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**Helping Injured Employees Return to Work:
Practical Guidance Under Workers' Compensation and
Disability Rights Laws in California**

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For the California Commission on Health and Safety and Workers' Compensation

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Introduction

About this handbook

Sometimes an employee with a work injury cannot do all of the tasks involved in his or her usual job, but could do the same job with modifications or could do a different job with the same company or organization. The employer and employee working together to find an appropriate accommodation will serve as a model for others in the same situation. Their collaborative efforts will also contribute towards promoting health, wellbeing, and increased productivity in our workforce and society.

Two sets of laws govern the employee's right to continue working and the employer's obligations to accommodate the employee:

- Workers' compensation law, Labor Code section 132a, protects the employee from discriminatory treatment because of a work-related injury or illness.¹
- Disability rights law under the Fair Employment and Housing Act (FEHA) requires the employer to engage in a timely, good faith, interactive process to find a reasonable accommodation for the employee's disability.² (FEHA applies regardless of whether an employee's disability was caused by work.)

Employers can comply with these laws by establishing an effective return-to-work program. This not only helps avoid fines and penalties, it also helps the employer save money in workers' compensation benefits and insurance premiums, reduces the need to replace injured employees and train replacements, improves productivity and morale among all employees, and increases the health and competitiveness of the business.

For the employee, participating in an effective return-to-work program can protect the employee's job and income. In addition, continuing to work helps the employee stay physically conditioned and mentally active, which supports the recovery process. It also maintains the structure and social connections provided by work and allows the employee to participate in programs to improve health and safety conditions in the workplace.

The handbook is geared for small employers and their employees, where the employer does not have a separate human resources department (HR) and is not self-insured. Larger employers often have HR staff who coordinate or assist in the return-to-work process. Some large employers are also certified to be self-insured and may therefore handle workers' compensation claims directly or use a third-party administrator.

The main part of the handbook is organized as follows:

- Section 1 briefly describes workers' compensation anti-discrimination and disability rights laws in California.

¹ For information on how to access Labor Code section 132a, see Appendix B.

² FEHA is found in Government Code sections 12900-12996. For information on how to access FEHA and its regulations, see Appendix C.

- Section 2 describes seven basic steps that constitute best practices to help injured employees return to safe and appropriate work in a timely fashion.
- Section 3 discusses how to establish an effective program to carry out the best practices.

Appendices to the handbook are as follows:

- Appendix A lists additional resources to help employers and employees design, implement, and participate in an effective return-to-work program. It also lists resources of the state agencies that administer workers' compensation and disability rights laws.
- Appendix B explains how to access the workers' compensation laws and regulations discussed in this handbook.
- Appendix C explains how to access the FEHA and its regulations.

Section 1

Legal requirements

How does workers' compensation law protect injured employees from discrimination?

In the California workers' compensation system, Labor Code section 132a makes it illegal for an employer to discriminate against employees with job injuries. This means an employer may not fire, threaten to fire, demote, or otherwise treat an employee differently from other employees solely because the employee filed a workers' compensation claim, intended to file a claim, or got injured at work. To defend against a 132a claim, the employer must prove there was a valid business reason for the action taken against the employee.

Penalties and other remedies available to the injured worker under Labor Code section 132a are described in Appendix B.

What are employers' obligations under the Fair Employment and Housing Act (FEHA)?

The California Fair Employment and Housing Act (FEHA) requires employers with five or more employees to provide reasonable accommodations to disabled employees. An employer, however, is not required to provide an accommodation if doing so would create an undue hardship. "Disability" means a medical condition or a physical or mental impairment, regardless of whether it was caused by work, that limits a major life activity. It can be one that prevents an employee from doing his or her usual job, either temporarily or permanently. "Reasonable accommodation" means an adjustment or change in the employee's job or workplace to make it possible for the employee to continue working. "Undue hardship" would be created if an accommodation is too costly compared to the employer's overall resources or significantly disrupts the employer's business.

