

Disabilities in the Workplace

Reasonable Accommodations on the Job

YOUR LEGAL RIGHTS

If you qualify as an employee with a disability, you may be entitled to a “reasonable accommodation” at work to enable you to perform your job and/or protect your health (See our Fact Sheet titled “**Disabilities in the Workplace: An Introduction to State and Federal Laws**” for general disability information). In California, employers with 5 or more employees must provide reasonable accommodations to employees and job applicants with disabilities under the Fair Employment and Housing Act (“FEHA”). Under Federal Law, if your employer has 15 or more employees, the Americans with Disabilities Act (“ADA”) requires employers to provide reasonable accommodations to employees and job applicants with disabilities.

This fact sheet provides information about reasonable accommodations. It does not cover every employment situation but instead provides general guidance as to your rights to reasonable accommodations on the job.

1. What is a reasonable accommodation?

Reasonable accommodations are changes made to a job or the workplace to enable an employee or job applicant to successfully perform the position’s basic duties and/or protect his or her health. A reasonable accommodation does not change the essential functions of the job. Whether a particular accommodation request is reasonable depends upon the situation and the type of job. The accommodation cannot be extremely costly or disruptive for the employer.

2. Do I have to already be an employee to request a reasonable accommodation?

The ADA/FEHA applies equally to employees and job *applicants*. An employer must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job.

3. When does my employer or potential employer have to accommodate me?

An employer is only required to provide an employee or job applicant with a reasonable accommodation if the individual qualifies as disabled (See our Fact Sheet titled “**Disabilities in the Workplace: An Introduction to State and Federal Laws**” for information on who is legally considered to be disabled). Additionally, an employer must accommodate only known disabilities. So to guarantee your legal rights, you should tell your

employer that you have a disability if you need an accommodation rather than expect that your employer to know you have a disability from the situation. No “magic words” from the employee or job applicant are required to prompt a reasonable accommodation discussion.

Exception: If the accommodation causes an “undue hardship” to the employer, the employer is not required to provide a reasonable accommodation. An accommodation is considered an undue hardship when it requires significant difficulty or expense to apply it. For example, if an employer at a small business is required to modify a disabled employee’s work hours or must grant leave as part of a reasonable accommodation, the result of that leave may prevent other employees from doing their jobs if they must take on the responsibilities of the disabled employee. This may create a significant disruption to the operations of the business and could be considered an undue hardship.

4. What do I have to tell my employer if I need an accommodation? Do I need to disclose what type of disability I have?

To be protected by the ADA/FEHA, you must disclose your disability to at least one person who represents the employer, such as a supervisor or human resource person. If your disability is of a personal nature you do not necessarily need to tell your employer all the details of the disability. You should say that you need an “accommodation” and provide your employer with enough information to show that you have a disability/impairment that substantially limits certain major life activities.

Many disabilities are classified as one condition but have many other effects that require a reasonable accommodation. For example, if your substantially limiting impairment is HIV/AIDS, but you are also suffering from other conditions caused by HIV/AIDS, such as cancer, a respiratory disorder, an eye condition or depression, you may say that you have “an immunity impairment substantially limiting a major life activity.” Of course, in some circumstances, employers can decode these descriptions and conditions.

Disclosure of your disability can be an extremely personal decision. You should consider the costs and benefits, including:

- Need for accommodation to perform the job;
- Need for accommodation to avoid discipline or termination;
- Need for accommodation to protect health;
- Whether you can get the accommodation without disclosing your disability;
- Risk of stigma and harassment;
- Risk of loss of job or promotion;
- Risk of loss of privacy; and
- Potential for more successful and supportive employment experience.

5. Do I have to disclose to everyone at work?

No. You must disclose to someone who represents the employer, such as a human resources person or even your supervisor--if you feel comfortable doing this and the supervisor has a legitimate need to know of your disability. However, you are not required to disclose to co-workers. In fact, any medical information your employer has must be kept confidential and may be revealed only to supervisors and managers who need to know about the accommodation and any restrictions on your work or duties.

6. Do I have to put the accommodation request in writing?

No. You can make the request in writing, orally, through e-mail or by any other form of communication. However, you may want to keep records of your request in case your employer later denies that you made the request.

7. What are some kinds of accommodations an employee with a disability might request?

<ul style="list-style-type: none"> • Modification of facilities 	An employee with a mobility impairment caused by their disability may need a ramp or a special chair to accommodate the disability.
<ul style="list-style-type: none"> • Equipment or devices 	An employee with CMV or another vision impairment, for example may need a computer with voice recognition or enlarged type.
<ul style="list-style-type: none"> • Part time work schedule 	An employee who has fatigue or is unable to stand for 4 or more hours a day may need a part time schedule.
<ul style="list-style-type: none"> • Modified work schedule 	An employee who takes a regimen of prescription drugs to treat their disability or a person who has fatigue or trouble breathing may need frequent breaks and access to drinking water, and/or a modified schedule to accommodate the side effects of the medications.
<ul style="list-style-type: none"> • Time away for treatment 	Time away from the workplace to attend doctor's appointments may be a reasonable accommodation.
<ul style="list-style-type: none"> • Unpaid leave of absence 	An employee with a disability may need an unpaid leave of absence for a limited time to undergo surgery or to recover from an episode of an illness related to the disability such as an epileptic seizure.
<ul style="list-style-type: none"> • Job restructuring 	An employee with decreased physical strength due their disability might seek to avoid manual tasks, where such tasks are not core duties of the job.
<ul style="list-style-type: none"> • Training and supervision 	An employee with a disability-related condition interfering with concentration or learning may need additional or specialized training or supervision to master new job skills and duties.
<ul style="list-style-type: none"> • Modification of policy 	An employee taking medication for a disability who experiences midday grogginess might need a break to lie down in the employee lounge, despite an employer's policy against napping.
<ul style="list-style-type: none"> • Education of other employees 	An employee with a disability such as HIV/AIDS who is facing misunderstandings on the job might seek disability education of co-workers and supervisors to raise awareness and dispel fears and stereotypes.

<ul style="list-style-type: none"> • Transfer to a vacant position 	<p>An employee who is not able to perform the essential functions of his or her current position may seek a transfer to a vacant position for which he or she is qualified. A transfer may also be appropriate where the employee remains qualified for the current position with accommodation, but both the employee and the employer agree that a transfer is appropriate.</p>
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8. What happens after I request an accommodation?

Once you request an accommodation, your employer must make a reasonable effort to determine the appropriate accommodation. However, you must also be willing to participate in the process of developing and implementing the accommodation. Employees who do not fully participate in the process may lose their rights under state and federal disability laws. This participation may require that you submit requested medical documentation and attend scheduled meetings. If you or your employer rejects a suggested accommodation, you must take steps to continue the process. You may wish to enlist the assistance of third-party advocates during the process.

To protect your rights, you should take proactive steps, such as:

- Presenting accommodation requests in writing.
- Suggesting alternative accommodations.
- Offering referrals to accommodation specialists like the Job Accommodation Network (1-800-526-7234) (<http://www.jan.wvu.edu/>) or the Disability and Business Technical Assistance Centers (DBTACs) (1-800-949-4232) (<http://www.dbtac.vcu.edu/>).
- Scheduling and attending meetings to discuss accommodations.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or 866-864-8208 (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

