



# “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](http://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:

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

***Each is a stand-alone statutory obligation***

# Eligibility

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

# Eligibility

- 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**



# Eligibility

**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”

# Eligibility

## 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®**

# Disability Interactive Process Hallway

## Door #1

**Gather Data:** Obtain Clear Medical Work Restrictions; May determine an Essential Functions Position Analysis<sup>®</sup> (EFPA<sup>®</sup>) 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 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

# 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.  
[www.shawhrconsulting.com](http://www.shawhrconsulting.com)  
Phone: 805.498.9400

Date \_\_\_\_\_

Employee Name \_\_\_\_\_  
Address \_\_\_\_\_  
Address \_\_\_\_\_

### LETTER OF INTRODUCTION DISABILITY INTERACTIVE PROCESS

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 you 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:

1. 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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Phone: 805.498.9400

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 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]**.

I will prepare a set of questions that seeks to support your health care provider to clarify your work restrictions/functional limitations **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]**.

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.**

**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.**

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.asdjan.org](http://www.asdjan.org).

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Phone: 805.498.9400

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 \_\_\_\_\_  
Title \_\_\_\_\_

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

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

1. 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?

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- Provide reasonable accommodation for employees who, because of their disability, are limited in or unable to perform one or more of the essential functions of their job.

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# 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.

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# 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.

Employee Name  
Address  
Address

## LETTER OF INTRODUCTION DISABILITY INTERACTIVE PROCESS

Dear Mr./Ms. Name:

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Sincerely,

Name  
Title

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

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



# 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].**

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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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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].**

Once the above activities are completed, and if the claimant is found to be disabled 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.

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.

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.asian.org](http://www.asian.org).

Title

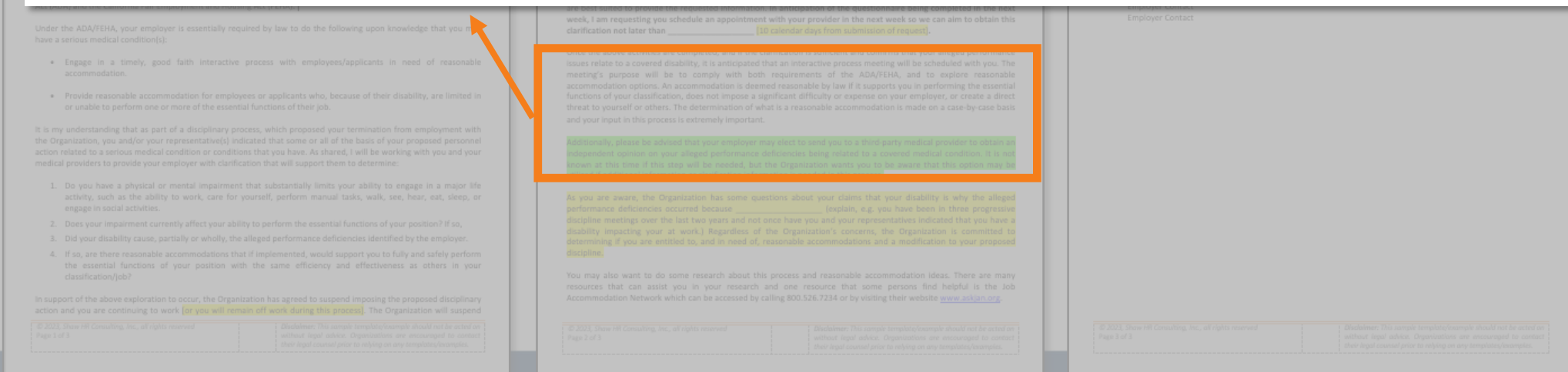
Enc: Disability Under the Fair Employment & Housing Act Pamphlet

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

# 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.

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:

1. 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

request and requesting the necessary accommodations with your provider in the next week so we can begin the interactive clarification not later than \_\_\_\_\_ [10 calendar days from submission of request].

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 want 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

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.

If you may need additional resources, please contact your representative(s) for assistance. The Organization has provided you with 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.asian.org](http://www.asian.org).

# 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.

# The Hallway: Door #1

## 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<sup>®</sup> (EFPA<sup>®</sup>)**
  - Understand and document the Essential Functions of the job description/classification and the particular assignment





# The Hallway: Door #1

- 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



# The Hallway: Door #1

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

- Sample Questionnaires Discipline:
  - Discipline / Disability Questionnaire (**sample 3**)
  - Intermittent Leave Questionnaire (**sample 4**)









# The Hallway: Door #1

## Template Discipline / Disability Questionnaire (sample)

Date \_\_\_\_\_

Health Care Provider Name \_\_\_\_\_  
Address \_\_\_\_\_

DISABILITY IMPACT SUPPLEMENTAL QUESTIONNAIRE

Dear Dr. Name: \_\_\_\_\_

Your patient has indicated that you are the best person to provide a 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 medical opinion that past performance issues in relation to language used at work and use of expletives were due to his/her condition.

