



# What is Reasonable? The ADA Interactive Process

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Presented by:  
Desiree Serrano

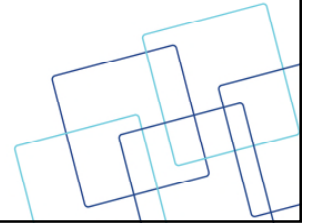
Tulare County Office of Education  
March 9, 2023



# What is Reasonable? The ADA Interactive Process

Presented by: Desiree Serrano

Tulare County Office of Education – Law Seminars 2022-2023  
March 9, 2023



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Lozano Smith



## Road Map

- The Interactive Process
- Determining Reasonable Accommodations
- Essential Functions
- Interactive Presentation!

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## What is the Interactive Process?

The *Interactive Process* is the way in which employees, supervisors, and their departments determine whether reasonable accommodations can be made for an employee with a health condition or disability.



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## It's a "Process"



ADA and FEHA require a **timely, good faith, interactive process** between an employer and an applicant, employee, or the individual's representative.

The process is not a singular event, but an ongoing series of interactions from which the employer can identify and offer effective and reasonable accommodations to the employee.



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## Interactive Process Triggers

The Employer's obligation is triggered when:

- An Employee with a known disability or medical condition requests reasonable accommodations;
- The Employer otherwise becomes aware of the need for an accommodation through a third party or by observation; or,
- The Employer becomes aware of the possible need for an accommodation because the disabled Employee has exhausted medical and other leaves and the Employee's physician suggests further accommodations.



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## Discipline or Disability?

The Assistant Superintendent met with a lead/supervisory employee in the business department, Sara, to discuss ongoing performance issues. The performance issues included failure to complete tasks, mistakes on reports, and failure to submit required paperwork. During that conversation, the employee states that they have been experiencing anxiety and depression, which makes it difficult to concentrate and recall instructions.

*Is anxiety and depression a disability that the District is required to accommodate?*

*What do you do now that the employee has indicated their performance issues are the result of a mental condition?*



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## Discipline or Disability? (cont.)

After initiating the interactive process with the employee, the employee changes course and refuses to provide any further information regarding their medical condition or treating physician, refuses to sign a release for the district to communicate with their treating physician, and says that they do not need any accommodations.

*What do you do if the performance issues continue?*



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## Interactive Process – Employer’s Duties

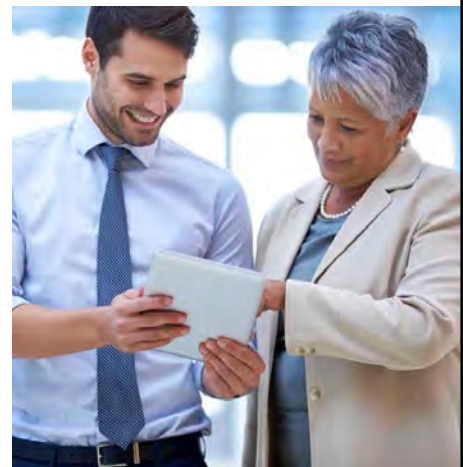
An Employer’s duties include:

- Analyze essential functions of the job
- Work in consultation with the employee
- Initiate discussions regarding alternative accommodations
- Grant or deny requested accommodations
- Consider preferences of the employee

An Employer may also:

- Request clarification from the employee
- Request reasonable medical information if needed
- Consult experts

*EEOC Interpretive Guide, 29 C.F.R. § 1630.9 App. (2011).*



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## Interactive Process – Employee Duties



An Employee's duties include:

- Making a request and participation in the process
- Engaging in a good faith effort throughout the process
- Respond to requests for medical documentation
- Respond to requests for educational and work experience information if reassignment is considered



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## Interactive Process

An Employee may also:

- Be represented in the process through an attorney or union, but direct communication between the Employer and Employee is preferred under the law
- Refuse to provide more medical information than is necessary to make a determination regarding his/her functional limitations and ability to perform essential functions of the job with accommodations



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## Interactive Process

### Possible Steps During Interactive Process:

- Review the current/updated job description
- Consult with immediate supervisor(s)
- Determine essential job functions (what, how, when)
- Identify and specify functional limitations
- Compare limitations to essential and non-essential functions
- Analyze options to accommodate limitations
- Engage and document your meetings and communications with the Employee and your analysis of accommodations



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# Essential Functions

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## Essential Functions

An employer is not required to eliminate essential functions of a position as a reasonable accommodation.

*Nealy v. City of Santa Monica*  
(2015) 234 Cal.App.4th 359.



## Essential Functions Under ADA/FEHA

FEHA “essential functions” means the fundamental job duties of the position the individual with a disability holds or desires. (Gov. Code, § 12926.)

ADA “essential functions” of a job are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation. (29 C.F.R. § 1630.2(n).)





