

**Navigating Complex
Accommodations:
Managing Disability,
Religion, Pregnancy & More**



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2025 APMA ANNUAL FORUM

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While the presenter believes the information contained in this presentation is accurate, this presentation contains general information and guidance under CA law and cannot be relied upon for a specific factual situation or as legal advice. The law is constantly evolving and changing. For specific advice, please consult Patane Gumberg Avila or your legal counsel.

Today's Agenda

- A. Sources of law
- B. Enforcement trends
- C. Unique issues with pregnancy and religious accommodations
- D. Reasonable accommodation and the interactive process



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Federal laws

Title VII of the 1964 Civil Rights Act (“Title VII”)

Pregnancy Discrimination Act (“PDA”)

Pregnant Workers Fairness Act (“PWFA”)

Americans with Disabilities Act (“ADA”)

California FEHA

Pregnancy Disability Leave

Reasonable Accommodation for Religious Beliefs

Reasonable Accommodation for Disabled Applicants and Employee

Interactive Process Requirement

Fair Chance Act (Applicant's criminal history and off the clock cannabis use)



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2023 CRD Complaints

Disability complaints (2,008)

Retaliation (report/resist discrimination/
harassment) (1,832)

Race/Sex/Gender (Approx. 1,300 each)

Sexual harassment/HWE (470)

Religious Creed (Inc. Dress/Grooming Claims) (219)



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2023 CRD Right-to-Sue Complaints



CRD issued 13,686 right-to-sue notices.



CRD issued 14,982 immediate right to sue notices.



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2023 CRD and EEOC Payouts



Employers paid \$116.5M to Resolve CRD Complaints



Employers paid \$440M to Resolve EEOC Complaints (excluding federal workers).



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CRD 2023 Lawsuits



Over 34% of lawsuits filed by EEOC were for disability discrimination.



CRD sued Ralphs for violation of FCA for screening out applicants with criminal histories that did not have a direct and adverse relationship with the positions they were applying for.



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Pregnancy Accommodation Laws CA PDL

California's Pregnancy Disability Leave (part of FEHA) allows eligible employees up to 4 months of leave when the employee is "disabled by pregnancy, childbirth, or a related medical condition."

No Retaliation! Can't retaliate against an employee for attempting to take or taking leave under the PDL.

It is per pregnancy (not per year).



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Intermittent or Reduced Schedule Leave under PDL

- Pregnancy disability leave may be taken intermittently (e.g., for a medical appointment or because of morning sickness) or on a reduced work schedule.
- Accounting for Intermittent Leave: No bigger than the shortest period that the payroll system uses to account for other types of leave, provided not longer than 1 hour.
- Example: If PSL is accounted for in 30-minute increments and vacation time in 1-hour increments, PDL must be accounted in increments of 30 minutes or less.
- If you account for all leaves in 2-hour increments, PDL increments may be no greater than 1 hour.

Temporary
Transfer
Allowed
Under PDL

- If provider certifies that the employee's medical needs require intermittent or reduced-schedule leave, the employer may require the employee to temporarily transfer to an available alternative position that meets the employee's needs and better accommodates their leave requirements than their regular job.
- Employee must be qualified for the alternative position, and it must have equivalent pay and benefits, although not necessarily the same duties.



Case Study
Time Off for
Egg
Retrieval/
Freezing is
Not
Pregnancy
or Disability
Related to
Pregnancy

In October 2018, Erika Paleny informed her Sacramento employer Fireplace Products that she would be undergoing egg retrieval procedures for donation and personal use. Her supervisor expressed disapproval. A few months after this, she told her supervisor that she would be late to attend an egg retrieval procedure. She claimed her supervisor became angry and fired her. She sued.

Employer won. There was no pregnancy or disability discrimination because she wasn't pregnant at the time and she had no medical condition or disability related to pregnancy. Appellate court upheld dismissal of the case in 2024.

"The Times
They are A'
Changin'"
FEHA
Contraceptive
Equity Act

In 2023, FEHA was amended to include protection for "reproductive health decision-making."

Covered employers must accommodate and/or provide time off for egg retrieval, egg donation, sperm donation, and related activities.

