Reasonable Accommodations Tool Kit

California Employers Association™

Table of Contents

Overview: Reasonable Accommodations

One of your employees just informed you they need an accommodation as they are unable to perform some of their job duties. This will trigger obligations on your part as well as by the employee, so what do you do next? This tool kit outlines required steps and considerations to help you navigate the reasonable accommodation process. [Note: Employers are also required to make reasonable accommodations for religious practices/observance. Those issues are not covered here.]

While the federal Americans with Disabilities Act (ADA) applies to employers with 15 or more employees, California's Fair Employment and Housing Act (FEHA) applies to employers with **five or more employees.** FEHA has significant overlap with the federal requirements, but has greater protections, including a broader definition of "disability." The FEHA requires employers to provide reasonable accommodations for individuals who are limited in their ability to work due to a physical or mental disability and/or medical condition, unless it would cause an undue hardship. More specifically, the employer is required to go through the interactive process with the employee (or applicant) to determine whether they can perform the essential functions of their job with or without a reasonable accommodation. This requires an individualized assessment of both the job and the individual's limitations.

Employers should keep in mind that, due to California's confidentiality protections, employers should not inquire into the employee's disability or diagnosis itself. Rather, employers should have open communication with the employee regarding their *specific limitations* that may impact the workplace. For example, an employer may need to know that an employee cannot stand without assistance, but should not ask about what disability or medical condition caused the limitation. Of course, if the employee voluntarily shares information regarding their disability that is fine, but the employer may also remind them they are not required to do so.

Once you are aware an employee may need a workplace accommodation, you should generally take the following steps:

- **Step 1**: Ask the employee directly if they believe they need an accommodation (do not request information about an underlying diagnosis or disability);
- **Step 2**: Request that the employee obtain a medical certification from their health care provider to outline their limitations. This will enable you to engage in a meaningful interactive process;
- **Step 3**: Set up a meeting with the employee (e.g., in person, via video, phone call, etc.) to discuss their specific limitations, impact on essential job functions, and potential accommodation solutions. Schedule follow-up meetings as needed. Document all discussions;
- **Step 4**: Select reasonable accommodation(s) and test out if they are effective. Follow up with employee. If a selected accommodation fails, continue to engage in interactive process to identify an effective accommodation solution. Document all selected accommodations and outcomes. (If you believe there are no reasonable accommodations without undue hardship, it is recommended to consult legal counsel.)

California employers may initiate this process by providing employees this Sample Reasonable Accommodations Packet from the Civil Rights Department- (CRD) (Spanish version available here). It includes the following sections:

- Section A: Form for Employee to complete regarding requested accommodation(s);
- Section B: Certification Form for Health Care Provider;
- Section C: Documentation of Interactive Process Discussions for employer;
- Section D: Documentation of Accommodations Provided or Denied for employer
- Section E: Follow Up with Employee for employer

Note that this form is compliant with California's confidentiality protections, which prohibit inquiry into the employee's underlying disability/diagnosis.

Medical Certification

When a disability or accommodation need is not obvious, the employer may request medical certification to certify the existence of the employee's disability/medical condition and outline the employee's functional limitations that require reasonable accommodation. The documentation will vary depending on the nature of the employee's limitations and their impact on job duties. For example, if an employee states they need surgery and is requesting a leave of absence, the employer may request certification of medical necessity for the surgery, as well as estimated dates of the treatment and recovery period. Under almost all circumstances, the employer should not reach out to the employee's health care provider directly for this information; instead, it should be handled through the employee.

Medical information must be kept confidential and only be shared on a need-to-know basis. Medical information obtained in connection with the interactive process should be maintained in a confidential file, separate from the employee's personnel file. Only share essential information such as:

- Informing supervisors of any work restrictions;
- Alterting safety personnel of any conditions requiring emergency treatment.

