

"But My Disability Made Me Do It"

Managing the Interactive Process
When Disability & Discipline Collide

Rachel Shaw March 25, 2023





Today's Topics

- ADA Compliance a Brief Overview
- The Disability Interactive Hallway®
- How the Hallway Works when Performance or Discipline Issues are at Play
- Making Reasonable Accommodation Decisions
- More scenarios
- Questions & Answers





Conference Materials

- Visit www.shawhrconsulting.com
- Click on: "Click Here to Download Conference Materials"
- Type in the conference code DMEC24Discipline, as well as your email, and click Submit.
- Information is located at bottom of table of contents handout.
- An automatic download will start.



General Information on Session

- I have not read your Personnel Rules or Collective Bargaining
 Agreements and best practices may conflict with your organization's rules
 or policies, so
- Before changing any practices, you are encouraged to consult with your legal counsel to determine if there are any meet and confer obligations and/or regulations that must be taken into consideration before changes are made.
- I am not an attorney.
- I knowingly violate every PowerPoint rule so that you have a tool and resource that you can reference in the future.
- Enjoy!



The Disability Interactive Process Hallway

WHEN DISABILITY & DISCIPLINE COLLIDE



ADA Obligations

Mandates of the Employer:

- Employers must engage in a timely good faith interactive process, and
- 2. Employers must provide reasonable accommodation

Each is a stand-alone statutory obligation



The 3 typical ways an employer is triggered to start a timely good faith interactive process:

- 1. Request for Accommodation
 - Applicant or employee verbalizes concern, regardless of the specific words they may use
- 2. Perception (Observation) of disability / Impacting work
 - Performance changes
 - Attendance problems / changes
 - Rumors, with an impact on work performance or availability
- 3. Knowledge of work restrictions / functional limitations impacting work
 - Medical Note listing work restrictions



- When triggered, you must start a timely good faith interactive process
- Pause discipline
- Just because you start the disability interactive process does not mean you believe that they need, or entitled to, reasonable accommodations
- You want to use the right tool



You MAY NOT ask questions to determine if a person is disabled, such as:

- What disability / condition they have / claim to have
- What treatment (medication, therapies, etc.) they are receiving
- If they have had a workers' compensation injury in the past
- What medication they are "on"



Human Resources / Risk Management WILL ask:

- For a note from a Health Care Provider indicating:
 - Covered Disability: Has a serious medical condition that impacts their ability to perform one or more of the essential functions of their job
 - Did the disability cause the alleged performance / attendance issues?
 - Work Restrictions / Leave Needs: What are their work restrictions / functional limitations / leave needs
 - Duration: What is the duration of work restrictions / functional limitations / leave

Discipline & Disability

Cases help us understand how Discipline and Disability interact:

- Gambini v. DaVita (Federal 9th Circuit Court of Appeals)
 - Court record found: "Conduct resulting from a disability is part of the disability and not a separate ground for termination." Triggers: Request and Knowledge
- Castaneda v. Board of Education of the City of Chicago (2019)
 - Court record found: "...if the facts of a situation are such that you would reasonably perceive the person as disabled under the ADA, then you should act accordingly." Triggers: Perception



Discipline & Disability

What We Feel:

- Pausing discipline can be frustrating
- There is a perception that starting the disability interactive process will add more time to the process.
- Not all doctors tell the truth

What We Know:

- Trust the process! We will show you the process today!
- You will never regret doing this right. I will bet a steak dinner on it!





Understanding the...

DISABILITY INTERACTIVE PROCESS



Interactive Process

Statutory Obligation # 1:

Provide a timely good faith interactive process



ADA

Mandates of the Employer Breakout:

- Employers must engage in a
 - Timely:
 - When triggered, you know it and you start the process
 - Don't intentionally or unintentionally delay take the time that is needed to do good work and find the right answer
 - Good Faith: Do the work to find a YES, your goal is to find reasonable accommodations regardless of the person
 - Interactive Process: Engage in the steps needed to support you and the employee to understand each other's opinions and gather needed data to support decision-making. The "Hallway!"

When Triggered

Use the Disability Interactive Process to gather data to determine if the claim/perception is accurate

Did their disability make them do it?





Disability Interactive Process Hallway

Door #1

Gather Data: Obtain Clear Medical Work Restrictions; May determine an Essential Functions Position Analysis® (EFPA®) document needs to be created

Door #2

Research Accommodations: Call/email/discuss with employee and supervisor the restrictions and begin exploring accommodation ideas

Door #3

Schedule Meeting & Prepare: Schedule meeting and invite the right people to attend; confirm attendance in advance; prepare notes for meeting; meeting and make decisions

Door #4

Do What You Said You Would Do: After meeting, implement decisions; do what was said would be done

When Triggered

- It is okay to have concerns about the legitimacy of the claim of disability, be candid about your concerns at the start
- Be open to being incorrect, know you must provide a goodfaith interactive process, regardless of your concerns
- Understand you must use the interactive process to confirm your assumptions
- Pause discipline and know that you may revise charges if the disability is impacting the employee



Reality Check

Be assured:

- The Disability Interactive Process & Progressive Discipline both have the same goal and needed outcome = performance standards being met. If the employee cannot meet performance or safety standards, they will be separated – medically or disciplinarily.
- Difference is how the employee gets there what TOOL is used:
 - Disability Interactive Process
 - Disciplinary Process



Remember WHY we do discipline.

It is not to terminate employees.



So, when triggered with a request, perception or knowledge that a disability may be impacting performance...

Get into the Disability Interactive Process Hallway!



The Foyer

Discuss with Employee:

- What triggered the pause in discipline and the Hallway being opened?
- Do you have concerns with their claim?
- What parts of their performance matter does the employee believe relates to their disability?
- What do they need to do?
- What will you do?
- Send letter to document conversation (sample 2)
- Move down the Hallway
- Don't underestimate the power of this step!



The Foyer

Template Introduction Letter - Discipline (sample 2)

Shaw HR Consulting, Inc.

Date

Employee Name Address Address

LETTER OF INTRODUCTION

Dear Mr./Ms. Name;

Thank you for taking the time to talk with me on Please allow this letter to serve as a follow-up to our conversation and as a more formal introduction of my role and the next steps of your interactive process with your employer. As shared, the Organization is aware you and your union representative(s) have indicated that you are in need of reasonable accommodations. Due to this claim, the Organization would like to begin this process to support them in determining if you are eligible for reasonable accommodation considerations. My role will be to assist your and your employer to engage in the Disability interactive Process in compliance with Title I of the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA).

Under the ADA/FEHA, your employer is essentially required by law to do the following upon knowledge that you may have a serious medical condition(s):

- Engage in a timely, good faith interactive process with employees/applicants in need of reasonable accommodation.
- 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.

It is my understanding that as part of a disciplinary process, which proposed your termination from employment with the Organization, you and/or your representative(s) indicated that some or all of the basis of your proposed personnel action related to a serious medical condition or conditions that you have. As shared, I will be working with you and your medical providers to provide your employer with clarification that will support them to determine:

- Do you have a physical or mental impairment that substantially limits your ability to engage in a major life activity, such as the ability to work, care for yourself, perform manual tasks, walk, see, hear, eat, sleep, or engage in social activities.
- 2. Does your impairment currently affect your ability to perform the essential functions of your position? If so,
- 3. Did your disability cause, partially or wholly, the alleged performance deficiencies identified by the employer.
- 4. If so, are there reasonable accommodations that if implemented, would support you to fully and safely perform the essential functions of your position with the same efficiency and effectiveness as others in your classification/job?

In support of the above exploration to occur, the Organization has agreed to suspend imposing the proposed disciplinary action and you are continuing to work or you will remain off work during this process. The Organization will suspend

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imposition of any disciplinary actions for the period of time it takes to support the Organization to evaluate the above 4 areas and as long as you actively participate in this process.

In talking with you on ______date, you shared you will gladly and actively participate in this process. We discussed the Organization needs to first determine if your past alleged performance deficiencies were caused partially ure wholly by a disability. We discussed that I would be creating a questionnaire for you to take to your health care providers whom you feel would be best suited to provide clarification on your work restrictions/functional limitations or your past leave and your future leave needs. You shared that you would be confortable to obtain this information and would think about which Health Care Provider(s) would be best to provide this information for you. We also discussed that the Organization will not be requesting any private or protected medical information pertaining to any possible diagnosis, condition or treatment.

Once the above activities are completed, and if the clarification is sufficient and confirms that your alleged performance issues relate to a covered disability, it is anticipated that an interactive process meeting will be scheduled with you. The meeting's purpose will be to comply with both requirements of the ADA/FEHA, and to explore reasonable accommodation options. An accommodation is deemed reasonable by law if it supports you in performing the essential functions of your classification, does not impose a significant difficulty or expense on your employer, or create a direct threat to yourself or others. The determination of what is a reasonable accommodation is made on a case-by-case basis and your input in this process is extremely immorrant.

didditionally, please be advised that your employer may elect to send you to a third party medical provider to obtain an observable to send you to a third party medical provider to obtain an observable to send this time if this step will be needed, but the Organization wants you to be aware that this option may be utilized if additional in this process.