To accomplish the goal of return to work, FEHA requires employers to engage in a "timely, good faith, interactive process" with a disabled employee to determine a reasonable accommodation for the employee. This means that one or more persons in positions of supervision or management must communicate directly and openly with the employee and share important information about possible accommodations. The interaction must be genuine. The process can end only when a reasonable accommodation is found or it becomes clear that an accommodation is not possible or would create undue hardship.

Employers in California must also comply with the federal Americans With Disabilities Act (ADA). The requirements to engage in the interactive process and provide a reasonable accommodation under FEHA are more extensive than those under ADA. This booklet primarily discusses FEHA because an employer can comply with ADA by complying with FEHA.

Fines, damages, and other remedies available to the disabled employee and to the state under FEHA are described in Appendix C.

Section 2

Best practices in returning an injured employee to work

This section describes seven basic steps that constitute best practices in returning an injured or disabled employee to work under workers' compensation and disability rights laws. Following the seven basic steps is a discussion of the different time frames for engaging the employee in the interactive process and offering work. Examples are then given of appropriate return to work in construction and agriculture.

How can employers comply with the requirements of the interactive process under the Fair Employment and Housing Act (FEHA)?

Unlike in workers' compensation, there are no prescribed forms to use or fixed deadlines to meet to ensure compliance with FEHA. Instead, the interactive process is governed by common sense principles of "timeliness" and "good faith." This means being proactive at every stage, communicating frequently with the employee, receiving input from the employee about his or her job-related limitations and ideas for accommodation, sharing all relevant information about possible accommodations, and making a genuine effort to find an accommodation that works for both employee and employer. It is important in this process to be mindful of the employee's situation, needs, and concerns, and to show respect for the employee as a person.

The following steps should be taken with these principles in mind:

1. Contact the injured employee

After an employee has been injured, make and maintain personal contact as soon as appropriate. Provide a Workers' Compensation Claim Form (DWC 1) and encourage the employee to read the notice about workers' compensation attached to it. If possible, fill out basic parts of the form – name of employee, name of employer, address of employer, date employer first knew of injury, and date claim form was provided to employee – before providing it to the employee. Show the employee how to complete the form and explain how to turn it in.

Inform the employee that medical care will be paid for by your workers' compensation insurer while the claim is pending. Also describe when the employee can expect to learn about receiving temporary disability (TD) benefits if his or her claim is accepted by the insurer and the employee loses pay because of the injury. Be available to answer questions.

Maintaining contact will help allay concerns or worries the employee may have about the injury. It will also help avoid misunderstandings and encourage the employee to have a positive view of the return-to-work process.

2. Initiate the interactive process with the employee

Under FEHA, employers must start the interactive process when a supervisor or someone else in management becomes aware that an employee has a disability and may need an accommodation to be able to perform his or her job. The need for an accommodation is not

always obvious. An employer must start the process, for example, when an employee informs a supervisor that he or she is having trouble working full days because of medical appointments, or cannot do a certain task or use a certain device in his or her job because of pain or other symptoms.

As soon as a supervisor or someone else in management learns that an employee cannot do his or her job because of an injury or disability, contact the employee about the return-to-work process. If necessary, explain why staying at work or returning to work will be beneficial for everyone involved. Also explain that you will coordinate with the employee and his or her treating physician and others to find an appropriate accommodation. If the employee has a union representative or an attorney and wants you to coordinate with that person too, you should honor the request. If you choose to hire an attorney to assist in the process, you must still strive to interact directly and openly with the employee.

3. Identify essential and non-essential functions of existing jobs, and other tasks that can be done on a temporary basis

Essential functions are the fundamental duties of a job that an employer is not required to remove or modify to accommodate a disabled employee. An employee must be able to perform these functions to be entitled to a reasonable accommodation. A function may be considered essential because of one or more of the following factors:

- The job exists to perform that function, and removing the function would fundamentally change the job.
- There are a limited number of employees among whom the function can be distributed.
- The function is highly specialized, and the person in that job is hired for his or her expertise or ability to perform it.

Non-essential (or “marginal”) functions are duties of a job that an employer may be required to remove or modify to accommodate a disabled employee so that the employee will be able to perform the job. A function may be non-essential to a particular job but still create physical or mental demands or working conditions that are incompatible with the employee.