## Essential Job Functions

Essential job functions do NOT include:

- Job duties that are “marginal” functions of the position.
- Job duties that “if not performed would not eliminate the need for the job, or those that could be readily performed by another employee, or those that could be performed in another way.”



## Essential Job Functions (cont.)

A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

- The function may be essential because the reason the position exists is to perform that function.
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
- The function may be highly specialized, so that the incumbent in the position is hired based on expertise or the ability to perform a particular function



## Determining Which Functions are Essential

Employer's judgment

Terms of collective bargaining agreement

Work experiences of past incumbents of position

Job description

Amount of time spent performing the function

Work experience of those in similar positions



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## Is it Essential? What do you think?

- A part-time bus driver cannot drive a bus for three months due to undergoing eye surgery but can continue to perform her part-time maintenance job duties.
- A custodian cannot vacuum/sweep stairs because of an arthritic knee that will not improve with time.
- A teacher cannot stand longer than 15 minutes due to a degenerative back condition.
- A food service employee cannot lift more than 15 pounds.
- Other Examples?



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## Absenteeism

The Principal notices that a new instructional aide, Mrs. Murphy, has been frequently tardy and regularly absent from work. The Principal is frustrated because the students really need consistency. The Principal calls you and asks if she can release Mrs. Murphy during probation.

Role play your discussion with the Principal.



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## Absenteeism

Now let's say Mrs. Murphy has been working for the District for 4 years and every year she is absent at least 70 days each school year.

After talking with Mrs. Murphy, you learn that many absences are due to various doctor's appointments. Mrs. Murphy mentions to you that she has been dealing with some health problems but doesn't go into detail.

Role play discussion with Mrs. Murphy.



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## Absenteeism (cont.)

Extensive and unpredictable absenteeism may be caused by an employee's disability

Courts have differing views regarding proper considerations for analyzing attendance issues

- Some courts have held that regular attendance is an essential function of most jobs. (*Laurin v. Providence Hospital* (1st Cir. 1998) 150 F.3d 52.)
- Other courts have held that even if a fixed work schedule is an essential job function, the court must consider whether there is an effective reasonable accommodation. (*Jacques v. Clean-Up Group, Inc.* (1st Cir. 1996) 96 F.3d 506.)



## EEOC Guidance – Frequent Absences

The chronic, frequent, and unpredictable nature of such absences may put a strain on the employer's operations for a variety of reasons, such as the following:

- an inability to ensure a sufficient number of employees to accomplish the work required;
- a failure to meet work goals or to serve customers/clients adequately;
- a need to shift work to other employees, thus preventing them from doing their own work or imposing significant additional burdens on them;<sup>74</sup>
- incurring significant additional costs when other employees work overtime or when temporary workers must be hired.



## Q & A with the EEOC

May an employer apply the same quantitative and qualitative requirements for performance of essential functions to an employee with a disability that it applies to employees without disabilities?

<https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities>



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## Q & A with the EEOC

Yes. An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job.

Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation. However, a reasonable accommodation may be required to assist an employee in meeting a specific production standard.

*Practical Guidance: It is advisable for employers to give clear guidance to an employee with a disability (as well as all other employees) regarding the quantity and quality of work that must be produced and the timetables for producing it.*



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## Production Quotas

An Intervention Teacher is responsible for meeting with 20 students per week and writing reports about what the student completed. Due to the Teacher's disability he has been having trouble meeting with 20 students and completing the reports. On average, the Teacher generally meets with about 17 students each week.

What does the conversation with the teacher look like?



## Q&A with the EEOC

An employer cannot penalize an employee for work missed while the employee took a significant amount of leave as a reasonable accommodation.

An employer that accurately evaluates the quality and quantity of work produced by an employee when present is not penalizing the employee for work missed while taking leave as a reasonable accommodation. An employer may wish to consider postponing a performance evaluation or providing an interim one when a significant amount of leave affects overall productivity.



# Reasonable Accommodations

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## Reasonable Accommodations

A reasonable accommodation is a **modification or adjustment** that:

- enables an applicant with a disability to have an equal opportunity to be considered for a job;
- enables an employee to perform the essential functions of the job the employee holds or desires; or
- enables an employee with a disability to enjoy benefits and privileges of employment equivalent to employees without disabilities.



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## Assessing the Limitations and Potential Accommodations

- What are the employees limitations?
- What job functions does it impact?
- Interactive dialogue is just that – interactive – two way conversation.



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## Sara the Lead

You receive a doctor's note from Sarah, the lead, who has said she has difficulty remembering things due to her anxiety and depression.

The doctor's note states that Sarah has trouble retaining information, especially in stressful situations.

Sarah says this is why she has trouble and makes mistakes on reports.

What reasonable accommodations can you identify as possibilities?

