

5 Reasonable Accommodation Pitfalls to avoid in California

PITFALL #1 | Failing to Recognize a Reasonable Accommodation Request

As a general rule, anytime an employee tells you that they need an adjustment or a change for a reason that is related to a medical condition, they are asking for a reasonable accommodation.

The employee does not have to mention the Americans With Disabilities Act (ADA), the request does not necessarily have to come directly from the employee, and the request does not have to be in writing.



To protect yourself, train low-level managers who deal with things like employee attendance and tardiness, scheduling, and work conditions on how to spot a reasonable accommodation request and when to get HR involved



Implement a reasonable accommodation policy that directs employees to send accommodation requests to HR representatives, who have more experience with the ADA.



PITFALL #2 | Failing to Consider Leave an Accommodation

By now, most employers are aware that leave can be required as a reasonable accommodation, even if the leave is above and beyond the requirements of the Family and Medical Leave Act (FMLA). The ADA requires you to break your own rules (e.g., no-fault attendance policies or policies denying leave until six months of service) if an employee requests leave as an accommodation.

The bottom line is, your policies will not be a defense against an allegation that you failed to accommodate an employee's known disability.

For good examples of when leave may be required, visit www.eeoc.gov/eeoc/publications/ada-leave.cfm Become familiar with it to avoid violating your duty to provide leave as a reasonable accommodation.



PITFALL #3 | Failing to Recognize Mental Disabilities

It can be very hard for employers to recognize when an employee with a mental disability is requesting an accommodation. To make a legally valid request for an accommodation, an employee has to do little more than state a need for a change to his work environment for a reason related to a disability.

If an employee has a known disability, employers must be sensitive to accommodation requests that might otherwise seem unreasonable (e.g., moving an employee who is having trouble concentrating because of a disability to a more secluded office).

If you suspect an employee's performance issues are being caused by a mental disability, take the time to document the performance problems prior to asking questions about the disability.



PITFALL #4 | Failing to Engage in and Document the Interactive Process

The ADA's interactive process requires that parties engage in a discussion of what accommodations would allow the disabled employee to perform the essential functions of the job. There are no rigid guidelines for this interactive process, and employers have the discretion to engage in this process in a manner that works for them.

If you think an employee is asking for an accommodation, engage in the interactive process. If an employee is struggling to meet a job requirement, ask why. If they are struggling because of a medical condition, you may have to discuss accommodations and continue the interactive process.

Be sure to have a witness in the room and document the interactive process. Documentation is part of the primary evidence you will use to defend your company in litigation.



PITFALL #5 | Failing to Consider Alternatives

If an employee is disabled and asks for an accommodation, you must provide a reasonable accommodation absent an undue hardship. Many employers fail to appreciate how difficult it can be to prove an undue hardship. The EEOC requires an employer to consider (1) the nature and cost of the accommodation, (2) the company's resources and the effect of the accommodation on company expenses, and (3) the overall impact on the operation of the company.

General fears about the effect on employee morale or increased costs are likely not sufficient to show an undue hardship.

Many employers forget that even if they establish that a particular accommodation request would result in an undue hardship, they may still be required to provide an alternative accommodation that does not impose an undue hardship.



Want to learn more about the new rules and regulations affecting employers in California?



HR Comply California (formerly the California Employment Law Update, or CELU) will help you get ahead of workplace policy updates with a one-stop, comprehensive overview of breaking state-specific updates and proven best practices for complying with California's strict requirements.

Use code "PITFALLSCA" for \$50 off registration!

SAVE YOUR SEAT

at CAHRCOMPLY.blr.com