Identify the essential and non-essential functions of the employee’s particular job. Be as specific as possible. List postures, motions, lifting, carrying, pushing, pulling, equipment, environmental conditions, and other requirements of the job. Give the frequencies and hours per day of these functions. Explain to the employee that you will provide this information to the employee’s treating physician and possibly to others who will evaluate the employee’s work capacities and restrictions. Review these functions with the employee to obtain his or her input (and with the union, if there is one).

In addition, for other jobs where the employee may be able to perform the job’s essential functions, distinguish the functions that are essential to the job from those that are non-essential, to know which ones you may need to modify or remove to accommodate the employee.

If the employee has a temporary disability, identify useful tasks apart from the existing jobs discussed above that the employee could perform while recovering.

4. Obtain work capacities and restrictions from the treating physician and other providers

In workers' compensation, the only medical reports that are considered in determining an employee's benefits are those of the employee's treating physician and of other physicians who are authorized to conduct medical evaluations to resolve disputes. In contrast, under FEHA the employer and employee may also consider information from other providers such as physician assistants, nurse practitioners, and physical therapists.

Explain to the employee that you need enough information from the treating physician and other providers to understand what kind of accommodation is needed. You may be able to obtain this information through the employee or your insurer. If the information provided by the employee and insurer is unclear, ask them to obtain further information, or ask the employee to give you permission to contact the physician or other providers directly to clarify the employee's work capacities and restrictions. Also ask the employee to share with the employer, not just the employer's insurer, any important information provided by the physician that could help determine the kind of accommodation that is needed.

Give the treating physician and other providers information about the essential and non-essential functions of the employee's job and of other jobs the employee may be able to perform, and information about tasks apart from existing jobs that the employee could perform while recovering. Ask about the employee's work or "functional" capacities, which means the tasks the employee can do safely and effectively. Also ask about the employee's work restrictions, which means the tasks the employee is limited in doing or cannot do because of the injury or disability. Depending on the stage of the injury, these could be temporary restrictions while the employee is recovering or permanent restrictions because of a permanent disability. If the physician prescribes broad, general work restrictions, ask the physician to be more specific by identifying only the restrictions that are clearly necessary to prevent injury.

Do not ask for details about the employee's medical condition, prognosis, or other matters unrelated to work. Workers' compensation law and state and federal medical privacy laws allow you to access only the diagnosis for which workers' compensation is claimed and the medical information that is needed to modify the employee's duties.

5. Identify and evaluate possible accommodations

Carefully compare the employee's capacities and restrictions with possible modifications to the employee's regular job. Modifications could include, for example:

- Job restructuring, such as limiting tasks to those that are safe for the employee
- Changes in the way duties are performed
- Physical changes in the work station
- New or modified equipment, and training on how to use it
- Part-time or modified work schedule
- Time off for medical appointments

- Extended leave while recovering

Ideally, the employee should return to his or her same job with appropriate modifications. Building on existing work experience and working relationships avoids the stresses of adjusting to different responsibilities and new surroundings.

If modified work is not possible, consider alternative work that meets the employee's work restrictions. Under FEHA, you must consider assigning the employee to a vacant position in a job that the employee is qualified to perform. Qualifications may include education, training, experience, acquired skills, and ability to learn new skills. It would be preferable for the employee to continue working in the same area, unit, or program. If that is not possible, consider transferring the employee to a different area, unit, or program and providing adequate training and support in the transition.

Share information and communicate openly with the employee, and engage in a meaningful, genuine dialogue. Assess how effective each accommodation would be in allowing the employee to perform the job. Obtain feedback from the employee, the employee's physician and other providers if you are unsure that an accommodation would meet the employee's work restrictions. If an accommodation would create an undue hardship (defined on page ___), consider other accommodations.

6. Select a reasonable accommodation and make an offer of work

If there is more than one possible accommodation, consider the employee's preferences as well as the cost and impact of the accommodations on the operation of your business. If the employee is still recovering from the injury, the accommodation could be temporary. If the employee has a permanent disability and his or her condition is permanent and stationary (P&S), the accommodation could be one without time limits. Make an offer of work based on the accommodation you select.

