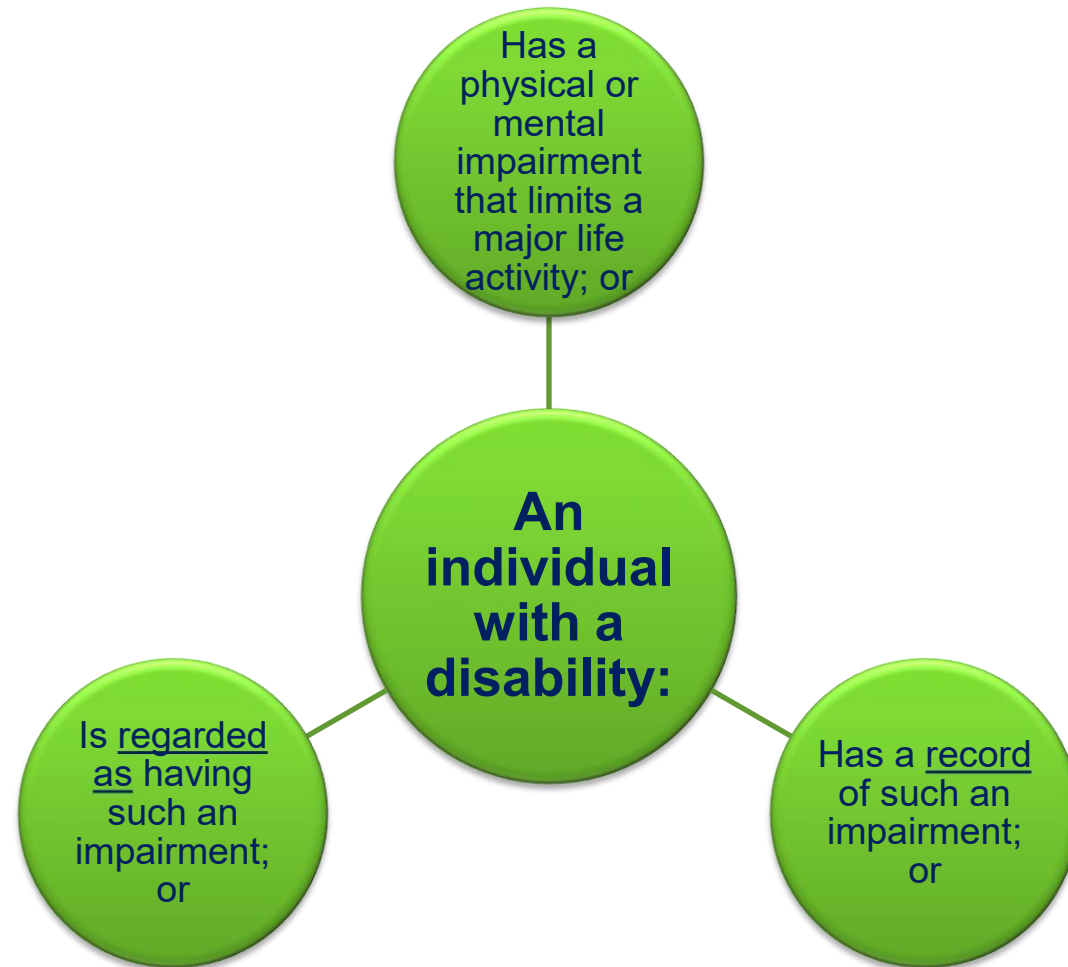
Employee or applicant must be qualified for the job.

- Qualified means able to meet all prerequisites for the job (*Johnson v. Board of Trustees of Boundary School District No. 101* (9th Cir. 2011)), and able to perform the *essential functions* of the position with or without reasonable accommodation (*Jensen v. Wells Fargo Bank* (2000)).
- In a disability lawsuit, the *plaintiff* must prove he/she is qualified for the job (*Green v. State of California* (2007)) and able to perform the essential functions *at the time of the adverse action* (*Carroll v. City of Stone Mountain* (11th Cir. 2013)).

What Is a Disability?

ADA/FEHA protections apply to all three categories

ADA & FEHA also protect from employment discrimination qualified individuals who are associated with a disabled individual. (*Castro-Ramirez v. Dependable Hwy. Express* (2016))



What Is a Disability?

A physical disability includes:

- Any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following (Gov. Code §12926(m)):
- Affects one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine (Gov. Code §12926(m)(1)); and
- Limits a major life activity (Gov. Code §12926(m)).

What Is a Disability?

- Limits a major life activity (Gov. Code §12926(i)(1)(A) and (k)(1)(B)(i):
- Shall be determined without regard to mitigating measures;
- Limits a major life function if it makes the achievement of the major life activity more difficult; and
- Major life activities shall be broadly construed and includes physical, mental, and social activities and working.

What Is a Disability?