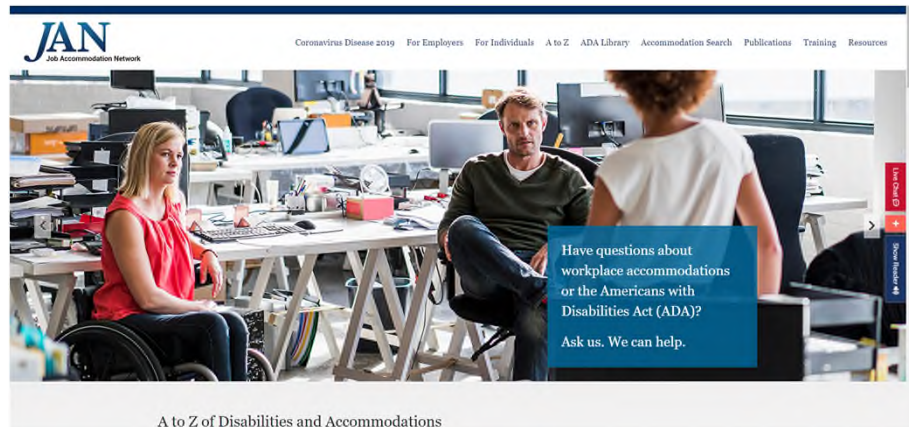


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# Ask Jan

<https://askjan.org/>



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## Examples of Accommodations

- Job restructuring (non-essential job functions)
- Leaves of absence (paid and/or unpaid for treatment or recovery)
- Modified facilities and/or equipment
- Modification of qualifying exams, training materials, and providing additional training
- Providing qualified readers or interpreters



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## More Examples

- **Reassignment** to vacant position
- Allowing an applicant/employee to bring an assistive **animal** to the work site
- **Transfer** to more accessible work sites
- **Altering** when and/or how an essential function is performed
- Modifying an employer **policy**, modifying supervisory methods

(See Modified Amended Disability Regulations under FEHA, 2 CCR § 11065(p)(2)(A)-(O).)



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# Limits to a “Reasonable Accommodation”

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## Undue Hardship

Undue hardship = Not “reasonable”

Findings of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

Undue hardship is determined in light of:

1. Nature and cost of accommodation
2. Financial resources of employer
3. Number of employees
4. Impact on employer’s operation
5. Overall size of business with respect to number of employees and number, type and location of facilities
6. Type of operations
7. Geographic separateness or administrative/fiscal relationship of facilities



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## Direct Threat

“Direct threat” = **significant risk of substantial harm** to the health or safety of the applicant/employee or others that cannot be eliminated or reduced by reasonable accommodation.

Factors for assessing whether an employee poses a direct threat:

- Duration of risk
- Nature and severity of potential harm
- Likelihood that potential harm will occur; and
- Imminence of potential harm.



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## Q &A with the EEOC

May an employer withdraw a telework arrangement or a modified schedule provided as a reasonable accommodation because the employee is given an unsatisfactory performance rating?



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## Q & A with the EEOC

No. An employer may not withdraw a reasonable accommodation as punishment for the unsatisfactory performance rating. Simply withdrawing the telework arrangement or a modified schedule is no different than discontinuing an employee's use of a sign language interpreter or assistive technology as reasonable accommodations.

Nor should an employer assume that an unsatisfactory rating means that the reasonable accommodation is not working. The employer can proceed with the unsatisfactory rating but may also wish to determine the cause of the performance problem to help evaluate the effectiveness of the reasonable accommodation. If the reasonable accommodation is not assisting the employee in improving his performance as intended, the employer and employee may need to explore whether any changes would make the accommodation effective, whether an additional accommodation is needed, or whether the original accommodation should be withdrawn and another should be substituted.<sup>36</sup>



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# Lets Walk Through An Interactive Process

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## Injured at Work

Bus driver was injured at work and has been going through the Workers Compensation process. After being out for 30 days, the employee brings a note from the workers compensation doctor that states that employee cannot lift more than 10 pounds and cannot sit for more than 15 minutes at a time.

Go through the interactive process meeting with the employee.



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# Response to a Request for Accommodations

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## Responding to Accommodation Request

If you grant it – Provide a detailed letter to employee:

- Document the accommodations.
- Indicate a time limit on the accommodations, when relevant.
- Indicate that the District and employee will reconvene at the end of the time limit to reassess the situation.

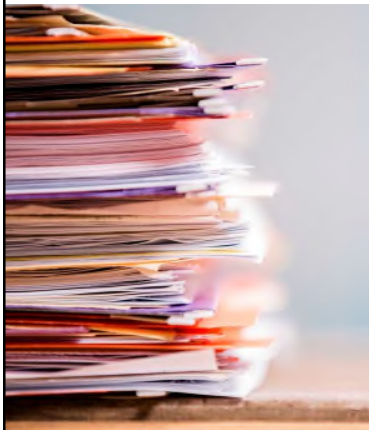
If you deny – Provide a detailed letter to employee:

- Explain why the District is denying the request.
- Provide a recap of the interactive process engaged in by both employer and employee.
- If relevant, provide an overview of all the alternative accommodations considered.



