

What to Expect in the Interactive Process (For Employees)

The California Fair Employment and Housing Act (FEHA) and Americans with Disabilities Act (ADA) are state and federal laws that prohibit discrimination based on disability and also require an employer to engage in an ongoing, good faith interactive process with an employee to determine whether reasonable accommodation can be made to an employee with a known disability.

What Is The Interactive Process?

The Interactive Process is the way in which employees, supervisors, and their departments determine whether reasonable accommodation can be made to an employee.

The interactive process obligation applies to both workers' compensation and non- industrial related injuries or illnesses.

What Triggers The Interactive Process?

The Interactive Process is triggered as soon as the employer becomes aware that the employee may have a mental or physical impairment that limits his/her ability to perform any aspect of his/her job. While an employee may disclose to the employer that he/she has an impairment that affects his/her ability to do the job, the employee is not required to specifically request accommodation or disclose that he/she has a disability requiring accommodation.

The interactive process may be triggered by any one or a combination of the following situations:

- Verbally or in writing by the disabled employee.
- An employee regularly misses work, telling the employer that he/she is ill.
- An employee has a workers' compensation injury.
- A family member, friend, health professional, or other representative may request a reasonable accommodation on the employee's behalf.
- The employee requests a reasonable accommodation, specifically or by reference to his/her limitations.
- A manager or supervisor observes barriers to the employee's performance on the job.
- The employer receives work restrictions from a medical provider.

What to Expect in the Interactive Process (For Employees)

What May Be A Reasonable Accommodation?

Reasonable accommodation is any effective measure that would enable an employee with a disability to perform the essential functions of his/her position. The following are accommodations that should be considered (this is not all inclusive):

- Job restructuring.
- Modifying work schedules.
- Adjusting or modifying exams, training, materials or policies.
- Acquiring or modifying equipment or devices.
- Providing qualified readers or interpreters.
- Alcohol or Drug Rehabilitation Programs.
- Paid or unpaid leave, including reduced hours or leave coordination in conjunction with the Family Medical Leave Act (FMLA)/California Family Right's Act (CFRA).
- Reassignment to a vacant position. (This is typically considered an accommodation of "last resort" .)

What May Not Constitute Reasonable Accommodation

- Modifying an employee's work hours or job duties to the extent that it causes a significant disruption to the employer's operations.
- Providing an unknown amount of time off, with no estimated date of return. (After statutory leaves are exhausted-FMLA/CFRA, etc.)
- Changing an employee's supervisor.
- Promoting an employee.
- An action that would result in an undue hardship to the employer.

What to Expect in the Interactive Process (For Employees)

What Is An Undue Hardship?

"Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

- The nature and cost of the accommodation needed.
- The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
- The overall financial resources of the employer, the overall size of the business with respect to the number of employees, and the number, type, and location of its facilities.
- The type of operations, including the composition, structure, and functions of the workforce of the entity.
- The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

Your Role In The Interactive Process

- Provide documents requested by the employer to support your request for accommodation, such as medical certification from your physician identifying your work restrictions.
- Provide suggestions of possible reasonable accommodations.
- Participate in a good faith dialogue with agency representative(s) to discuss all possible accommodations.

Resources

Department of Fair Employment and Housing -
<http://www.dfeh.ca.gov/Publications.htm>

Job Accommodation Network – www.askjan.org