PWFA

Employers with 15 or more employees must provide reasonable accommodations for known physical and mental limitations related to pregnancy, childbirth, or related medical conditions, unless the employer can demonstrate an undue hardship.

PDL applies to employers with 5 or more employees.



***“Predictive
Assessments” for
PWFA Pregnancy
Accommodations***

Frequent restroom breaks, as needed

Take breaks to eat and drink as needed

Sitting/Standing as needed



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***“Likely”
Reasonable
Accommodations
under PWFA***

Schedule changes, part-time work, and paid and unpaid leave;

Telework;

Parking;

Light duty;

Making existing facilities accessible or modifying the work environment;

Job restructuring;

Acquiring or modifying equipment, uniforms, or devices; and

Temporarily suspending one or more essential functions.



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Interactive Process under PWFA

1. “Interactive process” is a method to help the employer and the employee (or applicant) identify the limitation and the adjustment or change at work needed due to the limitation and potential reasonable accommodations.
2. Generally, it means a discussion or two-way communication between an employer and an employee.
3. Similar to ADA.
4. Documentation of Interactive process discussed below.



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***When
Requesting
Supporting
Documentation
is “not
Reasonable”
under PWFA***

When the employee attests to being pregnant and requests a predictable assessment.

When the known limitation and need for reasonable accommodation is obvious.

When the pregnant employee has previously provided sufficient information, such as a prior doctor’s note.

For lactation and pumping.



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Factors for Temporary Suspension of Essential Functions under PWFA

1. Length of time that the employee will be unable to perform the essential function(s);
2. Is there work for the employee to accomplish;
3. The nature of the essential function, including its frequency;
4. Whether the employer has provided other employees in similar positions who are unable to perform the essential function(s) of their positions with temporary suspensions of those functions and other duties; if necessary,
5. Are there other employees, temps or third parties who can perform the essential function(s) in question; and whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.



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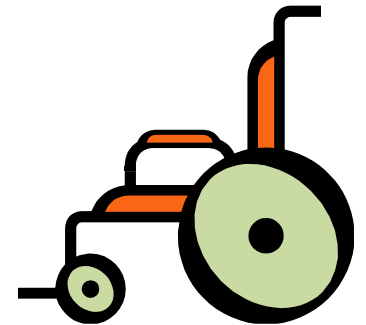


Reasonable Accommodations for Religious Beliefs

- Interviews and examinations, must reasonably accommodate religious practices.
- Dress and grooming standards or requirements for personal appearance must take into account "religious dress and grooming practices."
- Union Dues. An employer or union shall not require membership from any employee or applicant whose religious creed prohibits such membership. An applicant's or employee's religious creed shall be reasonably accommodated with respect to union dues.
- Can't retaliate for requesting reasonable accommodation based on religion, regardless if the request was granted or denied.

ADA and FEHA Reasonable Accommodation and Interactive Process

- “Covered Employers”:
 - ADA – 15 or more employees
 - FEHA – 5 or more employees



Failure to Accommodate Claims

- Upswing in reasonable accommodation claims, including requests for leave / leave extensions, and position modifications.
- Coincides with workers' comp claims.
- Coincides with downswing in harassment claims.



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Failure to Accommodate

EEOC v. Wal-Mart

- Marlo Spaeth worked at Wal-Mart for 15 years. She has Down syndrome.
- She always worked 12:00 p.m. to 4:00 p.m. but not Thursdays and weekends when she was not available to work due to lack of public transportation.
- Wal-Mart directed managers to cease manually adjust computer generated schedules absent business justification.
- Due to her work unavailability, she was not scheduled. When she complained, she was told she needed to work from 1:00 p.m. to 5:30 p.m., which she initially did.
- She had difficulties adapting to the new schedule. Her sister told HR and asked to change the schedule back to noon to 4:00 p.m. “to restore the order” as her sister “couldn’t physically handle working that late.”
- Wal-Mart kept her on the 1:00 p.m. to 5:30 p.m. shift. She developed attendance problems and was ultimately fired for 17 “occurrences.”
- Spaeth broke down crying when she was fired, and was escorted from the store.