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. 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:  
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 not treating Mr./Ms. Name for a condition that would allow me to answer this question.

OTHER / ADDITIONAL INFORMATION: \_\_\_\_\_

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**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 medical opinion that past performance issues in relation to language used at work and use of expletives were due to his/her condition.

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. 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:  
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 not treating Mr./Ms. Name for a condition that would allow me to answer this question.

OTHER / ADDITIONAL INFORMATION: \_\_\_\_\_



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:

- I have been treating Mr./Ms. Name since \_\_\_\_\_ (date)
- The last time I evaluated Mr./Ms. Name was \_\_\_\_\_ (date)

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 employees to remain at work with reasonable 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 appreciate your assistance to help us ensure we have a full and correct understanding of 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 receipt of your report dated \_\_\_\_\_ for Mr./Ms. Employee Name in which you provide the following:

**List the exact language of the report, exclude any information on diagnosis, condition or treatment**

**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 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 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:

- California Confidentiality of Medical Information Act (CA Civil Code Sec. 56.10 & 56.10(b)). The organization can receive 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."

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1. Does Mr./Ms. Name have a medical impairment that limits his/her ability to engage in a major life activity, such as the ability to work, care for himself/herself, perform manual tasks, walk, see, hear, eat, sleep, or engage in social activities?

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

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

2. If the answer to question 1 is yes, does the impairment currently affect Mr./Ms. Name's ability to perform the essential functions of a POSITION TITLE (see attached job description)?

NO, Mr./Ms. Name's impairment does not limit his/her ability to perform any of the essential functions of his/her position.

YES, Mr./Ms. Name's impairment does affect his/her ability to perform some or more of the essential functions of his/her position.

If the answer to question 2 is yes, please continue to complete this questionnaire:

**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
2017	1928	741	38%
2018	1928	598	31%
2019	1928	1023	53%
2020	1928	1194	62%
2021	1928	826	43%

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

- I have been treating Mr./Ms. Name since \_\_\_\_\_ (date)
- The last time I evaluated Mr./Ms. Name was \_\_\_\_\_ (date)

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**PAST LEAVE:** Mr./Ms. Name has taken was due to a serious medical condition. Please clarify \_\_\_\_\_

\_\_\_\_\_ same has taken in the following years is due to a serious medical condition: \_\_\_\_\_

\_\_\_\_\_ leave was related to a condition that I am treating him/her for. I would \_\_\_\_\_

\_\_\_\_\_ leave in each of the above years for the condition that I am treating \_\_\_\_\_

\_\_\_\_\_ is a serious medical condition as defined by the ADA and FEHA \_\_\_\_\_

\_\_\_\_\_ for a condition that would have produced the above leave in the past, but \_\_\_\_\_

\_\_\_\_\_ conditions that I am not treating him/her for. \_\_\_\_\_

\_\_\_\_\_ will have FUTURE LEAVE annually and on-going due to a medical \_\_\_\_\_

\_\_\_\_\_ I will have the SAME leave needs going forward. \_\_\_\_\_

\_\_\_\_\_ will have SOME leave needs going forward, and averaging \_\_\_\_\_ days \_\_\_\_\_

\_\_\_\_\_ per year. \_\_\_\_\_

\_\_\_\_\_ Mr./Ms. Name will have leave needs on-going due to the following reasons: \_\_\_\_\_

\_\_\_\_\_ to be predicted, allowing his/her employer to plan for his/her time off? \_\_\_\_\_

\_\_\_\_\_ leave needs would be predictable and/or allow notice in advance. \_\_\_\_\_

\_\_\_\_\_ provide his/her employer with notice at least \_\_\_\_\_ hour/days (please \_\_\_\_\_

\_\_\_\_\_ is taken. \_\_\_\_\_

\_\_\_\_\_ call out sick more on the days before or after weekends and holidays. Mainly \_\_\_\_\_

\_\_\_\_\_ Mr./Ms. Name's disability impact his/her ability to be available for work more \_\_\_\_\_

\_\_\_\_\_ ability impact them more on Mondays and Fridays. \_\_\_\_\_

\_\_\_\_\_ 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 \_\_\_\_\_

\_\_\_\_\_ his/her ability to notify his/her employer when he/she is not able to arrive for \_\_\_\_\_

\_\_\_\_\_ his/her ability to notify his/her employer as follows: \_\_\_\_\_

\_\_\_\_\_ he learns that he/she is too ill to report to work. \_\_\_\_\_

\_\_\_\_\_ being an accurate assessment of when he/she can be expected to arrive to work \_\_\_\_\_

