The Interactive Process

There's a new Sheriff In Town

Azucena M Coronel, CPDM, CLMS

Kymberly Clay, CPDM

Disclaimer

- ❖ We are not attorneys.
- ❖ The information discussed today may or may not be included in your Personnel Policies, Memorandum of Understandings, and/or Collective Bargaining Agreements.
- ❖ These best practices may not work within the culture of your department/program/ agency/organization, and they are highly recommended by EEOC, DOL, FEHA, JAN & federal laws and regulations.
- ❖ Before making any changes, "get a seat at the table" with upper management, human resources, employee relations, risk management and your legal team to ensure compliance and assessment of risk/liabilities and/or meet and confer requirements with unions.

Overview

❖ What is the Disability Interactive Process?

❖ What triggers the Interactive Process?

❖ How do I conduct the Interactive Process?

What is the Disability Interactive Process?

❖ Federal/(and/or State) requirement that employer interact with disabled employee/ applicant to determine reasonable accommodation alternatives

❖ Practical and successful approach to successfully navigating the "leave lanes" of federal FMLA, and your state's (i.e. California PDL and CFRA)

Disability Laws

❖ American with Disabilities Act (ADA) and 2008 Amendments (ADAAA)

42 U.S.C. § 12101 et seq., 12103, 12205a

❖ California Fair Employment and Housing Act (FEHA), and amendments, April 1, 2016

Government Code § 12940 et seq.

❖ Rehabilitation Act of 1973

State of California (CA) Federal Disability Laws

CA – FEHA

Where an employee/applicant has:

- Mental, physical or medical condition

  - *that*

- Limits a major life activity

  and is permanent condition or

- Temporary conditions? Maybe.

- Diaz v. Federal Express Corp., 373 F.Supp.2d 1034, 1051-1052 (finding that FEHA has no durational requirement for evaluation of whether condition constitutes a disability).

Federal – ADAAA

Where an employee/applicant has:

- Mental or physical condition

  that

- Substantially limits a major life activity

  and is permanent condition

- Not: temporary, non-chronic injuries having little or no long-term impact (unless they are sufficiently severe)

Mandates for Employers

❖ Must engage in a timely good faith Interactive Process

❖ And

❖ Must provide reasonable accommodation

Each is a stand-alone statutory obligation

Interactive Process – Considerations

- Meetings to be timely, in good faith, and flexibly scheduled but no undue delay

- Accommodations suggested by both (employer/employee)

- Document responses to the requested accommodation

- Create detailed record of results of meeting

- Continuing obligation to employee

Interactive Process - Considerations

Good Faith – Consider Everything
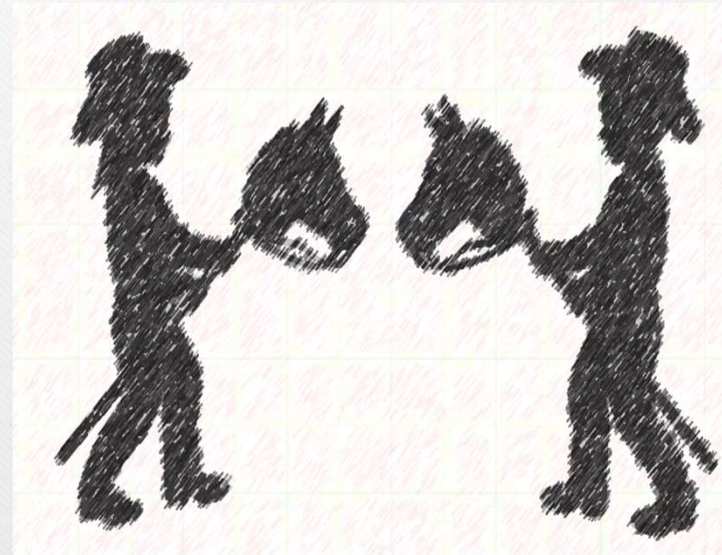
Preferences of employee

Doctor's recommendation

Input of family members and/or employee advocate

Be flexible

Meet as many times as needed (not one and done)

Choose convenient time for all

Consider meeting via telephone

What triggers the Interactive Process?