Note on Medical Exams/Inquiries

California employers are extremely limited in when they may require a medical examination or inquiry. This type of exam seeks information about an individual's physical or mental impairments or health. For example, this would include vision tests, tests for genetic markers, pulmonary tests measuring lung capacity, psychology tests identifying a mental disorder, and other diagnostic procedures or questions aimed at these issues. It is recommended to consult legal counsel if you believe there is a legitimate business need for a medical exam.

On the other hand, employers may typically conduct *nonmedical* examinations, including tests to determine use of controlled substances (refer to our Drug and Alcohol Testing Toolkit), and tests that measure an employee's ability to perform actual or simulated job tasks. Employers must pay for the costs of these tests, including any pre-employment screenings. Also, these tests must still be *job-related and consistent with business necessity*. For example, do not require an employee to test for a lifting requirement, if lifting is not an essential function of their position. These tests should also be applied consistently across applicants or employees for the same position.

Medical Release to Return to Work

There may also be circumstances when it is appropriate to request a medical release to ***return*** to work, including following a leave of absence for illness, injury, or disability. Refer to your specific policies on this issue and *apply them consistently*. [Note: Employers should not request a medical release following an employee's use of mandatory paid sick leave, as this is likely considered to interfere with an employee's rights under the paid sick leave rules.]

Requiring a medical release may also be appropriate in situations when the employer has a reasonable belief, based on objective information, that the employee is unable to perform essential functions or poses a safety threat due to a medical issue. This may be based on what the employee tells you, an employer's observations, or credible information from a third-party.

Do not automatically disqualify someone from return just because their physician has indicated they are still recovering or have a limitation. Even if the employee is not fully healed, you must still engage in the interactive process and consider whether there is a reasonable accommodation available that allows them to perform their essential functions.

The Interactive Process

As discussed, the FEHA requires employers to engage in a *timely* good-faith interactive process to determine effective reasonable accommodations. The obligation to initiate the interactive process often falls on the employer. The employee is not required to directly state that they need an accommodation or identify what particular accommodation they need.

The employer should start the interactive process whenever the following occurs:

- An applicant or employee with a known or obvious disability requests an accommodation;
- The employer becomes aware of the need for an accommodation, whether via the employee, observation, or a third-party;
- The employee indicates that they need additional leave time, after they have exhausted protected leave, such as paid sick leave or leave under the California Family Rights Act (CFRA)/Family and Medical Leave Act (FMLA).

Below are some examples when an employer would be on sufficient notice to start the interactive process:

Example A: An employee tells their supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."

Example B: An employee tells Human Resources, "I need six weeks off to get treatment for a back problem."

Example C: A new employee, who uses a wheelchair, informs their supervisor that the wheelchair cannot fit under the desk in their office.

It is always a best practice for the employer to meet with an employee and have a direct conversation to discuss possible reasonable accommodations. This often requires a back and forth dialogue between the

employer and employee, with the assistance of the employee's health care provider, to identify solutions. This should be a collaborative effort, and employers should document all discussions and suggestions by both parties. If a suggested accommodation will not work or is unreasonable, an employer should document why, as well as any offered counter-suggestions. Again, employers may use the Sample Reasonable Accommodations Packet for documenting this process. The CRD's position is that one brief meeting with the employee is insufficient to satisfy the interactive process requirement. However, if an employee refuses to participate in this process, make sure to document it, as the employee also has an obligation to participate in good faith.

An important point is that employers do not have to approve an employee's *requested* accommodation; rather, an employer's obligation under the FEHA is to provide a *reasonable* accommodation (if one exists) that allows the employee to perform the essential functions of their position. There is no "one-size-fits-all" approach on how this should be conducted, because every individual's specific circumstances are unique. Employers should be open-minded and "test out" suggested accommodations, often with deference to the employee (if reasonable). Follow-up discussions may be required, including upon receiving more information from the employee's healthcare provider. The obligation to engage in the interactive process is ongoing, including if a selected accommodation ends up failing.

For more general tips, refer to our Reasonable Accommodations Checklist.