A mental disability includes:

- Any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. (Gov. Code § 12926(j)(1))
- Chronic or episodic conditions, clinical depression, and bipolar disorder. (Gov. Code § 12926.1(c))

What Is a Disability?

- A mental disability does *not* include:
 - Stress/anxiety over working for a particular supervisor (*Higgins-Williams v. Sutter Medical Foundation* (2015))
 - Sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs
(Gov. Code §§ 12926(j)(5), (m)(6))

What Is a Disability?

A medical condition includes:

- Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer (Gov. Code §12926(i)(1)); or
- Genetic characteristic. (Gov. Code § 12926(i)(2))

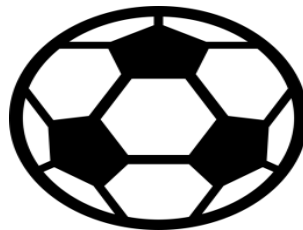
What Is a Major Life Activity?

Major life activities include:

- Working
- Walking, running, standing
- Sleeping
- Caring for oneself
- Breathing
- Learning, reading, concentrating, thinking, communicating
- Major bodily system functions
- Procreation

What Is Not a Major Life Activity?

- Playing soccer (*Arteaga v. Brink's* (2008)) or tennis (*Amann v. Potter* (6th Cir. 2004))
- Ability to wear a specific uniform (*Sipple v. Crossmark* (E.D. Cal. 2012))
- Knitting, crocheting, sewing, braiding hair (*Casey v. Kwik Trip, Inc.* (7th Cir. 2004))
- Bowling, camping, restoring cars, lawn mowing (*Moore v. J.B. Hunt Transport* (7th Cir. 2000))

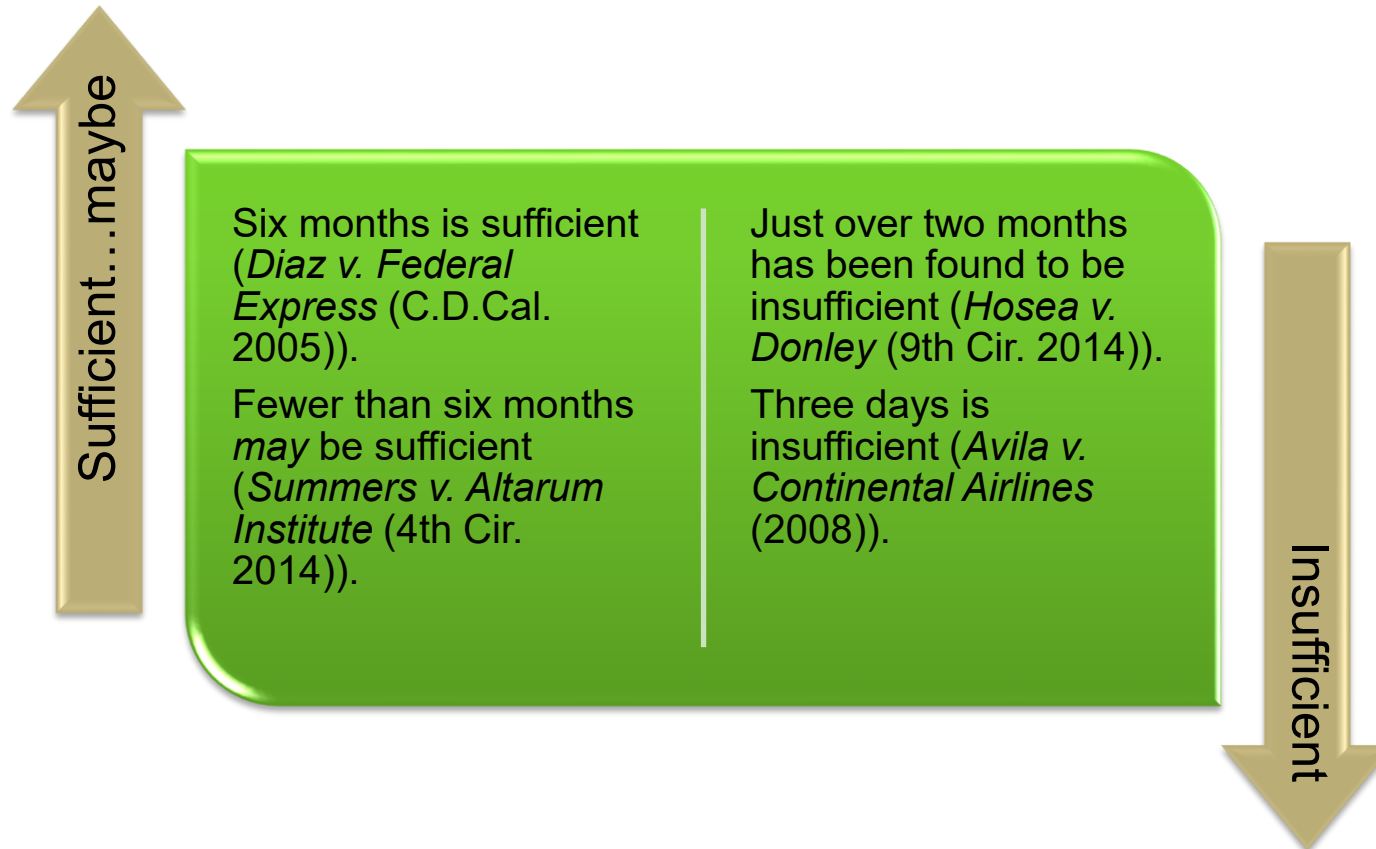


What About Mitigating Measures?