As you are aware, the Organization has some questions about your claims that your disability is why the alleged performance declinencies occurred because dacipline meetings over the last two years and not once have you and your representatives indicated that you have a disability impacting your at work. Regardless of the Organization's concerns, the Organization is committed determining if you are entitled to, and in need of, reasonable accommodations and a modification to your proposed scirculine.

You may also want to do some research about this process and reasonable accommodation ideas. There are many resources that can assist you in your research and one resource that some persons find helpful is the Job Accommodation Network which can be accessed by calling 800.526.7234 or by visiting their website www.asiya.or.go.

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I am very pleased to be able to assist you with this important process. Please do not hesitate to contact me if you have any questions or need anything as we progress with this process. You can contact me directly at

Sincerely,

Name

Enc.: Disability Under the Fair Employment & Housing Act Pamphlet

cc: Employee's Representative Employee's Reasonable Accommodation / Medical File Employer Contact Employer Contact

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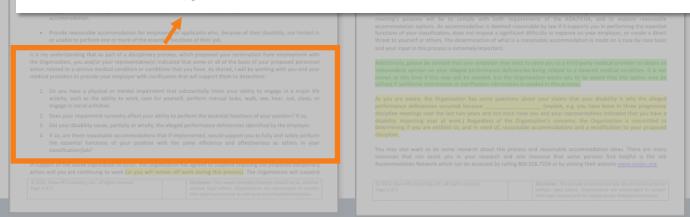
Page 3 of 3



Customize the language in the letter to address performance management specifically

It is my understanding that as part of a disciplinary process, which proposed your termination from employment with the Organization, you and/or your representative(s) indicated that some or all of the basis of your proposed personnel action related to a serious medical condition or conditions that you have. As shared, I will be working with you and your medical providers to provide your employer with clarification that will support them to determine:

- Do you have a physical or mental impairment that substantially limits your ability to engage in a major life activity, such as the ability to work, care for yourself, perform manual tasks, walk, see, hear, eat, sleep, or engage in social activities.
- 2. Does your impairment currently affect your ability to perform the essential functions of your position? If so,
- 3. Did your disability cause, partially or wholly, the alleged performance deficiencies identified by the employer.
- 4. If so, are there reasonable accommodations that if implemented, would support you to fully and safely perform the essential functions of your position with the same efficiency and effectiveness as others in your classification/job?

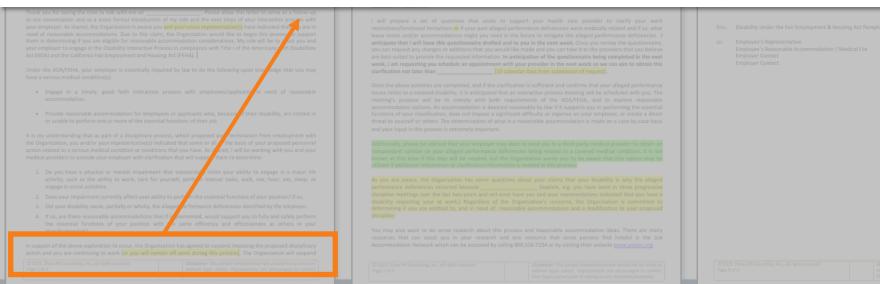




Ensure it is clear performance management will be paused while this process continues

Template Introduction Letter - Discipline (sample 2)

In support of the above exploration to occur, the Organization has agreed to suspend imposing the proposed disciplinary action and you are continuing to work [or you will remain off work during this process]. The Organization will suspend imposition of any disciplinary actions for the period of time it takes to support the Organization to evaluate the above 4 areas and as long as you actively participate in this process.

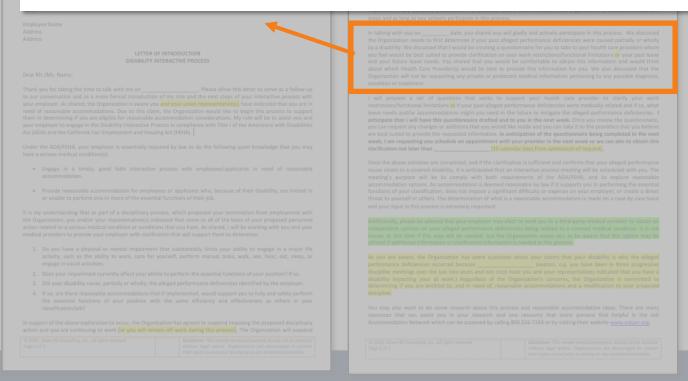






Document what you discussed and what they agreed to do next

In talking with you on _____ date, you shared you will gladly and actively participate in this process. We discussed the Organization needs to first determine if your past alleged performance deficiencies were caused partially or wholly by a disability. We discussed that I would be creating a questionnaire for you to take to your health care providers whom you feel would be best suited to provide clarification on your work restrictions/functional limitations or your past leave and your future leave needs. You shared that you would be comfortable to obtain this information and would think about which Health Care Provider(s) would be best to provide this information for you. We also discussed that the Organization will not be requesting any private or protected medical information pertaining to any possible diagnosis, condition or treatment.

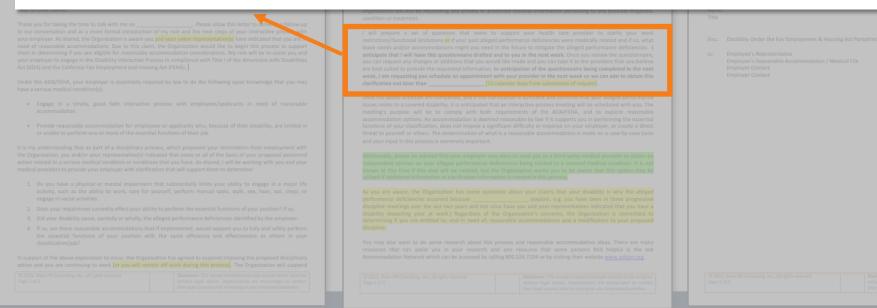






Be specific about what will happen next: Medical Questionnaire will be sent or is attached

I will prepare a set of questions that seeks to support your health care provider to clarify your work restrictions/functional limitations or if your past alleged performance deficiencies were medically related and if so, what leave needs and/or accommodations might you need in the future to mitigate the alleged performance deficiencies. I anticipate that I will have this questionnaire drafted and to you in the next week. Once you review the questionnaire, you can request any changes or additions that you would like made and you can take it to the providers that you believe are best suited to provide the requested information. In anticipation of the questionnaire being completed in the next week, I am requesting you schedule an appointment with your provider in the next week so we can aim to obtain this clarification not later than ______ [10 calendar days from submission of request].

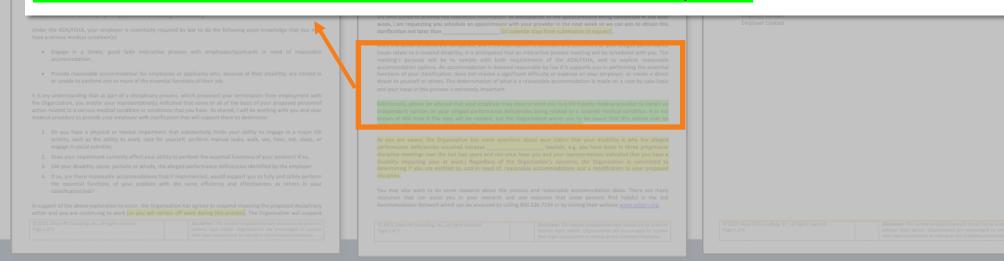




Explain what will happen after sufficient medical data is obtained

Once the above activities are completed, and if the clarification is sufficient and confirms that your alleged performance issues relate to a covered disability, it is anticipated that an interactive process meeting will be scheduled with you. The meeting's purpose will be to comply with both requirements of the ADA/FEHA, and to explore reasonable accommodation options. An accommodation is deemed reasonable by law if it supports you in performing the essential functions of your classification, does not impose a significant difficulty or expense on your employer, or create a direct threat to yourself or others. The determination of what is a reasonable accommodation is made on a case-by-case basis and your input in this process is extremely important.

Additionally, please be advised that your employer may elect to send you to a third-party medical provider to obtain an independent opinion on your alleged performance deficiencies being related to a covered medical condition. It is not known at this time if this step will be needed, but the Organization wants you to be aware that this option may be utilized if additional information or clarification information is needed in this process.

