

Employment TODAY

DISABILITY IN THE WORKPLACE

**Recruitment, Employment and Retention of a
Highly Qualified Workforce**

DOR DEPARTMENT of
REHABILITATION

Employment, Independence & Equality



ACKNOWLEDGEMENTS

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CHANGES IN THE WORKPLACE

Changes are occurring in today's workforce that impact small business owners, employers, supervisors and managers.

This DVD discusses the misconceptions about hiring and supervising applicants and employees with disabilities and clarifies the differences between the federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) disability employment requirements.

Key Points of Discussion

- Employees from the “baby boomer generation” are staying in the workforce longer, many working well beyond their anticipated retirement years.
- The chances of acquiring a disability increase during the aging process.
- A high percentage of ex-military service personnel who acquired a disability in service to our country are seeking employment.
- Advances in technology have significantly reduced many workplace obstacles.
- Revised federal and state disability requirements afford job applicants and employees with disabilities greater protections in the workplace.
- The majority of disability related discrimination complaints are filed by existing employees rather than new hires.

Recommended Publications

[Communicating With and About People with Disabilities](https://www.dol.gov/odep/pubs/fact/communicating.htm)

<https://www.dol.gov/odep/pubs/fact/communicating.htm>

This publication offers some suggestions on how to relate to and communicate with and about people with disabilities.

[Employers and the ADA: Myths and Facts](https://www.dol.gov/odep/pubs/fact/ada.htm)

<https://www.dol.gov/odep/pubs/fact/ada.htm>

Common myths and misconceptions about how the ADA affects employers can act as barriers to compliance. This publication provides employers with facts in understanding the ADA.



ADA/FEHA REQUIREMENTS

In an interview with an employment law attorney and former Director of the California Department of Fair Employment and Housing (DFEH), this segment explains the key differences between the ADA and FEHA. Both the ADA and California's FEHA prohibits employers from discriminating against applicants or employees based on their disability. However, the disability definition under FEHA is much broader than the federal ADA definition, and thus, affords greater protection to more job applicants/employees with disabilities. The ADA and FEHA require employers to engage in an interactive process to determine if accommodations can or should be provided.

Key Points of Discussion

- Prohibits employers from discriminating against applicants or employees based on their disability.
- Requires employers to engage in an interactive process to determine if accommodations can or should be provided.
- Excludes individuals with sexual behavioral disorders, pyromania, kleptomania or individuals currently using illegal substances, including medically prescribed marijuana.
- ADA only applies to employers with 15 or more employees, even those working part time, whereas the FEHA applies to employers with 5 or more employees.
- The ADA disability definition does not provide as broad of protection as the FEHA for Californians with disabilities.

Recommended Publications

[Discrimination is Against the Law](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_DiscriminationIsAgainstTheLaw_ENG.pdf)

https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_DiscriminationIsAgainstTheLaw_ENG.pdf

This publication describes the Department of Fair Employment and Housing's role to enforce state laws that prohibit discrimination in the workplace, housing and places of public accommodations.



Phyllis Cheng, former Director
Department of Fair Employment and Housing

DUTY STATEMENTS

This segment examines the correlation between duty statements and the ADA/FEHA, identifying five of the most commonly made mistakes that employers can easily correct. The best way to avoid a disability discrimination complaint is to prepare a well written duty statement and provide training to managers and supervisors.

Key Points of Discussion

- Well written duty statements help employers “hire the right person” by accurately describing the job functions to be performed and the performance/behavioral standards that are expected in the workplace.
- Duty statements are the primary tool used to evaluate job performance and when responding to reasonable accommodation requests.
- The Five Duty Statement Mistakes:
 1. No duty statement.
 2. Poorly written duty statement.
 3. Essential and marginal functions are not separated.
 4. Inaccurate or outdated duty statement.
 5. Unsigned duty statement.

Recommended Publications

[Job Description Writer](http://www.careerinfonet.org/jobwriter/default.aspx)

<http://www.careerinfonet.org/jobwriter/default.aspx>

This resource will guide employers through the process of building meaningful job descriptions. From start to finish, users are prompted with simple questions concerning the typical job duties, the work skills required, and the tools and technology used to perform the job tasks.