- Under California law, “whether a condition limits a major life activity must be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity.” (Gov. Code § 12926.1(c))
- Mitigating measures include employees’ devices (such as wheelchairs) and medications.
- Mitigating measures do not include ordinary eyeglasses and contact lenses. (2 Cal. Code Regs. § 11065(n)(1))
- Since the 2009 ADA amendments, federal law is similar. (Overruling *Sutton v. United Air Lines* (1999))

Temporary Disabilities

- No bright line rule as to how long a condition must disable or impair the individual to be protected.



Work-Related Conditions

The duty to accommodate disabling conditions applies regardless of whether the condition is related to a workplace injury or illness.

The primary distinction between work-related and non-work-related conditions is the amount of leave the employee is entitled to use.

Accommodation may be required *before* the employee is declared “permanent & stationary.”

“Record of” a Disability

Individual had a *past* impairment that limited a major life activity but (1) no longer has the impairment or (2) the impairment no longer limits the activity.

- Recovering drug user (*Hernandez v. Hughes Missiles Systems* (9th Cir. 2002))
- Record of mental illness (*Doe v. The Salvation Army* (6th Cir. 2008))
- History of cancer (*Adams v. Rice* (D.C. Cir. 2008))
- Past leaves or extensive absences (*Snead v. Metropolitan Property & Casualty Ins. Co.* (9th Cir. 2001))
- Prior receipt of disability benefits (*Lawson v. CSX Transportation* (7th Cir. 2001), agreeing with EEOC)

“Regarded as” Disabled

- Individual has *no* impairment or has an impairment that does not limit a major life activity, but employer treats or perceives the employee as having an impairment.
 - Excludes impairments that are “transitory *and* minor”
 - Covers any adverse employment action taken “because of” an actual or perceived impairment
- Employer need not accommodate impairments that are merely perceived or regarded.

“Regarded as” Disabled

Employer
regards
individual as
disabled:

- Employer’s doctor refused to “clear” individual (*Wilson v. Phoenix Specialty Manufacturing Co.* (4th Cir. 2008)).
- District reassigned guidance counselor because it believed she was suicidal (*Peters v. Baldwin Free School District* (2d Cir. 2003)).
- Supervisor described employee as “slow” and “knew there was something wrong with him” (*Brady v. Wal-Mart Stores* (2d Cir. 2008)).
- Supervisors thought employee posed a safety risk because he was under psychiatric treatment (*Quiles-Quiles v. Henderson* (1st Cir. 2006)).
- Employer required an applicant to pay for MRI at his own cost as a condition to employment (*EEOC v. BNSF Railway Company* (9th Cir. 2018)).

“Regarded as” Disabled

Employer does not regard individual as disabled:

- Employer simply followed restrictions imposed by employee’s doctor (*Gruener v. Ohio Casualty Insurance Co.* (6th Cir. 2008); *Rivera v. Pfizer Pharmaceuticals* (1st Cir. 2008); *Sipple v. Crossmark* (E.D. Cal. 2012)).
- Employer offered employee a respirator due to her chemical sensitivity (*Thomas v. Avon Products* (6th Cir. 2008)).
- Employer denied employee’s accommodation request because it concluded he did not have a disability (*Krolik v. National Board of Medical Examiners* (9th Cir. 2008)).

Medical Examinations and Inquiries

Medical Examinations

- Employers may only require medical examinations and make medical inquiries in limited circumstances.
- Drug testing is not considered a medical examination.
- Collective bargaining agreements may include additional restrictions

Medical Examinations

Pre-Offer Examination or Inquiry

- Unlawful for employer to conduct a medical examination or inquiry of an applicant before making a job offer.
- Employer may require medical verification of disability and applicable restrictions if applicant requests accommodation in the hiring process.
- Employer may make pre-employment inquiries into applicant's ability to perform job-related functions.

Medical Examinations

Post-Offer, Pre-Employment Examination or Inquiry

- Employer may require medical examination or inquiry after making an offer of employment but before applicant begins duties if:
 - All entering employees in same job category are subjected to such an examination or inquiry; and
 - It is job-related and consistent with business necessity.

Medical Examinations

Post-Employment Examination or Inquiry

- Employer may conduct an employee medical examination where:
 - There is evidence of a job performance or safety problem;
 - The examination is required by law;
 - The examination is necessary to determine fitness to perform a particular job; or
 - Certification of need for a requested accommodation.