7. Implement and monitor the accommodation

As you implement the accommodation, encourage and support the employee in his or her return. If the employee was recovering from an injury or illness when you provided the accommodation, ideally the treating physician should be removing or reducing restrictions as the employee's condition improves, and you should be adjusting work assignments accordingly to help the employee rehabilitate and be as productive as possible. There may also be other changed circumstances that affect whether an accommodation is appropriate or effective. Continue to communicate with the employee in an ongoing, interactive process to ensure that the accommodation you provide is working as anticipated.

If you have 50 or fewer employees and purchased a workplace modification such as special equipment, tools, devices, or furniture, you may apply to the state Division of Workers' Compensation for financial reimbursement. To obtain more information about this program, see Appendix A.

What are the time frames for engaging in the interactive process and offering work?

1. The interactive process under FEHA

- **Start.** The interactive process is required when a supervisor or someone else in management learns that an employee cannot do his or her regular job because of a disability (whether work-related or not) and needs an accommodation to be able to continue working.
- **Duration.** The process must continue until you and the employee are satisfied that a suitable return to work has been accomplished or that a reasonable accommodation is not possible. It could continue even after deadlines to offer work have passed or work that was offered for 12 months has been completed. (These time frames are described below.)
- **Follow-up.** You must re-engage the employee in the interactive process if the employee's disability, the work environment, or your business needs change, or if the accommodation is no longer effective for any reason.

2. Offering regular, modified, or alternative work in workers' compensation

- **During the recovery phase.** While the employee is recovering from the injury, you should make every effort to offer transitional work to aid the employee's recovery and reduce your costs. The offer can be made at any time as long as it meets the restrictions specified by the employee's treating physician.
- **Instead of paying a supplemental job displacement benefit.** Workers with a permanent disability may be eligible to receive a supplemental job displacement benefit (SJDB). This is a voucher that promises to pay for educational retraining or skill enhancement. As an alternative to the employee receiving an SJDB, you may offer modified or alternative work within 30 days after the employee's final temporary disability (TD) payment. Ideally, the employee's treating physician should specify permanent work restrictions so that you can know what kind of work to offer. The job you offer must:
 - Pay at least 85% of the wages and benefits that were paid at the time of the injury
 - Meet the work restrictions specified by the physician
 - Last at least 12 months
 - Be within a reasonable commuting distance of where the employee lived at the time of injury.

The employee may accept the offer within 30 days or object to it on the ground that it does not meet the requirements of modified or alternative work. After the offer is accepted or rejected, you must send a completed copy of it to the state Division of Workers' Compensation.

- **Reducing permanent disability payments.** If you are an employer with 50 or more employees, you can reduce permanent disability (PD) payments to the injured employee

by 15% and avoid an increase of 15% by offering regular, modified, or alternative work. You must do this within 60 days after the employee's condition becomes permanent and stationary (P&S). The job you offer must:

- Pay the same wages and benefits that were paid at the time of the injury (regular work), or pay at least 85% of those wages and benefits (modified or alternative work).
- Meet the work restrictions specified by the physician
- Last at least 12 months
- Be within a reasonable commuting distance of where the employee lived at the time of injury.

The employee may accept or object to an offer of regular work within 20 days, and may accept or object to an offer of modified or alternative work within 30 days. After an offer of modified or alternative work is accepted or rejected, you must send a completed copy of it to the state Division of Workers' Compensation.

