



ACTIVITIES TO PREVENT ACCIDENTS OR REDUCE THE COST OF ACCIDENTS IN THE WORKPLACE

An Overlap Between Workers' Compensation and California Fair Employment & Housing Act, FEHA

\$3,000,000 in Damages Against an Employer for Disability Discrimination Case

How to Return an Injured Employee to Work With-Out Getting Sued

An employee who is "disabled" as a result of industrial or non industrial injury has the right to be reinstated to an – existing job, modified job or alternative job as long as the employee can perform the "essential functions" of the position with or without a reasonable accommodation.

Employers must consider permanent modified duty or alternative assignments for workers who are not expected to sufficiently recover from their injuries enough to permit them to return to their original jobs.

Engage the Employee in an Interactive Process

FEHA does not explain how, but employers and employees must engage in an "interactive process" to determine how and if the employee's limitations may be accommodated. By requiring an "interactive" process, the law prevents employers from making any unilateral decisions. And it may require several meetings or discussions before any decisions are made. This process should include a comparison of the employee's abilities and limitations with their job tasks and physical requirements. The employer must then evaluate what reasonable accommodations to his or her current position could be made or if there are other positions within the organization they could reasonably undertake. Employers that make a good faith effort to engage the employee and document everything should have little to worry about.

Workers' Compensations Impact

Current Workers' Compensation Laws have replaced the old Vocational Rehabilitation System with a Supplemental Job Displacement Benefit Voucher Program. Your company now only has 10 days after an injured employee is released from Temporary Disability to advise them of the voucher program and 30 days to find and offer modified work if available. A documented interactive process would be required to defend your decisions on job accommodation should the employee pursue a lawsuit.

An Effective Keep At Work Program Can Protect Your Company. A Sample Program Can Be Found On The CompWest Web Page - For A Copy of The CompWest Guide Keep At Work, Click [Here](#).

Additional Information Can Be Found At the California EOC At

<http://www.dfeh.ca.gov/publications/publications.aspx?showPub=20>

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