

## HOW TO CREATE SAFE SPACES FOR PERSONS LIVING WITH DISABILITIES TO SELF-IDENTIFY IN THE WORKPLACE

### Speakers:

- **Kathy Martinez**, President and Chief Executive Officer, Disability Rights Advocates, [kmartinez@dralegal.org](mailto:kmartinez@dralegal.org)
- **Branden Butler**, Assistant Deputy Director of Education and Outreach, Department of Fair Employment and Housing, [Branden.Butler@dfeh.ca.org](mailto:Branden.Butler@dfeh.ca.org)
- **Wendy Musell**, Managing Partner of Law Offices of Wendy Musell and Of Counsel to Levy Vinick Burrell Hyams LLP, [wmusell@wendymuselllaw.com](mailto:wmusell@wendymuselllaw.com)

Moderator: **Julie Ann Giammona**, Of Counsel, Ferber Law, APC, [jgiammona@ferberlaw.com](mailto:jgiammona@ferberlaw.com)



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## WELCOME!

- INTRODUCTIONS
- GOALS
- SPEAKERS
- INTERACTIVE SESSION

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| Education and Outreach

## Overview of Workplace Protections for Persons With Disabilities

Branden Butler  
Assistant Deputy Director of Education and Outreach

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**DFEH**  | Education and Outreach

### Mission

The Department of Fair Employment and Housing is California's Civil Rights Agency. The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from the perpetration of acts of hate violence and human trafficking.

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## DFEH Responsibilities

- Engage in public outreach and provide training and technical assistance to employers, business establishments, and housing providers regarding their responsibilities under the law
- Investigate discrimination complaints and cases of systemic discrimination
- Facilitate mediation and resolution of disputes involving civil rights
- Enforce the laws by prosecuting violations in civil court

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## Civil Rights Laws Enforced by DFEH

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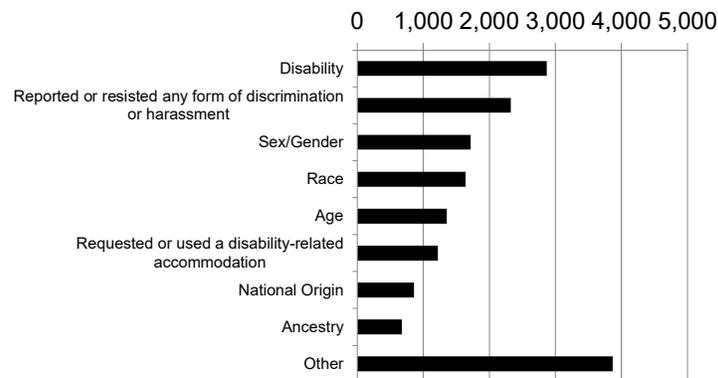
## Employment Protected Bases

- Race (inc. hair texture and style)
- Color
- Ancestry
- National Origin
- Religion
- Age (40 and over)
- Disability (mental and/or physical)
- Sex
- Gender
- Sexual Orientation
- Gender Identity
- Gender Expression
- Medical Condition
- Genetic Information
- Marital Status
- Military and Veteran Status

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## 2019 Employment Filings = 5,183 (1 of 3)

*Total Employment Bases = 16,528*



*DFEH also issued 15,076 right-to-sue letters in 2019*

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**2019 Employment Filings = 5,183 (2 of 3)***Total Employment Bases = 16,528*

| <b>Bases of Employment Complaints</b>                         | <b>Total</b> |
|---|--------------|
| Disability  | 2,868        |
| Reported or resisted any form of discrimination or harassment | 2,325        |
| Sex/Gender  | 1,717        |
| Race*   | 1,639        |
| Age   | 1,356        |
| Requested or used a disability-related accommodation          | 1,221        |
| National Origin   | 859          |

\* Beginning 1/1/2020, "race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

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**2019 Employment Filings = 5,183 (3 of 3)***Total Employment Bases = 16,528*

| <b>Bases of Employment Complaints</b>                                    | <b>Total</b> |
|--|--------------|
| Ancestry   | 675          |
| Sexual harassment- hostile environment                                   | 574          |
| Requested or used leave under the California Family Rights Act or FMLA   | 476          |
| Color  | 441          |
| Sexual Orientation   | 311          |
| Pregnancy, childbirth, breast feeding, and/or related medical conditions | 282          |
| Other  | 1,784        |