The point of the interactive process is to determine whether there is a reasonable accommodation that allows the employee to still perform the *essential functions* of their position. As such, many employers have questions about what is considered "essential" to the employee's job. Keep in mind that a leave of absence may be one form of a reasonable accommodation if it allows the employee to recover/return to the job and perform their essential functions.

Essential Job Functions

A job function may be "essential" because the position exists to perform the function (e.g., driving is an essential function for someone hired as a truck driver), because a limited number of employees are able to perform the function, or because it is highly specialized and the person is hired for a particular expertise or skill (e.g., plastic surgeon is hired to perform specialized surgeries). Essential functions do not include "marginal" tasks that can be done another way or by another person filling in. Employers may start by asking, "Would the position be eliminated if the employee is unable to perform X function?"

Other evidence employers may reference in determining if a function is considered "essential" include:

- Accurate and current job descriptions
- Amount of time spent on job function
- Significance of job function
- Legitimate business consequences if it cannot be performed

An employer's mere preference that a task is performed in a particular way does not mean it will be considered "essential." For example, if an employer prefers that an accountant come to work onsite, but they are capable of completing all tasks remotely following recovery from surgery, then "onsite presence" likely would not be

considered an “essential” job function. However, for a restaurant host, “onsite presence” to greet guests would certainly be critical to the job, as the position exists to perform that job function.

It is important that employers’ job descriptions accurately reflect the current essential functions of a position – prior to the need to evaluate job duties for purposes of reasonable accommodation – to best assess reasonable accommodation requests and defend against disability discrimination claims.

Undue Hardship Exception

There is an exception to the reasonable accommodation requirement if, after engaging in the interactive process, the employer determines reasonable accommodation would pose an “undue hardship.” This is a term of art, and refers to an accommodation that is unduly costly, extensive, or would fundamentally alter the nature of your business. Both the EEOC and CRD scrutinize claims of undue hardship. Oftentimes, they will find that there is an alternative accommodation available, particularly for larger employers with more resources. Before claiming undue hardship, it is highly advised to consult legal counsel.

Direct Threat to Health or Safety

Employers are also not required to hire or retain an individual that poses a “direct threat” or significant risk to the health or safety of themselves or others that a reasonable accommodation cannot remove. Again, the employer must engage in the interactive process prior to making this determination.

Attendance Issues

How Do I Address Multiple Absences?

Employers are often unsure of how to deal with an employee who is experiencing attendance issues which may be the result of a disability or medical condition. First, with any absence or tardiness, it is important to **document** why the employee was out – ask the employee for the reason. If the employee qualified for a protected leave (e.g., paid sick leave, CFRA, etc.) the absence should not count against them, nor should they be subject to disciplinary action. Refer to our Attendance Policy Toolkit and Leaves of Absence Toolkit for more information and considerations.

In situations when the employee has exhausted all protected leave, but they have indicated they have a medical issue, illness, etc., the employer should always assess whether they need to reasonably accommodate the employee under the ADA/FEHA. As such, do not automatically count the absence against the employee or discipline them because they have exhausted protected leave. A leave of absence may be one form of a reasonable accommodation if it allows the employee to recover/return to the job and perform their essential functions.

The issue of accommodating absences can be tricky, as there may be various reasons why an employee is absent, and at various times. In each situation when an employee indicates the absence is due to a medical reason or illness (and mandatory PSL has been exhausted), the best practice is often requesting that the

employee provide a medical certification, as in any other accommodation situation. That way, their health care provider can certify whether there was a legitimate reason that they missed work, and whether the employee has a disability or medical condition requiring intermittent leave, a reduced work schedule, or extended leave of absence. The health care provider should also certify the frequency or duration of anticipated absences, as appropriate.

If the issue is ongoing in nature and disruptive to the work environment, employers often wonder whether they can let the person go. As with any other accommodation, the employer must engage in the interactive process and should consider whether other employees can "reasonably" fill in for the person who needs to miss work as a result of a disability/medical condition.