Failure to Accommodate

EEOC v. Wal-Mart

- The EEOC sued Wal-Mart alleging failure to accommodate a disabled worker by not modifying her schedule.
- After a 4 day trial, the jury found for EEOC, finding that
 - (1) Wal-Mart was aware that Spaeth needed an accommodation due to her disability;
 - (2) Wal-Mart could have accommodated her without undue hardship; and
 - (3) Wal-Mart failed to provide Spaeth with a reasonable accommodation, discharged her, and declined to reinstate her, all in violation of the ADA.
- The jury awarded \$150,000 in compensatory damages and \$125 million in punitive damages (reduced to \$150K), \$44,757 or a total monetary award of \$419,662.59 and judge ordered reinstatement.

Failure to Accommodate

EEOC v. Wal-Mart

- Wal-Mart claimed discussions with the sister did not place in notice that a schedule accommodation was requested or medically necessary because there was no doctor's note.
- “There is ample evidence in the record that Wal-Mart was on notice that a schedule accommodation for Spaeth was medically necessary, particularly once (her sister...) advised Wal-Mart's managers that Spaeth's Down syndrome made it extremely difficult for Spaeth to adapt to her new work schedule. *At that point, Wal-Mart had a duty to seek out from Spaeth and her family members whatever medical documentation it needed to corroborate the medical need for an accommodation and to explore what type of accommodation would be suitable.*”
- Under FEHA, the employee is not required to specifically invoke FEHA or speak any “magic words” to request an accommodation.



No discrimination

Miller v. Cal. Dept of Corrections

Employer did **not** discriminate/retaliate against disabled employee absent from work for more than four years.

The trial court granted summary judgment to the employer, and the Court of Appeal affirmed, holding that Miller failed to show that she could perform the essential functions of her job with or without an accommodation. The Court also agreed with the trial court that “the involuntary act of becoming disabled” is not protected activity under the FEHA.



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ADA Basics

A "disability" under the ADA is defined as any of the following:

A physical or mental impairment that "substantially limits" one or more of an individual's "major life activities" or "major bodily functions.

A "record of such an impairment."

Being "regarded as" having such an impairment.



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A “major life activity” is “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”

A “major bodily function” is “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

ADA Basics “Disability” (Cont.)



FEHA Basics


- A "disability" under the FEHA is defined as an impairment (physical disability, mental disability, or medical condition) that "limits" a "major life activity."
 - The FEHA provides protections against disability discrimination independent from those in the ADA.
 - Although the ADA provides a floor of protection, California law has always, even before passage of the ADA, afforded additional protections.
 - California law contains broad definitions of "physical disability," "mental disability," and "medical condition."

FEHA Basics- “Physical Disability”

- All of the following:
- **(1)** Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that both: **(A)** Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; and
- **(B)** Limits a major life activity.
- A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.
- **“Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.**

FEHA Basics- “Mental Disability”

- Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity.
- “Limits” is without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
- A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.
- “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.
- **(2)** Any other mental or psychological disorder or condition “that requires special education or related services.”
- **(3)** Having a record or history of a mental/psychological disorder known to the employer.
- **(4)** Being “regarded or treated” as having, or having had, any mental condition that makes achievement of a major life activity difficult.



FEHA Basics- NOT Disabilities (for now at least)

- Compulsive gambling, kleptomania, or pyromania;
- Psychoactive substance use disorder from current unlawful use of drugs;
- Sexual behavior disorders;
- Common cold, flu, minor cuts, sprains, muscle aches, soreness, bruises, or abrasions; “non-migraine” headaches, “minor and non-chronic gastrointestinal disorders”, all determined on a case-by-case basis.




FEHA Basics- “Medical Condition”

- “Medical condition” includes (1) “genetic characteristics” and (2) any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.
- Unlike the definition of physical disability, there is no requirement that a medical condition limit a major life activity.



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Reasonable Accommodations

- An employer must engage in a *good faith interactive process* to determine if there is a reasonable accommodation that would allow an applicant or employee to maintain employment.
- ***Independent cause of action for Accommodations failing to engage in the interactive process.***



The Interactive Process

- An employer must engage in a *good faith interactive process* to determine if there is a reasonable accommodation that would allow an applicant or employee to maintain employment.
- ***Independent cause of action for Accommodations failing to engage in the interactive process.***

The Interactive Process

- Requires the employer "engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, *in response to a request for reasonable accommodation by an employee* or applicant with a known physical or mental disability or known medical condition."