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Table 2: Employment Right-to-Sue Complaints Filed by Bases

|  |                |
|--|----------------|
| Age  | 6,456          |
| Ancestry   | 2,518          |
| Association with a member of a protected class                           | 4,035          |
| Baby Bonding Leave (employers of 20 - 49 people)                         | 689            |
| Color  | 3,413          |
| Criminal History   | 254            |
| Disability (physical or mental)  | 13,101         |
| Family Care or Medical Leave (CFRA) (employers of 50 or more people)     | 6,773          |
| Gender identity or expression  | 1,418          |
| Genetic information or characteristic                                    | 1,132          |
| Marital status   | 962            |
| Medical condition (cancer or genetic characteristic)                     | 5,764          |
| Military and veteran status  | 219            |
| National Origin  | 3,738          |
| Pregnancy, childbirth, breast feeding, and/or related medical conditions | 1,592          |
| Race   | 6,029          |
| Religious Creed - Includes dress and grooming practices                  | 1,025          |
| Sex/Gender   | 8,327          |
| Sexual harassment- hostile environment                                   | 6,549          |
| Sexual harassment- Quid Pro Quo  | 2,718          |
| Sexual orientation   | 1,725          |
| Other  | 6,863          |
| <b>Total</b>   | <b>85,293*</b> |

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## FEHA: California Civil Rights Laws

The California Fair Employment and Housing Act requires employers of five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to apply for jobs and to perform the essential functions of their jobs unless it would cause an undue hardship.

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## FEHA and Disability (1 of 2)

- FEHA Prohibits employment discrimination and harassment based on a person's disability or perceived disability.
- FEHA prohibits retaliation for exercising a FEHA right, such as filing a complaint about discrimination.
- FEHA requires employers to reasonably accommodate individuals with mental or physical disabilities unless the employer can show that to do so would cause an undue hardship.

**Article 9 Disability Discrimination**  
2CCR § 11064-11042

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## FEHA and Disability (2 of 2)

- FEHA covers mental or physical disabilities regardless of whether the conditions are presently disabling. It also covers medical conditions, which are defined as either cancer or genetic characteristics.
- Disability does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.
- 2CCR § 11065

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## FEHA VS. The Federal Americans With Disabilities Act

The FEHA provides broader protection for persons with disabilities than federal law.

- California law has broader definitions of mental disability, physical disability, and medical condition than does federal law.
- Under California law, a disability must only “limit” a major life activity. The disability does not have to involve a “substantial limitation,” as under federal law, to be considered a disability.
- Whether a condition or disability “limits” a major life activity is determined regardless of any mitigating measure, such as medication or prosthesis, unless the mitigating measure itself limits a major life activity.

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## Reasonable Accommodation - Modifications or Adjustments that are:

- Effective in enabling an applicant with a disability to have an equal opportunity to be considered for a desired job, (or)
- Effective in enabling an employee to perform the essential functions of the job the employee holds or desires, (or)
- Effective in enabling an employee with a disability to enjoy equivalent benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.
- 2CCR § 11065

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## Examples of Reasonable Accommodation

- Allowing applicants or employees to bring assistive animals to the work site;
  - Transferring an employee to a more accessible worksite;
  - Job Restructuring-reallocation or redistribution of non-essential job functions in a job with multiple responsibilities;
  - Providing a part-time or modified work schedule;
  - Permitting an alteration of when and/or how an essential function is performed;
  - Providing an adjustment or modification of examinations, training materials or policies;
  - Modifying an employer policy;
  - Permitting an employee to work from home;
- 
- 2CCR § 11065

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## Undue Hardship

- An accommodation is reasonable if it does not impose an undue hardship on the employer's business.
  - An action requiring significant difficulty or expense incurred by an employer or other covered entity, when considered under the totality of the circumstances
- 
- 2CCR § 11065

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## Undue Hardship Factors

- Nature and net cost of the accommodation
- Overall financial resources of the facilities involved
- Number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility
- Overall financial resources of the employer
- Overall size of the business
- Type of operation or operations, including the composition, structure, and functions of the workforce of the employer or other covered entity; and
- Geographic separateness, administrative, or fiscal relationship of the facility or facilities.