Medical Examinations

Certification of Need for Accommodation

- Employer may require an employee to provide certification of the need for accommodation. It may only require:
 - Name and credentials of health care provider;
 - Statement that the employee (or applicant) has a physical or mental condition that limits a major life activity or a “medical condition”;
 - A description of why the employee needs reasonable accommodation; and
 - Anticipated duration of the need for accommodation.

Medical Examinations

Certification of Need for Accommodation

- Employer may not require an employee:
 - To reveal the specific disability or medical condition.
 - To be examined initially by a District-selected physician unless the exam is due to a concern that the employee's condition poses a direct threat to the employee's health and safety or the health and safety of others in the workplace.
 - To provide medical information unrelated to reason for the request for reasonable accommodation.

Medical Examinations

Confidentiality

- Medical information must be kept confidential in separate medical files with limited access.
- Supervisors/managers may be informed of necessary restrictions and accommodations.
- First aid and emergency personnel may be informed when appropriate.
- Relevant information provided to government on request.

Medical Examinations

Fitness for Duty

- Limited to determining whether employee can perform essential functions of position.
- May identify work-related restrictions.
- If concern is safety, must have specific, factual, objective information supporting concern.
- Warning: for mental health concerns related to certificated employees follow the very technical requirements in Education Code 44942

Disability Discrimination

Disability Discrimination

- Employers may not take any action with purpose or effect of denying a qualified individual with a disability any right, privilege, advantages or opportunity enjoyed by others.
- May not discriminate in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- Laws also prohibit harassment of disabled employees and retaliation against an applicant or employee for asserting rights under the laws.

The Interactive Process

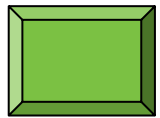
The Interactive Process: Triggers

What Triggers the Interactive Process?

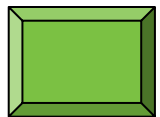
- Generally, the employee or applicant must *request* an accommodation
 - Request need not be formal
 - No magic words
 - Request need not be specific
 - Request may be ambiguous
 - Request may be made to HR, a supervisor, or anyone in the employee's chain of command
- An employer must accommodate only *known* disabilities

What Triggers the Interactive Process?

- **True or False:** A doctor's note with work restrictions should be treated as a request for accommodation.



True



False

What Triggers the Interactive Process?

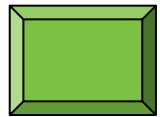
Answer

True. The employee *need not* request an accommodation when:

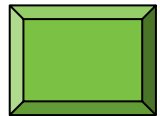
- The employer knows of the disability *and* the need for accommodation is *obvious* because of the disability
- The disability prevents the employee from requesting an accommodation
- The employee can show that requesting an accommodation would be futile

What Triggers the Interactive Process?

- **True or False:** Participating in the interactive process is a separate obligation from the duty to accommodate.



True



False

What Triggers the Interactive Process?

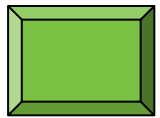
Answer

True.

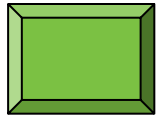
- California law makes the interactive process a separate obligation. An employee or applicant can sue for an employer under FEHA for failing to engage in the interactive process.
- While the ADA does not describe the interactive process as a specific employer obligation, the Ninth Circuit Court of Appeals recognizes it as a “mandatory rather than a permissive obligation.” (*Barnett v. U.S. Air, Inc.* (9th Cir. 2000))

When Does the Interactive Process Begin?

- **True or False:** The employee may be placed on sick leave while the employer schedules the interactive meeting.



True



False

When Does the Interactive Process Begin?

Answer: It depends on the circumstances:

- Is the employee returning from medical leave with restrictions?
- Did the employee supply adequate medical documentation of the need for accommodation?
- What is the reason for the delay?
- Is the employee able to work safely pending the interactive meeting?

When Does the Interactive Process Begin?

- The employer must engage in a *timely*, good faith interactive process (Gov. Code § 12940)
 - Employer should respond to a reasonable accommodation request as soon as practicable
 - Unwarranted delay is a violation of the duty to accommodate
 - Lengthy delay is a failure to engage in the process in good faith



The Interactive Process: Effective Communication and Problem Solving

The Interactive Process

- Who should attend an interactive process meeting?
 - Employee
 - Employee's representative, if requested
 - Human Resources
 - If appropriate, a process facilitator
 - Legal counsel, if employee brings an attorney
 - Other persons with relevant knowledge



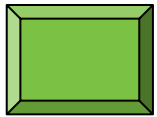
The Interactive Process

Prepare for the interactive meeting

- Review the job description/job function analysis
- Review the employee's restrictions
- Request additional details about restrictions if needed
- Consider any accommodation requested by the employee
- Identify other possible accommodations
- If an effective accommodation in the current position appears unlikely, determine whether the employee is qualified for any vacant positions
- Determine how much leave the employee has available

The Interactive Process

- **True or False:** Sending the employee for a fitness for duty examination is the approved way to gather the necessary information about the employee's work restrictions.