For example, a teacher may need to leave an hour early every day to attend physical therapy appointments, but the predictability allows the employer to arrange for coverage with another staff member. However, if the teacher is often absent with little to no advance notice, particularly if they are responsible for students, it would likely be unreasonable for the employer to frequently arrange for last-minute coverage. All situations are unique and employers should get guidance as needed.

How Do I Address Extended Leave Requests?

Another issue that comes up is when an employee has exhausted all protected leave, but has requested an extension/unpaid leave of absence as a reasonable accommodation. (This accommodation example is discussed further below.) Particularly in situations when employees request extention after extension, employers question whether they have to "hold the position" and if there is a point they can terminate the individual.

First, the obligation to "hold the position" is a bit complex. If the employee is on a protected leave, such as PDL, CFRA/FMLA, etc., they often have a formal "right to reinstatement" to an equivalent position under almost all circumstances. If, however, the employer has provided leave time as a reasonable accommodation under the ADA/FEHA *only*, there may be circumstances when the employer is not required to hold the position. For example, if the employer can show that holding the position creates an undue hardship and they need to fill it, the employer may instead offer the employee another vacant position for which they are qualified. The employer should first offer any available position(s) equivalent in pay/seniority; however, the employer may offer position(s) that result in less pay or status if that is all that is available and work with the employee's needed accommodation. If the person's position was eliminated entirely during their leave due to business needs *unrelated to the individual* (e.g., department layoff, plant closure) there is no ongoing requirement to reasonably accommodate them.

Courts have also held that employers are not required to accommodate an "indefinite" leave of absence. However, at what point an employer may end the employment relationship after multiple leave extensions with "changing" return to work dates, is unclear. Unfortunately, there is no brightline rule for how long an employer must accommodate a leave and, for this reason, employers should not implement "maximum leave policies" resulting in automatic termination after a set period of time. These policies almost always violate the

ADA/FEHA. Oftentimes, it is a best practice to “wait and see” what happens – retain the employee if possible and assess what positions are available if/when they do indicate they are ready to return.

Notably, there are some cases where employers have successfully argued that it was appropriate to end the employment relationship after granting multiple leave requests in good faith and when the absence exceeded a year. Again, however, the law is not clear in this area and employers should always ***first engage in the interactive process on a case-by-case basis*** before making a determination the accommodation is unreasonable and/or an undue hardship exists. If an extended leave creates an undue hardship, consider whether there is another vacant position to offer the individual for which they are qualified and can perform essential functions. Moreover, if the employee has a workers’ compensation claim, employers should proceed with caution to avoid Labor Code Section 132(a) retaliation claims.

Pregnant Workers (PWFA)

Pregnant workers have additional protections beyond FEHA/ADA requirements. In California, employers with five or more employees are required to reasonably accommodate pregnant employees, and provide up to 17.3 weeks of Pregnancy Disability Leave when an employee is “disabled” or “affected” by pregnancy, as certified by their health care provider.

The federal Pregnant Workers Fairness Act (PWFA), which applies to employers with 15 or more employees, also requires accommodating “known **limitations**” related to pregnancy, childbirth or related medical conditions, unless accommodation creates an undue hardship.

Notably, under the PWFA, the employee’s limitation does not need to rise to the level of a disability or medical condition to require an accommodation. The EEOC clarifies that a limitation can be an “impediment or problem that is minor or modest and can be episodic (such as migraines or morning sickness).” This part of PWFA is almost identical to protections under California’s Pregnancy Disability Leave law, which, as noted above, also covers when employees are “affected” by pregnancy or related conditions.

Temporarily Suspending Essential Job Functions

However, one very important distinction with employees limited by pregnancy is that an employer covered by the PWFA may be required to ***temporarily suspend essential job functions***, which is not required for disabilities or medical conditions under the ADA/FEHA, or under PDL.