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## Right Of Reasonable Accommodation: Interactive Process

- Employers must initiate an “interactive process” when an applicant or employee requests reasonable accommodations
- The employer must also offer to initiate an interactive process when the employer becomes aware of the possible need for an accommodation

2CCR § 11069 Interactive Process.

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## Interactive Process (1 of 4)

FEHA requires a timely, good faith, interactive process between an employer or other covered entity and an applicant, employee, or the individual's representative, with a known physical or mental disability or medical condition.

Both the employer or other covered entity and the applicant, employee or the individual's representative shall exchange essential information without delay or obstruction of the process.

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## Interactive Process (2 of 4)

An employer or other covered entity shall initiate an interactive process when:

- An applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodations, or
- The employer or other covered entity otherwise becomes aware of the need for an accommodation through a third party or by observation, or

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## Interactive Process (3 of 4)

- The employer or other covered entity becomes aware of the possible need for an accommodation because the employee with a disability has exhausted leave and the employee or the employee's health care provider indicates that further accommodation is still necessary for recuperative leave or other accommodation for the employee to perform the essential functions of the job.

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## Interactive Process (4 of 4)

- The goal of the process is to remove barriers that keep people from performing jobs that they could do with some form of accommodation.
- The process requires an individualized assessment of both the job and the specific physical or mental limitations of the individual that are directly related to the need for reasonable accommodation.

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## Medical and Psychological Examinations and Disability-Related Inquiries during Employment

- An employer or other covered entity may make disability-related inquiries, including fitness for duty exams, and require medical examinations of employees so long as the inquiries are both job-related and consistent with business necessity
- “Business Necessity,” as used in this article regarding medical or psychological examinations, means that the need for the disability inquiry or medical examination is vital to the business.
- 2CCR§ 11071. Medical and Psychological Examinations and Inquiries

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## Employment Inquiries (1 of 2)

The FEHA prohibits employers from either verbally or in writing:

- Requiring any medical or psychological examination or related inquiry of any applicant or employee prior to making an offer of employment
- Inquiring directly or indirectly as to whether an applicant or employee has a mental or physical disability or medical condition
- Inquiring about the nature and severity of a mental or physical disability or medical condition

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## Employment Inquiries (2 of 2)

- However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request either with or without a reasonable accommodation.
- Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical or psychological examination. However, the examination or inquiry must be job related and consistent with business necessity and all entering employees in the same job classification must be subject to the same examination or inquiry.

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STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency  
**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**  
 2215 Kawanishi Street, Suite 100 | Elk Grove, CA | 95758  
 800-884-1084 (Voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
 www.dfeh.ca.gov | email: contact\_center@dfeh.ca.gov

GAIVEN NEWSOM, GOVERNOR  
 KEVIN KISH, DIRECTOR

July 11, 2019  
 For Immediate Release

Contact: Fahizah Alim (916) 585-7076  
 Fahizah.Alim@dfeh.ca.gov

**DFEH and KajSong Corporation Reach Settlement in Disability Discrimination Case**  
*Retail employer to pay \$20,000 and revise "fully healed" policy*

**Sacramento** – The California Department of Fair Employment and Housing (DFEH) has reached a settlement in an employment disability discrimination case with KajSong Corporation (KajSong) involving a retail store clerk who alleged she was subjected to discrimination, denied a good-faith interactive process and reasonable accommodation, and retaliated against after she informed her employer about her disability and need for accommodation.

The employee filed a complaint with DFEH in February 2018 alleging that KajSong, which operates women's retail clothing stores, stopped scheduling her for a month after she submitted a doctor's note requiring a change to her work schedule. For disability-related reasons, the employee couldn't both open the store in the morning and close it at night. KajSong ultimately provided a new work schedule, but significantly reduced the employee's work hours and demoted her. The company also had an unlawful "fully healed" policy that required employees who were out sick to bring in a doctor's note indicating they could "resume full duty" before they could return to work.

DFEH found cause to believe a violation of the Fair Employment and Housing Act had occurred. The parties engaged in mediation resulting in a settlement in which KajSong will pay \$20,000, which includes the employee's lost wages, emotional distress and the DFEH's attorney fees.