[Accommodation/Compliance Series: Job Descriptions](https://askjan.org/publications/Topic-Downloads.cfm?pubid=356384)

<https://askjan.org/publications/Topic-Downloads.cfm?pubid=356384>

Responding to a reasonable accommodation request can be quite challenging for employers who do not have current or accurate job descriptions. This publication addresses the importance of job descriptions and their role in the reasonable accommodation process.

SAMPLE DUTY STATEMENT	
JOB TITLE:	
SUPERVISED BY:	
PHYSICAL/WORK DEMANDS:	
WORK ENVIRONMENT:	
JOB DUTIES:	
<ul style="list-style-type: none">• List of Essential Job Functions• List of Marginal Job Functions	
CONDUCT, ATTENDANCE & PERFORMANCE EXPECTATIONS:	
SIGNATURES:	
_____ DATE __/__/__	_____ DATE __/__/__
EMPLOYEE	SUPERVISOR

ACCESSIBLE INTERVIEWS

This segment offers suggestions for making sure the interview site is physically accessible and outlines employer responsibilities during the recruitment and interview process. These are helpful hints to ensure employers' recruitment and hiring process is accessible to all qualified applicants.

Key Points of Discussion

Do:

- Make sure the interview site is physically accessible.
- Use various recruitment approaches to permit resumes and applications in more than one method.
- Update the position's duty statement.
- Focus the interview questions on the applicant's abilities to perform the essential job functions.

Don't:

- Ask questions that elicit disability related medical information during the interview or pre-offer stage.
- Require the applicant to take a medical exam until after a formal job offer has been extended.
- Fail to respond to accommodation requests made by applicants and/or employees. Most accommodation requests are low-cost.
- Make assumptions about job applicants with disabilities.

Recommended Publications

[Employer's Practical Guide to Reasonable Accommodations](https://askjan.org/publications/individuals/employee-guide.cfm)

<https://askjan.org/publications/individuals/employee-guide.cfm>

This publication identifies strategies employers can implement to ensure compliance with the ADA.

[Focus on Ability: Interviewing Applicants with Disabilities](http://www.dol.gov/odep/pubs/fact/focus.htm)

<http://www.dol.gov/odep/pubs/fact/focus.htm>

As employers well know, the job interview plays a critical role in the hiring process. Job interviews allow employers the opportunity to identify the individual who possesses the best mix of knowledge, skills and abilities for the position available. This publication contains tips for employers to ensure the interview process is accessible to individuals with disabilities.

[California Certified Access Specialist Program \(CASp\)](https://www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.a.spx)

https://www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.a.spx

This is a listing of Certified Access Specialists that can be sorted by area codes. CASp inspectors have the expertise to evaluate the physical accessibility of businesses.



MEDICAL INQUIRIES

This segment provides an interactive quiz with answers to the most frequently asked questions regarding medical exams and disability inquiries.

Key Points of Discussion

- Permissible inquiries during the interview process and once hired.
- The steps employers must follow to ensure employee confidentiality is maintained.
- Types of medical or disability-related inquiries that employers can and cannot ask job applicants or employees. Examples include:
 - ✓ If a person has a disability
 - ✓ If they ever filed a workers' compensation claim
 - ✓ What medications they are taking
 - ✓ Prior attendance or punctuality at the last job
 - ✓ If a reasonable accommodation is needed to perform job duties
 - ✓ Drug testing in the workplace

Recommended Publications

[Medical Examinations and Inquiries under the ADA](http://www.eeoc.gov/policy/docs/guidance-inquiries.html)

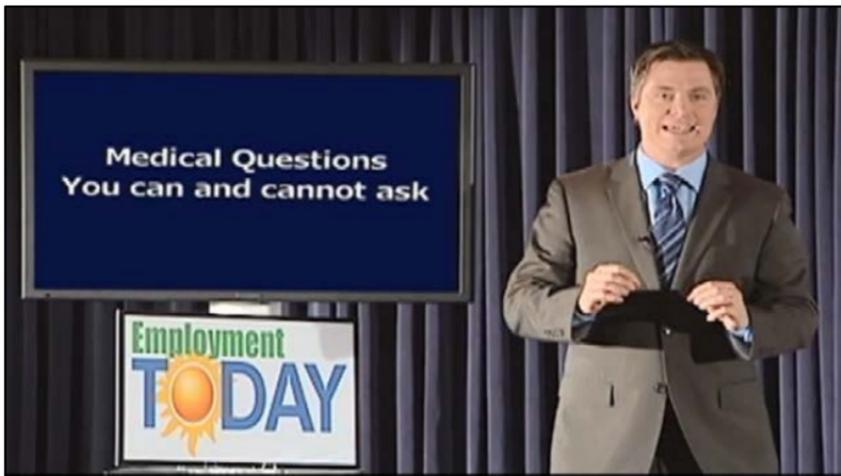
<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

