

October 19, 2012

TO: District Superintendents  
Chief Business Officials  
Maintenance and Operations Directors

FROM: Robert J. Kretzmer  
Director, Property and Liability

SUBJECT: P&L Update - The Interactive Process: A Quick Guide

Employee Practice Liability (EPL) claims present many challenges for SISC and our member districts. These cases raise questions concerning coverage and indemnity. It is essential that good communication between our office and our member district be established during the early stages of any employment practice liability claim presented to SISC.

The attached Guide prepared by Jill Williams, Attorney at Law, provides an overview of the Interactive Process—one of the key elements reviewed by SISC on almost all EPL claims referred to our office for handling.

Ms. Williams, a partner with the Law Offices of Carpenter, Rothans & Dumont, is an experienced attorney with expertise in the handling and defense of employment discrimination and retaliation lawsuits. She represents many public entities throughout Southern California. Ms. Williams welcomes any comments you may have concerning her Quick Guide on this important subject for our SISC members.

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Attachment

# The Interactive Process: A Quick Guide

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## When is it required?

- (1) When an employee makes a request for an accommodation; *or*
- (2) When the employer knows – or has reason to know – that an employee is unable to perform one or more of the essential functions of his or her job because of a disability.

The employer must engage in the interactive process even if the employee does not request an accommodation. If the employer has a reason to believe that an employee might require an accommodation, the employer should initiate the interactive process.

## What qualifies as a request for accommodation?

A “request” for an accommodation should be construed liberally and includes oral and written requests by an employee, by an employee’s healthcare provider, by a member of the employee’s family, or by another representative of the employee.

## What are the steps in the interactive process?

- (1) Analyze the employee’s job and determine the purpose and essential functions of the job;
- (2) Consult with the employee to ascertain the precise job-related limitations imposed by the employee’s disability and how those limitations could be overcome with a reasonable accommodation;
- (3) Identify potential accommodations and assess the effectiveness each possible accommodation would have in enabling the employee to perform the essential functions of the position; and
- (4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

## What are examples of reasonable accommodation?

- Job restructuring
- Reassignment to a vacant position
- Offering part-time or modified work schedules
- Providing qualified readers or interpreters
- Adjusting or modifying equipment or devices
- Providing reserved parking spaces
- Adjusting or modifying examinations, training materials or policies
- Leave of absence for a finite period
- Permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment

## What is not a reasonable accommodation?

- Creating a new position
- Giving an employee a second chance
- Adopting the most reasonable accommodation
- Accepting the employee's requested accommodation

## Dos and Don'ts

- **DO** seek technical assistance (i.e. from the EEOC, DFEH, local rehabilitation agencies or disability constituent organizations) if necessary to determine what accommodations are possible and appropriate.
- **DO NOT** make inquiries into the employee's disability that are not job-related or consistent with a business necessity.
- **DO** make a decision on a reasonable accommodation very soon after discussing the employee's request for accommodation with the employee. (The EEOC's internal guidelines require that accommodation decisions be made within 15 days-20 days.)
- **DO** identify specific, legitimate, non-discriminatory business reasons if any request for accommodation is denied.
- **DO NOT** evaluate an employee's job performance on the employee's ability to perform the essential functions of his or her job *without* accommodation.
- **DO NOT** evaluate employees with disabilities on a lower standard than other employees.
- **DO NOT** discipline employees with disabilities less severely than other employees.

## Online Resources & Guidance

EEOC - [http://www.eeoc.gov/laws/guidance/enforcement\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/enforcement_guidance.cfm)

DFEH - <http://www.dfeh.ca.gov/Publications.htm>

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10/19/2012