"Blanket 'fully healed' policies violate California law, which requires a good faith interactive process when an employee requests a reasonable accommodation, including a schedule change," said DFEH Director Kevin Kish. "Employers cannot ignore requests for accommodations, or unilaterally remove employees from the schedule when they request an accommodation."

As part of the settlement, KajSong will hire an outside consultant to revise its current policies; provide training for staff on the interactive process and the prohibition of retaliation; and report compliance to DFEH.

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## Thank you!

*For more information, please contact DFEH:*

[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

[contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

[accommodations@dfeh.ca.gov](mailto:accommodations@dfeh.ca.gov)

Toll Free: (800) 884-1684

TTY: (800) 700-2320

California Relay Service 711

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## How to create safe spaces for persons living with disabilities to self-identify in the workplace

Wendy Musell  
Law Offices of Wendy Musell  
Levy Vinick Burrell Hyams LLP

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**\*State Bar Diversity Report Card  
Call to Action: Practical Ways to Address  
Wrkplace Deficiencies for Attorneys with  
Disabilities**

**\*Aging Population of the Bar**

**\*COVID**

**\*Studies Regarding Hiring People with  
Disabilities**

**\*Culture Problem within the Law**

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**Report Card on the Diversity of California's  
Legal Profession- California State Bar**



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## People with Disabilities

More than one-in-five Californians report having at least one form of disability that limits activities and self-care. These include mobility issues, cognitive impairments, and vision and hearing impairments. In contrast, only 5 percent of attorney respondents report living with a disability.

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## Workplace Experiences

Satisfaction with career development opportunities and workplace experiences is an important indicator of whether a workplace has high rates of retention.

The State Bar's 2019 Attorney Census asked attorneys if they were satisfied with various aspects of work life, including issues pertaining to their individual careers and workplace experiences, issues relating to the collective workplace experience, and work/life balance.

The results below are based on composites of each derived from six survey questions within each of these workplace domains. Women, people of color, LGBTQIA+ and **people with disabilities** consistently report lower levels of satisfaction with workplace experiences than white men.

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## Satisfaction with: Individual Career and Workplace Issues

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advancement opportunities

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career development

---

challenging assignments

---

respect and prestige

---

salary

---

performance evaluations

**People with Disabilities:  
44% lowest any group**

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## Collective Workplace Issues

---

mentoring

---

coworkers

---

leadership

---

diversity

---

inclusion

---

application of antidiscrimination  
policies

**People with Disabilities  
51%- lowest of any group**

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## Work/Life Balance

---

number of hours worked

---

flexible work schedule

---

maternity leave

---

paternity leave

---

family medical leave

---

child friendly work environment

**People with Disabilities  
and Women of Color:**

**43%- tied for lowest  
percentage**

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## Call to Action- Workplace Leadership



Set measurable and visible diversity and inclusion goals, and regularly report and discuss progress



Take an active role in advancing inclusion and diversity by participating in goal-setting efforts and holding employers accountable for results.

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## A diverse workplace isn't necessarily an inclusive workplace

**Do you have:**

Established and clearly communicated criteria for advancement within your organization?

Institutionalized processes to ensure that all attorneys have equal access to the resources and experiences needed to satisfy those criteria?

Career/professional development programs that align with advancement criteria?

Executive coaching or leadership training opportunities available to your attorneys to develop and expand their skills?

A mechanism to solicit feedback from attorneys as to the types of career development opportunities they would be interested in receiving?

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## Work Allocation that Reflects Priorities for Retention and Advancement Goals

**Do you have:**



Regular reviews of: How work is assigned



(2) the effectiveness of mentoring and staff evaluations; and



(3) whether you are giving your junior and mid-level staff the opportunities they require to succeed and advance into leadership positions?

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## Call to Action

### Do you have?

#### **360 degree feedback**

process to how people of different backgrounds are experiencing the workplace and how these experiences may lead to disparities in advancement?