True



False

The Interactive Process

False.

- First attempt to gather sufficient information from the employee's own doctor. Send the employee to a district doctor (at district expense) only if the employee's doctor fails to provide the information needed for the interactive process. (2 C.C.R. § 11069(d)(5))
- Exception: Where the employee's disability poses a direct threat to the employee's health and safety or that of others in the workplace.

The Interactive Process

- **Possible outcomes of the interactive meeting**
 - Employee states no accommodation is needed
 - Employee identifies new restrictions
 - Employee declines proffered accommodation(s)
 - Employee insists on a specific accommodation
 - Supervisor is resistant to accommodations
 - Employer offers temporary accommodation on trial basis
 - Employer determines restrictions cannot be accommodated
 - Parties determine more information is needed

The Interactive Process

Document the interactive process meeting

- Summarize the discussion in writing
- Describe accommodations discussed, offered, declined, or accepted
- Describe the terms of any agreed-on accommodations
- Set a date for follow-up discussion
- Signed by each participant
- Do not place in employee's personnel file; use a separate confidential file

When the Interactive Process Breaks Down

- *Both* parties must cooperate in the process in good faith
 - Employer must promptly initiate the interactive process.
 - Employee must cooperate by providing appropriate medical documentation of (1) the impairment(s) and (2) the employee's functional limitations (not a diagnosis) (*Jackson v. City of Chicago* (7th Cir. 2005); *Bundy v. Chaves County Board of Commissioners* (10th Cir. 2007)).
 - Employee must participate in the interactive meeting (*EEOC v. Sears* (7th Cir. 2005)).
 - Employee may not “uncompromisingly insist on a single accommodation that is unreasonable” (*Whelan v. Teledyne Metal Working Products* (3d Cir. 2007)).

When the Interactive Process Breaks Down

- If the employee causes the process to break down, he/she has no claim for failure to accommodate.
 - *Gratzl v. Office of Chief Judges* (7th Cir. 2010) [employee could not unilaterally insist on accommodation of her choice where employer offered an effective alternative].
 - *Carter v. Northwest Airlines* (7th Cir. 2004) [employee did not respond to employer's calls or invitation to meet, and declined to take test for the job he claimed to be qualified for].
 - *Kratzer v. Rockwell Collins* (8th Cir. 2005) [employee failed to provide requested documentation of restrictions and appropriate accommodation for mechanical test needed for promotion she sought].

When Is the Interactive Process Complete?

- The duty to accommodate is *ongoing*.
- “The duty to reasonably accommodate a disabled employee is a continuing one that is not exhausted by one effort.” (*Swanson v. Morongo Unified School District* (2014), cited in *Atkins v. City of Los Angeles* (2017))

When Is the Interactive Process Complete?

Follow up with the employee to ensure the accommodations are effective.

Follow up with the supervisor to identify concerns.

Hold additional meetings, if necessary.

Request current medical verification if appropriate.

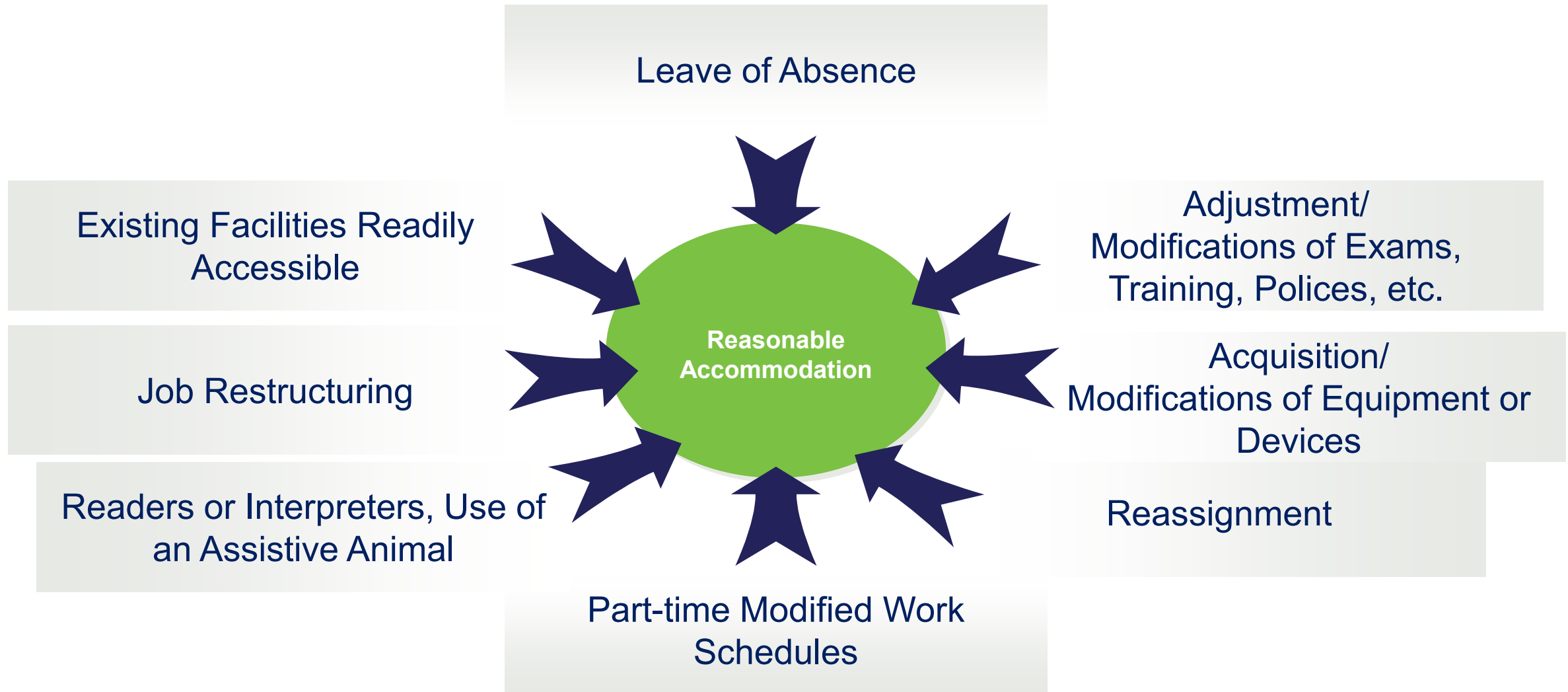
Give the employee a contact for questions.