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“Undue Hardship”

- “Undue hardship” means as “an action requiring significant difficulty or expense.”
- Factors to consider:
 - Size of the establishment/ facility;
 - Number of employees, and budget;
 - Type of operation, including the composition and structure of the workforce;
 - Nature and cost of the accommodation involved;
 - Reasonable notice of the need for accommodation; and
 - Any available reasonable alternative means of accommodation.

Beginning of the Interactive Process

- No 'magic words' needed. Usually, it starts with a doctor's note with a work restriction or need for time off or a request for job modification.
- Knowledge by a foreperson or supervisor *is* "knowledge." Forepersons and supervisors must be trained to not ignore requests, which usually start with a job restriction, and to refer *all* accommodation requests to Human Resources.
- Forepersons/supervisors do not have knowledge of the entire operation, how similar requests were handled in other crews or departments.
- **DON'T IGNORE REQUESTS!**



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Examples of Actual Accommodation Requests

Time off.

Must leave early, can't work overtime.

Need to come in late or a change of schedule.

Needs to work from home.

Equipment modification, like a special chair, desk, PPE, gloves, or monitor.

Frequent bathroom breaks.

Frequent food breaks.

Need to work for a supervisor who is less stressful. Need to work in a less stressful environment.

Must be allowed to bring dog (assistive animal) to work.

Can't work in the cold room for more than 30 minutes.

Can't walk on uneven ground.

Can't lift/ push / carry more than 10 pounds.

Can't talk on the phone due to anxiety.

Extending deadlines due to ADHD.

Can't be vaccinated.



Interactive Process

- Idea is to determine “*effective reasonable accommodations, if any.*”
- Although an employer must consider any and all reasonable accommodations, including considering the preference of the employee, the employer retains the right to select and implement any accommodation that is effective for both the employer and the employee.



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Documenting the Interactive Process

- Prepare! Review the job description and position and determine its essential functions BEFORE the meeting.
- Meet with the individual to understand their job-related limitations and what reasonable accommodations are available.
- Request medical documentation that describes the nature and severity of the impairment and why /what accommodations are needed. (This often comes from the occupational /work comp provider.)
- Ask the employee what they specifically want.
- Discuss available alternatives when the request is too burdensome.
- Consider using CRD form, at least as a guidepost:
chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://calci.vilrights.ca.gov/wp-content/uploads/sites/32/2021/07/Request-For-Reasonable-Accommodation-Package_ENG.pdf



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***Documenting
the Interactive
Process ...
Making the
Decision***

- Employers need not grant *the* accommodation requested, but *an* accommodation, provided it is reasonable.
- If you determine the requested accommodation is reasonable, notify the employee in writing that their request is granted.
- If the worker rejects the proposed accommodation in the workplace, consider alternatives, like time off.
- If you are denying the request, explain why, offer alternatives if possible, and offer to discuss to meet with the employee to discuss.



Documenting the Interactive Process

- Be cautious about email communications amongst supervisors/management. Do not overcommunicate.
- Do not make snide or unprofessional comments in emails.
- Communications with your lawyer are protected by the attorney-client privilege.
- Communications with your broker or work comp claims representative are not!



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***The Interactive
Process After a
Job
Modification is
Given***

- Calendar follow ups! Don't let it slip through the cracks.
- Monitor performance in the new role.
- Have an end date for the accommodations if appropriate.
- Consider extending accommodations unless there is an undue hardship.



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Reasonable Accommodations for Diabetic Workers

- Diabetes is a disability.
- Common accommodations include breaks to check blood glucose, eating a snack, taking medication, using the restroom.
- *See, e.g., [Job Accommodation Network: Diabetes](#)*



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EEOC v. Walgreens

Diabetes Discrimination Claim

- EEOC sued Walgreens on behalf of a diabetic clerk.
- Plaintiff was fired because she ate a \$1.39 bag of chips in violation of Walgreens “anti-grazing” policy. She claimed it was during a hypoglycemic episode to stabilize her blood sugar level. Walgreens argued that “theft” was not a reasonable accommodation.
- After a trial court refused to dismiss the case, Walgreens settled for \$180,000 with a consent decree.



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THANK YOU

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