This publication by the Equal Employment Opportunity Commission (EEOC) highlights the types of medical exams and disability related inquiries that are permitted by the ADA using a straightforward question and answer format.

[What Can Employers Ask Applicants and Employees](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_PEI-Guidelines.pdf)

[https://www.dfeh.ca.gov/wp-](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_PEI-Guidelines.pdf)

[content/uploads/sites/32/2017/06/DFEH_PEI-Guidelines.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_PEI-Guidelines.pdf)
The FEHA imposes limits on medical exams and/or disability related inquiries. This publication was developed by the DFEH to help employers understand the restrictions and scope of questions allowed under the FEHA.



REASONABLE ACCOMMODATION

This segment features the Reasonable Accommodation and Interactive Process. It outlines the employer's role and responsibilities including the factors employers must consider when granting or denying an accommodation request.

Key Points of Discussion

- Answers the “who-what-when” questions.
- Outlines the employer's role and responsibilities.
- Describes the factors employers must consider when granting or denying an accommodation request.



Ed Flores, Disability Consultant/Trainer
Department of Rehabilitation

Recommended Publications

[Employer's Practical Guide to Reasonable Accommodation](http://askjan.org/Erguide/Three.htm)

<http://askjan.org/Erguide/Three.htm>

This publication provides information about what policies and procedures might be useful, how to recognize and handle accommodation requests, how to determine effective accommodations, and what types of accommodations might be reasonable.

[Search Online Accommodation Resources \(SOAR\)](http://www.askjan.org/soar)

www.askjan.org/soar

An accommodation resource designed to explore various accommodation options for people with disabilities in work and educational settings.

[Veterans Employment Toolkit](https://www.va.gov/vetsinworkplace/resources.asp)

<https://www.va.gov/vetsinworkplace/resources.asp>

This link provides information and tools to help returning service members and veterans succeed in the workplace.

[Investing in People: Job Accommodations, Situations, and Solutions](http://www.dol.gov/odep/pubs/misc/invest.htm)

<http://www.dol.gov/odep/pubs/misc/invest.htm>

This publication provides examples of situations other employers experienced and describes the solutions implemented.

UNDUE HARDSHIP

In this segment there are three unique situations posed by employers to describe the steps before an accommodation can be denied because it imposes an undue hardship on the employer or business operation.

Key Points of Discussion

- Answers employer questions regarding various accommodation scenarios.
- Describes the factors EEOC and DFEH officials will consider when investigating a disability discrimination complaint, such as:
 1. The applicant or employee has a qualifying disability.
 2. The applicant or employee communicated the need for an accommodation to the employer.
 3. The employer responded in a timely, interactive and good faith manner.
 4. The accommodations the employer considered and implemented.
 5. The evidence the employer gathered to deny an accommodation request.
 6. Any assistance from outside resources, professionals, or accommodation specialists before denying an accommodation.

Recommended Publications

[Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA](http://www.eeoc.gov/policy/docs/accommodation.html)

<http://www.eeoc.gov/policy/docs/accommodation.html>

This guidance sets forth an employer's legal obligations regarding reasonable accommodation, examples of reasonable accommodations, and the interplay between reasonable accommodations and conduct rules.



SUCCESSFUL OUTCOMES

In this segment three individuals with disabilities describe the workplace accommodations their employers made that allowed them to maintain their productivity in the workplace.

Key Points of Discussion

- Highlights the importance of maintaining communication between the job applicant or employee and the employer.
- Describes the steps employers should follow during the interactive process to ensure a successful outcome.



Recommended Publications

[Talent Knows No Limits](https://www.youtube.com/watch?v=7B-746l3Wgg)

<https://www.youtube.com/watch?v=7B-746l3Wgg>

This video series motivates companies to increase employment of persons with disabilities as a part of their corporate culture and diversity.

