

Interactive Accommodations and Protected Leaves

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Purpose

Educate

Train

Support



Reasonable Accommodations

Common Questions about the Americans with Disabilities Act and Employment Practices

ROCKY MOUNTAIN ADA CENTER

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https://youtu.be/PD9Rh_nwQUE

what's the
opposite of
reasonable?



unreasonable, irrational,
senseless, unwarranted, unsound,
expensive, implausible,
nonsensical, illogical



 Thesaurus.plus

The Laws

- Americans with Disabilities Act and 2008 Amendments (ADA), 42 U.S.C. Section 12012; 12101 et seq.
- Rehabilitation Act of 1973, 29 U.S.C. Sections 701 et seq.
- California Fair Employment and Housing Act (FEHA), Govt Code Sections 12940 et seq.

What is a Disability?

ADA defines an individual as having a “disability” if...

- 1) The individual has a physical or mental impairment that substantially limits one of more major life activities
- 2) The individual has a record of such an impairment
- 3) The individual is perceived as having a physical or mental impairment

Special Note: what is not a disability

While the list is long, some commonly presented characteristics that are not considered a disability include:

- Age
- Obesity, unless it is based on a physiological disorder affecting one or more of the basic bodily systems and limiting a major life activity (i.e. a genetic condition affecting metabolism)
- Stress and Depression, unless they result in a documented physiological or mental disorder

Major Life Activities

“Major life activities” are those basic activities that an average person can perform with little or no difficulty.⁴¹ The ADAAA provides a non-exhaustive list of major life activities: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.⁴² The ADAAA also specifies that major bodily functions are also major life activities, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.⁴³ The ADAAA provides that the definition of disability “shall be construed in favor of broad coverage of individuals.”⁴⁴

What do the Laws protect?

Discrimination based on disability under ADA is prohibited in regards to...

- Recruitment, advertising and job application procedures;
- Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff termination, right of return from layoff, and rehiring;
- Rates of pay or any other form of compensation and changes in compensation;
- Job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists;
- Leaves of absence, sick leave, or any other leave;
- Fringe benefits available by virtue of employment, whether or not administered by the employer;
- Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
- Activities sponsored by a covered entity including social and recreational programs; and

...and any other term, condition, or privilege of employment

How do we know?

- Known or should have known standard
 - Perception
 - Applicant or Employee reveals the disability or need for accommodation
 - Extended Leaves
 - Rumor
- In general, it is the employee's responsibility to notify employer about a needed accommodation

Medical Information

- The District will not ask for a diagnosis
- Pre-offer drug testing (for illegal drug use) does not constitute a medical exam
- Questionnaires to determine functional limitations
- Fitness for Duty Exams – when needed to determine if the employee can perform functions of the job



Functional Limitations

Employee Name Location Employee Number

Employee has restrictions Yes ☐ No ☐ Estimated duration of the restrictions?

Posture/Movement

Please indicate in hours/minutes

Example Sit for 2 Hrs at a time for a total of 8 Hr with a 15 mi break of sitting standing x walking x

Sit for at a time for a total of with a break of sitting standing walking

Stand for at a time for a total of with a break of sitting standing walking

Walk for at a time for a total of

MENTAL AND PSYCHOLOGICAL DEMANDS

Basic work

	Yes	No
Follow verbal instructions	<input type="checkbox"/>	<input type="checkbox"/>
Follow written instructions	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the established workflow	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the established work pace	<input type="checkbox"/>	<input type="checkbox"/>
Adhere to established work and safety procedures	<input type="checkbox"/>	<input type="checkbox"/>

Interaction with Others

Work cooperatively with coworkers	<input type="checkbox"/>	<input type="checkbox"/>
Interact and deal with customers or the public	<input type="checkbox"/>	<input type="checkbox"/>
Direct or supervise others	<input type="checkbox"/>	<input type="checkbox"/>
Maintain composure under all circumstances	<input type="checkbox"/>	<input type="checkbox"/>
Respond appropriately to direction and evaluation	<input type="checkbox"/>	<input type="checkbox"/>
Work autonomously, or with minimal supervision	<input type="checkbox"/>	<input type="checkbox"/>

Attention to Task/Details

	Yes	No
Perform simple or repetitive tasks	<input type="checkbox"/>	<input type="checkbox"/>
Perform complex or varied tasks	<input type="checkbox"/>	<input type="checkbox"/>
Organize tasks and set priorities	<input type="checkbox"/>	<input type="checkbox"/>
Perform and or direct multiple tasks simultaneously	<input type="checkbox"/>	<input type="checkbox"/>

Decision Making

Give training or instruction	<input type="checkbox"/>	<input type="checkbox"/>
Use basic problem-solving techniques	<input type="checkbox"/>	<input type="checkbox"/>
Make independent judgments and decisions based on data/circumstances	<input type="checkbox"/>	<input type="checkbox"/>

Fitness for Duty

Ninth Circuit Court of Appeals on a public employers right to conduct fitness for duty exams:

“The government clearly has a valid concern with the productivity and stability of its work force. Citizens rightly expect the government to operate as effectively and efficiently as it can, given the diverse task with which it is charges. The government cannot operate with any degree of efficiency if its employees miss work...Regular performance of [an employee’s] work is a prerequisite for...most if not all full-time governmental jobs.”

Then What?

- If the employee is determined to have a disability that limits one of more major life activity, then the employer will engage in the interactive process to evaluate if there are any reasonable accommodations that would enable the employee to perform the essential functions of the position

The Interactive Process

What is Reasonable?

