

ALERT

Good Process Key to Choosing Reasonable Accommodation for Disability

By Matthew Roberts - April 26, 2024



One of our employees with a disability requires a reasonable accommodation. May we choose the reasonable accommodation that we provide?

Perhaps. Determining what accommodations, if any, we must provide to employees with a disability is one of the more challenging personnel matters that employers will work through, largely due to the unique case-by-case nature of each request for accommodations. As with all challenging matters, successful resolution starts with a solid process.

Good Faith Interactive Process

When an employer becomes aware of an employee's need for an accommodation due to the employee's disability or medical condition, California and federal laws require employers to initiate and engage in a timely, good faith interactive process.

This interactive process allows the employer and employees to exchange information regarding the employee's essential job functions; how the disability or medical condition may conflict with those job duties; and suggested reasonable accommodation to resolve that conflict. Employers must not inquire about the employee's actual disability or medical condition.

A crucial component of this interactive process is working with the employee's health care provider to determine how the disability or medical condition affects one or more of the employee's essential job functions, as well as soliciting suggestions for reasonable accommodation that are medically advisable that will allow the employee to continue working.

For example, a health care provider may inform the employer that the bright lights and loud noises in the employee's normal workspace regularly trigger that employee's medical condition. So, the employee should be provided a work location with dim lights and little-to-no noises.

Based on this information about how the employee's medical condition affects their job duties in their ordinary workspace, the employer now knows what kinds of reasonable accommodations to consider in the process.



Providing Reasonable Accommodations

As part of the interactive process, the employee will request specific reasonable accommodations. In our example with the employee having difficulty around bright lights and loud noises, the employee may request to work remotely at home because the employee can control the workspace.

Although this may be a reasonable accommodation depending upon the employee's job duties, the employer may provide an alternative reasonable accommodation.

In this case, the employer may be able to design a workspace at the employer's facility that meets the needs of the accommodation and can choose to provide this arrangement instead of agreeing to the employee's requested accommodation.

However, if the employer chooses to provide its own suggested accommodation, it must ensure the accommodation is effective. If the workspace the employer provides in this example does not resolve the conflict between the employee's disability and their job duties, the employer's duty to provide a reasonable accommodation is ongoing and the employer must return to the interactive process to continue evaluating potential accommodations, including considering the employee's requested accommodation.

Because an employer's duty to provide reasonable accommodations is ongoing, even if the accommodation appears effective at first, the employer should continue to monitor the accommodation for effectiveness for the duration it is in place to ensure compliance with California and federal laws.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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Matthew J. Roberts, a member of the CalChamber legal affairs team since July 2019, was named associate general counsel, labor and employment in October 2023. He explains California and federal labor and employment laws to CalChamber members and customers, and since October 2021 has

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