[The ADA Primer for Small Business](http://www.eeoc.gov/eeoc/publications/adahandbook.cfm)

<http://www.eeoc.gov/eeoc/publications/adahandbook.cfm>

Small businesses are an ever-increasing source of jobs representing 99.7 percent of all employers. Unfortunately, small businesses oftentimes overlook qualified individuals with disabilities as prospective new hires. Aimed at employers with 15 or more employees, this handbook offers an easy-to-read overview of the basic employment provisions of the ADA as they relate to employees and job applicants.

[Job Accommodation Network - Reasonable Accommodation](https://askjan.org/soar.cfm)

<https://askjan.org/soar.cfm>

JAN's Searchable Online Accommodation Resource (SOAR) on-line system is designed to let employers explore various accommodation options for people with disabilities in work and educational settings.

DID YOU KNOW

[Department of Rehabilitation - Disability Access Services](https://www.dor.ca.gov/Home/DisabilityAccessServices)

<https://www.dor.ca.gov/Home/DisabilityAccessServices>

Disability Access Services provides centralized resources, training and information on employment, access, and digital accessibility.

[Work Opportunity Tax Credits \(WOTC\)](http://www.edd.ca.gov/wotc)

www.edd.ca.gov/wotc

Employers can claim tax credits of up to \$9,000 through the Work Opportunity Tax Credits for hiring and training qualified candidates from nine different targeted groups, including referrals from DOR, veterans with disabilities and others with special challenges in finding jobs.

[Barrier Removal Tax Deduction](https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities)

<https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>

This deduction allows businesses to deduct up to \$15,000 per year for qualified expenses to make facilities accessible to individuals with disabilities.

[Disability Access Credit](https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities)

<https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>

Small businesses can claim up to \$5,000 for improving workplace accessibility, purchasing equipment and/or providing accommodations for individuals with disabilities.

MEDIATION AND DISPUTE RESOLUTION

Mediation is a form of alternative dispute resolution and is completely voluntary and free at both the DFEH and the EEOC. Generally, within a month of receipt of the discrimination charge at the governmental agency, the case is referred to mediation. If either party declines mediation, the complaint is returned to the Enforcement Division. Individuals that do not wish to participate in mediation services may file a complaint with the California DFEH or the federal EEOC. Both complaint processes may take six months to a year.

ADA complaints can be filed within 300 days of the alleged discrimination act by contacting EEOC:

Toll Free Phone (800) 669-4000 TTY (800) 669-6820
LA Area (213) 894-1000 TTY (213) 894-1121
San Francisco (415) 356-5100 TTY (415) 356-5098
Website [EEOC](http://www.eeoc.gov) www.eeoc.gov

Under FEHA, employees or job applicants have 365 days from the date of the last alleged discriminatory act to file the complaint. The complaint can be filed with the DFEH:

Toll Free Phone (800) 884-1684 TTY (800) 700-2320
Sacramento and Out of State (916) 227-0551
Website [DFEH](http://www.dfeh.ca.gov) www.dfeh.ca.gov



GLOSSARY OF TERMS

(Alphabetical Index)

The definitions of terms used in this video are excerpts from the ADA, EEOC guidance, California's FEHA regulations and other reference materials. These are commonly used terms in the accompanying DVD and may have various definitions depending on their context:

Accessible Refers to a site, facility, work environment, service or program that is easy to approach, enter, operate, participate in and/or use safely, independently and with dignity by a person with a disability.

Adverse Action Employment decision that has a negative impact on the terms and conditions of an employee's job.

Americans with Disabilities Act of 1990 (ADA) A comprehensive, federal civil rights law that prohibits discrimination on the basis of disabilities in employment, state and local government programs and activities, public accommodations, transportation and telecommunications.

Auxiliary Aids and Services A wide range of services and devices that promote effective communication or allow access to goods and services.

Department of Fair Employment and Housing (DFEH) Enforces California's discrimination law.

Direct Threat to Self or Others A significant risk to the health or safety of a person with a disability or to others that cannot be eliminated with an accommodation.

Disability Under the ADA, an individual with a physical or mental impairment that substantially limits one or more major life activities. Under the FEHA, a physical or mental disability is a disability that limits one or more major life activities and is construed broadly.