The Interactive Process: Finding Reasonable Accommodations

What Are Accommodations?

- *Reasonable accommodation* means the removal of workplace barriers to allow an individual with a disability to perform the essential functions of a job.
- Categories of accommodations include:
 - Changes that allow an individual with a disability to enjoy equal benefits and privileges of employment (also includes modifications to work without pain)
 - Changes to the job application process
 - Modifications to the work environment
- Reasonable accommodations are not limited to modifications that enable the performance of essential functions. Rather, they can include modifications that allow an employee to work without pain. (*Strife v. Aldine Independent School District* (5th Cir. 2025))

Examples of Reasonable Accommodations



Essential Functions

- What are *essential functions*?
 - Job exists to perform the function
 - Function vs. way of performing function
 - Limited number of employees available who can perform it
 - Function is highly specialized
 - Function is not “marginal” (marginal functions can be redistributed, while essential functions need not be)
- Employer must show the position *does* perform the function
 - Written job description is significant evidence of essential functions
 - Job description alone is not sufficient

Essential Functions

- Time spent performing the function is not dispositive
 - Driving is essential function of field nurse's job though only 25% of the day is spent driving (*EEOC v. LHC Group* (5th Cir. 2014)).
 - Restraining inmates was essential for youth worker, even though rarely performed, because of the consequences if it could not be done (*Wardia v. Justice & Public Safety Cabinet Dept.* (6th Cir. 2013)).
 - Firefighting is essential function of fire investigator position because firefighters could die if investigator could not assist in suppressing fires (*Creemeens v. City of Montgomery* (11th Cir. 2011)).
 - Function may not be essential if employee has never had to perform it (*Shell v. Smith* (7th Cir. 2015) [driving bus might not be essential function of mechanic helper job where employee had not driven bus on public road in 12 years of employment]).

Essential Functions

- Other essential functions recognized by courts:
 - Ability to handle workplace stress and get along with others (*Walz v. Ameriprise Financial* (8th Cir. 2015) [working as part of a team])
 - Ability to refrain from sexually harassing staff (*McElwee v. County of Orange* (2d Cir. 2012))
 - Ability to refrain from threats and racial slurs against coworkers (*Darcangelo v. Verizon Maryland* (4th Cir. 2006))
 - Ability to get along with subordinates (*Cameron v. Community Aid for Retarded Children* (2d Cir. 2003))
 - Ability to carry out tasks without offending customers (*Taylor v. Food World* (11th Cir. 1998) [rejecting EEOC's position that interacting appropriately with customers was *not* an essential function])

Documenting Essential Functions

- Include a comprehensive list of essential functions in each job description.
- As jobs change, update job descriptions and discard old ones.
- Job descriptions should include:
 - “The essential functions of the position include, but are not limited to ...”
 - Attendance and qualitative and quantitative performance standards.
 - Sensory and physical requirements such as:
 - Use full range of peripheral vision to drive a van.
 - Read student health records.
 - Lift 30-lb. boxes of textbooks intermittently for approximately 30 minutes per day.
 - Answer office telephones and communicate information to callers.



What Is “Reasonable”?