Instances

Request for reasonable accommodation from the employee, need not be in writing

Employee initial request for time off (leave of absence) for medical issues (i.e. CFRA/FMLA)

Doctor's note describing work limitations

Workers' compensation medical restrictions

Evidence prior accommodation is not effective

Temporary accommodation appearing permanent

Returning to work post CFRA/FMLA

Employee extending CFRA/FMLA Leave*

*Awareness of possible need for accommodation because the employee has exhausted leave *and* the employee or employee's health care provider indicates further accommodation is necessary

2 Cal. Code Regs. § 11069 (b)(3)
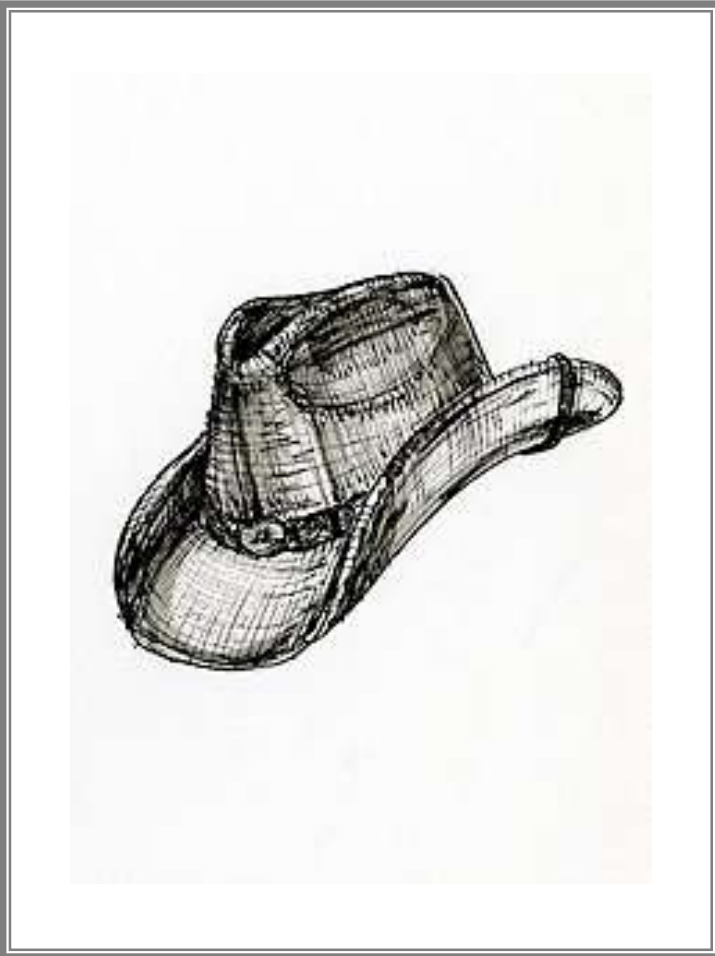
Awareness of the need for accommodation through third party or by observation

Performance changes

Attendance problems/changes

Rumors

Proceed with caution – Regarded as disabled

**Essentials
for
Effective
Interactive
Process**

Medical Restrictions

- Medical limitations, impairments
- Physical abilities

Essential Job Functions

- Specific physical requirements to perform essential job functions
- Mental & environmental requirements to perform the essential job functions

Medical Confidentiality

The Health Insurance Portability and Accountability Act (HIPAA)

Protects the confidentiality and security of healthcare information. HIPAA creates and protects individual privacy rights for protected health information and governs the use and disclosure of that information.

California Medical Information Act

"California's Confidentiality of Medical Information Act ("the CMIA" or "the Act") is codified in California Civil Code § 56 et seq.,i and is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider.

Employee works within a 24-hour operation #1

- Patient restricted to work from 5:00 p.m. to 5:30 a.m.

- Patient with chronic medical conditions hypertension, obstructive sleep apnea.

