

What is reasonable accommodation?

Reasonable accommodation is required by federal and state law and County policy. It provides for modifications or adjustments to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions without causing or incurring undue hardship on the operation of the employer's business. Reasonable accommodation" may include either of the following: (1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities. (2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

What law requires reasonable accommodation?

The Americans with Disabilities Act (ADA) of 1990, amended. Title 1 of the ADA prohibits state and local governments from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, training and other privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments such as the County of Santa Clara. California law also prohibits discrimination against people with disabilities. Under the Fair Employment and Housing Act ("FEHA") it is an unlawful employment practice to discriminate against a person in compensation or in terms, conditions or privilege of employment on the basis of physical or mental disability.

Who is a "qualified" applicant or employee with a disability?

"Qualified" means the employee or applicant has the requisite knowledge, skill and experience for the position and can perform the "essential functions" of the position with or without a reasonable accommodation.

A "disability" is an impairment that substantially limits one or more major life activities, a record of such impairment or being regarded as having such an impairment.

Disabilities are recognized in one of three ways:

1. A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (walking, talking seeing, hearing or learning).
2. A person may be disabled if he or she has a history of disability (such as serious medical condition that is in remission).
3. A person may be disabled if he or she is believed to have a physical or mental impairment that is not temporary and minor.

What is an impairment?

An impairment is any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic, lymphatic, skin and endocrine. Also any mental or psychological disorder, such as mental retardation, organ brain syndrome, emotional or mental illness and specific learning disabilities.

The definitions of disability are broader under California law, because the Legislature intends that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

What is a major life activity?

Major life activities include seeing, hearing, walking, speaking and breathing. The ADA was expanded in 2008 to include reading, bending and “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.” Under FEHA it also includes being regarded or treated by the employer or other entity covered by FEHA as having, or having had, any mental condition that makes achievement of a major life activity difficult.

What is an example of an accommodation?

Examples of accommodations include making existing facilities more accessible, restructuring non-essential duties of a job, utilizing part time or modified work schedules, adjusting or modifying training material or policies and acquiring or modifying equipment. Relocating the work area, providing mechanical or electrical aids, providing leave for medical care. An accommodation is reasonable if it does not impose an undue hardship on the employer’s business.

What is the interactive process and is it mandatory?

The interactive process is a communication held in good faith between an employee and the employer to identify and implement a reasonable accommodation. It is mandatory under both the ADA and FEHA. An employee does not need to use the phrase “reasonable accommodation” to put the employer on notice that an accommodation is being requested. It could be a simple verbal statement from the employee to the employer about a medical need. A request for accommodation must be weighed on a case by case basis.

How to start the RA process

1. Typically, the employee provides a medical note listing work restrictions.
2. Supervisor provides Form A “Request for Accommodation” for employee to complete.
3. Supervisor and employee meet to discuss accommodation request, possible ways the accommodation could be accomplished and the length of time for the accommodation.
4. Supervisor informs employee, through Form B, whether the accommodation can take place.

How long does this process take?

According to County policy, the interactive process, the discussion between employee and supervisor, should occur within 10 working days of the notification. More than one meeting may be necessary. A decision on whether an accommodation can be made should be provided to the employee within 20 working days of completion of the interactive process. If there is a possibility for delays, keep the employee informed. If more information is needed, the employee is expected to obtain such information from his/her medical provider within 30 days of the request.

Does the process start only when an employee presents a medical note?

No. The interactive process can start when a supervisor observes an employee who appears disoriented or unable to perform his or her job in a safe manner or when a supervisor is notified by a third party that an employee is having difficulty.

What is an essential function?

To determine essential functions, consider the following:

1. The position exists to perform that function and the employee actually performs the function.
2. All employees in this classification required to do the function.
3. Highly specialized so that the incumbent of the position was hired for his/her expertise or ability to perform the particular function.
4. How often during a shift is there sitting, standing, lifting, carrying, pushing, pulling? Are there other activities needed to do the job such as working outdoors or in and out of freezers or refrigeration.
5. A position description is not enough.

Does the accommodation have to be the employee's choice?

No. The accommodation can be whatever meets the employee's needs medically.

Is the process over once an accommodation is made?

No. The employer (supervisor) should monitor the accommodation for its effectiveness. Adjustments or reconsideration of the original accommodation may be necessary for either employer, employee or both.