

DISABILITY DISCRIMINATION IN EMPLOYMENT OVERVIEW

Mental Health Law Excerpt

Who Is A Covered Employer

- Includes **employment agencies and labor unions.**
- Includes employers with 15 or more employees; FEHA applies to employers with 5 or more employees and, in the case of harassment, to employers with 1 or more employees.
- FEHA: *employer* includes supervisors
- ADA includes religious entities (preferences o.k.); FEHA excludes

The law also applies to state and local governments.

- ADA: includes all state and local governmental agencies regardless of number of employees (no monetary damages against state).
- FEHA: limits on number of employees applies.

Federal Government

- Federal employers are covered by the Rehabilitation Act of 1973.
- ADA Protections are also available under the Rehabilitation Act.
- The main difference are the administrative procedures

Covered Employee under ADA

- To be protected, a person must prove he or she is a qualified individual with a disability.
- *Disability* means a physical or mental impairment that substantially limits one or more major life activities.

Covered Employee under FEHA

- Much **broader** definition
- person with physical or mental disability that limits (makes the achievement of the activity difficult) a major life activity (construed broadly; includes working even a particular job); history; regarded or treated as even if no current disabling effects
- Disorder requiring receipt of Special Ed services qualifies
- medical condition (cancer or genetic characteristics)
- Might cover people who currently use drugs illegally; ADA does not

Mitigating Measures Rule

- ADA: Here is a Significant Change Brought About by the ADA Amendments Act. It used to be that the mitigating effects of Medication and Corrective Devices (classic example is eyeglasses) on Disability Determination must be taken into account. Under ADA amendments: ameliorative effects of mitigating measures should not be considered in determining whether an individual has an impairment that substantially limits a major life activity. We will
- FEHA: Mitigating measures are **not** considered unless the mitigating measure limits a major life activity

Associational Discrimination and Retaliation

- Protection against discrimination based on known relationship or *association*
- *Retaliation*

Being Qualified Under the ADA: Skills, Experience, and Education

- A person with a disability must meet the *minimum job qualifications*.
- Job qualifications include skill, experience, education, medical, safety, physical, and other requirements the employer sets

Reasonable Accommodations

- Employers must make *reasonable accommodations* to the known physical or mental limitations of an otherwise qualified employee or applicant. . .

Unless. . .

unless the employer can demonstrate that the accommodation would impose an *undue hardship* on the operation of its business.

Reasonable Accommodations

Include

- making facilities *accessible*;
- *Job restructuring*;
- Part-time or modified *work schedules*;
- Acquisition or modification of *equipment or devices*;

Reasonable Accommodations Include

- modification of *examinations, training materials, or policies*;
- qualified *interpreters and readers*;
- *Reassignment* to vacant position;
- Any other *similar accommodation*.

Examples of Reasonable Accommodations

For people with cognitive limitations:

- Simplify wording on applications
- Help in completing information needed on applications
- Verbal interviews to obtain complex information needed for applications

Examples of Reasonable Accommodations

For people with attention limitations:

- Reduce distractions in the work space
- Instructions in alternative formats
- Break down large tasks
- Structure in long-term tasks
- Frequent and specific feedback

Examples of Reasonable Accommodations

For people with fatigue/emotional issues:

- Flexible scheduling
- Longer or more frequent work breaks
- More time to learn new responsibilities
- Self-paced workload
- Backup coverage for breaks
- Time off for counseling

Examples of Reasonable Accommodations

For individuals in drug or alcohol recovery (better under California law):

- Modified work schedule to attend counseling session
- Job restructuring to relieve an employee of tasks that may compromise recovery
- Temporary reassignment of an employee in a safety position to a vacant non-safety job during treatment

Confidentiality of Medical Records

- Information is collected and kept on separate forms in separate locked files
- Information is confidential record
- Limited access for filing
- Limited disclosure

Disability Related Questions?

- Yes—*After job offer extended* but before start (ADA); only if job-related and consistent with business necessity (FEHA) OR
- Yes—*After first day of work* BUT ONLY IF *job-related and consistent with business necessity*
- NO—*anytime before job offer extended*

Time Limits for Filing

- ADA: 300 days to file EEOC charge; 90 days to file complaint after right-to-sue letter.
- FEHA: one year to file DFEH charge; one year to file complaint after right-to-sue letter.