#### **Salary and Compensation:**

internal salary reviews to determine if there are disparities

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## Age of Attorneys in California

### Attorney Status

| <b>Attorney Status</b>             | <b>Population</b> | <b>Average Age</b> | <b>% of Attorneys</b> |
|------------------------------------|-------------------|--------------------|-----------------------|
| Active                             | 194,008           | 49                 | 69.01%                |
| Inactive                           | 68,180            | 65                 | 24.25%                |
| Judge                              | 2,145             | 61                 | 0.76%                 |
| Not eligible to practice law in CA | 16,802            | 65                 | 5.98%                 |
| <b>Total</b>                       | <b>281,135</b>    |                    |                       |

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## Studies Regarding Hiring People with Disabilities

Improvements in profitability (e.g., profits and cost-effectiveness, turnover and retention, reliability and punctuality, employee loyalty, company image),

Competitive advantage (e.g., diverse customers, customer loyalty and satisfaction, innovation, productivity, work ethic, safety),

Inclusive work culture, and ability awareness.

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## Law Has a Culture Problem



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Hypo 1

Attorney is undergoing treatment for anxiety. Attorney attempts to maintain privacy as to their weekly appointments including has scheduled them as late in the day as possible. However, within a month after starting treatment, it becomes clear it is difficult to maintain a weekly appointment. Attorney is unsure about seeking an accommodation to leave work every Tuesday at 4:45 pm for appointment, what they would have to disclose to do so and is fearful that they would be subjected to discrimination and/or retaliation for seeking this accommodation.

- Is this a disability?
- Is this a reasonable accommodation?
- What would the Attorney need to provide?
- Does the Attorney have to disclose their request is for a mental health condition and/or therapy appointments?
- Is the fear of discrimination and/or retaliation real?

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Hypo 2

Attorney placed on doctor ordered bed rest due to high risk pregnancy, a disability. Attorney seeks a Stipulation from Opposing Counsel to continue Trial. Opposing Counsel refuses and suggests Attorney have another take over the case. Attorney files a Motion for a Continuance, noting her pregnancy related disability and that no previous continuance has been sought. During oral argument for the Motion, the Court questions why Attorney's second chair, a significantly junior male associate, was not able to take the case to trial in her absence.

- What do you see - is this a disability, is this a reasonable accommodation, etc.?
- What if any actions could and/or should the Attorney take if Motion for Continuance is Granted and/or Denied?

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Hypo 3

A party is asked to attend private in-person mediation which will require plane travel. Attorney for party has a non-apparent disability with a compromised immune system. Attorney would like to hold mediation remotely to accommodate disability.

- Should Attorney self-identify to Firm? Client? Opposing Counsel?
- What should Attorney do if any one of these players will not agree to accommodate - Firm, Client and/or Opposing Counsel?

# CCCBA MCLE SPECTACULAR

## Inclusivity in the Workplace: Best Practices for Creating Safe Spaces for Persons Living with Disabilities to Self-Identify

November 18, 2021, 10:30-11:45am

### **Hypothetical Scenarios**

#### Scenario #1

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Attorney placed on doctor ordered bed rest due to high-risk pregnancy, a disability. Attorney seeks a Stipulation from Opposing Counsel to continue Trial. Opposing Counsel refuses and suggests Attorney have another take over the case. Attorney files a Motion for a Continuance, noting her pregnancy related disability and that no previous continuance has been sought. During oral argument for the Motion, the Court questions why Attorney's second chair, a significantly junior male associate, was not able to take the case to trial in her absence.

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# CCCBA MCLE SPECTACULAR

*Inclusivity in the Workplace: Best Practices for Creating Safe Spaces for Persons Living with Disabilities to Self-Identify*

November 18, 2021, 10:30-11:45am

## Resources

California Department of Fair Employment and Housing – Reasonable Accommodation - <https://www.dfeh.ca.gov/accommodation/>

Job Accommodation Network - <https://askjan.org/>

Department of Rehabilitation – Disability Access Services – <https://www.dor.ca.gov/Home/DisabilityAccessServices>

EEOC Fact Sheet on Small Employers and Reasonable Accommodation - <https://www.eeoc.gov/laws/guidance/small-employers-and-reasonable-accommodation>

EEOC Enforcement Guidance on Reasonable Accommodation Under Federal Law – <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

Statement of EEOC Chair Charlotte A. Burrows on National Disability Employment Awareness Month 2021 - <https://www.eeoc.gov/wysk/statement-eeoc-chair-charlotte-burrows-national-disability-employment-awareness-month-2021>

ABA Pledge for Change: Disability Diversity in the Legal Profession - [https://www.americanbar.org/groups/diversity/disabilityrights/initiatives\\_awards/pledge\\_for\\_change/](https://www.americanbar.org/groups/diversity/disabilityrights/initiatives_awards/pledge_for_change/)