Examples of return to work in construction and agriculture

- 1. Modified work schedule in construction.** A carpenter working for a construction company has a back injury and cannot work full days while recovering. He would like to work partial days. The employer engages the employee in an interactive process to determine how many hours he can work per day doing carpentry work. The employee contacts the treating physician to ask whether it would be safe to work part-time. The physician estimates that it would be safe for the employee to work half days and increase gradually the number of hours worked. Based on this, the employer postpones one project that does not have a set deadline and allows the employee to start at four hours per day. The employee gradually increases to full days by the time the injury is fully healed.
- 2. New equipment and training in agriculture.** An agricultural employee sustains a permanent injury in her right hand. She complains to her supervisor of pain while working. She is not able to prune as many plants per hour as she could before her injury. The employer engages the employee in an interactive process to share information about the functional capacities of each hand and the demands that her job places on the hands. The employer finds a new pruning tool that can be used in either hand and is ergonomically designed to avoid injuries, and contacts the employee's physician to ensure that it would be safe for the employee to use. The employer purchases the tool and brings in a rep to train the employee on how to use it with her left hand, with the right hand doing less demanding tasks of placing cut pieces into bins. The employer applies for and receives payment from the state Division of Workers' Compensation program that reimburses small employers for workplace modifications (see Appendix A).

Section 3

Establishing an effective return-to-work program

This section discusses what employers can do to establish an effective program to carry out the best practices discussed in Section 2.

How can employers carry out best practices?

1. Develop and formalize policies and procedures

Develop your policies and procedures, describe them in writing, and disseminate them to everyone involved:

- Use the six-step process, discussed in Section 2.
- Identify who in your company or organization will be responsible for engaging injured employees in the interactive process, and who will make final decisions on job accommodations.
- Include information on how to contact the workers' compensation insurer, treating physicians and other providers, and others in management.
- Emphasize the need to gather complete and accurate information about work restrictions and possible accommodations, share all important information and communicate openly and respectfully with the injured employee, act in a timely fashion, and be proactive.

2. Eliminate inappropriate policies

Eliminate previous policies that categorically limited return to work without considering whether an accommodation would create an undue hardship for the employer. Inappropriate policies, for example, include the following:

- Always ending modified or alternative work after a specific, fixed period
- Never considering modified or alternative work outside an employee's area, unit, or program
- Requiring that injured employees be released to full duty without restrictions or be healed 100% before returning
- Not considering time off except under specific, fixed policies
- Delaying discussion of job accommodations until the employee's condition is permanent and stationary
- Refusing to purchase new equipment to accommodate the employee unless approved by the workers' compensation insurer

What can be done to ensure everyone assumes their roles and responsibilities?

1. Select the best physicians and the right workers' compensation insurer

Physicians who treat injured workers should clearly specify the kinds of work the employee can do safely -- both during the recovery phase and after the employee's condition has become permanent and stationary. These recommendations should be based on the employee's medical condition and the employer's description of available jobs and working

conditions. The physicians should also be available to answer questions about work capacities and restrictions (but not other matters unrelated to work).

It is therefore important to select a workers' compensation insurer that will:

- Select the best treating physicians
- Pay the physicians for their time participating in the return-to-work process
- Authorize medical treatment promptly
- Relay information about work capacities and restrictions from the treating physician or other providers in a timely fashion

The insurer should also offer services to help you design and implement your return-to-work program. Ideally, the insurer should reduce your insurance premiums if you create and implement an effective program that saves costs for the insurer.

2. Train supervisors and other managers on the return-to-work process

Inform supervisors and managers that when they learn that an employee has a disability and needs an accommodation, they must notify staff who are responsible for involving the employee in the interactive process. Train responsible staff on how to do this. They should focus on work restrictions and capacity to work, not on the exact medical diagnosis. Train them to engage in the interactive process until a reasonable accommodation is found or all possibilities have been exhausted.

Instruct staff to document the process fully. This means keeping accurate records of the interactive process and the data that was used to evaluate possible accommodations. Doing this will help ensure that the process is truly interactive, inform new supervisors and managers in the future about the accommodation that was selected, and provide back-up in case of possible legal problems.

3. Inform employees of their rights and obligations in the process

Inform all employees about the return-to-work process. Encourage injured employees to return to work as soon as is medically appropriate. Emphasize that they should fully participate in the return-to-work process, share medical information about job-related limitations to help determine what kind of accommodations are needed, accept reasonable accommodations, and inform the employer if their contact information has changed.

Why should employers evaluate existing jobs and working conditions?