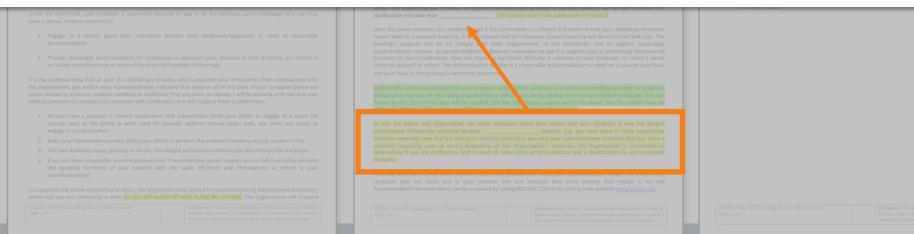




If you have concerns about legitimacy, be candid about this

Template Introduction Letter - Discipline (sample 2)

As you are aware, the Organization has some questions about your claims that your disability is why the alleged performance deficiencies occurred because _______ (explain, e.g. you have been in three progressive discipline meetings over the last two years and not once have you and your representatives indicated that you have a disability impacting your at work.) Regardless of the Organization's concerns, the Organization is committed to determining if you are entitled to, and in need of, reasonable accommodations and a modification to your proposed discipline.





Disability Interactive Process Hallway

Door #1

Gather Data: Discipline / Disability Questionnaire – TODAY'S FOCUS

Door #2

Research Accommodations / Share Information Received: Share the completed questionnaire answers.

Door #3

Schedule Meeting & Prepare: Schedule meeting and invite the right people to attend; Prepare meeting notes and be prepared to discuss what is medically possible and what is not.

Door #4

Do What You Said You Would Do: After meeting, implement decisions; do what was said would be done – which might include preparing for separation or a full return to work.



What happens at Door #1?

Obtain Necessary Documentation/Information

- Medical report with:
 - Serious medical condition impacting work and performance
 - Yes/No answer
 - ✓ Were performance issues related to disability?
 - ✓ Clear work restrictions & duration
 - ✓ Leave needs & duration
- Essential Functions Position Analysis® (EFPA®)
 - Understand and document the Essential Functions of the job description/classification and the particular assignment





- If more than one performance deficiency, you've established what actions/behaviors or performance deficiencies claims are related to their disability
- Make two lists:
 - Related to disability; start the The Hallway
 - Not related to disability; continue discipline (is this enough)
- Only once you have this list start clarifying medical need for work restrictions/functional limitations for disabilities





Don't Cut Corners... Prepare and Send a Questionnaire for Health Care Provider to Complete



- Discipline / Disability Questionnaire (sample 3)
- Intermittent Leave Questionnaire (sample 4)

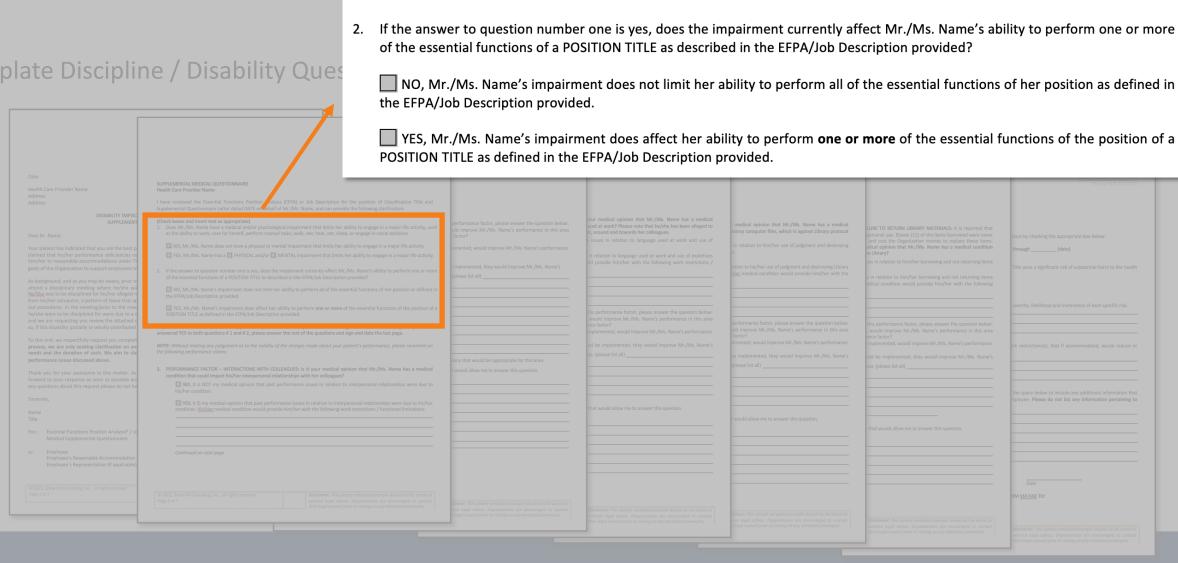




Template Discipline / Disability Questionnaire (Sample 3)

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Date				Phone: 805.498.9400	www.shawhrconsulting.com Phone: 805,498,9400	Shaw HR Consulting, Inc. www.shawhrconsulting.com
						Phone: 805.498.9400
Health Care Provider Name Address SENT VIA FAX TO:						
Address	cription for the position of Classification Title and can provide the following clarification:					
DISABILITY IMPACTING PERFORMANCE CLAIM CLARIFICATION:			rour medical opinion that Mr./Ms. Name has a medical			
SUPPLEMENTAL MEDICAL QUESTIONNAIRE REQUEST	imits her ability to engage in a major life activity, such	performance factor, please answer the question below: uld improve Mr./Ms. Name's performance in this area	used at work? Please note that he/she has been alleged to at, around and towards her colleagues.	 medical opinion that Mr./Ms. Name has a medical estroy computer files, which is against Library protocol 	LURE TO RETURN LIBRARY MATERIALS: It is reported that	
Dear Dr. Name:	r, eat, sleep, or engage in social activities.	factor?	e issues in relation to language used at work and use of		personal use. Eleven (11) of the items borrowed were never and cost the Organization monies to replace these items.	tions by checking the appropriate box below:
Your patient has indicated that you are the best person to comment on his/her claimed disability. Specifically, your patient has	limits her ability to engage in a major life activity.	lemented, would improve Mr./Ms. Name's performance		in relation to him/her use of judgment and destroying	edical opinion that Mr./Ms. Name has a medical condition ne Library?	through (date)
claimed that his/her performance deficiencies relate to a disability that you are treating him/her for and that would entitle him/her to reasonable accommodations under Title I of the Americans with Disabilities Act (ADA) and be consistent with the	that limits her ability to engage in a major life activity.		in relation to language used at work and use of expletives uld provide him/her with the following work restrictions /		ues in relation to him/her borrowing and not returning items	
goals of the Organization to support employees to continue working and/or return to work with reasonable accommodations.	affect Mr./Ms. Name's ability to perform one or more	implemented, they would improve Mr./Ms. Name's		lation to his/her use of judgment and destroying Library Her, medical condition would provide him/her with the		Title pose a significant risk of substantial harm to the health
As background, and as you may be aware, prior to Mr./Ms. Name going off work in November, 2019, he/she was scheduled to	Description provided?	(please list all)			s in relation to him/her borrowing and not returning items edical condition would provide him/her with the following	
attend a disciplinary meeting where he/she was aware he/she would be disciplined and likely terminated from service. He/She was to be disciplined for his/her alleged negative interactions with co-workers, use of expletives at work, deleting files	of the essential functions of her position as defined in					
from his/her computer, a pattern of leave that appeared to coordinate with weekends and holidays and failure to follow call- out procedures. In the meeting/prior to the meeting, Mr./Ms. Name informed the Organization some if not all of the issues	or more of the essential functions of the position of a					severity, likelihood and imminence of each specific risk.
he/she were to be disciplined for were due to a disability. The Organization has paused discipline with this claim of disability, and we are requesting you review the attached questionnaire to clarify if your patient has a serious medical condition and if	d mare of the essential faretons of the position of a		his performance factor, please answer the question below: would improve Mr./Ms. Name's performance in this area			
and we are requesting you review the attached questionnaire to clarify if your patient has a serious medical condition and if so, if this disability partially or wholly contributed to the alleged performance deficiencies.	aire and sign and date the last page. If you have		ince factor?	performance factor, please answer the question below: uld improve Mr./Ms. Name's performance in this area	this performance factor, please answer the question below: , would improve Mr./Ms. Name's performance in this area	
To this end, we respectfully request you complete the attached Medical Questionnaire Form. Please note that as part of this	stions and sign and date the last page.		mplemented, would improve Mr./Ms. Name's performance	factor? emented, would improve Mr./Ms. Name's performance	ance factor?	
process, we are only seeking clarification on your patient's possible work restrictions, functional limitations and/or leave needs and the duration of such. We aim to clarify if there is a disability that has partially or wholly caused the alleged	out your patient's performance, please comment on		uld be implemented, they would improve Mr./Ms. Name's		implemented, would improve Mr./Ms. Name's performance	ork restrictions(s), that if accommodated, would reduce or
performance issues discussed above.		tions that would be appropriate for this area.	as: (please list all)	be implemented, they would improve Mr./Ms. Name's (please list all)	uld be implemented, they would improve Mr./Ms. Name's	
Thank you for your assistance in this matter. As further decisions regarding accommodation are pending your reply, I look	medical opinion that Mr./Ms. Name has a medical	t would allow me to answer this question.		(piease list all)	eas: (please list all)	
forward to your response as soon as possible and not later than 10-calendar days from the date of this notice. If you have any questions about this request please do not hesitate to contact me directly at	relation to interpersonal relationships were due to					
Sincerely.		_				the space below to include any additional information that mployee. Please do not list any information pertaining to
,,	on to interpersonal relationships were due to his/her flowing work restrictions / functional limitations:		that would allow me to answer this question.			inproyee. Please do not list any information pertaining to
Name Title				t would allow me to answer this question.	_	
Enc.; Essential Functions Position Analysis® / Job Description					that would allow me to answer this question.	
Medical Supplemental Questionnaire						
cc: Employee						
Employee's Reasonable Accommodation / Medical File Employee's Representative (if applicable)						
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Page 1 of 7 without legal advice. Organizations are encouraged to contact their legal counsel prior to relying on any templates/examples.	er: This sample template/example should not be acted on legal advice. Organizations are encouraged to contact					RM <u>VIA FAX</u> TO:
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Template Discipline / Disability Ques