\_\_\_\_\_ able to return to work (full days) \_\_\_\_\_

\_\_\_\_\_ he/she is off work due to his/her medical condition. \_\_\_\_\_

\_\_\_\_\_ impact his/her ability to notify his/her employer when he/she needs to be off \_\_\_\_\_

\_\_\_\_\_ 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 \_\_\_\_\_

\_\_\_\_\_ Position Analysis (EPPA), are there any additional unmodified job activities listed \_\_\_\_\_

\_\_\_\_\_ other physical, mental, and emotional demands listed in the attached Essential/ \_\_\_\_\_

\_\_\_\_\_ that is already restricted. \_\_\_\_\_

\_\_\_\_\_ to do for each restricted activity) \_\_\_\_\_

\_\_\_\_\_ to do for each restricted activity) \_\_\_\_\_

\_\_\_\_\_ to do for each restricted activity) \_\_\_\_\_

\_\_\_\_\_ Please confirm the duration of restrictions by checking the appropriate box below:

\_\_\_\_\_ BARY through \_\_\_\_\_ (date) \_\_\_\_\_

\_\_\_\_\_ NENT \_\_\_\_\_

\_\_\_\_\_ the job of Position Title pose a significant risk of substantial harm to the health \_\_\_\_\_

\_\_\_\_\_ e duration, nature, severity, likelihood, and imminence of each specific risk. \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ H / JCP ) \_\_\_\_\_

\_\_\_\_\_ PHYSICIAN'S LICENSE NUMBER \_\_\_\_\_

\_\_\_\_\_ FAX TO: \_\_\_\_\_

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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:

YES, ALL of the leave that Mr./Ms. Name has taken in the following years (mark all that apply) is due to a serious medical condition:

- 2020
- 2021
- 2022
- 2023
- 2024

YES, SOME of Mr./Ms. Name's past leave was related to a condition that I am treating him/her for. I would estimate he/she has needed the following leave in each of the above years for the condition that I am treating him/her for: \_\_\_\_\_ days per year

NO, his/her leave has not been due to a serious medical condition as defined by the ADA and FHEA

UNKNOWN, I am not treating him/her for a condition that would have produced the above leave in the past, but I cannot comment if he/she has other conditions that I am not treating him/her for.

Additional Clarification \_\_\_\_\_

Supplemental 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 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:

- YES, ALL of the leave that Mr./Ms. Name has taken in the following years is due to a serious medical condition: (mark all that apply)
  - 2017
  - 2018
  - 2019
  - 2020
  - 2021
- YES, SOME of Mr./Ms. Name's past leave was related to a condition that I am treating him/her for. I would estimate he/she has needed the following leave in each of the above years for the condition that I am treating him/her for: \_\_\_\_\_ days per year
- NO, his/her leave has not been due to a serious medical condition as defined by the ADA and FHEA
- UNKNOWN, I am not treating him/her for a condition that would have produced the above leave in the past, but I cannot comment if he/she has other conditions that I am not treating him/her for.
- Additional Clarification \_\_\_\_\_

Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off?  
 NO, it would not be expected his/her leave needs would be predictable and/or allow notice in advance.  
 YES, Mr./Ms. Name should be able to provide his/her employer with notice at least \_\_\_\_\_ hours/days (please circle one) before his/her need for leave is taken.  
 OTHER (additional information) \_\_\_\_\_

d. Is it medically expected Mr./Ms. Name will have FUTURE LEAVE annually and on-going due to a medical condition(s)?

- YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.
- YES, it is expected Mr./Ms. Name will have SOME leave needs going forward, and averaging \_\_\_\_\_ days off per year OR \_\_\_\_\_ (clarify)
- NO, it is not medically expected that Mr./Ms. Name will have leave needs on-going due to the following reasons:

Address \_\_\_\_\_

**DISABILITY INTERACTIVE PROCESS:  
Supplemental Medical Questionnaire Request**

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 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 employees to remain at work with reasonable 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 appreciate your assistance to help us ensure we have a full and correct understanding of 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 receipt of your report dated \_\_\_\_\_ for Mr./Ms. Employee Name in which you provide the following:

- List the exact language of the report, exclude any information on diagnosis, condition or treatment

**DO NOT** include any medical notes that have 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 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 restrictions/functional limitations and the duration of each. Please do not provide any information pertaining to medical conditions, 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:

- 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 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."

