

Employment Law Newsletter

Legal news promoting employee rights

DISABILITY DISCRIMINATION.

By Morris Nazarian

In California, the California Fair Employment and Housing Act (FEHA) protects employees from discrimination due to a disability.

For the employee to be eligible to make a claim of disability discrimination under FEHA, the employee must be a "qualified individual with a disability." This means that the employee must show that they have the skills, education and experience that are necessary for the job and can perform the essential functions of the job with or without reasonable accommodations. *Green v. California*, No. S137770 (Cal. Aug. 23, 2007)¹.

An employer who discriminates against a person because of his/her disability may do so **only** if the employer can demonstrate that:

- The person is unable to perform the essential functions of the job; and that no reasonable accommodation exists that would enable the person to perform the essential functions of the job; or,
- The person would create an imminent and substantial danger to himself/herself or a substantial danger to others by performing the job; and that no reasonable accommodation can be made to remove or reduce the danger.

¹ *It is the plaintiff's burden to prove that he can perform the essential functions of the job.*

The Law Offices of Morris Nazarian

Attorneys and Counselors at Law

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What is Disability Discrimination under the law?

Under FEHA, Disability is defined as a physical or mental impairment that limits a person's major life activities or a record of having, or being perceived as having, a physical or mental impairment.

Physical Disability – Any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that affects one or more of several body systems and limits a major life activity. The body systems listed include the neurological, immunological, muscular and skeletal, respiratory, speech, reproductive, digestive, urinary, lymphatic, skin, and endocrine systems. A typical physical disability includes: High blood pressure (hypertension).

Mental Disability – Any mental or psychological disorder, that limits a major life activity. Some mental disabilities include: clinical depression; bipolar disorder; post traumatic stress disorder; Attention Deficit/Hyperactivity Disorder.

Disability discrimination includes adverse employment actions like refusal to hire, wrongful termination, harassment and demotion. Disability discrimination also includes a failure to make reasonable accommodations.

How do you prove Disability Discrimination?

In order to prove disability discrimination, the employee must show that he or she suffered an adverse employment action, and that there is a causal link between the disability/medical condition and the adverse employment action². Also, the employee must show that the disability would not prevent the employee from performing the essential duties of the job, at least not with reasonable accommodation.

² *An employer will not be held liable if it can meet its initial burden (i.e. honestly believing) that it had a legitimate reason for the adverse employment action. The burden then shifts to the employee to show with specific and substantial evidence that the reason given for the termination was pretextual.*

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What are the possible ways an Employee can Discriminate against you?

- Your employer does not allow you to miss work for medical appointments
- Your employer does not provide reasonable accommodations for your disability
- Your employer does not provide you with time off of work to receive treatment.

Employers must provide Reasonable Accommodation to employees with Disabilities

Once the employee who has a disability that is protected under the law is established asks for reasonable accommodations, an employer is obligated to provide a reasonable accommodation (*such as changing the job duties; relocating the work area; or, changing the work shift*) unless the accommodation would constitute an undue hardship (*too expensive or disruptive*) on the employer's business operation. California law requires the employer to engage in an "interactive process" with the employee to determine the need for effective accommodations of disabilities.

Harassment and Discrimination

Employees have the right to be free of harassment or name calling about their disability.

What are the time limits for filing a complaint of employment discrimination?

A complaint of employment discrimination must be filed within one year from the date that the alleged discriminatory act occurred.

If you believe that you have been discriminated against and unfairly treated by your employer as a result of a disability, contact us at (310) 277-2323 or (877) CALI LAW for a free consultation.

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