1. Does Mr./Ms. Name have a medical and/or psychological impairment that limits her ability to engage in a major life activity, such

NO, Mr./Ms. Name does not have a physical or mental impairment that limits her ability to engage in a major life activity.

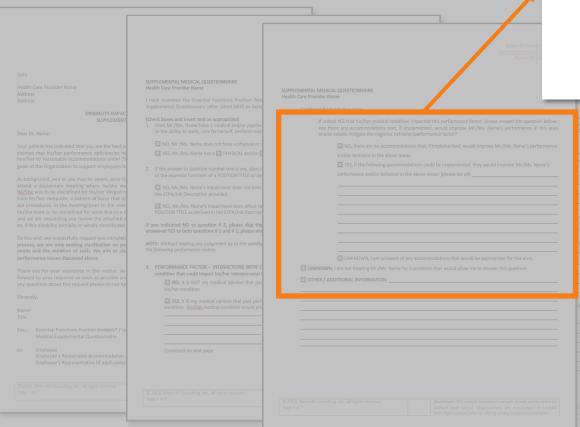
YES, Mr./Ms. Name has a PHYSICAL and/or MENTAL impairment that limits her ability to engage in a major life activity.

as the ability to work, care for herself, perform manual tasks, walk, see, hear, eat, sleep, or engage in social activities.

(Check boxes and insert text as appropriate)

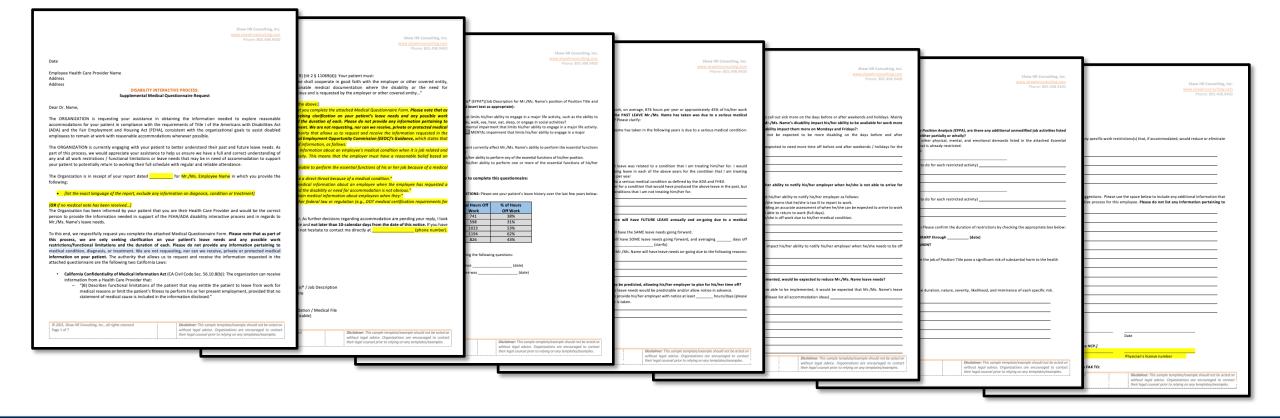
3. PERFORMANCE FACTOR - INTERACTIONS WITH COLLEAGUES: Is it your medical opinion that Mr./Ms. Name has a medical condition that could impact his/her interpersonal relationships with her colleagues? NO, it is NOT my medical opinion that past performance issues in relation to interpersonal relationships were due to his/her condition. YES, it IS my medical opinion that past performance issues in relation to interpersonal relationships were due to his/her condition. His/Her medical condition would provide him/her with the following work restrictions / functional limitations: If stated YES that his/her medical condition impacted this performance factor, please answer the question below: Template Discipline / Disability Questionnaire (s Are there any accommodations that, if implemented, would improve Mr./Ms. Name's performance in this area and/or totally mitigate the negative behavior/performance factor? NO, there are no accommodations that, if implemented, would improve Mr./Ms. Name's performance and/or behavior in the above areas. YES, if the following accommodations could be implemented, they would improve Mr./Ms. Name's performance and/or behavior in the above areas: (please list all) UNKNOWN, I am unaware of any accommodations that would be appropriate for this area. UNKNOWN, I am not treating Mr./Ms. Name for a condition that would allow me to answer this question. OTHER / ADDITIONAL INFORMATION:

Template Discipline / Disability Questionnaire (sample



4.	PERFORMANCE FACTOR – USE OF EXPLETIVES AT WORK: Is it your medical opinion that Mr./Ms. Name has a medical condition that could impact his/her communication and language used at work? Please note that he/she has been alleged to have used expletives such as the "f" word, "a" word and "b" word at, around and towards her colleagues.										
	NO , it is NOT my me expletives were due to his/		ormance issues in relation to la	inguage used at work and use of							
	YES, it IS my medical opinion that past performance issues in relation to language used at work and use of expletives were due to his/her condition. <u>His/Her</u> medical condition would provide him/her with the following work restrictions / functional limitations:										
	Are there any acc and/or totally miti NO, the and/or be YES, in performa	commodations that, if implement of the negative behavior/penere are no accommodations that in the above areas. If the following accommodations are and/or behavior in the above areas.	nented, would improve Mr./Ms. erformance factor? that, if implemented, would imp ons could be implemented, the	please answer the question below: Name's performance in this area rove Mr./Ms. Name's performance y would improve Mr./Ms. Name's							
	OTHER / ADDITIONAL I	NFORMATION:									
elow: area ance	sur medical opinion that Mr/Ms. Name has a medical tied at work? Please note that he/she has been alleged to transcription and towards her colleagues. Issues in relation to language used at work and use of n relation to language used at work and use of expletives d provide him/her with the following work restrictions /	medical opinion that Mr./Ms. Name has a medical stroy computer files, which is against Library protocol in relation to him/her use of judgment and destroying n. ation to his/her use of judgment and destroying Library Djg, medical condition would provide him/her with the	LURE TO RETURN LIBRARY MATERIALS: It is reported that bersonal use. Eleven (11) of the items borrowed were never and cost the Organization monies to replace these items ideal opinion has Mr./Mrs. Name has a medical condition as thorapy? uses in relation to him/her borrowing and not returning Items in relation to him/her borrowing and not returning Items edical condition would provide him/her with the following	tions by checking the appropriate box below: through(date) Title pose a significant risk of substantial harm to the health							
		performance factor, please answer the question below: aid improve Mr./Ms. Name's performance in this area factor? emented, would improve Mr./Ms. Name's performance be implemented, they would improve Mr./Ms. Name's please list all)	this performance factor, please answer the question below: would improve Mr./Ms. Name's performance in this area nrce factor? implemented, would improve Mr./Ms. Name's performance uld be implemented, they would improve Mr./Ms. Name's eas: (please list all)	severity, likelihood and imminence of each specific risk.							
	that would allow me to answer this question.	would allow me to answer this question.	that would allow me to answer this question.	the space below to include any additional information that reployee. Please do not list any information pertaining to							
	Alsolatiners this sample template/example should not be acted on without legal ordine. Dispositions on example to sense of the acted on without legal ordine point an object go on the template commodes.	sines: This sample template/example should not be octed on our legal adules. Organizations are encouraged to contact legal counses from perhysic on unpresented reasons.	Disclaimer This sample template/example should not be acted on without legal advice. Organizations are encouraged to prince!	Date RM <u>VIA FAX</u> TO:							
			their regal counsel prior to relying on any templates/examples.	without legal advice. Organizations are encouraged to contact their legal counsel prior to relying on any templates/examples.							