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## Accommodation Decisions



- A good faith effort includes consideration of input from the employee and his/her medical provider
- Employer is not required to provide the best accommodations or the employee's requested accommodations
- Employer makes final determination
- Document, Document, Document



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## Final Round of Hypotheticals

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## Chronic Conditions

Ms. Morgan has a medical certification on file with her employer for her chronic serious health condition, migraine headaches. She is unable to report to work at the start of her shift due to a migraine and needs to take unforeseeable FMLA leave. She follows her employer's absence call-in procedure to timely notify his employer about her need for leave.

*Is an employee required to follow an employer's normal call-in procedures when taking FMLA leave?*



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## More Chronic Conditions (cont):

Can Ms. Morgan use FMLA/CFRA to continue to take time off due to her migraines and to obtain treatment for them?



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## Mr. Rose

Mr. Rose has been an administrative assistant at your school for 5 years, and you've never had any issues with his work performance. He shares with you that he recently got a DUI and is dealing with a divorce.

*What is your obligation?*



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## Mr. Rose (cont.)

Several weeks after Mr. Rose's DUI you begin you notice that he is regularly late to work, his eyes are regularly red, and he occasionally has alcohol breath.

*What is your obligation?*

*What steps should you take?*



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## Rules of Thumb

- Establish and follow set procedures.
- Know who owns the process.
- The District speaks with one voice. Know who is communicating with the employee.
- Engage in the interactive process. This is a two-way conversation.
- Ask the employee what they need but understand you are not required to agree to the specific requested accommodation.
- Work collaboratively with the individual and maintain a process, not just one meeting.
- Reasonably and specifically identify the essential functions and the precise job-related limitations.



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## Final Thoughts

- Explore how the limitations might be overcome with reasonable accommodation, and give a good faith consideration of all potential accommodations.
- **Document** your assessment of the effectiveness of all accommodations considered.
- If considering denying an accommodation, can you articulate the reason and does it comply with the legal standards? Can you **document** the basis for the denial?
- **Document** the process, including meeting dates, times, persons present, discussions held and agreements made.



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## Questions



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## Thank you from Lozano Smith.

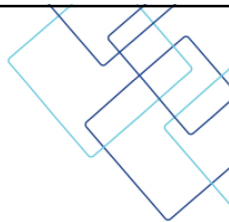
Together with you, we're impacting  
communities and lives through:

- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships

#BlueHatProject  
#LozanoSmithFoundation



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# @LozanoSmith

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**[District Name] SCHOOL DISTRICT  
Interactive Meeting Dialogue Form  
(Attach Employee Job Description)**

Employee Name: \_\_\_\_\_  
Employee Job Title: \_\_\_\_\_  
Employee Work Site: \_\_\_\_\_

Employee Phone Number: \_\_\_\_\_  
Employee Address: \_\_\_\_\_  
Employee Email: \_\_\_\_\_

Meeting Date/Time: \_\_\_\_\_  
Participants: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each of the questions listed below should be discussed at the meeting and the response should be recorded to establish a record of the interactive meeting.

**I. Does the Employee have a Disability?**

**Definition: A physical or mental impairment that limits one or more major life activities. An individual with a disability also includes someone who has “record” of such a condition, and someone who is “regarded” as having such a condition.**

A. (1) Does individual claim s/he has a current disability? Yes\_\_\_ No\_\_\_

(2) If yes, what is the impairment or disability? If more than one, list all.

(3) Is the impairment or disability permanent or temporary?

(4) Has the Employee provided any medical documentation regarding his or her disability or impairment? Yes\_\_\_ No\_\_\_ (If yes, list the documents provided and review any medical restrictions. E.g., doctor’s notes, AME reports, physical

therapy records, medical records, etc. If the employee has claimed a disability for which no medical documentation has been provided, provide the Employee with Release of Medical Information form to sign. Get the name(s)/address(es) of Employee's medical providers to whom the request for information should be sent.)

(5) Does the disability affect the employee's ability to do any of the following? (Check all that apply)<sup>1</sup>

- Seeing
- Hearing
- Breathing
- Walking
- Speaking/Communicating
- Eating
- Sleeping
- Reading/Writing
- Learning/Concentrating
- Caring for him/herself
- Lifting
- Pulling/Pushing
- Standing
- Sitting
- Climbing
- Using equipment/tools
- Performing manual tasks
- Operation of a major bodily function
- Interacting with Others
- Working
- Other: \_\_\_\_\_

(6) For all items checked in #5, explain the how each is affected or any applicable work restrictions.

<sup>1</sup> The ADA as amended prohibits consideration of the ameliorative effects of mitigating measures such as medication, assistive technology, or reasonable modifications when determining whether an impairment constitutes a disability. (42 U.S.C. 12102(4)(E)(i).)

