

IMPORTANT RIGHTS AND PROTECTIONS FOR EMPLOYEES WITH DISABILITIES

As a worker with a disability, certain aspects of the job application process or performing your job duties in the work place may be difficult. Whether you have a physical or mental disability, you may need to seek a reasonable accommodation for your disability(ies) so that you can perform the essential functions of your position. In California, an employer's failure to accommodate a disability may be unlawful.

Failure to Accommodate a Disability

California's Fair Employment and Housing Act (FEHA) is a strong anti-discrimination law that prohibits disability discrimination in the workplace. Among other things, FEHA requires employers to provide job applicants and employees with reasonable accommodations if they have a disability or a medical condition that renders them unable to perform essential job functions. When requesting a reasonable accommodation, an employee is not required to disclose their disability, however it is important to be clear about your restrictions and identify potential job modifications. A reasonable accommodation must be provided, unless an employer can show that providing the accommodation would present an "undue hardship".

To lawfully deny you an accommodation due to an "undue hardship", an employer must be able to establish that the accommodation would present a significant expense or difficulty in terms of certain factors. These factors include the cost and nature of the accommodation sought, your employer's overall finances, the size of the business, the impact on your co-workers or the people you serve, the kind of operations underway and whether your employment is controlled by a Collective Bargaining Agreement. In addition to considering modifications to your current position, your employer must consider assigning you to an alternative vacant position; your employer is not required to create a new position for you or to promote you.

What is a Reasonable Accommodation?

A reasonable accommodation is any arrangement or measure that would permit you, as a job applicant or employee who has a disability, to perform essential job functions. A reasonable accommodation could include providing necessary equipment, restructuring the job, allowing for additional or more frequent breaks, modifying a work schedule, or making the facilities accessible. For example, if you are blind, a reasonable accommodation might involve providing you with a computer screen reader to perform the job's essential functions. For another example, if you have cancer, your employer might reasonably accommodate you by shifting your schedule to permit you to receive your chemotherapy treatments and providing more frequent breaks.

Good-Faith Interactive Process

Your employer should engage with you in a timely, good-faith interactive process to figure out which accommodation would be effective to address your disability. The good-faith interactive

process is an informal process in which an employer is supposed to take time to develop potential solutions that would allow an employee to continue working.

The first step in this process is to figure out what the essential functions of the job are. Factors that may be considered when deciding which job functions are essential include whether there are a limited number of employees available to whom a task can be distributed, whether the job exists to perform that task, and whether the task is highly specialized. The employer's judgment will play a role in determining which job functions are essential. If you have a job description for your position that can be helpful in determining the essential tasks for your position. After the essential tasks are determined, the employer should talk with you to figure out what a reasonable accommodation for the disability or medical condition would be. Like your employer, the employee has an ongoing duty to engage in the interactive process, which may include providing additional information about your restrictions.

Damages

To recover damages for an employer's failure to accommodate a disability in California, you will need to show that you have a covered disability, you can perform the essential job functions, and your employer failed to reasonably accommodate you. If you can establish liability for your employer's failure to reasonably accommodate you, you may be able to recover back pay, front pay, and emotional distress damages. If the employer's conduct was egregious, it may be appropriate to pursue punitive damages. You cannot recover punitive damages against public entities. Equitable relief, such as reinstatement, also may be appropriate.

Retaliation

Under FEHA, it is illegal for your employer to retaliate against you for requesting a reasonable accommodation. You may have a claim regardless of whether your employer provided the accommodation. The central question is whether your employer took an adverse action against you in response to your requesting a reasonable accommodation. For example, if your employer fails to accommodate you and terminates you for requesting the accommodation, a court is likely to view this as retaliation. Other potentially retaliatory actions can include a demotion, limiting your advancement prospects, or making another negative decision about the terms, conditions, and privileges of your employment due to your request for an accommodation.

California Statute of Limitations for Employment Claims

California employment law statute of limitations, which refers to how long after an incident you have to file a lawsuit, vary depending on your claim.

In California, claims involving disability discrimination and harassment, failure to reasonably accommodate, failure to engage in the interactive process and retaliation, fall under the Fair Employment and Housing Act (FEHA). This law protects employees from discrimination and harassment based on protected categories, such as race, disability, gender, gender identity, age, military and veteran status, etc. There are additional steps involved, but when filing a claim

under the FEHA, the plaintiff must obtain what's referred to as a Right to Sue letter from the California Civil Rights Department (CRD) – formerly the California Department of Fair Employment and Housing (DFEH) – which is the state agency that handles complaints.

Violations of the Americans with Disabilities Act (ADA) can be filed as a complaint with the Equal Employment Opportunity Commission (EEOC). The EEOC enforces federal ADA disability discrimination laws, including the failure to provide reasonable accommodations.

Because FEHA grants more rights to employees than does the ADA, it is often advisable for employees to pursue relief under FEHA instead of the ADA.

When filing with the CRD or EEOC, an employee can either file an online complaint requesting an immediate “right-to-sue” letter to litigate the employer in civil court or fill out an online form requesting the CRD or EEOC conduct its own investigation into the employer’s alleged wrongdoing.

Employees are up against strict deadlines when pursuing relief for disability discrimination. If the employee is bringing claims under state law, they must file a complaint against the employer with California’s Department of Fair Employment and Housing (the DFEH) no later than three years from the date of the alleged discriminatory act. If the employee has gone through the administrative process and has been issued a right-to-sue letter from the DFEH, the employee will then have one year to file a lawsuit in civil court against the employer. This one-year clock starts ticking on the date the right-to-sue letter is issued.

If the employee is pursuing federal relief, they must file a complaint with either the DFEH or the U.S. Equal Employment Opportunity Commission (the EEOC) within 300 days of the alleged discriminatory act. If either agency issues a right-to-sue letter, the employee will have 90 days to file a lawsuit in court based on federal claims.

Generally, wrongful termination claims outside of discrimination, such as a claim based on public policy, have a statute of limitations of two years. These claims typically involve the violation of an implied contract, retaliation for filing a worker’s compensation claim, or reporting a work injury, among other instances. However, if your employer is a public entity, you must file a claim pursuant to the California Tort Claims Act within six months of the unlawful incident.

Contact TST

Your employer should provide a reasonable accommodation for your disability unless it would present an undue hardship to do so. If you believe that your employer’s failure to accommodate your disability has harmed you, or you have been discriminated against because of your disability(ies), contact our office right away for a consultation.

The foregoing is for informational purposes only and is not legal advice. If you would like a consultation, please click on Contact Us and we will schedule an appointment with an appropriate attorney in our firm.