Long-Term Intermittent Leave (sample 4)

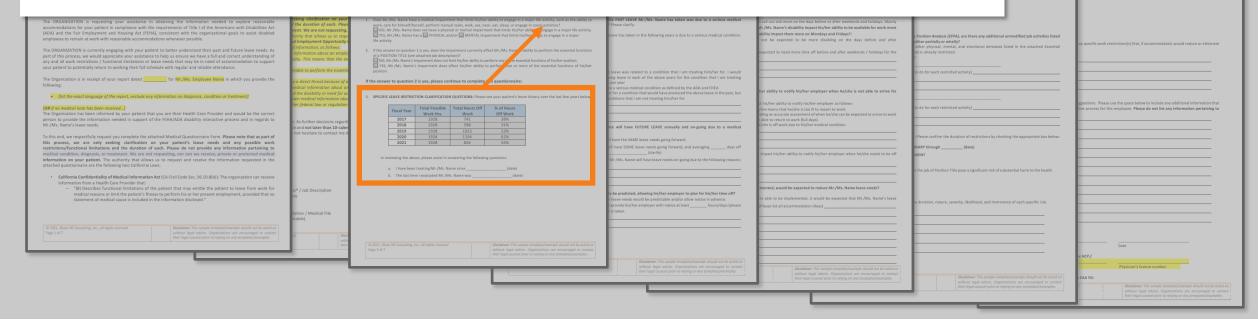


3. SPECIFIC LEAVE RESTRICTION CLARIFICATION QUESTIONS: Please see your patient's leave history over the last few years below:

Fiscal Year	Total Possible Work Hrs.	Total Hours Off Work	% of Hours Off Work		
2020	1928	741	38%		
2021	1928	598	31%		
2022	1928	1023	53%		
2023	1928	1194	62%		
2024	964	414	43%		

In reviewing the above, please assist in answering the following questions:

- a. I have been treating Mr./Ms. Name since _____ (date)
- b. The last time I evaluated Mr./Ms. Name was _____ (date)



c. Mr./Ms. Name has been absent from work, on average, 876 hours per year or approximately 45% of his/her work year. Is it your medical opinion that the PAST LEAVE Mr./Ms. Name has taken was due to a serious medical condition you are treating him/her for? Please clarify:								
	medical condition: 2020 2021 2022 2023 2024			ng years (mark all that apply) is due to a s				
				dition that I am treating him/her for. I				
			the ab	ove years for the condition that I am t	reating			
		ays per year		and defined by the ADA and EUSA				
				n as defined by the ADA and FHEA	act but			
	I cannot comment if he/she has othe			have produced the above leave in the pa	ist, but	_		
	Additional Clarification	i conditions that rain not	. ti cati	ng minyher for.	Shaw HR Consulting, Inc.			
	DIABILITY BINERACTIVE PROCESS. Sunnigmental Medical Questionaire Benuest	inus and is requested by the employer or other covered entity. "		Euralumantal Medical Quantitannina	www.shawhrconsulting.com Phone: 805.498.9400	Shaw NR Consulting, Inc. www.shawhroonsulting.com Phone: 805.498.9400	Shaw HR Consulting, Inc. www.shawhrconsulting.com	
ı	Supplemental Medical Questionnaire Request Dear Dr. Name,	the above:] It you complete the attached Medical Questionnaire Form. Please method as	is* (EFPA*)/Job De d insert text as app	Suppresental medical questionnaire Health Care Provider Name C. Mr./Ms. Name has been absent from work, on average, 876 hours per year or approximately 45% of his/her work.			7900e: 803,498,3400	
ı	The ORGANIZATION is requesting your assistance in obtaining the information needed to explore reasonable accommodations for your patient in compliance with the requirements of Title I of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA), consistent with the organizational goals to assist disabled	eeking clarification on your patient's leave needs and any possible. The if the duration of each. Please do not provide any information pertaining a nent. We are not requesting, nor can we receive, private or protected medical harity that allows us to request and receive the information requested in the	at limits his/her at ks, walk, see, hear, mental impairmen MENTAL impair	year. Is it your medical opinion that the PAST LCAVE Mr./Ms. Name has taken was due to a serious medical condition you are treating him/mer for Please clarify. [2] YES, ALL of the leave that Mr./Ms. Name has taken in the following years is due to a serious medical condition:	a call out sick more on the days before or after weekends and holidays. Mainly Ar./Ms. Name's disability impact his/her ability to be available for work more ability impact them more on Mondays and Fridays?:	s Position Analysis (EFPA), are there any additional unmodified job activities listed		
ı	employees to remain at work with reasonable accommodations wherever possible. The ORGANIZATION is currently engaging with your patient to better understand their past and future leave needs. As part of this process, we would appreciate your assistance to help us ensure we have a full and correct understanding of	al Employment Opportunity Commission (EEOC)'s Guidance, which states that d information, as follows: information about an employee's medical condition when it is job related and scale. This means that the employer must have a reasonable helief based on	ent current. He	(mark all that apply)	not be expected to be more disabling on the days before and after expected to need more time off before and after weekends / holidays for the	ather partially or wholly? other physical, mental, and emotional demands listed in the attached Essential tal is already restricted.	my specific work restrictions(s) that, if accommodated, would reduce or eliminate	
ı	any and all work restrictions / functional limitations or leave needs that may be in need of accommodation to support your patient to potentially return to working their full schedule with regular and reliable attendance. The Organization is in recept of your report dated for Mr./Ms. Employee Name in which you provide the	nable to perform the essential functions of his or her job because of a medical	his/her ability to peri	3020		to do for each restricted activity)		
ı	following: Bits the exact language of the report, exclude any information on diagnosis, condition or treatment)	e a arrect threat pecause of a menical condition." medical information about an employee when the employee has requested a d the disability or need for accommodation is not obvious." gain medical information about employees when they:"	STIONS: Please see	him/her for:days per year	her ability to notify his/her employer when he/she is not able to arrive for			
ı	OR if no medical note has been received. The Organization has been informed by your patient that you are their Health Care Provider and would be the correct person to provide the information needed in support of the FEHA/ADA disability interactive process and in regards to	her federal law or regulation (e.g., DOT medical certification requirements for Ir. As further decisions regarding accommodation are pending your reply. I look	al Hours Off Work 741	Ladotional Carification	this/her ability to notify his/her employer as follows: // this/her ability has been been been been been accurate assessment of when he/she can be expected to arrive to work able to return to work (full days).	to do for each restricted activity)	ggestions: Please use the space below to include any additional information that tive process for this employee. Please do not list any information pertaining to	
ı	Mr./Ms. Name's leave needs. To this end, we respectfully request you complete the attached Medical Questionnaire Form. Please note that as part of this process, we are only seeking clarification on your patient's leave needs and any possible work	le and not later than 10-calendar days from the date of this notice. If you have not hesitate to contact me directly at	1023 1194 826	condition(s)? YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.	s/she is off work due to his/her medical condition.	Please confirm the duration of restrictions by checking the appropriate box below:		
ı	restrictions/functional limitations and the duration of each. Please do not provide any information pertaining to medical condition, diagnosis, or treatment. We are not requesting, nor can we receive, private or protected medical information on your patient. The authority that allows us to request and receive the information requested in the attached questionnaire are the following two california Laws:		ing the following o	The species of the species of Mr./Ms. Name will have SOME leave needs giving forward, and averaging days off per year OR (starfty) (starfty) NO, it is not medically expected that Mr./Ms. Name will have leave needs on-going due to the following reasons:	impact his/her ability to notify his/her employer when he/she needs to be off	NRARY through (date)		
ı	California or the including law calcinoma tasks. California Confidentiality of Medical Information Act (CA Civil Code Sec. 56.10.8(b)): The organization can receive information from a Health Care Provider that: — "(8) Describes functional limitations of the patient that may entitle the patient to leave from work for		nce			n the job of Position Title pose a significant risk of substantial harm to the health		
ı	— "(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons of limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed."	is* / Job Description ire		 a. Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off? NO.1 k would not be expected his/her leave needs would be predictable and/or allow notice in advance. Y.S. Mr./Ms. Name should be able to provide his/her employer with notice at least. 	mented, would be expected to reduce Mr./Ms. Name leave needs? re able to be implemented, it would be expected that Mr./Ms. Name's leave [Please list all accommodation ideas]	e duration, nature, severity, likelihood, and imminence of each specific risk.		
ı		dation / Medical File (cable)		circle one] before his/her need for leave is taken. OTHER (additional Information)				
	Page 1 of 7 without days declare. Cognitionism are more product on the declared of a central of	rd Disclaimer: This sample template/example should not be acted on without legal advice. Organizations are encuraged to contact their legal coursel prior to relying on any templates/examples.					Date	
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				their logal counsel prior to relying on any templates/acomples.	What legal dutic. Organizations are encuraged to calcular their legal coursel prior to relying an any templates/examples.	Disclaimer: This sample template/example should not be acted an without legal advice. Organizations are encouraged to contact; their legal course froit to relating on any templates/examples.	FAX TO: Disclaimer: This sample template/example should not be acted on	
						uses regul courses phor to relying on any templatesy examples.	The temporary country and the other on	