The ADA as amended also provides that impairments that are episodic or in remission are disabilities if they would substantially limit a major life activity when active. 42 U.S.C. 12102(4)(D).)

**II. Is the Employee “Qualified” Under the ADA/FEHA?**

**Definition of Qualified: The individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position, and s/he can perform the *essential functions* of the job (either without any accommodations, or with a reasonable accommodation).**

A. Review job description. Review any additional duties of the job that may not be listed on the job description.

1. What are the “essential functions” of the job?

2. What are the marginal functions of the job?

B. Is the Employee in agreement with the functions of the job that the District considers to be “essential functions”? Yes \_\_\_\_ No \_\_\_\_

If no, what is the disagreement?

C. How does the disability or medical condition listed above limit Employee’s ability to perform **essential** job functions? List each essential job function affected by the disability or medical condition. Explain how the disability or medical condition affects those job duties.

D. Given the employee’s disability and limitations, is the employee able to perform the essential functions of his/her job without accommodation?

District: Yes \_\_\_\_ No \_\_\_\_

Employee: Yes \_\_\_\_ No \_\_\_\_

E. Given the employee’s disability and limitations, is the employee able to perform the essential functions of his/her job with accommodation?



District: Yes \_\_\_\_\_ No \_\_\_\_\_  
Employee: Yes \_\_\_\_\_ No \_\_\_\_\_

### III. Reasonable Accommodation

**Definition of Reasonable Accommodation: A workplace modification so the individual with a disability can perform the essential functions of the job, and enjoy the job benefits. An employer doesn't need to provide a reasonable accommodation that causes an "undue hardship."**

- A. What accommodations, if any, are being requested?
- B. Is the accommodation needed *because of* a disability or medical condition?  
Yes \_\_\_ No \_\_\_ If yes, explain how the accommodation relates to the disability or medical condition.
- C. How will the requested accommodation assist Employee in performing the essential functions of his or her position?
- D. Are there alternative accommodations that will allow the Employee to perform the essential functions of the position? [Brainstorm potential accommodations]



Attached is a sample packet of information to provide to an employee in order to engage in the interactive process to determine whether the employee has a disability and whether there are reasonable accommodations that will allow the employee to perform the essential functions of his/her position. This packet should be customized based on the particular situation and/or any District specific rules/procedures.

**[The following is a sample that can either be a cover email or cover letter for the employee]**

Dear \_\_\_\_\_,

Please find enclosed a packet with information and documentation that will allow us to engage in the interactive process to determine whether you have a disability and whether there are reasonable accommodations that will allow you to perform the essential functions of your position. The packet includes the following:

1. **Release of Medical Information.** This is an optional authorization that allows your physician to provide information directly to the District. If you consent to the release of your medical information, please fill out Page 2 and provide it to your doctor with a copy to the District.
2. **Request for Reasonable Accommodation.** Please review and fill out the attached form on pages 4-5 and return it to the District.
3. **Medical Provider Evaluation, Verification and Overview.** Please provide these documents to your medical provider and have your medical provider return the documents directly to the District (if you choose to consent to your medical provider providing information directly to the District) or you can return the documents directly to me. Pages 6-12
4. **District's Board Policy and Administrative Regulation regarding Accommodation.** Please see enclosed the District's policies regarding accommodations offered to employees for your review and reference. Pages 13 - \_\_\_\_\_.

Should you have any questions regarding any of the above, please do not hesitate to contact me.

Sincerely,

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[Name]  
[Title]

**RELEASE OF MEDICAL INFORMATION  
CONFIDENTIALITY OF MEDICAL INFORMATION ACT  
CALIFORNIA CIVIL CODE SECTIONS 56 et seq.**

TO: [INSERT NAME OF DOCTOR]

[REDACTED]

Street Address

[REDACTED]

City, State, Zip Code

I, name of employee, pursuant to the Confidentiality of Medical Information Act, California Civil Code sections 56 et seq., and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, hereby authorize you to release certain medical information to *[insert name]*, Superintendent whose address is:

[REDACTED], Superintendent  
[REDACTED] School District  
*[street address]*  
*[city, state, zip code]*  
Tel: *[phone number]*

By signing this document, I hereby authorize you to disclose my medical records, medical condition(s), and prescription medication(s), to [REDACTED] School District. These disclosures are for the exclusive purpose of determining my ability to continue to perform the essential functions of **[POSITION]** for [REDACTED] School District. This Release is issued pursuant to California Civil Code section 56.10(c)(8)(B).

I understand that I have a right to receive a copy of this document, and I hereby acknowledge receipt of a copy of this authorization and a copy of the attached "Authorized Restrictions and Rights."

