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LEGAL UPDATES

Best Practices for Engaging in the Interactive Process

The “interactive process” is one of the most challenging parts of complying with California’s Fair Employment and Housing Act and the federal Americans with Disabilities Act.

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The “interactive process” – the procedure through which an employer determines whether and to what extent it must accommodate an employee’s disability or medical condition – is one of the most challenging parts of complying with California’s Fair Employment and Housing Act and the federal Americans with Disabilities Act. Unfortunately, there is no one-size-fits-all approach for satisfying this legal requirement, but employers can minimize their risk by following these best practices:

1. **Educate managers and supervisors:** An employer’s managers and supervisors are often the first (and sometimes the only) company representatives to learn of an employee’s need for accommodation. Accordingly, even if managers and supervisors are not primarily responsible for representing the company through the interactive process, employers should ensure that their managers and supervisors understand not only the importance of the interactive process, but how the obligation to engage in the process arises as well as their role in it.
2. **Initiate the interactive process promptly:** An employer should begin the interactive process as soon as an employee requests an accommodation or the employer becomes aware (such as through a manager, supervisor, or Human Resources) of the employee’s need for accommodation. Once aware of the need for accommodation, employers should initiate communication to confirm the scope of the employee’s limitations and identify potential accommodations that would enable the employee to perform the essential functions of the job.
3. **Communicate clearly and effectively:** Many disability claims under FEHA and the ADA arise from poor communication between the employer and employee. Communications during the interactive process should be clear and direct, telling the employee precisely what is needed, directly responding to requests and concerns, asking questions to clarify the employee’s needs, and responding to the employee in a timely and respectful manner.

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4. **Identify reasonable accommodations:** Employers must attempt to identify reasonable accommodations that would enable the employee to perform the essential functions of their job. Employers should consider a wide range of accommodations, including modifications to the work environment, job duties, and work schedule. Only after identifying a potential accommodation should an employer consider whether the accommodation would cause an undue hardship on the company. Employers should recognize that mere inconvenience or added cost does not automatically mean that a potential accommodation creates undue hardship and be wary about relying on that potential defense, as courts frequently reject the argument, leading to significant liability.
5. **Follow up and monitor accommodations:** Once a reasonable accommodation is identified and provided, the employer should not consider the process done; it should follow up with the employee to ensure that the accommodation is actually effective. If the accommodation does not accomplish its intended purpose, the interactive process should continue with the employee to identify potential alternative accommodations.
6. **Accurately document the process:** The interactive process is rarely completed in a single back-and-forth interaction. Instead, it is usually an ongoing dialogue spanning several communications occurring over several days or longer. Because claims alleging failure to engage in the interactive process and/or provide reasonable accommodation often involve disputes about the communication between the parties, employers are wise to document those communications thoughtfully. When an employer follows the recommendations above and documents its participation in the interactive process properly, the record of those communications becomes an incredibly useful tool in proving that the employer engaged in the interactive process reasonably and in good faith.
7. **Maintain confidentiality:** Employers should maintain the confidentiality of the employee's disability or medical condition, all related medical information, and the details of the interactive process. Only those individuals who have a need to know should be involved in the interactive process.

Engaging in the interactive process in good faith is a difficult but crucial component of complying with the ADA and California's FEHA and avoiding claims of disability discrimination. Employers without extensive experience in the interactive process should confer with counsel when the duty to engage in the process arises.

If you have questions regarding the interactive process or any other issue related to employment law, please contact one of our attorneys.