Disabilities in the Workplace: Reasonable Accommodation

YOUR LEGAL RIGHTS

Tagalog

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 five or more employees must provide reasonable accommodations to employees and job applicants with disabilities under the Fair Employment and Housing Act (“FEHA”). Employers with fifteen or more employees must accommodate under the federal Americans with Disabilities Act (“ADA”).

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,to protect health, and to obtain the same benefits of employment as other workers. 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, however, may not be unduly costly or disruptive for the employer (an undue hardship).

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 required only to provide reasonable accommodations to employees and applicants with known disabilities. (See our Fact Sheet titled (See our Fact Sheet Disabilities in the Workplace: An Introduction to State and Federal Laws for information on how the law defines “disability.”) No “magic words” are required to prompt a reasonable accommodation discussion, and an employer’s knowledge of a disability may be implied. However, to ensure your legal rights, you should tell your employer that you have a disability and need accommodation.

   Exception: An employer is not required to provide a reasonable accommodation that imposes an “undue hardship” to the employer. An accommodation is considered an undue hardship when it requires significant difficulty or expense to implement. The employer must consider alternative accommodations that do not impose 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 someone who represents the employer, such as a supervisor or human resource person. While you do not have to share every detail about your disability, you need to provide enough information to show that you have a “disability”: under the law and need accommodation. To be safe, you should use words such as “disability,” “impairment,” “limiting,” “major life activities,” and “accommodation.”

   Some people have multiple or related disabilities, such as HIV/AIDS and cancer. Disclosing one of the conditions may be sufficient to trigger

the employer’s obligation to accommodate the individual.

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.

Am I required to release my medical or psychiatric records to obtain accommodations?

No. If your disability or your need for accommodation is not obvious, your employer may ask for reasonable medical documentation. The documentation should be limited to a doctor’s note or other medical documents showing that you have a disability and need accommodation. You are not required to produce your entire medical or mental health history.

6.

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 your supervisor. However, you are not required to disclose to co-workers. In fact, medical information obtained by an employer must be kept confidential, and maintained in files separate from your personnel file. This information can be revealed only to supervisors and managers who need to know about the accommodation and any restrictions on your work or duties.

7.

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.

8.

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

AccommodationExampleModification of facilities or furnitureAn employee who uses a wheelchair may need a ramp or higher desk. An employee with PTSD might need dividers or a more private workspace to reduce distractions.Equipment or devicesAn employee with low-vision may need a computer with voice recognition or enlarged type.Part time work scheduleAn employee who has fatigue or is unable to stand for more than four hours per day because of a disability may need a part time schedule.Modified work scheduleAn employee who takes medications causing grogginess might need a later or flexible schedule.Time away for treatmentAn employee who needs to attend doctor’s appointments or to undergo treatments such as chemotherapy may need time away from the workplace.Unpaid leave of absenceAn employee with a disability may need a leave of absence for medical treatments or procedures such as surgery or to recover from illness related to the disability.Job restructuringAn employee with decreased physical strength due to a disability might seek the elimination of certain manual tasks, where such tasks are not essential duties of the job.Training and supervisionAn employee with a disability interfering with concentration or learning may need additional or specialized training or supervision to master new job skills and duties.Modification of policyAn employee with insulin-dependent diabetes might need additional breaks to test blood sugar or to administer insulin, or permission to eat food throughout the day.Education of other employeesAn 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.Transfer to a vacant positionAn 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 an appropriate modification.

9.

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) or the Disability and Business Technical Assistance Centers (DBTACs) (1-800-949-4232).
- Scheduling and attending meetings to discuss accommodations.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

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.