

EMPLOYMENT LAW SUMMARY

California: Fair Employment – Disability Discrimination Law



Because You're Different

California workers are protected against disability discrimination under both federal and state law. While the federal Americans with Disabilities Act of 1990 (ADA) applies to employers with 15 or more employees, California's Fair Employment and Housing Act (FEHA) applies to California employers with **five or more employees**. In addition, the FEHA's protections extend to unpaid interns and participants in any other limited-duration program that provides unpaid work experience.

This Employment Law Summary provides an overview of the disability discrimination protections provided by the FEHA.

PROHIBITED DISCRIMINATION

The FEHA, which is enforced by the [California Civil Rights Department](#) (CRD), prohibits employment discrimination and harassment based on a person's disability or perceived disability. Under the law, prohibited discrimination includes, but is not limited to, the following actions when taken on the basis of an individual's disability or perceived disability:

- Refusing to hire or employ the individual;
- Refusing to select the individual for a training program leading to employment, internship or any limited-duration program for providing unpaid work experience;
- Barring or discharging the individual from employment or from a training program leading to employment, internship or any limited-duration program for providing unpaid work experience;
- Discriminating against the individual in compensation or in terms, conditions or privileges of employment.

LIMITED EXCEPTIONS

Any employment-related decision based on either of the following reasons is **not** considered discrimination under California law:

- The individual is unable to perform essential job functions and no reasonable accommodation exists that would enable the person to perform the essential functions of the position;
- The person would create an imminent and substantial danger to him- or herself or others, and no reasonable accommodation can be made to remove or reduce the danger.

DISABILITY DEFINITION

Under the FEHA, a disability is a physical or mental impairment that limits one or more major life activities. It also includes having a record or history of a known impairment, being regarded or treated as having an impairment, or any health impairment that requires special education or related services.

The FEHA generally provides broader protections for persons with disabilities than the ADA. For example, California law has broader definitions of the terms "mental disability," "physical disability" and "medical condition." Under the FEHA, a condition must only limit an individual's ability to participate in major life activities to be covered as a disability, as opposed to the federal definition that requires conditions to **substantially** limit a person's ability to participate in major life activities. Accordingly, individuals whose conditions are not covered under the ADA may qualify for protections under the FEHA.

Under the FEHA, **physical disabilities** include, but are not limited to:

- Deafness or blindness;
- Missing limbs;
- Mobility impairments;
- Cerebral palsy; and
- Chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, diabetes, multiple sclerosis and heart disease.

Mental conditions that are considered disabilities under the FEHA include, but are not limited to:

- Emotional or mental illness;
- Cognitive disabilities;
- Clinical depression;
- Bipolar disorder;
- Autism spectrum disorders;
- Schizophrenia;
- Post-traumatic stress disorder; and
- Obsessive compulsive disorder.

CONDITIONS EXCLUDED

For the purposes of the FEHA, the term “disability” does **not** include sexual behavior disorders, compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

In addition, the term does not include mild conditions that do not limit major life activities. The excluded conditions are those that have little or no residual effects and include: the common cold; seasonal or common influenza; minor cuts, sprains or muscle aches; soreness, bruises and abrasions; non-migraine headaches; and minor, non-chronic gastrointestinal disorders.

REASONABLE ACCOMMODATIONS

California employers have a duty to explore all possible means of reasonable accommodations for a person prior to rejecting the person for a job or making an employment-related decision. A reasonable accommodation is any modification or adjustment to a job or the work environment that enables an applicant or employee with a disability to participate in the application process, perform essential job functions or enjoy the same employment rights and privileges as other employees.

Examples of reasonable accommodations include, but are not limited to: making facilities accessible to individuals with disabilities, restructuring jobs, modifying work schedules, buying or modifying equipment, modifying examinations and policies, or other accommodations. Additionally, employers may obtain assistance from government agencies and outside experts to determine whether accommodations are possible.

INTERACTIVE PROCESS

When an employee or applicant with a known disability requests reasonable accommodation for his or her disability or the employer becomes aware of the need for an accommodation, an employer must engage in a timely, good-faith, interactive process with the employee, which explores all possible means of reasonable accommodation prior to rejecting that person for a job or making any employment-related decision. The interactive process requires an individual assessment of the job requirements and the specific physical or mental limitations of the individual that are directly related to the need for accommodation.

Although employers should consider the preferences of the individual requesting accommodations during the interactive process, employers have the right to select and implement an accommodation that is effective for both the employer and the employee.

UNDUE HARDSHIP

An employer’s duty to provide reasonable accommodations may be exempted in circumstances where undue hardship is demonstrated. An undue hardship is an action requiring significant difficulty or expense by an employer in providing an accommodation. In determining whether undue hardship exists, the following factors are considered:

- The nature and cost of the accommodation;
- The overall financial resources of the facilities involved in providing reasonable accommodations;

- The employer's type of operation; and
- The geographic separateness of facilities.

PRE-EMPLOYMENT INQUIRIES

An employer is generally prohibited from requiring any medical or psychological examinations of a current employee and from making any inquiries about:

- Medical or psychological conditions;
- Whether an employee has a mental or physical disability; or
- The nature or severity of a physical disability, mental disability or medical condition.

Prior to extending an employment offer, it is illegal for an employer to require an applicant to undergo medical or psychological examinations. Inquiries about whether an applicant has a mental or physical disability or medical condition or about the nature and severity of a mental or physical disability or medical condition are also prohibited. However, an employer may inquire into the ability of an applicant to perform job-related functions.

Once an employment offer has been made to an applicant, but prior to the commencement of employment duties, employers may require a medical or psychological examination, provided that:

- All entering employees in the same job classification are subject to the same examination or inquiry;
- An applicant may submit independent medical opinions for consideration before a final determination on disqualification is made if the results would result in disqualification; and
- The results are maintained on separate forms and considered confidential as medical records.

INQUIRIES DURING EMPLOYMENT

Employers may make disability-related inquiries, including fitness-for-duty exams, and require medical examinations of employees that are job-related and consistent with business necessity.

ENFORCEMENT

Individuals who believe they have been discriminated against on the basis of their disability may file a complaint with the CRD. Individuals have up to **three years** to file a claim.

Once a complaint is filed, the CRD will investigate the complaint and attempt to resolve the dispute. If the CRD finds evidence of discrimination and settlement efforts fail, the CRD may file a formal accusation or lawsuit against the employer.

The FEHA provides remedies for individuals who experience prohibited discrimination, harassment or retaliation. Remedies may include hiring, promotion, reinstatement, back pay, front pay, cease-and-desist orders, expert witness fees, reasonable attorney's fees and costs, punitive damages and emotional distress damages. In addition, civil courts may order unlimited monetary damages against employers found guilty of discriminating against employees or job applicants on the basis of their disabilities.

MORE INFORMATION

For more information on California's fair employment laws, please consult Heffernan Insurance Brokers or visit the CRD's [website](#).

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