This release shall expire **one (1) year from date executed.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Name of Employee**

Date of Birth: \_\_\_\_\_

**School District**  
**Authorization Restrictions and Rights**

1. Signing this Authorization is voluntary. You may refuse to sign this Authorization. However, without the proper health information, the District may not be able to properly assess and determine your eligibility to perform duties and responsibilities of the employment position for which you are applying or presently holding and thereby deny your request for reasonable accommodations.
2. This Authorization may be revoked in part or in whole at any time.
  - a. To revoke this Authorization with respect to the District, you must provide the District with a written revocation. The revocation will take effect when the District receives your written request.
  - b. To revoke this Authorization with respect to the organization or individual the authorization is sent to, you must provide the organization or individual a written revocation. The revocation will take effect when the organization or individual the authorization is sent to receive your written revocation. Please provide the District with a copy of your revocation.
  - c. Any information disclosed before your written revocation is received by the District or individual the authorization is sent to may be used as permitted in this Authorization.
3. You have a right to receive a signed copy of this Authorization. Upon request, you will be provided a copy of this Authorization.
4. The District and many other organizations and individuals such as physicians, hospitals and health plans are required by law to keep your health information confidential. If you authorize the disclosure of your health information to a person or entity that is not legally required to keep it confidential, the information may be re-disclosed and may no longer be protected by state or federal law. Unless otherwise provided in this Authorization or permitted or required by law, no further disclosure of your health information will be made by the District, except to the District's authorized agents, without your express authorization.
5. A photocopy or fax copy of this Authorization is as valid as the original.

**SCHOOL DISTRICT**

**REQUEST FOR REASONABLE ACCOMMODATION**

(Use additional pages as necessary)

\_\_\_\_\_  
**Applicant's or Employee's Name**

**Date of Birth:** \_\_\_\_\_

\_\_\_\_\_  
**Applicant's or Employee's Telephone No.**

\_\_\_\_\_  
**Address or Work Location**

I am requesting accommodation because: (mark appropriate section)

I am requesting accommodation that will allow me to participate in a District offered program, activity or service.

I am applying for employment. The accommodation requested will allow me to participate in the examination for:

\_\_\_\_\_

I am currently employed by the District and request a reasonable accommodation. My current job title is:

\_\_\_\_\_

**My specific disability or limitation is:**

\_\_\_\_\_

\_\_\_\_\_  
(Describe specific functional limitations or behaviors caused by the disability which you believe will or does interfere with job performance and/or ability to perform specific job functions or duties; or limits ability to participate in a examination; or program, activity or service; etc.)

**ACCOMMODATION REQUESTED.** (Describe the type of accommodation you are requesting; if it is a purchasable item, list model, number, cost, where it can be purchased, etc; suggestions for work site or examination site modifications or specific job duties which may be restructured to facilitate employment /examination, etc.)

Describe how this accommodation will assist you. (If accommodation is time sensitive, please explain)

**MEDICAL PROVIDER INFORMATION**

**Name of Physician:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Name of Physician:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Name of Physician:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

I certify that I have a disability or medical condition that requires reasonable accommodation, which will be met by acquiring the equipment, services or work adjustments described above and that the information provided on this form is intended to comply with the interactive process requirements of the law.

Signature of Applicant or Employee: \_\_\_\_\_ Date: \_\_\_\_\_

**Return Form to Superintendent:** *(Attach appropriate documentation of action taken regarding this request.)*

Received by: \_\_\_\_\_ Job Title: \_\_\_\_\_ Date Received: \_\_\_\_\_

**Medical Provider Evaluation**  
[RETYPE ON DISTRICT LETTERHEAD]

[Dr. Name]  
[Address]  
[City], CA [zip]

Re: Name of employee: Request for Medical Report  
Regarding Disability/Reasonable Accommodation Request

Dear Dr. [redacted]:

Name of employee has indicated that you are his treating physician/medical provider. The District is trying to determine whether, and to what extent, Name of employee has a disability that may require reasonable accommodation at work. Your medical report regarding Name of employee provides helpful information to assist with our interactive dialogue with Name of employee. We appreciate your office taking the time to review the enclosed documents and complete the requested form.

Enclosed please find the following documents: (1) Medical Verification form; (2) Employee's Job Description; (3) Medical Provider Overview; (4) Administrative Regulation regarding reasonable accommodation of disabled employees; and (5) the employee's Medical Release authorizing you to provide the District with the requested medical information (if the employee consents).

Name of employee's position as a job title entails working from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m., Monday through Friday. The job also entails list specific information about the job that is pertinent to the questions about the employee's ability to do the job [i.e. requires working 7.5 hours per day]

Prior to completing the Medical Verification Form, please read the Medical Provider Overview. The Overview contains a brief summary of key definitions as defined in law. The Job Description contains a description of the essential functions of the employee's work. Finally, we hope that the attached Administrative Regulation helps provide an overview of our procedures regarding disability accommodation requests.

Please send the completed Medical Verification form to:

[redacted], [Title]  
[redacted] School District  
[street address]  
[City, CA, zip code]  
Tel: [phone number]



Thank you for your assistance. If you have any questions, please feel free to contact me by telephone.

