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Navigating the Duty to "Reasonably Accommodate" & Engage in the "Interactive Process"

July, 2018

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This program has been approved for 1.50 hours (California) recertification credit hours toward PHR, SPHR & GPHR through the HR Certification Institute (HRCI) and SHRM-CP and SHRM-SCP.

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The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies to avoid potential liability



California Department of **Fair Employment and Housing**

Reasonable Accommodation

The California Fair Employment and Housing Act requires employers of five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to apply for jobs and to perform the essential functions of their jobs unless it would cause an undue hardship. Reasonable accommodation can include, but is not limited to, the following:

- Changing job duties
- Providing leave for medical care
- Changing work schedules
- Relocating the work area
- Providing mechanical or electrical aids

Employees with disabilities may have separate rights to unpaid leave under the Federal Family and Medical Leave Act or the California Family Rights Act.

Employers must initiate an “interactive process” when an applicant or employee requests reasonable accommodations. The employer must also offer to initiate an interactive process when the employer becomes aware of the possible need for an accommodation. This awareness might come through a third party, by observation, or because the employee has exhausted leave benefits but still needs reasonable accommodation.

In California, it is unlawful for an employer to fail to engage in a timely, good faith, interactive process. The point of the process is to remove barriers that keep people from performing jobs that they could do with some form of accommodation.

The process requires an individualized assessment of both the job and the specific physical or mental limitations of the individual that are directly related to the need for reasonable accommodation.

The DFEH has created a sample Request for Reasonable Accommodation package to assist employers and employees in engaging in the interactive process. The law does not require the use of these or any other forms to make a request for a reasonable accommodation or to engage in an effective, good faith interactive process. The use of these forms does not insulate a user from liability or create a presumption that discrimination did not occur. However, they may be a useful tool for both employers and employees.

[Click here](#) to view the sample Request for Reasonable Accommodation package.

Employment

- Sexual harassment
- Pregnancy disability leave
- **Reasonable accommodation**

Housing

- Families, seniors, those with disabilities

Business establishments / Public accommodations

Mediation / Dispute resolution

Responding to a complaint

Use of Criminal History Information in Employment

Other Reasonable Accommodation Resources:

Resources to help identify whether accommodation is possible include:

<https://askjan.org>

<http://www.dor.ca.gov/DisabilityAccessInfo/index.html>

To view the EEOC's fact sheet on small employers and reasonable accommodation, [click here](#).

To view the EEOC's enforcement guidance on reasonable accommodation under federal law, [click here](#).

REQUEST FOR REASONABLE ACCOMMODATION-CONFIDENTIAL

The California Fair Employment and Housing Act requires employers of five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to perform the essential functions of their job unless it would cause an undue hardship. The law does not require the use of this or any other form to make a request for a reasonable accommodation. This form and any supporting materials or information is confidential and should be kept separate from an employee's personnel file.

SECTION A: TO BE COMPLETED BY EMPLOYEE	
NAME OF EMPLOYEE	CLASSIFICATION/JOB TITLE
WORK LOCATION/SUPERVISOR	WORK TELEPHONE NUMBER/EMAIL
ACCOMMODATION(S) REQUESTED (Be as specific as possible, for example adaptive equipment, reader, interpreter, training, schedule change, etc.):	
REASON FOR REQUEST (Please do not disclose your diagnosis; explain your disability-related limitations and how this accommodation will help you do your job.)	
IS YOUR LIMITATION: <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary <input checked="" type="checkbox"/> Unknown	ANTICIPATED RECOVERY DATE (if any)
IS THE ABOVE DESCRIBED DISABILITY THE SUBJECT OF A WORKER'S COMPENSATION CLAIM? (Employees with work related injuries may also be eligible for a reasonable accommodation independent of the worker's compensation process.) <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE FILED:	
HAVE YOU REQUESTED FMLA, CFRA, PDL, OR OTHER LEAVE IN CONNECTION WITH THE ABOVE DESCRIBED DISABILITY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, PLEASE SPECIFY WHAT YOU REQUESTED AND WHEN:	
I CERTIFY THAT I HAVE A DISABILITY THAT REQUIRES REASONABLE ACCOMMODATION, WHICH WILL BE MET BY THE ACCOMMODATION(S) LISTED ABOVE.	
SIGNATURE OF EMPLOYEE	DATE

SECTION B:

CERTIFICATION FROM PHYSICIAN/HEALTH CARE PROVIDER:

When an employee's disability or need for accommodation is not apparent or known to the employer, the employer may request a certification from a health care provider verifying that an accommodation is necessary. The employer should provide the employee with a copy of a job duty statement to share with the health care provider.

For completion by the health care provider: please provide a letter or verification addressing the following:

1. Verification that the employee has a disability (but not the diagnosis).
2. Description of how the employee's limitations impair the ability to perform the duties of the job and indication of whether these limitations are temporary or permanent.
 - a. If temporary, state when they are expected to end.
3. Recommendation of specific reasonable accommodation(s).

(Note: Use the space below or attach a letter or verification, which will be kept confidential. Employers must generally retain medical certifications and related documents separately from usual personnel files.)

DATE ACCOMMODATION TO BEGIN	DATE ACCOMMODATION TO END OR CONTINUOUS
NAME OF HEALTH CARE PROVIDER	SIGNATURE OF HEALTH CARE PROVIDER

SECTION C: INTERACTIVE PROCESS DISCUSSION TO BE COMPLETED BY EMPLOYER

1. Document all interactive discussions with employee, including dates of the discussions, employee's specific request(s), names of all persons present, and what was discussed. Use additional pages if required.

Date

Discussion Notes

2. List all potential reasonable accommodations identified in the interactive discussions and the strengths and weaknesses for each as a potential reasonable accommodation.

3. State your recommended reasonable accommodation and the rationale for your recommendation.

SECTION D: TO BE COMPLETED BY EMPLOYER

LIST SPECIFIC ACCOMMODATION(S) TO BE PROVIDED:

For each accommodation requested by the employee that you deny, explain the reason for the denial:
(may check more than one box, use additional pages if needed)

- Accommodation Ineffective
- Accommodation Would Cause Undue Hardship. Identify Hardship: _____
- Medical Documentation Inadequate
- Accommodation Would Require Removal of an Essential Job Function. Identify Function: _____
- Accommodation Would Require Lowering of Performance or Production Standard. Identify Standard: _____
- No Alternative Vacant Position Available. Positions Considered: _____
- Employee Rejected Alternative Accommodation. Identify Accommodation Offered and Reason for Employee's Rejection:
 Other (Please identify) _____

Further Explanation/Comments:

_____ Date _____ Signature

	DATES
ACKNOWLEDGEMENT OF RECEIPT OF REASONABLE ACCOMMODATION REQUEST	
DATE ACCOMMODATION TO BEGIN	
DATE ACCOMMODATION TO END	
DATE EQUIPMENT ORDERED IF NEEDED AND BY WHOM	
DATE EQUIPMENT WAS RECEIVED BY EMPLOYEE	

SECTION E: TO BE COMPLETED BY EMPLOYER FOLLOWING IMPLEMENTATION OF THE ACCOMMODATION(S)

The employer should check in periodically with the employee to ensure that the accommodation is effective. If the accommodation is not effective, there is a duty to reengage in the interactive process.

Document all interactive discussions with employee, including dates of the discussions, names of all persons present, what was discussed, and next steps if needed. Use additional pages if needed.

Date	Discussion Notes