- Job-related
- Reasonable and good faith effort
- Modifications and adjustments that enable employees with disabilities to enjoy the benefits and privileges of other employees
- Customarily done
- Not an undue hardship

Steps of The Interactive Process

- Analyze job function
- Identify precise limitations
- Identify possible accommodations and assess how each will enable the ee to successfully perform job functions
- Consider employee's preference and implement accommodation that is most appropriate for employee and employer

Union Representation/ Support Person



Forms of Reasonable Accommodation

Examples:

Modifications to job application process

Making facilities accessible

Modified work schedule

Acquisition of equipment or devices

Permitting the use of accrued paid leave or providing additional unpaid leave

Providing reserved parking space

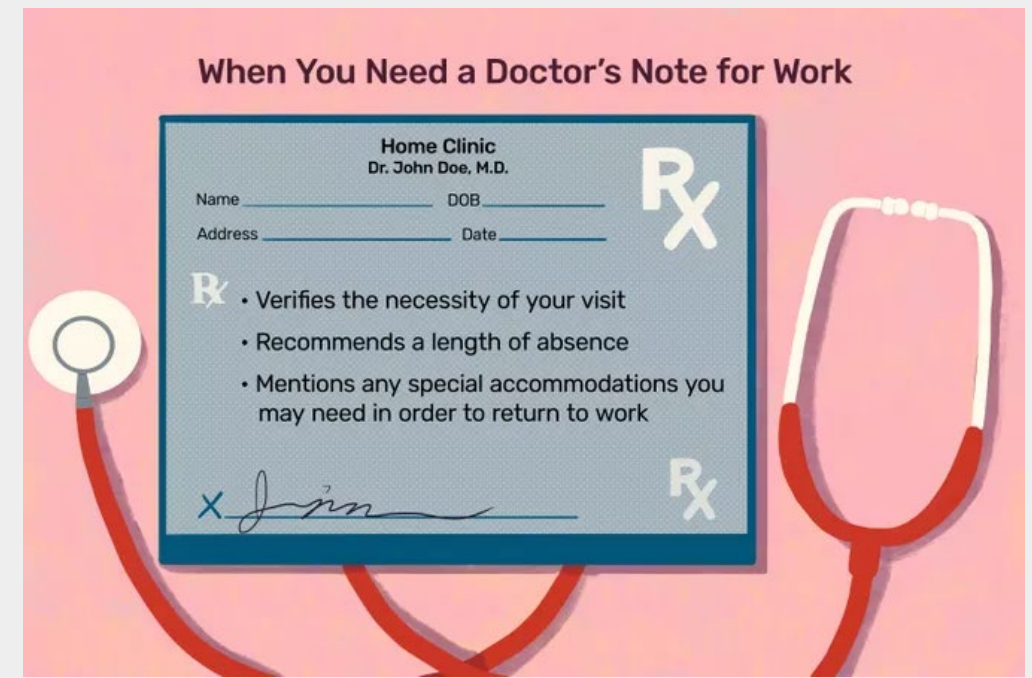
Allowing the qualified individual with a disability to provide and use equipment, aids, and services that employer is not required to provide

Quiz

The employee's physician submits – via the employee – a note that states that the employee has a medical condition for which 3 hours of paid break time a day is required.

Is this reasonable?

Does this note provide a work restriction or limitation?



Protected leaves



FMLA & CFRA

Family and Medical Care Leave

California Family Rights Act of 1993

Overlap and Diverge:

Employer follows whichever is of greater benefit to the employee

FMLA/CFRA: Reasons for Leave

FMLA

- Birth of child and care for newborn
- Placement of a child with ee for adoption or foster care
- Serious health condition of self or family
- Qualifying exigency
- Care for service member

CFRA

Most FMLA conditions, and covers domestic partners

Does not include pregnancy or related medical condition under “serious health condition”

FMLA/CFRA: Required?

Case law ebbs and flows on the requirement of the employer and employee to apply FMLA/CFRA.

FMLA/CFRA: Paid Leave?

Employees may use accrued sick leave to pay themselves during any FMLA/CFRA absence, but these leaves do ensure paid status. Rather, they provide protections.

FMLA and CFRA Eligibility

FMLA

- Employed for at least 12 months
- 1,250 hours of service during 12-month period prior to leave

CFRA

- Employed for at least 12 months
- 1,250 hours of service during 12-month period prior to leave

Exception to 1,250 hours: Parental Leave

FMLA/CFRA: How much leave?

FMLA

- 12 workweeks of leave during any 12-month period
- 26 weeks for care of a service member in ees family

CFRA

- 12 workweeks of leave during any 12-month period
- 26 weeks: active duty for employee's spouse, registered domestic partner, or parent

Leave may be used consecutively or intermittently

PDL: Pregnancy Disability Leave

Eligibility: Pregnancy disability

How much leave: 4 months (based on hours worked per week)

Use of leave: consecutive or intermittent

CFRA Baby Bonding

12 weeks of leave is applied up to one year after child's birth

Bonding leave must be taken in a minimum of 2-week blocks (some exceptions)

Chart of FMLA/CFRA/PDL

	Pre-birth Disability	Post-birth Disability	“Bonding”
Health Care	FMLA and PDL	FMLA and PDL	CFRA
Job Protected	FMLA and PDL	FMLA and PDL	CFRA
	Up to four months (FMLA runs concurrently until available FMLA expires)	Up to four months total, including any pre-birth PDL (runs concurrently with available FMLA)	12 Weeks

Questions?