In regards to the PWFA, the EEOC states that if an employee cannot perform the essential functions of the job with or without a reasonable accommodation, an employee can be qualified even if they cannot do the essential functions of their job as long as:

- The inability is “temporary;”
- The employee could perform the functions “in the near future” (defined as generally up to 40 weeks); and
- The inability to perform the essential functions can be reasonably accommodated.

This means that an employee limited by pregnancy who is temporarily unable to perform one or more essential functions of their job, and who therefore needs light duty or a change in their work assignments, may be able to get such a change as a reasonable accommodation under the PWFA.

Predictable Assessments

The EEOC's PWFA regulation also lists certain accommodations deemed "reasonable" in "virtually all circumstances." The EEOC takes the position that these accommodations (termed "predictable assessments") do not cause an undue hardship in almost all cases.

- To carry or keep water near and drink as needed;
- Additional restroom breaks;
- To sit when work requires standing, and to stand when work requires sitting; and
- Breaks to eat and drink, as needed.

While the EEOC does not go quite so far as to say these accommodations must be "automatically" granted, they state, "the individualized assessment should be particularly simple and straightforward" in these circumstances. For example, the EEOC prohibits employers from requesting documentation and/or medical certification beyond self-attestation when a pregnant employee requests one of these assessments.

Unfortunately, though, EEOC's regulation does not provide additional guidance or parameters on the predictable assessments. For example, if an employee claims that due to pregnancy, she needs to visit the restroom every 10 minutes or have access to food constantly, the EEOC has not provided any guidance on how an employer is permitted to handle that situation. As such, employers are recommended to consult legal counsel if you wish to in any way limit an employee's request of a predictable assessment.

Limits on Documentation Requests

The EEOC also provides several examples when it is not reasonable for an employer to request supporting documentation or medical certification. These include:

- **Obvious Limitations**: The limitation and need for an adjustment or change at work due to the limitation is obvious. *For example, an obviously pregnant employee who seeks a bigger uniform because of their pregnancy cannot be required to provide additional information.*

- **Already Certified**: The employer already knows about the limitation and the adjustment or change at work due to the limitation. *For example, if the employee has already provided enough information that they have morning sickness due to pregnancy and need a later start time, the employer cannot demand a new doctor's note every time the employee uses the accommodation of coming in later.*

- **Predictable Assessments**: The employee is currently pregnant and needs breaks for the bathroom or to eat or drink, needs to carry water with them to drink, or needs to stand if their job requires sitting or to sit if their job requires standing.

- **Lactation**: The employee is lactating and needs modifications to pump at work or nurse during work hours.

- **Existing Policy/Practice**: The employer would not ask an employee for documentation in that situation normally. *For example, if an employer's policy is that employees only need a note from a health care provider for absences if they are missing more than 5 days in a row, the employer can't require someone who needs a reasonable accommodation of 1 day off because of pregnancy, childbirth, or a related medical condition to provide information from the health care provider.*

For many of the above, California law also prohibits requesting medical certification in certain circumstances (e.g., lactation accommodation requests.)

For more information on the PWFA, employers may refer to the EEOC's Summary of Key Provisions.

Crime Victims

California employers also have an obligation to reasonably accommodate any employee who is a victim or whose family member is a victim of a qualifying act of violence (as defined under California Government Code section 12945.8) who requests an accommodation for the safety of the employee while at work, unless it causes an undue hardship.

The law provides potential examples of reasonable accommodations in this context, including:

- implementation of safety measures, including a transfer, reassignment, modified schedule,
- changed work telephone and/or permission to carry telephone at work,
- changed work station,
- installed lock,
- assistance in documenting domestic violence, sexual assault, stalking, or another qualifying act of violence that occurs in the workplace,
- an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, stalking, or other qualifying act of violence,
- referral to a victim assistance organization

In determining whether an accommodation is reasonable, the employer must consider an exigent circumstance or danger facing the employee or their family member. The employer may request a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for an authorized purpose, or to certify the employee or family member's status as a victim.