1. Identify essential functions of jobs to assign disabled employees to appropriate jobs

Essential functions of a job are the fundamental duties that an employee must be able to perform with or without a reasonable accommodation. It is important to identify essential functions of jobs to know which functions you will not be required to modify or remove, and also to identify jobs you may offer to a disabled employee. A function may be considered essential because of one or more of the factors listed on page _____. You should list all

requirements and elements of essential job functions in detail, also discussed on page ____.
Do this in collaboration with employees (and the union, if there is one).

2. Identify non-essential functions of jobs to know which functions may need to be modified or removed

Non-essential (or “marginal”) functions are duties that an employer may be required to remove or modify to accommodate a disabled employee who is able to perform the essential functions of the job. A function may be non-essential but still create problematic demands or working conditions for the employee. You should list all requirements and elements of non-essential job functions in detail, as discussed on page ____.
Also do this in collaboration with employees (and the union, if there is one).

3. Identify short-term tasks to allow injured employees to return to work while recovering

Proactively identify and compile lists of specific tasks that can be done by injured employees on a temporary basis while recovering. This should also be done in collaboration with employees (and the union, if there is one).

4. Evaluate working conditions to reduce injuries and offer safe return to work to injured employees

Periodically inspect your workplace to identify and evaluate unsafe conditions. Encourage employees to report injuries and unsafe conditions, and conduct investigations as needed. This will enable you to make changes that can reduce injuries and allow employees who do become injured to return to safer conditions.

Appendix A

Additional resources

Physician's role

For information about how physicians can help injured employees return to work, see *The Personal Physician's Role in Helping Patients with Medical Conditions Stay at Work or Return to Work*, American College of Occupational and Environmental Medicine, position statement approved on November 8, 2008, available online at www.acoem.org (link to "Policies & Position Statements").

Insurer's role

Some workers' compensation insurers actively support employers' return-to-work programs. The insurer with the largest market share in California, State Compensation Insurance Fund, posts resources at its website to help employers with return to work programs: www.scif.com. Other insurers post similar resources at their websites or provide them directly to their policyholders.

For a list of all workers' compensation insurers that do business in California, go to the website of the California Department of Insurance – www.insurance.ca.gov – under "For Consumers," link to "Companies by Lines of Insurance."

Job accommodations

The Job Accommodation Network, which is a service of the U.S. Department of Labor, provides accommodation ideas, publications, and other resources, including a "Searchable Online Accommodation Resource," available at www.jan.wvu.edu

The Pacific ADA Center, one of 10 regional centers, is a private, nonprofit organization that offers information, referral, training, consultation, and technical assistance to business, state and local government, and disability communities about the responsibilities and rights under the American With Disabilities Act: www.adapacific.org

The Disability Access Section of the California Department of Rehabilitation provides information, training, consultation, and technical assistance on FEHA and related laws: www.dor.ca.gov/ada

Independent living centers provide information about local resources for persons with disabilities. Some also provide technical assistance to employers. The Department of Rehabilitation describes the independent living program and lists the 29 independent living centers in the California: <http://www.dor.ca.gov/ils>

Workers' compensation benefits, rights, and procedures

For information about injured employees' rights and benefits, see *Workers' Compensation in California: A Guidebook for Injured Workers, 3rd Edition, November 2006*, and updates to the guidebook. Go to the website of the Commission on Health and Safety and Workers' Compensation: www.dir.ca.gov/chswc

The state Division of Workers' Compensation (DWC) administers California workers' compensation laws. For fact sheets, forms, reports, publications, and the Division's phone numbers and addresses, go to: www.dir.ca.gov/dwc or call 1-800-736-7401. The Workers' Compensation Claim Form (DWC 1) is available at www.dir.ca.gov/dwc/DWCForm1.pdf

Employers with 50 or fewer employees can apply for reimbursement from the DWC to help cover costs of workplace modifications. Reimbursement can be up to \$1,250 to accommodate a temporarily disabled employee and up to \$2,500 to accommodate a permanently disabled employee. To apply, go to:

www.dir.ca.gov/dwc/ReturntoWorkReimbursementProgram/ReturnToWork.htm

Disability rights and procedures under FEHA

The state Department of Fair Employment and Housing (DFEH) administers and enforces FEHA. For information about the complaint process, go to: www.dfeh.ca.gov or call 1-800-884-1684 (within California), 1-916-478-7200 (outside California), or TTY 1-800-700-2320 (within California).