Sincerely,

\_\_\_\_\_, [Title]

cc: *Employee name*

**SCHOOL DISTRICT**  
**MEDICAL VERIFICATION FOR REASONABLE ACCOMMODATION**  
**(Attach additional Sheets as Necessary)**

\_\_\_\_\_  
**Applicant's or Employee's Name**

\_\_\_\_\_  
**Applicant's or Employee's Telephone No.**

**Job Title:** \_\_\_\_\_

\_\_\_\_\_  
**Address or Work Location**

**Job Duties: (See attached job description)**

1. Does the employee have a disability or physical or mental impairment that limits one or more life functions?  
 \_\_\_\_\_ Yes \_\_\_\_\_ No

2. Does this disability limit the employee's ability to do any of the following? (Check all that apply):

- |  |                               |
|--|-------------------------------|
| _____ Seeing                               | _____ Reaching                |
| _____ Hearing                              | _____ Bending/Stooping        |
| _____ Breathing                            | _____ Lifting                 |
| _____ Walking                              | _____ Pulling/Pushing         |
| _____ Eating                               | _____ Sleeping                |
| _____ Speaking/Communicating               | _____ Standing                |
| _____ Learning/Concentrating               | _____ Sitting                 |
| _____ Caring for him/herself               | _____ Climbing                |
| _____ Performing manual tasks              | _____ Using equipment/tools   |
| _____ Operation of a major bodily function | _____ Reading/Writing         |
| _____ Working                              | _____ Interacting with Others |
| _____ Other                                |                               |

3. If any items in #2 above are checked, please explain the functional limitation(s)/work restrictions:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. Given the employee's disability and functional limitations, is the employee able to perform the essential job functions of the job without accommodation? \_\_\_\_\_ Yes \_\_\_\_\_ No

5. Given the employee's disability and functional limitations, is the employee able to perform the essential job functions of the job with accommodation? \_\_\_\_\_ Yes \_\_\_\_\_ No

6. Recommended employment accommodations for consideration are:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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7. If the disability or its functional limitations are temporary, what is the expected duration of the limitations?  
\_\_\_\_\_ Months

8. Is the employee's condition permanent and stationary such that the limitations discussed above are permanent restrictions? \_\_\_\_\_ Yes \_\_\_\_\_ No

9. If an accommodation is needed, is it time sensitive? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please explain:

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10. With or without reasonable accommodation, can the employee perform the essential functions of the position without endangering the health or safety of the employee or others? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If no, please explain:

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Signature of Physician: \_\_\_\_\_ Date: \_\_\_\_\_

**Medical Provider Overview  
Disability/Reasonable Accommodation Medical Evaluation**

**Introduction**

Thank you for your assistance in evaluating the patient/employee. The District is currently engaged in an interactive dialogue with your patient to determine whether and the extent to which the patient/employee is able to perform job-related functions with or without reasonable accommodation.

To assist us in this process, please review this Overview, along with the attached Administrative Regulation adopted by the District and the employee’s job description and complete your evaluation of the patient/employee on the form provided by the District.

The California Fair Employment and Housing Act (“FEHA”) is the state law which prohibits disability discrimination. This document is to provide you, as the medical evaluator, with an overview of relevant state laws to assist you to determine whether your patient is disabled and needs reasonable accommodation so that the District can engage the employee in an informed “interactive dialogue” regarding reasonable accommodations, if necessary.

**Medical Documentation**

As an employer, the District is entitled to know whether the patient/employee has a covered disability for which reasonable accommodation is needed. If the employee is legally disabled, then a determination regarding the employee’s ability to perform the essential job functions without the need of accommodations should be made. If the employee cannot perform the essential functions of the job, the medical provider should assist the employer and the employee in determining whether reasonable accommodations exist to allow the employee to perform the essential job functions.

If sufficient information is not provided by the employee’s treating physician (or other health care professional) to substantiate that the employee has a disability and needs reasonable accommodations, the District can ask the employee to undergo an examination by an appropriate health professional. Any medical examination conducted by the employer’s health professional must be job-related and limited to determining the existence of a disability and the functional limitations that require reasonable accommodation.

**Patient Confidentiality**

An employer, in response to a request for reasonable accommodation, cannot ask medical providers for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. In most situations an employer cannot request a person’s complete medical records because it is likely to contain information unrelated to the disability at

issue. Accordingly, *the District is only requesting medical verification of the existence and nature of any physical or mental disability, which limits the employee's ability to perform essential job functions and your opinion on reasonable job accommodations. The District is seeking no other medical information.* Your opinion is valued; however, the ultimate decision as to what constitutes reasonable accommodation rests with the District following its interactive dialogue with the patient/employee.

