

A Primer on the Disability Discrimination Laws



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What Do the Discrimination Laws Require?

- Employers must make sure that individuals with disabilities:
 - Have an equal opportunity to apply for jobs
 - Have an equal opportunity to work in jobs for which they are qualified
 - Have equal access to benefits and privileges of employment
 - Are not harassed because of disability
- Employers must respect the privacy rights of employees in the process

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Definitions of Mental Disabilities

- Mental or emotional impairments affecting major life activities
- Which make those activities more difficult
- Excluding some transitory impairments, but including chronic, severe, or episodic impairments
- Prevalence
- Examples

What Do the Discrimination Laws Require?

- Through an “**interactive process**” an employer must provide:

Reasonable Accommodation to **qualified individuals with disabilities** who are **employees** or **applicants** for employment, unless to do so would cause an **undue hardship**.

3 Types of Reasonable Accommodations

- Changes to a job application process
- Changes to how the job is done
- Changes that enable an employee with a disability to enjoy benefits and privileges of employment (like access to training)

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Examples of Accommodations

- Make existing facilities accessible
- Acquire/modify equipment
- Change testing/training materials
- Modify work schedules
- Job restructuring
- Shift changes
- Unpaid leave
- Reassignment to vacant position

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(maybe) NOT
a Reasonable Accommodation

- Elimination of essential job functions
- Lowering production standards
- Personal use items (i.e., prosthetic limb, eyeglasses, hearing aids)
- Creating a job
- Bumping an employee from his/her job
- Promoting an employee into a vacant job he/she is not otherwise qualified for

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Threats of Workplace Violence

- An employer may discipline an employee who violates a workplace violence policy by making threats to harm others, even if the employee's conduct is the result of a disability
 - *Wills v. Superior Court of Orange County*, 195 Cal.App.4th 143 (2011)
- This rule is very narrow
- Know the difference between "making a threat" and "posing a threat"

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