Accommodations
must be
reasonable:

- Effective – enables employee to perform the job
- Removes a *workplace* barrier (not a personal one)
- Possible cost-benefit analysis (caution!)
- Need not violate seniority provisions of a CBA
- Need not be the employee’s *choice* of accommodation:
 - Employer may select *any* effective accommodation
 - Give consideration to employee’s preferred accommodation

Examples of Reasonable Accommodations

Making existing facilities readily accessible to, and usable by, employees with disabilities

Modifying an employer policy

Adjustment or modification of examinations

Job restructuring

Transferring an employee to a more accessible worksite

Part-time or modified work schedules

Modifying supervisory methods

Permitting alterations of when and/or how an essential function is performed

Assistive aids and services such as qualified readers or interpreters to an applicant or employees

Allowing applicants and employees to bring assistive animals to the worksite

Additional training

Permitting an employee to work from home*

Paid or unpaid leave of absence for treatment or recovery

Reassignment to vacant position for which employee is qualified

Providing other similar accommodations

Considerations When Accommodating Employees with Mental Health Conditions & Disabilities

- Employer decides which reasonable accommodation will be used, but employees should have a voice in this decision through the interactive process.
 - How does the disability impact the main tasks of the job?
 - What does the employee most need as far as support, equipment, or changes in order to perform these main tasks?
- Reasonable accommodations for employees with mental health conditions and disabilities should be aimed at managing:
 - Triggers
 - Concentration or distraction issues
 - Schedules for treatment and/ or medication compliance
- Job Accommodation Network has section for ideas on [Mental Health Conditions](#)

What is Not “Reasonable”?

Accommodation does not require employers to:

- Create a position for the disabled employee
- Hire another employee to perform the job functions
- Waive the requirement that the employee perform all essential functions of the job
- Promote the employee
- Provide paid leave if the employee has no paid leave available
- Bump another employee out of a position

What is Not “Reasonable”?

- Allowing employee to eat lunch in a restricted area that would cause the employer to be cited (*EEOC v. Sears* (7th Cir. 2005)).
- Providing indefinite leave where employee has already taken significant amounts of leave and shows no clear prospects for recovery (*Maat v. County of Ottawa* (6th Cir. 2016)).
- Assigning employee to permanent “light duty” (*Raine v. City of Burbank* (2006)).
- Reassigning supervisory responsibilities to accommodate employee’s memory loss (*Stern v. St. Anthony’s Health Center* (7th Cir. 2015)).
- Having someone “on call” whenever the employee cannot arrive on time to work (*Farina v. Branford Board of Ed.* (2d Cir. 2011)).
- Lowering production standards (*Lewis v. Gibson* (4th Cir. 2015)).

Reasonable Accommodation

Is regular attendance an essential function?

- EEOC: Although performing a job “sometimes requires a person’s presence at the worksite,” this does not render attendance “a job function in and of itself.”
- Most courts conclude attendance is essential for most jobs:
 - *Diaz v. Federal Express* (C.D. Cal. 2005) [if plaintiff would still have attendance problems when reassigned, he is not qualified]
 - *Pratt v. Delta Air Lines* (C.D. Cal. 2015) [request to work only when health permitted, after missing 211 days of work in a year, was unreasonable]
 - *McClelland v. Permanente Medical Group* (E.D. Cal. 2013) [attendance was essential function of advice nurse because understaffing compromised patient care]

Reasonable Accommodation: EEOC Guidance –Remote Work

- Equal Employment Opportunity Guidance indicated that the “temporary telework experience” that occurred during the COVID-19 pandemic could be relevant to considering a request to telework
- “For example, the period of providing telework because of the COVID19 pandemic could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely, and the employer should consider any new requests in light of this information”

Reasonable Accommodation: EEOC Post-COVID cases –Remote Work

- Employers must provide remote work for employee who cannot commute due to disability *when the employer admits the employee has adequately performed functions remotely for months.* (Linda A. v. Wormuth (EEOC 2023))
- Employee not entitled to FT telework where there is *no medical evidence* establishing that FT telework was “required” to perform their essential functions. (Oliver M. v. Fudge (EEOC 2022))
- FT remote work not a reasonable accommodation for employee whose *duties require being on-site part of the week to review files with sensitive/classified info* that could not be removed from office. (Hollis B. v. Mayorkas (EEOC 2023))
- Remote work not a reasonable accommodation where the employee’s duties include *interviewing the public.* (Barrett v. Kirakazi (EEOC 2022))

Reasonable Accommodation: Application of EEOC Guidance –Remote Work

- **Consider preferences of employee**
- **Need information regarding the employee's restrictions**
- **The Interactive Process is an Interactive Discussion**
- The interactive process does not require the employer to accept the employee's proffered accommodation, especially if another accommodation would suffice. (*Weeks v. Union Pacific Railroad Co.* (E.D. Cal. 2015) 137 F.Supp.3d 1204, 1217.)