Disparate Impact An employment practice that appears neutral but is discriminatory because it has an unjustified adverse impact on a protected class.

Duty Statement A portion of the job description statement outlining the essential and marginal job functions.

Equal Employment Opportunity Commission (EEOC) Interprets and/or enforces federal ADA discrimination law.

Essential Job Functions The fundamental job duties of the employment position.

Fitness for Duty A medical practitioner's examination and certification releasing an individual to assume or resume full or modified duties following a leave of absence due to illness or injury.

Impairment Physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems.

Interactive Process Timely, interactive and good faith process designed for applicants and employees in need of an accommodation.

Job Description A detailed summary of the major components of a job, including the duty statement.

Job Related and Consistent with Business Necessity

Standard used to determine whether a qualification or employment policy is an essential aspect of the job and whether it is required to meet the needs of the business.

Major Life Activity The ADA definition of disability refers to activities that an average person can perform with little or no difficulty. Under FEHA, the term “working” is considered a major life activity along with physical, mental and social activities.

Marginal Job Functions Job functions or activities that are not considered essential to a job.

Medical Examination Procedure or test that seeks information about an individual's physical or mental health status.

Medical Inquiries When an employer or employment agency cannot ask about a job applicant’s medical or psychological condition or disability except under certain circumstances.

- 1) **Pre-offer Stage** (Before extending a formal job offer) May not require an applicant to take a medical examination.
- 2) **Post-Offer Stage** (After acceptance of job offer but prior to actual start date) May require a medical examination, provided that all entering employees are subject to the same examination.
- 3) **Post-Hire Stage** (Once the employee has started employment) May require a medical exam if employer can show it is job-related and consistent with business necessity.

Minimum Qualifications Requirements that must be met to be considered for a position.

Mitigating Measures Medical treatment, medication, equipment or devices that lessen the effects of impairments.

Reasonable Accommodation Change, modification or adjustment to a job, work environment or the way things are done to enable an individual to enjoy equal employment.

Retaliation Adverse employment action against someone for exercising his/her legal rights or opposing unlawful practices.

Substantially Limits Term or standard used in the ADA definition of disability. The FEHA definition uses a standard of "limits" rather than "substantially limits" that affords protection to a wider range of individuals with disabilities.

Telecommute/telework Working outside of the usual workplace, often at home, or at a location away from the usual workplace.

Undue Hardship Significant difficulty or expense in relationship to the size of the employer, resources available and the nature of the business operation.

Workers' Compensation Mandatory "no-fault" insurance program, paid for by employers, to cover employees who are involved in a work-related illness or injury.

ALTERNATE FORMATS

This booklet is available in alternate formats as a reasonable accommodation for an individual with a disability. To request a copy in Braille, large print or digital media, please email [Disability Access Services](mailto:DASinfo@dor.ca.gov) at DASinfo@dor.ca.gov

DISABILITY ACCESS SERVICES

Disability Access Services (DAS) is your centralized resource and information on disability access. Contact us for free confidential guidance and technical information on physical accessibility, program access, disability employment, reasonable accommodations, accessibility of electronic and information technology and disability awareness.

Main (916) 558-5755

TTY (844) 729-2800

Telecommunication Relay Service (711)

E-mail DASinfo@dor.ca.gov

Website [Disability Access Info](#)

<https://www.dor.ca.gov/Home/DisabilityAccessServices>

DISCLAIMER

The information in this booklet and the Employment Today DVD are provided for educational purposes and presented as an introduction to basic disability related employment requirements.

Compliance with the basic educational concepts in this booklet and the Employment Today DVD does not suggest that your business is fully compliant with current federal and state disability employment requirements.

ADDITIONAL RESOURCES

Additional information on federal and state accessibility laws as they pertain to Californians with disabilities can be obtained through the [Disability Access Services](https://www.dor.ca.gov/Home/DisabilityAccessServices) webpage at <https://www.dor.ca.gov/Home/DisabilityAccessServices>



The Boost Your Business video is designed to assist business owners in making their businesses accessible to customers with disabilities. Compliance with minimum accessibility requirements is the key to ensuring that your place of business is accessible to all your customers.



Is your online presence accessible to customers with disabilities? Employees and customers both will benefit when access is built into all your electronic services.

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(updated: June 2019)