d.	Is it medically expecte condition(s)?	d Mr./Ms. Name w	vill ha	ave FUTURE LEAVE annually a	nd on-going due t	o a medical				
	YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.									
	YES, it is expected M	Ir./Ms. Name will ha	ve SO	ME leave needs going forward, (clarify)	and averaging	days off				
						-1				
Address	DISABLITY INTERACTIVE PROCESS: Supplemental Medical Questionnaire Request	onable medical documentation where the disability or the need for our and is requested by the employer or other covered entity*	is* (EFPA*)/Job De	Supplemental Medical Questionnaire Health Care Provider Name		Country In.				
accommodations (ADA) and the Fi employees to ren The ORGANIZATI part of this proce any and all work your patient to pi The Organization following:	ION is requesting your assistance in obtaining the information needed to explore reasonable for your patient in compliance with the requirements of Tritle I of the Americans with Disabilities Act air Employment and Housing Act (FEHA), consistent with the organizational goals to assist disabled minist work with resonable accommodations whenever possible. One six contently engaging with your patient to better understand their past and fidure leave needs. As six, we would approxise your assistance help us ensure we have a full and correct understanding of restrictions / functional limitations or leave needs that may be in need of accommodation to support obstailing visitum to working their full schedule with regular and neilable attendance. It is in receipt of your report dated for Min. Am. Simployee Name in which you provide the season of language of the report, exclude any information on diagnosis, condition or treatment)	is above?] I to a complete the attached Medical Guestionnaire form. Please note that as white group and the properties of the control pertaining to reserve the end of the control of the	is "(EFPA"//ob bt insert text as apt at limits his/her a x, walk, see, hear, mental impairment affects his/her ability to per his/her ability to per his/her ability to a to complete the STIONS: Please see	Health. Care Provider Name W. M.M. N. Nur O been alsent from work, on average, 876 hours per year or approximately 47% of higher work year. Is it year of decided poision that the PAST CLAY Mr./Mn. Name has taken was due to a serious medical condition you as least per high more from Passa clarify. W. S. A.L. of the P. In, that Mr./Mn. Name has taken in the following years is due to a serious medical condition: (passe sit has a line of the passe of the passes clarify.) W. S. A.L. of the P. In, that Mr./Mn. Name has taken in the following years is due to a serious medical condition: (passe sit has a line of the passes of the	a call out six more on the days before or after weekends and holidays. Mainly Afr, Mis. Name's disability impact this/her ability to be available for work more ability impact them more on Mondays and Fridays? not be expected to be more disability on the days before and after respected to need more time off before and after weekends. / holidays for the ther ability to notify his/her employer when he/she is not able to arrive for this/her ability to notify his/her employer as follows:	a pushion Analysis (EFPA), are there any additional unmodified job activities listed sibble partially or wheely? Other physical, meetal, and emotional demands listed in the attached Executal but is already restricted. To do for each restricted activity)	ny specific work restrictions(s) that, if accommodate			

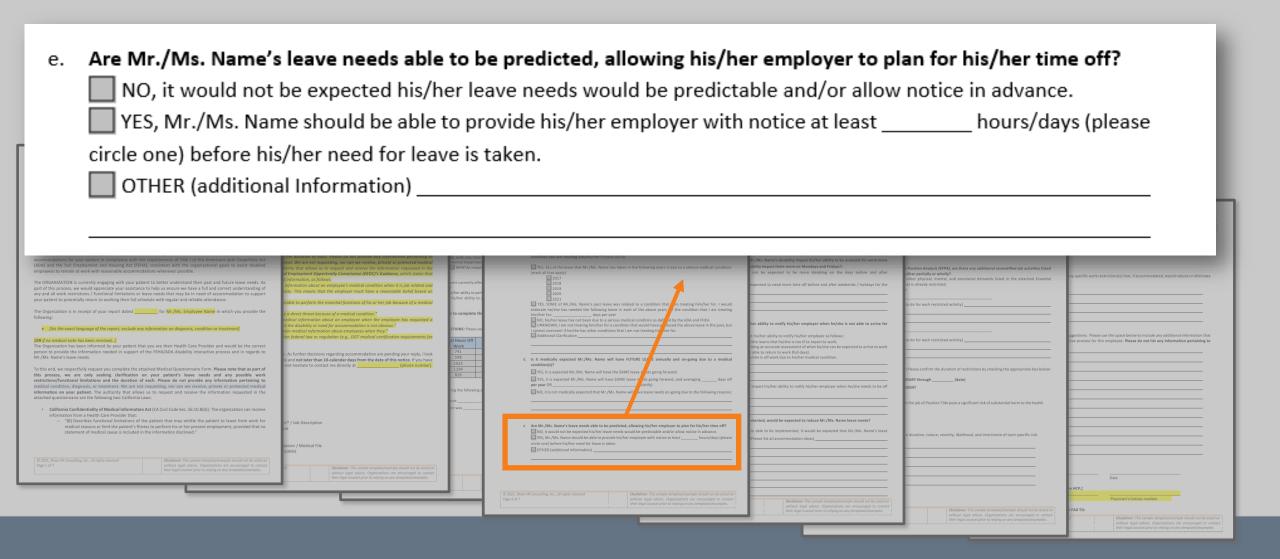
 ted, would be expected to reduce Mr./Ms. Name leave needs?

California Confidentiality of Medical Information Act (CA Civil Code Sec. 56.10.8(b)): The organization can receive information from a Health Care Provider that:

— "(B) Describes furcificial influtions of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or he present employment, provided that no statement of medical cause is cludded in the information disclosed."

is® / Job Description

y additional information that by information pertaining to



[OPTIONAL QUESTION] Your patient seems to call out sick more on the days before or after weekends and holidays. Mainly missing work on Mondays and Fridays. Does Mr./Ms. Name's disability impact his/her ability to be available for work more on certain days over others? Would their disability impact them more on Mondays and Fridays?: NO, Mr./Ms. Name's disability would not be expected to be more disabling on the days before and after holidays/weekends. YES, Mr./Ms. Name's disability would be expected to need more time off before and after weekends / holidays for the following reasons: e medical documentation where the disability or the need for not later than 10-calendar days from the date of this notice. If you have medical condition, diagnosis, or treatment. We are not requesting, nor can we receive, private or protected medical information on your patient. The authority that allows us to request and receive the information requested in the