### **Definition of Disability**

Both the FEHA and the ADA provide broad protections of disabled individuals. FEHA covers employees who have a physical, mental, or psychological disability that “limits” a major life activity. Under FEHA, “limits” is defined to mean “makes achievement of the major life activity difficult.” (Gov. Code, §§ 12926, subd. (k) and 12926.1, subd. (c).) An employee’s limitations are evaluated without considering mitigating measures such as medications, assistive devices or prosthetics unless the mitigating measure itself limits a major life activity.

### **Essential Job Functions**

FEHA defines an essential job function as one that is the reason the job exists, one only a limited number of employees can perform, or one that a specialized person is hired to perform. (Gov. Code, § 12926, subd. (f).) When determining the essential job functions consideration is given to: (1) the employer’s judgment; (2) job descriptions prepared before advertising or interviewing job applicants for the position; (3) amount of time spent on each function; (4) consequences of performing the function; (5) terms of any collective bargaining agreement; and (6) work experience of past and current employees in the same jobs. (Gov. Code, § 12926, subds. (f)(2)(A)-(G).)

### **Reasonable Accommodation**

FEHA requires an employer to provide reasonable accommodation to qualified individuals with disabilities, unless to do so would cause undue hardship or, with or without reasonable accommodation, the employee performing the job would endanger the employee or others as described below. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities without imposing an undue hardship on the employer.

Reasonable accommodations can include making modifications or adjustments to the work environment, part-time or modified work schedules, reassignment to a vacant position, acquisition, or modification of equipment, or providing assistance such as readers or interpreters. (Gov. Code, § 12926, subd. (n).)

As noted above, the District is seeking your input on potential reasonable accommodations. The ultimate decision regarding whether the employee has a covered disability and whether a requested accommodation is reasonable and/or poses an undue hardship rests with the District.

### **Health/Safety Risks**

An employee is not entitled to reasonable accommodation if, even after reasonable accommodation has been made, the employee cannot perform the essential functions of the position in question in a manner that would not endanger the health or safety of the employee or others because the job imposes an imminent and substantial degree of risk. (2 CCR 7293.8). The risk must be imminent; an employee is not disqualified if the disability merely poses a future risk but does not currently present the health or safety risk.

### **Conclusion**

Thank you for your assistance in helping the District to determine whether or not your patient has a physical or mental impairment which limits your patient's ability to perform his/her essential job functions for the District. We appreciate your review of the law, the employee's essential job functions, and the employee's medical condition.

**SCHOOL DISTRICT**

**INSERT DISTRICT'S Board Policy and Administrative Regulation  
regarding accommodation possibly AR 4032**

**[REPRODUCE ON DISTRICT LETTERHEAD]**

[Sample Letter following Interactive Process Meeting. This sample should be customized to fit the specific situation]

[DATE]

DELIVERED BY U.S. MAIL AND EMAIL AT: \_\_\_\_\_

[Name]

[Address]

**Re: Interactive Process Summary**

Dear \_\_\_\_\_:

Thank you for meeting with [Name] School District's ("District") on [Date]. The following correspondence is in follow-up to our meeting wherein we discussed your request for accommodation. Present at this meeting were [Insert attendees]. The meeting was an interactive process meeting, consistent with obligations under the American with Disabilities Act ("ADA") and the California Fair Employment and Housing Act ("FEHA") and District Administrative Regulation 4032, which provides the policies and procedures regarding reasonable accommodations.

The District takes its responsibilities under the ADA and the FEHA very seriously. Pursuant to both the ADA and FEHA, the District is required to provide reasonable accommodations to qualified employees with disabilities to enable them to perform the essential functions of their jobs. The process used to determine if an employee has a "disability" under state or federal law and what, if any, reasonable accommodations, can be provided is called the "interactive process." This is an informal process in which the employer and employee dialogue and exchange information to determine if there is a disability and what accommodations can be provided, if any.

The District received your doctor's note from \_\_\_\_\_ dated \_\_\_\_\_. Your doctor's note is attached to this letter and provides the following:

[Explain information provided by doctor's note]

(Attachment 1 – Medical Notes)

The goal of this interactive process meeting was to discuss the information provided to the District regarding your condition and to discuss any reasonable accommodations that will be effective and will allow you to perform the essential functions of your job.

During the meeting, we also discussed your essential functions, which are outlined in the attached document. (Attachment 2 - Essential Functions) Specifically, we discussed that the following essential functions are impacted by your limitations [Discuss essential functions and the limitations].



During the meeting, [Summarize the discussion of the meeting, such as accommodations requested and reasoning for granting, not granting or further exploring].

After our discussion and review of the information provided, the District [Insert details].

The interactive process is a flexible, ongoing process. Please notify the District if there are any changes in your work restrictions that would require additional or different accommodations and provide any updated documentation from your doctors related to the same. We will plan to follow-up meeting to check in on the accommodations in [DATE].

If you have any questions, please do not hesitate to contact me.

Sincerely,

[Name]

[Title]

[District]