Custodial (office) Care #2

- No lifting/pushing/pulling over 10 lbs.

- No repetitive bending, stooping or climbing

- His impairment fits the guidelines of the American Disabilities Act

Receptionist #3

Recommended to be closer to home

Trouble with cognitive thinking and can't learn anything new

Can only push/pull 5 pounds

Avoid exposure to irritants

No field work

Can walk 50 feet at a time, then needs to rest

Animal care
#4

Senior Secretary/Staff Specialist #5

Hypercritical interactions from Supervisor trigger negative levels of stress

A transfer is medically indicated

Must take productive 10-minute breaks every hour

I am recommending the need for a sit/stand work desk

Patient should not be seated for long periods of time

Knowledge Check
Accommodation Request vs Medical Restriction

1. Only work a 4-hour day
2. No lifting/pushing/pulling over 50 lbs
3. Can't use phone
4. Needs sit/stand workstation
5. Must get 1 hour lunch
6. No dealing with customers
7. Sedentary work
8. Seated work only
9. Walk/stand maximum 6 hrs/day
10. No driving
11. Stand/sit for #mins/#hours at a time
12. Cannot work overtime
13. Finger manipulation limited to #mins/#hours at a time
14. Can't work with Supervisor Azucena
15. Keyboarding limited to #mins/#hours at a time
16. 10-minute productive break from keyboarding
17. Can't file/can't work on project "demolish old files"

Essential job functions

How do I conduct the Interactive Process?

Ground Rules:

- Acknowledge Attendant(s) and Role(s)
- Address Medical Confidentiality
- Review Medical Restriction(s)
- Request & Identify Accommodation(s)
- Agree on next steps

Interactive Process – The IP Step 1 or Step 2

- **Meet with Operations***
  - Review medical restrictions
  - Review & confirm essential functions of the job
  - Formulate possible accommodations

* Repeat as often as necessary

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Interactive Process – The IP Step 1 or Step 2

- **Meet with Employee***
  - Review & confirm medical restrictions
  - Review & confirm essential functions of the job
 - Solicit input for possible accommodation(s)

  * Repeat as often as necessary

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Interactive Process – The IP
Step 3

- **Meet with Employee and Supervisory Staff***

  - Review & confirm medical restrictions & work expectations

  - Solicit input for possible accommodation(s)

  *Repeat as often as necessary

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Interactive Process – The IP Step 3++*

Implement Accommodation

Adjust

Monitor

Review for effectiveness

TEAMWORK
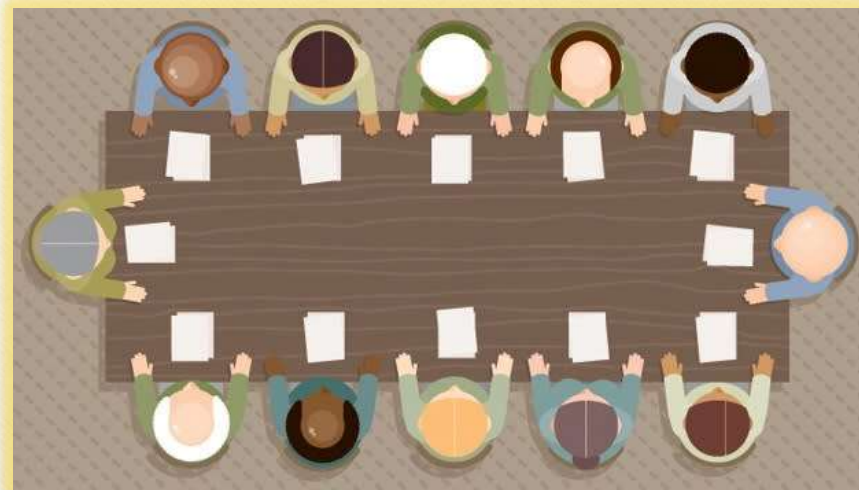
*Repeat this process as often as necessary

Q & A

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Kymberly Alexander Clay, CPDM