g.	Does Mr./Ms. Name's disabil	ity impact his/her ab	ility to notify his/h	er em	ployer when he/she is not able t	o arrive for	
	work? Please clarify:					_	
	YES, Mr./Ms. Name's disab	ility does impact his/h	ner ability to notify h	is/her	employer as follows:	_	
		ployer once he/she le				_	
					when he/she can be expected to a	rive to work	
	<u> </u>	he/she may be able t			_		
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	work for a partial or full day						
	OTHER	pnable medical documentation where the disability or the need for				Shaw HR Consulting, Inc.	Shaw Hill Consulting, Inc.
	Donolassi et et reductive erholessie Supplemental Medical Questionnaire Request ear Dr. Name,	ious and is requested by the employer or other covered entity" he above: It you complete the attached Medical Questionnaire Form. Please note that as	is® (EFPA®)/Job Description for Mr./Ms. Name's position of Position Title and a Insert text as appropriate):	rork, on average, 876	Supple Zal Medical Questionnaire Health Cure voider's Name		Phone: 805.498.9420
	he OBGANIZATION is requested your assistance in obtaining the information needed to explore reasonable representation of the properties of	eking clarification on your patient's leave needs and any possible work I the duration of each. Please do not provide any information pertaining to nent. We are not requesting, nor can we receive, private or protected medical harity that allows us to request and receive the information requested in the	at limits his/her ability to engage in a major life activity, such as the ability to it, walk, see, hear, ext, sleep, or engage in social activities? mental Impairment that limits his/her ability to engage in a major life activity. MENTAL impairment that limits his/her ability to engage in a major	the PAST LEAVE Mr./ ? Please clarify: lame has taken in the	f. JOPTONAL or ACTON) Your patient seems to call out tak more on the days before or after weekends and holders. Mainly missing work on any July and Pristage, Dear MAN, Namer's shadility inject help'ne ability to be available for work more on certain days over 0 at 2 Woold that disability impact them more on Mondays and Fridays?. I No M. M. M. M. M. M. M. M. M. And to be expected to the more disability on the days before and after	a Position Analysis (EFPA), are there any additional unmodified job activities listed	
,	he ORGANIZATION is currently engaging with your patient to better understand their past and future leave needs. As art of this process, we would appreciate your assistance to help us ensure we have a full and correct understanding of ny and all work restrictions / functional limitations or leave needs that may be in need of accommodation to support	al Employment Opportunity Commission (EEOC)'s Guidance, which states that d information, as follows: information about an employee's medical condition when it is job related and sity. This means that the employer must have a reasonable belief based on	ent currently affect Mr./Ms. Name's ability to perform the essential functions s/her ability to perform any of the essential functions of his/her position.		In No., Inc., No., No., No., No., No., No., No., No	aither partially or whoily? Other physical, mental, and emotional demands listed in the attached Essential nat is already restricted.	my specific work restrictions(s) that, if accommodated, would reduce or eliminate
У	our patient to potentially return to working their full schedule with regular and reliable attendance. the Organization is in receipt of your report dated for Mr.AMs. Employee Name in which you provide the	nable to perform the essential functions of his or her job because of a medical e a direct threat because of a medical condition."	his/her ability to perform one or more of the essential functions of his/her to complete this questionnaire:	t leave was related to ving leave in each of oper year		to do for each restricted activity)	
	Pit the exact longuage of the report, exclude any information on diagnosis, condition or treatment)	nedical information about an employee when the employee has requested a id the disability or need for accommodation is not obvious." tain medical information about employees when they:" her federal law or regulation (e.g., DOT medical certification requirements for	STIONS: Please see your patient's leave history over the last few years below:	to a serious medical c er for a condition that onditions that I am no	g. Does Mr./Ms. Name's disability impact his/her ability to notify his/her employer when he/she is not able to arrive for work? Please clarify: T. R.	to do for each certified which)	ggestions: Please use the space below to include any additional information that
1	to find the design of the control of the control of the first you are their Health Care Provider and would be the correct error to provide the information needed in support of the FEHA/ADA disability interactive process and in regards to find. Mr. Num's is owner needs.	r. As further decisions regarding accommodation are pending your reply, I look le and not later than 10-calendar days from the date of this notice. If you have	Work Off Work 741 38% 598 31%	me will have FUTUF	Calling his/her employer once he/she learn that he/she is too! It is report to work. Calling his/her employer and providing an accurate assessment of when he/she can be expected to arrive to work to the call the state of the she he/she may be able to return to work (thi disps). Provides a medical incidence when he/she and of lower dude to behind medical condition.		the process for the employee, Prease ou not not any minimation pertaining to
Ĭ	oth is end, we respectfully request you complete the attached Medical Questionnaire form. Please note that as part of its process, we are only seeking carlification on your pattern's leave needs and any possible work strictions/functional limitations and the duration of each. Please do not provide any information pertaining to edical condition, diagnosis, or treatment. We are not requesting, nor can we receive, private or protected medical	not hesitate to contact me directly at(phone number),	1194 62% 826 43%	II have the SAME leav	NO, Mr./Ms. Name's disability DOES NOT impact his/her ability to notify his/her employer when he/she needs to be off	; Please confirm the duration of restrictions by checking the appropriate box below: ### ### ### #### ###################	
is a	formation on your patient. The authority that allows us to request and receive the information requested in the tacked questionaries are the following the call official saves: **California Confidentiality of Medical Information Act (CA.Civil Code Sec., 56.10.8(b)): The organization can receive		ing the following questions: nce(date) ne was(date)	Mr./Ms. Name will h	work for a partial or full day	n the job of Position Title pose a significant risk of substantial harm to the health	
	information from a Health Care Provider that: - "(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed."	is* / Job Description		to be predicted, allow	h. Are there any accommodations that, if implemented, would be expected to reduce Mr./Ms. Name leave needs? No, there are no alternatives to leave. YES, if the following excommodations were able to be implemented, it would be expected that Mr./Ms. Name's leave		
		dation / Medical File (cable)		a provide his/her emp e is taken.	would be reduced by as much as	e duration, nature, severity, likelihood, and imminence of each specific risk.	
	C 2021. Show IN Comulaing, Inc., of rights reserved Distribution: This sample templating are encouraged to extend or stated and stated and the completion are encouraged to extend and stated and part of the completion and encouraged to extend their legal courses patrix to refyring on any templates/complete.	id Disclaimer: This sample template/example should not be acted on without legal advice. Organizations are encuraged to contact their legal coursel prior to relation an are translated-law marks.	Disclaimer: This sample template/coursels should not be acted on				Date
			without legal advice. Organizations are encouraged to centrat their legal counsel prior to relying on any templotes/examples.	Disc with	(6 XXII. Show HR Consultino, loc. oil notes reserved : Disclatinor: This carrole terministic-becoming should not be cated on		e HCP.] Physician's license number
				their	Page 5 of 7 without legal calcie. Departations are excuraged to contact their legal caused prior to relying on any templates/excamples.	Disclaimer: This sample template/example should not be acted an without legal advice. Organizations are encouraged to contact their legal coursel prior to relving an any templates/examples.	FAX TO: Disclaimer: This sample template/example should not be acted a

NO, there are no alte	ernatives to leave.	•		e expected to reduce Mr./N		
would be reduced by as	much as	%: (Please list al	l acco	ommodation ideas)		
OGABILIST IN IERACTIVE PROCESS. Supplemental Medical Questionnaire Request	ous and is requested by the employer or other covered entity"	is* (EFPA* //Job Description for Mr./Ms. Name's position of Position Title and		A character to		Phone: 805.408.11
Dear Dr. Name, The ORGANIZATION is requesting your assistance in obtaining the information needed to explore reasonable accommodations for your patient in compliance with the requirements of Tible is of the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA), consistent with the organizational goals to assist disabled employees for remain at vorw threasonable accommodations whenever possible. The ORGANIZATION is currently engaging with your patient to better understand their past and future leave needs. As part of this process, we would appreciately vor assistance to help us ensure we have a full and correct understanding of every patient to potentially return to working their full schedule with regular and reliable attendance. The Organization is in receipt of your report dated for the patient of t	he above? If you complishe the distoched Medical Questionnaire Form. Please nate that as yeking clarification on your patient's leave needs and any possible work if the duration of each. Please do not provide any information pertaining to the extraction of each. Please do not provide any information pertaining to the rest. We are not requested in create the efformation requested in the provide any information and to a to request and review the efformation requested in the end of	In the Tar AT JUST Discription for M. M.M. Numer's position of Problem Title and Insert text as appropriately: at limits thin/her ability to engage in a major if activity, such as the ability to surpain and activities? metacl impairment that it limits higher ability to engage an analysi fire ability to engage and activities? —MOTATA impairment that it limits higher ability to engage an analysi fire activity. —MOTATA impairment that it limits higher ability to perform the essential functions where ability to genter that the surpaint of the problem and the activity. —STORM Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: Mons of STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your patient's leave history over the last few years below: STORM's Please see your dealers of the story over the last few years below: STORM's Please see your dealers over the last few years below: STORM's Please see your dealers over the last few years below: STORM's Please see your dealers over the last few years below: STORM's Please see your dealers over the last few years below: STORM's Pl	york, on average, 876 to PAT LEAVE Mr., have part LEAVE Mr., have considered in the same of includent includent in the same will have SOME leave medium with the same will have SOME leave medium will have some same will be same will	Supplemental Medical Questionnaire Health Care Provider's Name 1. (OPTIONAL QUESTION) Your patient seems to call out sick more on the days before or after sevelends and holdings. Mainly 1. (OPTIONAL QUESTION) Your patient seems to call out sick more on the days before or after sevelends and holdings. Mainly seems or provider's Name of the Common of the Common of the September Selbility be available for sevel more on certain days over others? Would their disability sepact that more on Mondays and Foldays? [a] No. M.M.M. Name's disability would not be expected to be more disability on the days before and after weekends? Another disability would be expected to need more time off before and after weekends? Anothery for the following reasons: [b] T.S. Mr. M. Name's disability impact his/her ability to notify his/her employer when he/she is not able to arrive for work? Price claim? [c] T.S. Mr. Name's disability impact his/her ability to notify his/her employer as follows: [c] T.S. Mr. Name's disability does impact his/her ability to notify his/her employer as follows: [c] T.S. Mr. Name's disability on the price of	Partition Analysis (EFPA), are there any additional unmodified job activities listed share partially or wholly? Where physical, mental, and emotional demands listed in the attached Exercted sit is already restricted. To do for each restricted activity)	my specific work restrictions(s) that, if accommodated, would reduce or eliminate and the special spec
	sellock legil delice. Oppinistions are recovarged to context. New legil count frield to triving an any templates/source/co.	Dabbiner This surget templace/scorple should not be exist an which suggested the Charlestonia are emologing to collect the druger country facts to rightly an any template/scorpes.	Disc with their	D. 2001, Show HR Consulting, lec, all rights reserved Page 5 of 7 Who will be a served be about the servery of the context of the servery of th	Disclaimer: This sample template/example should not be outed on without legal addies. Organizations are encouraged to contact their legal counsel prior to relying on any template/examples.	Oute Physician's Iconse number STAXTO: Diskinson: This sample template about and be a whole large dark. Organization are encouraged to the large dark of the first organization and the particular country are particular from the first part of the first particular from the first particular from the first part of the first particular from the particular from the first particular from the particular from the particular from the particular from the first particular from the particular from th

What you're thinking...