# Request For Reasonable Accommodation - Confidential

The California Fair Employment and Housing Act requires employers of five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to perform the essential functions of their job unless it would cause an undue hardship. The law does not require the use of this or any other form to make a request for a reasonable accommodation. This form and any supporting materials or information is confidential and should be kept separate from an employee's personnel file.

| <b>SECTION A: TO BE COMPLETED BY EMPLOYEE</b>  |                                    |
|--|------------------------------------|
| NAME OF EMPLOYEE   | CLASSIFICATION/JOB TITLE           |
| WORK LOCATION/SUPERVISOR   | WORK TELEPHONE NUMBER/EMAIL        |
| ACCOMMODATION(S) REQUESTED (Be as specific as possible, for example adaptive equipment, reader, interpreter, training, schedule change, etc.):   |                                    |
| REASON FOR REQUEST (Please do not disclose your diagnosis; explain your disability-related limitations and how this accommodation will help you do your job.)  |                                    |
| IS YOUR LIMITATION:<br>Permanent      Temporary      Unknown   | ANTICIPATED RECOVERY DATE (if any) |
| IS THE ABOVE DESCRIBED DISABILITY THE SUBJECT OF A WORKER'S COMPENSATION CLAIM? (Employees with work related injuries may also be eligible for a reasonable accommodation independent of the worker's compensation process.)<br>YES    NO    IF YES, DATE FILED: |                                    |
| HAVE YOU REQUESTED FMLA, CFRA, PDL, OR OTHER LEAVE IN CONNECTION WITH THE ABOVE DESCRIBED DISABILITY?<br>YES    NO    IF YES, PLEASE SPECIFY WHAT YOU REQUESTED AND WHEN:  |                                    |
| I CERTIFY THAT I HAVE A DISABILITY THAT REQUIRES REASONABLE ACCOMMODATION, WHICH WILL BE MET BY THE ACCOMMODATION(S) LISTED ABOVE.   |                                    |
| SIGNATURE OF EMPLOYEE  | DATE                               |

**SECTION B: CERTIFICATION FROM PHYSICIAN/HEALTH CARE PROVIDER**

When an employee’s disability or need for accommodation is not apparent or known to the employer, the employer may request a certification from a health care provider verifying that an accommodation is necessary. The employer should provide the employee with a copy of a job duty statement to share with the health care provider.

For completion by the health care provider: please provide a letter or verification addressing the following:

1. Verification that the employee has a disability (but not the diagnosis).
2. Description of how the employee’s limitations impair the ability to perform the duties of the job and indication of whether these limitations are temporary or permanent.
  - a. If temporary, state when they are expected to end.
3. Recommendation of specific reasonable accommodation(s).

**(Note: Use the space below or attach a letter or verification, which will be kept confidential. Employers must generally retain medical certifications and related documents separately from usual personnel files.)**

DATE ACCOMMODATION TO BEGIN

DATE ACCOMMODATION TO END OR CONTINUOUS

NAME OF HEALTH CARE PROVIDER

SIGNATURE OF HEALTH CARE PROVIDER

**SECTION C: INTERACTIVE PROCESS DISCUSSION TO BE COMPLETED BY EMPLOYER**

1. Document all interactive discussions with employee, including dates of the discussions, employee's specific request(s), names of all persons present, and what was discussed. Use additional pages if required.

| Date | Discussion Notes |
|------|------------------|
|------|------------------|

2. List all potential reasonable accommodations identified in the interactive discussions and the strengths and weaknesses for each as a potential reasonable accommodation.

3. State your recommended reasonable accommodation and the rationale for your recommendation.

**SECTION D: TO BE COMPLETED BY EMPLOYER**

LIST SPECIFIC ACCOMMODATION(S) TO BE PROVIDED:

For each accommodation requested by the employee that you deny, explain the reason for the denial:  
(may check more than one box, use additional pages if needed)

Accommodation Ineffective

Accommodation Would Cause Undue Hardship. Identify Hardship:

Medical Documentation Inadequate

Accommodation Would Require Removal of an Essential Job Function. Identify Function:

Accommodation Would Require Lowering of Performance or Production Standard. Identify Standard:

No Alternative Vacant Position Available. Positions Considered:

