



# Rights and Responsibilities of Disabled Employees In California Law

Disabled employees in California enjoy a mix of federal and state law protections. A “disability” is defined as a physical or mental impairment that limits one’s ability to perform major life functions. The most notable federal law protecting individuals is the Americans with Disabilities Act (ADA), which was passed in 1990. In addition to that law, California has the Fair Employment and Housing Act (FEHA), which has been on the books since 1959 and generally offers stronger protections than the ADA.

## **California’s Fair Employment and Housing Act**

The FEHA applies to all California employers (public or private) with five or more employees and bars employers from discriminating against employees that are in a “protected class.” Under the FEHA, employees may not be treated unfairly, during any stage of the employment process, based on the following “protected classes:”

- Disability
- Ancestry or national origin
- Race or color
- Religion or creed
- Age
- Mental or physical disability

- Sex or gender
- Sexual orientation
- Gender identity
- Medical condition
- Genetic information
- Marital status
- Military/veteran status

The FEHA recognizes two categories of disabilities: physical disabilities and mental disabilities. The law also protects employees with a covered “medical condition.” Each category has its own separate definition. Additionally, the law prohibits discrimination against employees who are “regarded as” having a disability by their employer, even if they don’t have one (ex. If your employer believes you have cancer).

There are a wide variety of conditions that constitute a disability. These conditions can stem from an accident, be genetic, or be psychiatric, among other causes. There is no comprehensive list of conditions that qualify as disabilities under the law, but whether an employee is covered is generally construed broadly in favor of coverage.

*Two major protections extended to disabled workers in the state are:*

1. The right to reasonable accommodations in the workplace.
2. Protection against discrimination during any stage of the employment process.

## **Reasonable Accommodation Rights**

### **What are your obligations as an individual with a disability?**

If you have a disability, you might think it is obvious and that you do not need to explicitly state to your employer that you have one. While this sometimes may be the case, you do have an

obligation to notify your employer (or hiring manager if you are simply applying for a position) if you need accommodations for your disability if it is not patently obvious. If you are seeking remedies for being discriminated against due to your disability, your employer could raise the defense that it was unaware of your limitations.

We recommend you inform your employer in writing of your need for a reasonable accommodation. Note, you are not required to disclose the exact diagnosis to your employer. Furthermore, you are not required to reveal your disability to co-workers.

### **What is the interactive process?**

When an employer gains knowledge that the employee may have a disabling condition requiring accommodation, then the employer is required to engage in the “interactive process” with the employee to determine what reasonable accommodations are available to help that employee.

The “interactive process” is generally a back-and-forth dialog between the employee and employer to identify potential accommodations that are reasonable and can be offered to the employee. An employee is not required to identify the exact accommodation needed, but the employee does need to cooperate in providing the employer with information regarding the employee’s limitations. The interactive process requires communication and good faith exploration of possible accommodations.

If you believe your employer did not engage in a good-faith discussion with you, you might have a claim. Having an attorney with you during these meetings is often a good idea.

### **What are reasonable accommodations?**

A reasonable accommodation is a job modification or change that allows an individual with a disability to perform the essential functions of a job. Reasonable accommodations may include

special equipment, assistive devices, interpreters, alterations to the work environment, job restructuring, part-time or modified work schedules, accessibility changes, or even a leave of absence.

Employers are required to provide reasonable accommodations to qualified employees with disabilities, unless doing so would pose an “undue hardship.”

### **What is an undue hardship?**

The law does not require an employer to provide a reasonable accommodation if that accommodation creates an “undue hardship” for the employer. An accommodation reaches the level of undue hardship when it requires “significant difficulty or expense” to implement. Whether a requested accommodation is an undue hardship varies from company to company based on its available resources. What’s reasonable for a Fortune 500 company is usually not reasonable for a small business.

### **A Note About Pregnancy Discrimination**

The section of California law protecting pregnant employees and applicants is distinct from disability discrimination, but it overlaps when a pregnancy causes the mother to become (temporarily or permanently) disabled. If this is the case, then the same protections afforded to disabled employees can be enjoyed by pregnant employees.

### **Protections Against Discrimination in Employment**

The FEHA makes it unlawful for an employer to discriminate against a disabled employee any point in the employment process.

For example, before someone is employed with a company, a hiring manager may turn down otherwise qualified candidates due to the cost of accommodating that person in the workplace or because of stereotypes related to the employee's disability. This failure to hire, would be unlawful.

Employees who develop disabilities during employment are sometimes faced with an employer that refuses to engage in the interactive process, fails to provide reasonable accommodations, or terminates their employment. Another way discrimination manifests itself during employment is when disabled workers are passed up for promotion in favor of less-qualified, non-disabled employees.

Finally, the law prohibits an employer from terminating an employee on account of that person's disability.

Regardless of the stage in which disability discrimination occurs, California law offers you protections against it.

## **Conclusion**

Californians are fortunate relative to residents in other states when it comes to on-the-job protections against disability discrimination. The Fair Employment and Housing Act (FEHA) predates the federal ADA and is considered to provide more robust protections than the ADA. The California Department of Fair Employment and Housing (DFEH) enforces FEHA, while its federal counterpart that enforces the ADA is the Equal Employment Opportunity Commission (EEOC).

Despite these fairly broad protections, you do have responsibilities with regards to your employment as a disabled person. Unless your disability is apparent and obvious, you need to provide your employer with an explicit request for accommodations. Also, you are required to

engage in a good-faith interactive process with your employer about potential reasonable accommodations.

Proving disability discrimination is highly fact dependant and can be difficult. If you think you might have a case, contact us today and an attorney will provide a free 20-minute consultation. Attorney Vaccaro feels strongly about the rights of disabled employees and has fought hard in state and federal courts to vindicate the rights of her disabled employees. Contact Ms. Vaccaro today by filling out a confidential consultation form [here](#) or call at (415) 444-5800.