- The employee won't get this questionnaire completed
- The employee's health care provider could lie
- We won't accept the responses anyway





Trust the Process:



- You are in good-faith. You want to know the truth.
- You have tools, but first you need to give the employee's health care provider a chance
 - Follow-up questionnaire
 - Conclude the interactive process if no data is provided to support claims
 - Fitness for Duty
- This is not only good process. It is strategic.
 - EEOC Guidelines
 - Credibility and weight of different types of data



Requesting Medical Related Information

EEOC Says:

The authority that allows us to request and receive the information requested in the attached questionnaire is from the **Equal Employment Opportunity Commission (EEOC)'s Guidance,** which states that an employer may seek disability-related information, as follows:

- "... an employer only may seek information about an employee's medical condition when it is job related and consistent with business necessity. This means that the employer must have a reasonable belief based on objective evidence that:"
 - "an employee will be unable to perform the essential functions of his or her job because of a medical condition or"
 - "the employee will pose a direct threat because of a medical condition."
- "Employers also may obtain medical information about an employee when the employee has requested a
 reasonable accommodation and the disability or need for accommodation is not obvious."
- "In addition, employers can obtain medical information about employees when they:"
 - "are required to do so by another federal law or regulation (e.g., DOT medical certification requirements for interstate truck drivers)"

How to Get the Questionnaire Returned?



- It's all about the process:
 - Prepare the questionnaires using our template cover letters
 - Email / Fax to Health Care Provider or via the employee
 - Call Provider's office to confirm receipt
 - Get the name of the person who you talk with and document it
 - Follow-up with Provider's office if not returned
 - Ask for the same person, and she/he will help get it done (so you stop bothering them)
 - Set clear timelines for returning the questionnaire.



What ifs:

- Scenario # 1 Questionnaire is not returned and the organization is unsure
 if the employee has a disability and/or is concerned about litigation
- Scenario # 2 Questionnaire is not returned and the organization has ZERO belief that there is a real disability at play
- Scenario # 3 Questionnaire is returned and says employee is NOT disabled and that her performance was NOT related to a disability
- Scenario # 4 Questionnaire is returned and states that the employee's medical conditions caused the performance issues. All of them.

Scenario # 1 No Questionnaire Returned = Need FFD



When a Questionnaire is **NOT** Returned on a Disciplinary Matter, When is a Fitness for Duty Recommended?

- What was trigger?
 - Verbal request: Usually suggest Closing the Interactive Process with (Sample 5)
 - Perception: If safety concern, FFD will usually be a requirement. If performance only, and EE is denying a disability, usually recommend Closing the Interactive Process with (Sample 5)
 - Knowledge: When you have a health care provider's note,
 usually you must Override it with an FFD (Samples 6 and 7)



Fitness for Duty Examinations

What is an FFD Examination?

Employer can coordinate a Fitness for Duty examination with a qualified Health Care Provider (physical or mental impairment) in the event that they determine that the need to do so is job related and consistent with business necessity (42 USC § 12112(d)(4)(A), 42 USC § 12101 et seq. (ADA); and there are objective facts that:

- **Safely:** The employee may have a medical condition that could result in a direct physical threat or other liability to themselves, a co-worker or the public.
- **Fully:** The employee may have a medical condition that impacts their ability to perform the essential functions of their classification fully and it is unclear as to what type of reasonable accommodation is necessary.



Scenario # 2 No Questionnaire Returned (and ER has zero belief disability is at play) = Close Down IP!



When No Supporting Medical is Received on a Disciplinary Matter and...

- No perception of disability
- No documentation provided from any health care provider
- Comfortable concluding the interactive process and restarting discipline...
 - Close down the Hallway with a Closure Letter (sample 5)



Scenario # 3 Questionnaire Returned = Not Disabled



Medical Questionnaire Completed and indicates: NOT Disabled

- Send Notice of File Closure (sample 8)
- Restart Discipline/Termination proceedings



Customize Notice of File Closure (sample 8)

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Dat

Employee Name Address Address

> DISABILITY INTERACTIVE PROCESS: NOTIFICATION OF PROCESS CLOSURE

Dear Mr./Ms. Name;

Please allow this letter to serve as a follow-up to your call/meeting on (date). As you will recall, I spoke with you as you had indicated that you required certain workplace accommodations due to a health condition. In compliance with the California Fair Employment and Housing Act (FEHA) and Title I of the Americans with Disabilities Act (ADA), this request triggered the Organization to begin engaging with you to explore your request for reasonable accommodations.

During our discussions, I shared to best determine what workplace accommodations were medically needed, and in line with our standard disability interactive processes, we would need clarification from your Health Care Provider listing your work restrictions/functional limitations and the duration of such. You were asked to work with your personal provider to obtain this information.

Your health care provider completed the questionnaire and indicated that you do not have a disability that requires workpla

<mark>Or</mark>

Your health care provider did not complete the questionnaire. As such, you were then sent to a Fitness for Duty examination. The examiner determined that you do not have a disability requiring workplace accommodations.

As there is no documentation that your past performance concerns relate to a serious medical condition, and due to the above, your disability interactive process is concluding, and we have informed your supervisor that it would be appropriate for him/her to restart performance improvement activities for you.

If you have any questions about the above information, or if you don't believe that the above accurately reflects the discussion we had, please contact me immediately and within 10-calendar days from the date of this letter. If I don't hear from you by this date, I will assume the above is accurate and your disability interactive process will be officially closed.

I wish you all the best and encourage you to reach out to me again if you would like any additional information on reasonable accommodations at work.

Sincerely,

Name Title

cc: Supervisor and/or Manager
Personnel Medical File/Workers' Compensation File Copy
Employee Representative (if applicable)

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Page 1 of 1	without legal advice. Organizations are encouraged to contact their legal counsel prior to relying on any templates/examples.



Scenario # 4 Questionnaire Returned = Disability Caused ALL Performance Issues



Questionnaire is Returned and says ALL Disciplinary Matters are related to a disability. What do you do?

- First Ask:
 - Do you believe the reporting?
 - Is the provider credible?
 - Was there a belief that something might be going on?
 - What does the report say?
 - Is this enough?
 - Options:
 - Proceed with an interactive process meeting.
 - Fitness for Duty Examination



The Disability Interactive Process Hallway

Door #1

Gather Data: Discipline / Disability Questionnaire

Door #2

Research Accommodations / Share Information Received: Share the completed questionnaire answers.

Door #3

Schedule Meeting & Prepare: Schedule meeting and invite the right people to attend; Prepare meeting notes and be prepared to discuss what is medically possible and what is not.

Door #4

Do What You Said You Would Do: After meeting, implement decisions; do what was said would be done – which might include preparing for separation or a full return to work.



Reasonable Accommodation

Statutory Obligation # 2: (Long-Term Restrictions/Accommodations)

Provide Reasonable Accommodations



Reasonable Accommodation

When Discipline and Disability are intertwined, remember that a <u>reasonable accommodation</u> supports the employee to successfully perform their job. A reasonable accommodation mitigates their performance deficiencies, does not forgive them.



Reasonable Accommodation

Traditionally, what makes an accommodation REASONABLE:

- 1. Provides the employee/applicant with a SAFE work environment
- Allow the employee/applicant to perform the FULL set of Essential Functions of their position.

Technically:

- Undue Hardship (29 CFR §1630 app. §1630.15(d)) (1996)
- Direct Threat (42 U.S.C. § 12113(b); see 29 CFR §1630 app. §1630.2(r))



Making Decisions

Trial Accommodations: If unsure if an accommodation will support an employee to **FULLY** perform his job, don't be afraid to trial the accommodations

- Clarify and document what a "successful accommodation plan will look like and/or produce
- 2. Identify when the plan will be reviewed / checked-in on
- 3. Discuss and document what happens if the accommodations don't work so there are no surprises

Note: Trials don't work when concerned for **SAFETY** of accommodation ideas



Reasonable Accommodations

An employer is not required to:

- Lower quality or production standards
- Provide personal use items (such as glasses or hearing aids)
- Create a new position / create permanent "light-duty"
- Displace (bump/layoff) other employees



In Closing...

Remember:

- It is okay to have concerns about the legitimacy of the claim of disability, be candid about your concerns at the start
- Be open to being incorrect, know you must provide a good-faith interactive process, regardless of your concerns
- Understand you must use the interactive process to confirm your assumptions
- Pause discipline and know that you may revise charges if the disability is impacting the employee



In Closing...

Be assured:

- The Disability Interactive Process & Progressive Discipline both have the same goal and needed outcome = performance standards being met. If the employee cannot meet performance or safety standards, they will be separated – medically or disciplinarily.
- Difference is how the employee gets there what TOOL is used:
 - Disability Interactive Process
 - Disciplinary Process



So, when triggered with a request, perception or knowledge that a disability may be impacting performance...

Get into the Disability Interactive Process Hallway!





THANK YOU

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