Employee Rejected Alternative Accommodation. Identify Accommodation Offered and Reason for Employee's Rejection:

Other (Please identify):

Further Explanation/Comments:

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

**DATES**

ACKNOWLEDGEMENT OF RECEIPT OF  
REASONABLE ACCOMMODATION REQUEST

DATE ACCOMMODATION TO BEGIN

DATE ACCOMMODATION TO END

DATE EQUIPMENT ORDERED IF NEEDED AND BY WHOM

DATE EQUIPMENT WAS RECEIVED BY EMPLOYEE

**SECTION E: TO BE COMPLETED BY EMPLOYER FOLLOWING  
IMPLEMENTATION OF THE ACCOMMODATION(S)**

The employer should check in periodically with the employee to ensure that the accommodation is effective. If the accommodation is not effective, there is a duty to reengage in the interactive process.

Document all interactive discussions with employee, including dates of the discussions, names of all persons present, what was discussed, and next steps if needed. Use additional pages if needed.

| Date | Discussion Notes |
|------|------------------|
|------|------------------|

# Solicitud de Adaptación Razonable (Confidencial)

La Ley de Igualdad en el Empleo y la Vivienda de California exige que los empleadores con cinco o más empleados den adaptaciones razonables para que las personas con una discapacidad física o mental hagan las funciones básicas de su trabajo, excepto que esto cause una dificultad excesiva. La ley no exige el uso de este ni de cualquier otro formulario para hacer una solicitud de adaptaciones razonables. Este formulario y cualquier material o información de respaldo es confidencial y debe mantenerse separado del archivo personal de un empleado.

| SECCIÓN A (PARA QUE LA COMPLETE EL EMPLEADO)  |   |
|---|---|
| NOMBRE DEL EMPLEADO   | CLASIFICACIÓN/CARGO                               |
| LUGAR DE TRABAJO/SUPERVISOR   | NÚMERO DE TELÉFONO/CORREO ELECTRÓNICO DEL TRABAJO |
| ADAPTACIONES SOLICITADAS (sea lo más específico posible, por ejemplo, equipo de adaptación, lector, intérprete, capacitación, cambio de horario, etc.):   |   |
| MOTIVO DE LA SOLICITUD (no revele su diagnóstico; explique sus limitaciones relacionadas con la discapacidad y cómo esta adaptación lo ayudará a hacer su trabajo):   |   |
| SU LIMITACIÓN ES:<br><input type="checkbox"/> Permanente <input type="checkbox"/> Temporal <input checked="" type="checkbox"/> No se sabe   | FECHA DE RECUPERACIÓN PREVISTA (si corresponde):  |
| ¿LA DISCAPACIDAD EXPLICADA ARRIBA ES OBJETO DE UN RECLAMO DE COMPENSACIÓN PARA TRABAJADORES? (Los empleados con lesiones relacionadas con el trabajo también pueden ser elegibles para una adaptación razonable independiente del proceso de compensación del trabajador).<br><input type="checkbox"/> SÍ <input type="checkbox"/> NO   SI LA RESPUESTA ES SÍ, FECHA DE PRESENTACIÓN: |   |
| ¿SOLICITÓ UN PERMISO FMLA, CFRA, PDL U OTRO EN RELACIÓN CON LA DISCAPACIDAD EXPLICADA ARRIBA?<br><input type="checkbox"/> SÍ <input type="checkbox"/> NO   SI LA RESPUESTA ES SÍ, ESPECIFIQUE LO QUE SOLICITÓ Y CUÁNDO:   |   |
| CERTIFICO QUE TENGO UNA DISCAPACIDAD QUE NECESITA UNA ADAPTACIÓN RAZONABLE, QUE CUBRIRÁN LAS ADAPTACIONES LISTADAS ARRIBA.  |   |
| FIRMA DEL EMPLEADO  | FECHA   |

## SECCIÓN B (CERTIFICACIÓN DEL MÉDICO/PROVEEDOR DE ATENCIÓN MÉDICA)

Cuando la discapacidad de un empleado o la necesidad de adaptaciones no son evidentes o el empleador no sabe de ellas, el empleador puede solicitar una certificación de un proveedor de atención médica que verifique que es necesaria una adaptación. El empleador debe dar al empleado una copia de una declaración de obligaciones laborales para compartir con el proveedor de atención médica.

