



**FEHA/ADA:
HOW TO USE CPR
FOR A HEALTHIER DISABILITY
COMPLIANCE PROGRAM**

A White Paper for Human Resource Practitioners to Improve an
Organization's Management of its Disability Compliance Obligations

FEHA/ADA: HOW TO USE CPR FOR A HEALTHIER DISABILITY COMPLIANCE PROGRAM

Rachel Shaw | March 2017

Table of Contents

Introduction	2
Content	3
Process	4
Relationship	6
Conclusion	7

Implementing employee disability management programs remains one of the most challenging personnel issues for companies. Multiple factors make it difficult to determine best practices to put into place. Organizations certainly don't want to evaluate practices retrospectively during a lawsuit.

Introduction

Implementing employee disability management programs remains one of the most challenging personnel issues for public agencies. With so many different factors affecting an organization's compliance – the California Fair Employment and Housing Act (FEHA) and Title I of the Americans with Disabilities Act (ADA) – it can be difficult to determine the best practices to put in place.

Both ADA and FEHA make it obligatory for employers to provide reasonable accommodation for employees or applicants who, because of their disability, are limited in or unable to perform one or more of the essential functions of their job.

California employers must meet the greater requirements described by FEHA as it involves more than ADA. FEHA also requires employers engage in a timely, good faith interactive process with employees or applicants who are requesting or are in need of reasonable accommodations outcomes. After all, a job done right the first time is time and money well spent in the long run.



Volumes of articles have been written on what a “timely, good faith interactive process” is. Organizations often focus on accommodation decisions since they view these as being the direct triggers of a potential lawsuit. While there is no question decisions are important, this approach is short-sighted. Realize these decisions come at the end of a greater process which is equally as important. The law after all specifies a process.

The key then, is to develop an interactive process that directs all parties in the right direction so sound decisions are more likely to be made by your organization. Basically, if you set up the right process, it will lead to better decisions – so you are stacking the cards in favor of higher quality.

We have simplified the process into an approach based on the simple acronym: “CPR.”

C **Content** – Get the Most Current and Accurate Information Needed to Make Good Decisions

Perhaps the most important of C-P-R, is the gathering of up to date and correct medical information lays the foundation for consistent and grounded reasonable accommodation decisions.

1. Medically Supported Work Restrictions / Functional Limitations: Clear medical reports listing work restrictions / functional limitations and duration of any limitations.
2. Essential Functions Job Analysis (EFJA): Update or create an EFJA for the classification of the employee/applicant for the medical provider and accommodation meeting participants to reference. Include all of the traditional physical, mental and emotional demands of the position.
3. Understand Preferences and Limitations: Explore with both the applicant/employee and the department/division what accommodation ideas they think may work and/or what concerns they have about difficulties in accommodating the limitations. Explore, evaluate and research. Don't jump to decisions too early.

P **Process** – Develop a Standard Process that is Applied for Every Disability Management Case

Each person may have different needs or challenges, requiring longer or shorter timelines, so of course some flexibility is required, but by following the same established process each time, you are likely to

better ensure all persons are treated equally. This includes how you obtain medical clarification, who participates in making decisions related to short-term and long-term accommodation needs, and standardized letters used to communicate each critical step of the



process to the employee/applicant.

A good process will not only provide employees/applicants with a greater sense of fairness and transparency, it also will support the organization in documenting the reasoning behind decisions. Best process practices include:



1. Designate someone in your organization as a process “hawk,” ideally a person who does not make reasonable accommodation decisions. This quasi-neutral employee will be able to assist the parties to engage in a timely good-faith interactive process and will build trust and confidence in the process as they are not invested in the ultimate outcome.
2. Contact the applicant/employee immediately upon being made aware of a request or need for accommodation and advise them of the process and timeline they can expect.
3. Document all verbal conversations in writing to ensure your activities support you should there be future litigation or claims of failure to engage.
4. Provide advanced notice, in writing, of all meetings. Don’t rush to get to the table. Make sure you are ready and all parties have sufficient time to prepare for the important step in the interactive process.
5. Have decision makers at accommodation meetings. This shows respect to the applicant/ employee and reduces the need to have multiple meetings.

R **Relationship** — It's an Adage as Old As Time: Treat Others as You Would Like to be Treated, and it Still Applies

Never forget that how you treat employees/applicants will reflect on how they are likely to treat you once a decision is made. Processes should be focused on creating an environment in which the employee/applicant feels they are informed and a valued member of the decision process, regardless of their past performance or claim filing history.

Treat all employees with respect and fairness. Make sure the decision-making team contains some people who are not directly aware of the employee's history with the organization – both good and bad. The primary barrier for many organizations in making the “right” accommodation decision is that the history of the employee's performance makes its way into the decision criteria.

While there may be limited situations where past poor performance can be taken into consideration, in general, organizations are best served when there is at least one member who can help ensure the employee's past performance does not influence the decision.



1. Be honest and direct. Don't prolong the difficult decisions, once made, from being shared. An efficient process, even if

it is not the outcome desired by the applicant/employee, supports relationships to be maintained.

2. Be organized. The reality is you juggle multiple important activities and projects. However, respect the fact you may be dealing with a potentially career-ending decision. Manage the process appropriately: don't rush the process, but don't take longer than needed. A prolonged and unorganized process can send the unintentional message the employee is not important or that you don't fully appreciate the significance of the process.

Conclusion

Organizations that follow CPR will see better reasonable accommodation decisions made and, when accommodation is not reasonable, they will benefit from their CPR investment directly through reduced employee/applicant anger, disagreement and litigation.

The CPR approach is not a complicated one in theory; however, once case-by-case details enter the picture it is all too easy for it to become convoluted. This is why a straightforward and consistently repeated process is imperative.

About Shaw HR Consulting

Shaw HR Consulting is a boutique Human Resources training and consulting firm consultancy specializing in Risk Management and California and federal Disability Laws. We serve private companies as well as more than 100 public sector organizations including cities, counties, school districts, utilities and colleges. With almost 20 years of experience, we are focused on helping our clients with specific cases as well as assisting in implementing best practice policies and procedures.