

What is FEHA and ADA and how do they intersect California's Workers' Compensation System

The California Workers' compensation system was established over 100 years ago to assist employers when their employees were injured in the workplace. The Fair Employment and Housing Act (FEHA) and the federal Americans with Disability Act (ADA) offer distinct procedures and remedies for claims made by disabled employees in the workplace. Both FEHA and ADA claims trigger an obligation for employers to engage in an interactive process with their employees to determine if a reasonable accommodation can be provided that would allow the employee to perform the essential functions of their jobs.

As an employer it is important to understand the subtle differences between these acts and how they interact. FEHA and ADA are civil rights laws enacted to combat discrimination. FEHA applies only to entities with at least five employees, and ADA applies only to entities with at least 15 employees.

In 1998 the CA Supreme Court ruled disabled workers may pursue any and all remedies available to them under the law, including those provided by FEHA and ADA. Thus, settlement of a WC claim does not prevent an employee from bringing a later FEHA or ADA claim, which can include upfront fees, unlimited compensatory damages, attorney fees, and possibly punitive damages. These fees can all be the employer's expense.

The Interactive process:

It is the employer's duty after learning of a disability to meet with the employee to discuss his/her limitations, and to investigate possible accommodations, modify the current job, purchase special equipment, etc. The employer must make reasonable accommodations of the known physical or mental limitations of the employee, unless the employer can demonstrate an undue hardship precludes it from doing so.

Once an employer has notice of a disability, they have a legal obligation to engage in a formal interactive process with the employee to determine if an accommodation exists. This process generally begins with a simple dialogue between employer and employee, which must be meaningful and in good faith. The employee has an obligation to communicate all relevant medical information.

The biggest pitfall for employers is allowing communication to break down. Training on these issues is important as the employer should ensure it continues its efforts to communicate with the employee until a reasonable accommodation is reached. The interactive process can be accomplished by phone calls, e-mail, or in person. Regardless, this process must be well documented.

So what are some steps an employer can take to avoid liability relating to future workers compensation, FEHA or ADA claims?

- Before any disability issue arises, the employer should ensure each employee is provided with a job description containing all of the essential job functions. This important step will help eliminate confusion over the essential functions of the job, and is also a very valuable tool for workers compensation claims adjusters to help bring the injured employee back to work.
- Train supervisors on how to recognize and deal with injuries or disabilities in the workplace. Determining if an injury took place at work or recognizing performance issues can be key to help the interactive process function.

Finally, please be sure to understand that fulfilling your obligations under the workers' compensation process does not eliminate your obligations under the FEHA or ADA laws. As an employer it is important to understand your obligations under each of these arenas are different and that satisfying your obligations under one may not eliminate your obligations under another.