(Para que lo complete el proveedor de atención médica). Presente una carta o verificación que trate lo siguiente:

1. Verificación de que el empleado tiene una discapacidad (pero no el diagnóstico).
2. Descripción de cómo las limitaciones del empleado afectan la capacidad de hacer las tareas del trabajo e indicación de si estas limitaciones son temporales o permanentes.
  - a. Si son temporales, indique cuándo se espera que terminen.
3. Recomendación de adaptaciones razonables específicas.

**(Nota: Use el espacio de abajo o adjunte una carta o verificación, que se mantendrá confidencial. Los empleadores generalmente deben conservar las certificaciones médicas y los documentos relacionados por separado de los archivos de personal habituales).**

FECHA DE INICIO DE LA ADAPTACIÓN

FECHA DE FINALIZACIÓN O CONTINUACIÓN DE LA ADAPTACIÓN

NOMBRE DEL PROVEEDOR DE ATENCIÓN MÉDICA

FIRMA DEL PROVEEDOR DE ATENCIÓN MÉDICA

**SECCIÓN C (CONVERSACIONES INTERACTIVAS SOBRE EL PROCESO QUE DEBE COMPLETAR EL EMPLEADOR)**

1. Documente todas las conversaciones interactivas con el empleado, incluyendo las fechas de las conversaciones, las solicitudes específicas del empleado, los nombres de todas las personas presentes y de lo que se habló. Agregue páginas si es necesario.

| Fecha | Notas de las conversaciones |
|-------|-----------------------------|
| _____ |                             |
| _____ |                             |
| _____ |                             |
| _____ |                             |

2. Mencione todas las posibles adaptaciones razonables identificadas en las conversaciones interactivas y las fortalezas y debilidades de cada una como posibles adaptaciones razonables.

3. Indique la adaptación razonable recomendada y el motivo de su recomendación.

**SECCIÓN D (PARA QUE LA COMPLETE EL EMPLEADOR)**

LISTA DE ADAPTACIONES ESPECÍFICAS QUE SE DARÁN:

Para cada adaptación solicitada por el empleado que usted niega, explique el motivo de la denegación (puede marcar más de una casilla; agregue páginas si es necesario):

- Adaptación ineficaz.
- La adaptación causaría dificultades excesivas. Identifique las dificultades: \_\_\_\_\_
- Documentación médica inadecuada.
- La adaptación exigiría la eliminación de una función laboral básica. Identifique la función: \_\_\_\_\_
- La adaptación exigiría una reducción del desempeño o estándar de producción. Identifique el estándar:  
\_\_\_\_\_
  
- No hay un puesto vacante alternativo disponible. Posiciones consideradas: \_\_\_\_\_
- Adaptación alternativa rechazada por el empleado. Identifique las adaptaciones dadas y el motivo del rechazo del empleado:  
\_\_\_\_\_
  
- Otro (especifique): \_\_\_\_\_

Más explicaciones/comentarios:

\_\_\_\_\_  
Fecha

\_\_\_\_\_  
Firma

**FECHAS**

RECONOCIMIENTO DE RECIBO DE SOLICITUD DE ADAPTACIÓN RAZONABLE

FECHA DE INICIO DE LA ADAPTACIÓN

FECHA DE FINALIZACIÓN DE LA ADAPTACIÓN

FECHA EN QUE SE PIDIÓ EQUIPO Y QUIÉN LO PIDIÓ (SI ES NECESARIO)

FECHA EN QUE EL EMPLEADO RECIBIÓ EL EQUIPO

**SECCIÓN E (PARA QUE LA COMPLETE EL EMPLEADOR DESPUÉS DE LA IMPLEMENTACIÓN DE LAS ADAPTACIONES)**

El empleador debe comunicarse periódicamente con el empleado para asegurarse de que la adaptación sea eficaz. Si la adaptación no es eficaz, debe volver a participar en el proceso interactivo.

Documente todas las conversaciones interactivas con el empleado, incluyendo las fechas de las conversaciones, los nombres de todas las personas presentes, lo que se trató y los próximos pasos si es necesario. Agregue páginas si es necesario.

Fecha

Notas de las conversaciones

|       |  |
|-------|--|
| _____ |  |
| _____ |  |
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