An employer may also request recertification of an employee's status, or an employee's family member's status, as a victim, or ongoing circumstances related to the qualifying act of violence, every six months. All related documentation must be kept confidential by the employer.

Reasonable Accommodation Examples

Below are a few reasonable accommodation types and illustrative examples. There are *many more* depending on the limitation at issue, work-related functions, etc. This toolkit cannot begin to cover all scenarios. However, employers may refer to the Job Accommodation Network (JAN), which has an extensive library of employer resources and hypothetical examples. While JAN provides guidance based on the federal ADA (not the FEHA), there is significant overlap between the ADA and FEHA, and JAN is often a great starting point for employers to identify potential solutions.

Job Restructuring & Modifying Work Schedules

Job restructuring includes removing marginal functions or changing when or how a job is done, such as relocating the work area. This may also include modifying someone's work schedule to allow part-time work or different work hours.

For example, if an employee has a medical condition that causes fatigue or trouble focusing, the employer may restructure their job so that they can work when they are most alert and focused. Examples include adjusting starting and ending times of the workday, allowing for increased breaks, allowing flexibility with attendance, and/or allowing part-time work during hours when the employee is most mentally alert.

As another example, if a manufacturing worker has trouble reading/writing due to a disability, but is otherwise supposed to provide written summaries of completed work every week to their supervisor, the employer may remove this task, as it is likely marginal to the job. Instead, the employer may allow the employee to provide the summaries verbally, or with the assistance of another coworker.

Assistive Aids & Modified Equipment/Devices

There are a number of assistive aids and devices that help employees with disabilities perform essential job functions. Often, employees are able to identify such equipment based on their experience with their disability. If not, employers may also reach out to JAN for accommodation ideas. For example, if a customer service employee has difficulty typing due to a disability, one reasonable accommodation may be to provide an ergonomic keyboard. As another example, a teacher that needs to communicate with students but has slurred speech or becomes fatigued easily could be provided a personal speech amplifier so they do not have to strain to project their voice.

Note that employers are never required to provide *personal* use items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.

Assistive Animals

An employee may be entitled to bring an assistive animal to the worksite as a reasonable accommodation. Depending on the circumstances, an employee may need to bring one of the following:

- A guide dog trained for the blind or visually impaired;
- Signal dog or other animal trained for deaf or hearing impaired;

- Service dog or other animal trained to the requirements of a person with a disability; and
- Support dog or other animal that provides emotional, cognitive, or other similar support to a person with a disability (otherwise known as an “emotional support animal”).

An employer can require that the animal is housebroken, free from offensive odors, and that the animal does not cause a safety or health issue. For more information on how to handle these requests and considerations for the work environment, refer to our Assistive Animals Toolkit.

Work from Home/Telework

Telework is often suggested as an accommodation solution to address a variety of impairments, limitations, and work-related barriers. Examples of work-related barriers can include:

- Difficulty commuting to and from work due to disability-related reasons
- Environmental issues (e.g., construction activities, exposure to chemicals/irritants, temperature sensitivity, problematic lighting, etc.)
- Lack of privacy to manage personal/medical needs, like using the restroom, taking medication, or receiving treatment
- Exposure to viruses and bacteria
- Workplace distractions affecting concentration

For some jobs, the essential duties can only be performed in the workplace (e.g., construction worker) but in many jobs, some or all of the essential duties can be performed at home. Evaluate each situation case-by-case to determine if, and to what extent, it is feasible to perform essential duties at home. For example, if an office assistant has a rare condition and their doctor advises staying away from the worksite during cold and flu season due to their increased vulnerability, consider whether their essential functions can be performed at home. This may require the employer to provide equipment for a home office, such as a laptop and phone, as reasonable.

The California Civil Rights Department, which enforces FEHA, refers to the EEOC information on identifying whether an accommodation is possible. The EEOC’s position on this issue is that in determining whether telework is feasible, employers should consider:

- the employer’s ability to supervise the employee adequately;
- whether any duties require use of certain equipment or tools that cannot be replicated at home;
- whether there is a need for face-to-face interaction;
- coordination of work with other employees;
- whether in-person interaction with outside colleagues, clients, or customers is necessary; and
- whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace.