Reasonable Accommodation: Travel/ Commute to Work

- Employers have no obligation under the ADA to accommodate disabled employees for problems they face outside the workplace, unrelated to the essential job functions of their positions or privileges of employment, merely because they are disabled. (Unrein v. PHC-Fort Morgan, Inc. (10th Cir. 2021))
- Employers typically bear no responsibility for assisting an employee with a disability in commuting to and from work, as the employee is responsible for choosing their residence and has various options available to reach their workplace. But the employer may still have other reasonable accommodation obligations, such as a modified work schedule or parking provisions. (EEOC v. Chater Communications, LLC (7th Cir. 2023))

Reasonable Accommodation: Assistive Animals

- A reasonable accommodation may include “[a]llowing applicants or employees to bring assistive animals to the worksite.” (2 C.C.R. § 11068(a) & 2 C.C.R. § 11065(p)(2)(B).)
- Under California Fair Employment and Housing Act (“FEHA”), service animals include dogs trained for the visually and/or hearing impaired, dogs or other animals trained to the requirements of a person with a disability, and dogs or other “support” animals that provide “emotional, cognitive, or other similar support to a person with a disability, including but not limited to traumatic brain injuries or mental disabilities, such as major depression.”

2 C.C.R. § 11065(a)(1)(A)-(D)

Reasonable Accommodation: Assistive Animals

- Employer May Require:
 - Documentation re the need for the animal (Dona A. v. Kijakazi (EEOC 2022))
 - Confirmation that animal will behave appropriately
 - Animal be free from offensive odors and eliminate waste appropriately
 - Animal does not engage in behavior that endangers the health and safety of others (Bennett v. Hurley Medical Center (6th Cir. 2023))
- Employer may challenge that the animal meets above standards within the first two weeks based on objective evidence of offensive or disruptive behavior (2 C.C.R. § 11065(a).)

Accommodating Applicants

- Applicants must be reasonably accommodated in the application process:
 - Tests/examinations
 - Additional time
 - Reader/interpreter
 - Writing requirements
 - Interviews
 - Interpreter
 - Pre-employment physicals?

Undue Hardship

Accommodations
need not pose an
“undue hardship”:

- One that involves significant difficulty or expense considering the employer’s resources
- An unduly extensive or disruptive accommodation
- Accommodation that fundamentally alters the nature or operation of the business (42 U.S.C. §12111(10); 29 C.F.R. §1630.2(p))

Direct Threat

What if the employee's presence *or* the accommodation itself poses a “direct threat” in the workplace?

- Threat to the safety or health of the disabled employee
- Threat to the safety or health of other employees/students



Direct Threat

- The employer bears the burden of showing that an individual poses a “direct threat” in the workplace.
(*EEOC v. Wal-Mart Stores* (8th Cir. 2007))
- An individual analysis is required, considering:
 - The duration of the risk posed
 - The nature and severity of the potential harm
 - The likelihood that the potential harm will occur
 - The imminence of the potential harm
- Can a reasonable accommodation eliminate the risk?

When Must the Accommodation Begin?

- The employer must provide the accommodation(s) *expeditiously*
 - Does the employer control the possible modifications?
 - Is the modification readily available?
 - Must the employer order equipment?
 - Must the employer have equipment installed?
 - Does the modification require moving offices or other employees?
- In most cases, consider the accommodation(s) a *permanent* modification

Telling Others about the Accommodation

Employees' medical information is confidential. Inform others on a need-to-know basis:

- The employee's supervisor may need to know that the employee requires breaks or other accommodations.
- The site administrator may need to know about the accommodation.
- Individuals assigned to assist the employee may be told only the extent of their assignment.
- First aid and safety personnel may be informed if the disability might require emergency treatment.
- Coworkers should be told the district is "complying with the law."

Interaction with Other Laws

Interaction with Other Laws

- Worker's Compensation
- FMLA and CFRA
- Disability Retirements and Allowances
- Education Code — Placement on Medical Reemployment List
- Educational Employment Relations Act (EERA)
- Pregnancy Disability Leave Act (PDL)
- Pregnancy Workers Fairness Act (PWFA)
- Providing Urgent Maternal Protections for Nursing Mothers (“PUMP”) Act
- Labor Code Section 1030 Lactation Accommodations

Question & Answer Session

Thank You

For questions or comments, please contact:

Aaron V. O'Donnell
(562) 653-3200
AO'Donnell@aalrr.com

Jacquelyn Takeda Morenz
(949) 453-4260
jmorenz@aalrr.com

aalrr
Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

Disclaimer

This AALRR presentation is intended for informational purposes only and should not be relied upon in reaching a conclusion in a particular area of law. Applicability of the legal principles discussed may differ substantially in individual situations. Receipt of this or any other AALRR presentation/publication does not create an attorney-client relationship. The Firm is not responsible for inadvertent errors that may occur in the publishing process.

©2025 Atkinson, Andelson, Loya, Ruud & Romo