Appendix B

California workers' compensation laws

To access the Labor Code sections listed below, go to: www.leginfo.ca.gov To access the regulations, go to: www.oal.ca.gov

Anti-discrimination law

It is illegal for an employer to punish or fire an injured employee for filing a workers' compensation claim or for having a job injury (unless the employer's conduct is justified by "business realities"). An employee has one year from the last act of discrimination to file a claim under this law. The claim could be litigated as part of the employee's main workers' compensation case or litigated separately. The employee could be awarded a 50% increase in workers' compensation benefits up to \$10,000, reinstatement, and reimbursement for lost wages and work benefits. Labor Code section 132a.

Worker' compensation claim form

Employers are required to give or mail a Workers' Compensation Claim Form (DWC 1) to an injured employee within one working day after learning about the injury. Labor Code section 5401. (The claim form is available at www.dir.ca.gov/dwc/DWCForm1.pdf)

Temporary disability benefits

These benefits are paid if the injured employee cannot do his or her regular job while recovering and the employer cannot offer work that meets the employee's work restrictions. Labor Code sections 4453-4459, 4650-4657, 4661, and 4661.5.

Limitations on employer's right to medical information

A claims administrator may not disclose to an employer any medical information about an injured employee except the diagnosis for which workers' compensation is claimed, the treatment provided for this condition, and information necessary for the employer to have to modify the employee's work duties. Labor Code section 3762.

Supplemental job displacement benefit

This benefit is paid to injured employees who are eligible to receive permanent disability benefits if the employer cannot offer modified or alternative work meeting certain requirements. It is in the form of a voucher that promises to help pay for educational retraining or skill enhancement, or both. Labor Code sections 4658.5 and 4658.6; California Code of Regulations, title 8, sections 10133.50-10133.60.

Permanent disability benefits

These benefits are paid if the injured employee sustains a permanent disability that limits the employee's ability to compete for jobs or earn a living in the future. Labor Code sections 4453-4459, 4650-4651, 4658, 4658.1, 4659-4661, and 4661-4664.

Appendix C

California disability rights under FEHA

The Fair Employment and Housing Act (FEHA) is in Government Code sections 12900-12996. To access the Government Code, go to: www.leginfo.ca.gov Regulations under FEHA are in the California Code of Regulations, title 2, sections 7285.0-8504. To access these regulations, go to: www.oal.ca.gov

Requirements

Employers with five or more employees must provide a reasonable accommodation to a disabled employee if doing so does not create an "undue hardship" on the employer. The employer is also required to engage in a timely, good faith, interactive process to determine reasonable accommodations for the employee. This means the employer must communicate directly and openly with the employee and share important information about possible accommodations.

Timeline

The employee has one year from the last act of discrimination to file a complaint with the Department of Fair Employment and Housing (DFEH). (The deadline is earlier for complaints under the Americans With Disabilities Act, or ADA, filed with the U.S. Equal Employment Opportunity Commission.) After a complaint is filed and the Department determines that the case is governed by FEHA, agency staff investigate the complaint and seek informal resolution or settlement with the employer. If not resolved, the case is handled in a formal conciliation conference. If still not resolved, the Department pursues formal litigation before the Fair Employment and Housing Commission or, at an employee's request, in civil court. Litigation must be initiated within one year after the complaint was filed.

Fines and penalties for violating FEHA

If a case goes before the Fair Employment and Housing Commission (FEHC), the Commission can require reinstatement, promotion, back pay, reasonable accommodation, actual damages including damages for emotional distress, training, policy changes, and administrative fines. Actual damages, which are payable to the employee, and administrative fines, which are payable to the state, can be up to \$150,000 (total). The Department may give permission to file a private lawsuit, where a court could award the employee the same as listed above, with three exceptions: (1) no limit on the amount of emotional distress damages; (2) unlimited punitive damages instead of administrative fines; and (3) prevailing party be may awarded reasonable attorney's fees and expert witness fees and costs.