The EEOC cautions that an employer should not automatically deny a request to work at home solely because a job involves some contact and coordination with other employees. The EEOC notes that meetings can be conducted effectively by telephone and information can be exchanged quickly through e-mail.

If the employer already has remote workers/the capabilities to set up remote work arrangements, or has allowed such arrangements in the past, this creates a stronger argument that the accommodation is reasonable and will not result in undue hardship.

Alternative Job Position (Vacant/Qualified)

Reassignment to a vacant position (which the employee is qualified for) is typically an effective solution when: (1) the employee can no longer perform the essential functions of their current position or (2) when both the employer and the employee voluntarily agree that reassignment is preferable to remaining in the current position with reasonable accommodation.

As discussed above, the employer should first offer any vacant position the individual is qualified for that is equivalent in terms of pay, status, benefits, etc. However, if the only vacant position(s) available result in less pay/less status, the employer may still offer it as an accommodation solution.

If the employee rejects the offer, be sure to document the rejection (and ideally have them sign it). If the employee refuses the reassignment offer, the result could be termination if the employee is unable to perform their current essential job duties. The employer is under no obligation to keep looking until a vacancy occurs in a job that the employee prefers, but can do so.

One question that comes up is whether an employee must "compete" amongst other candidates for a vacant position. The answer is no – provided the employee is qualified for the vacant position, reassignment means that the employee is *given* the vacant position as the accommodation. There is no requirement to compete for it.

However, note that the employer is not required to *create* a vacant position as an accommodation, or offer a position the employee is not qualified to perform.

Leave of Absence

One of the more confusing reasonable accommodation issues is permitting the use of accrued paid leave, or providing unpaid leave, when an employee's disability necessitates it. The concept can be difficult to grasp because it does not align with the idea of providing an accommodation that keeps an employee *on-the-job*. One way to view it is that the goal in granting leave as a reasonable accommodation is to enable a qualified employee with a disability to manage medical issues so they may ultimately return to work and perform their essential functions.

Another complicated aspect about leave as an accommodation is it is considered a "lesser" form of accommodation. If there is another reasonable accommodation that will allow an employee to continue working, that should generally be selected first. Of course, an exception would be if the employee and employer both agree that leave is preferable.

Paid leave beyond that which is provided to similarly-situated employees is not required. The EEOC states that an employee with a disability should be permitted to exhaust accrued paid leave before using unpaid leave as an accommodation.

Leave may be requested as a reasonable accommodation for a number of disability-related reasons. Leave may also be taken on an intermittent basis. Some of the most common reasons include:

- to attend medical appointments related to an episodic or chronic medical impairment;
- to obtain medical treatment (e.g., chemotherapy, physical therapy, surgery, mental health counseling, in-patient substance abuse treatment, dialysis, etc.);
- to recuperate from an illness or surgery, or exacerbation of symptoms associated with an episodic or chronic medical impairment.

Employers should always first consider whether an employee is entitled to a protected leave of absence (e.g., PSL, PDL, CFRA/FMLA, etc.) as additional rights may apply, such as the right to reinstatement and continued health care coverage. Refer to our Leaves of Absence Toolkit for additional considerations.

Rehabilitation for Drugs/Alcohol

Drug and alcohol addiction is often considered a "medical condition" that requires reasonable accommodation. An important distinction is that employers are not required to accommodate illicit drug use or tolerate a violation of their drug/alcohol policies; however, an employer may be required to accommodate an individual seeking treatment/rehabilitation.

Job accommodations may include the use of paid or unpaid leave for inpatient medical treatment or flexible scheduling for counseling or to attend support meetings.

In California, employers with 25 or more employees are automatically required to reasonably accommodate an employee who volunteers to enter an alcohol or drug rehabilitation program, unless it causes an undue hardship.