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able medical documentation where the disability or the need for assistance is and is requested by the employer or other covered entity..."

the above:

If 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 restrictions/functional limitations and the duration of each. Please do not provide any information pertaining to medical conditions, diagnosis, or treatment. We are not requesting, nor can we receive, private or protected medical information on your patient. This means that the employer must have a reasonable belief based on information about an employee's medical condition when it is job related and safety. This means that the employer must have a reasonable belief based on information about an employee's medical condition when it is job related and safety. This means that the employer must have a reasonable belief based on information about an employee's medical condition when it is job related and safety.

a direct threat because of a medical condition."

medical information about an employee when the employee has requested a leave of absence or need for accommodation is not obvious."

can medical information about employees when they?

her federal law or regulation (e.g., DOT medical certification requirements for pilots).

As further decisions regarding accommodation are pending your reply, I look forward to your response and not later than 10-calendar days from the date of this notice. If you have not hesitated to contact me directly at \_\_\_\_\_ (phone number).

is / Job Description \_\_\_\_\_

ation / Medical File (attachable)

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Supplemental 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 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.

YES, ALL of the above that Mr./Ms. Name has taken in the following years is due to a serious medical condition: (mark all that apply)

- 2017
- 2018
- 2019
- 2020
- 2021

YES, SOME of Mr./Ms. Name's past leave was related to a condition that I am treating him/her for. I would estimate he/she has needed the following leave in each of the above years for the condition that I am treating him/her for: \_\_\_\_\_ day/year

NO, his/her leave has not been due to a serious medical condition as defined by the ADA and FEHA

UNKNOWN, I am not treating him/her for a condition that would have produced the above leave in the past, but I cannot comment if he/she has other conditions that I am not treating him/her for.

Additional Clarification \_\_\_\_\_

d. Is it medically expected Mr./Ms. Name will have FUTURE LEAVE annually and on-going due to a medical condition(s)?

YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.

YES, it is expected Mr./Ms. Name will have SOME leave needs going forward, and averaging \_\_\_\_\_ days off per year OR \_\_\_\_\_ (clarify)

NO, it is not medically expected that Mr./Ms. Name will have leave needs on-going due to the following reasons:

\_\_\_\_\_

\_\_\_\_\_

e. Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off?

NO, it would not be expected his/her leave needs would be predictable and/or allow notice in advance.

YES, Mr./Ms. Name should be able to provide his/her employer with notice at least \_\_\_\_\_ hours/days (please circle one) before his/her need for leave is taken.

OTHER (additional information) \_\_\_\_\_

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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.

YES, ALL of the above that Mr./Ms. Name has taken in the following years is due to a serious medical condition: (mark all that apply)

- 2017
- 2018
- 2019
- 2020
- 2021

YES, SOME of Mr./Ms. Name's past leave was related to a condition that I am treating him/her for. I would estimate he/she has needed the following leave in each of the above years for the condition that I am treating him/her for: \_\_\_\_\_ day/year

NO, his/her leave has not been due to a serious medical condition as defined by the ADA and FEHA

UNKNOWN, I am not treating him/her for a condition that would have produced the above leave in the past, but I cannot comment if he/she has other conditions that I am not treating him/her for.

Additional Clarification \_\_\_\_\_

d. Is it medically expected Mr./Ms. Name will have FUTURE LEAVE annually and on-going due to a medical condition(s)?

YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.

YES, it is expected Mr./Ms. Name will have SOME leave needs going forward, and averaging \_\_\_\_\_ days off per year OR \_\_\_\_\_ (clarify)

NO, it is not medically expected that Mr./Ms. Name will have leave needs on-going due to the following reasons:

\_\_\_\_\_

\_\_\_\_\_

e. Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off?

NO, it would not be expected his/her leave needs would be predictable and/or allow notice in advance.

YES, Mr./Ms. Name should be able to provide his/her employer with notice at least \_\_\_\_\_ hours/days (please circle one) before his/her need for leave is taken.

OTHER (additional information) \_\_\_\_\_

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Position Analysis (EPPA), are there any additional unmodified job activities listed other than physical, mental, and emotional demands listed in the attached Essential Job Description that are already restricted.

to do for each restricted activity) \_\_\_\_\_

to do for each restricted activity) \_\_\_\_\_

Please confirm the duration of restrictions by checking the appropriate box below:

START through \_\_\_\_\_ (date)

END \_\_\_\_\_ (date)

the job of Position Title pose a significant risk of substantial harm to the health and safety of the employee.

duration, nature, severity, likelihood, and imminence of each specific risk.

Date \_\_\_\_\_

Physician's license number \_\_\_\_\_

FAX TO: \_\_\_\_\_

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Position Analysis (EPPA), are there any additional unmodified job activities listed other than physical, mental, and emotional demands listed in the attached Essential Job Description that are already restricted.

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Please confirm the duration of restrictions by checking the appropriate box below:

START through \_\_\_\_\_ (date)

END \_\_\_\_\_ (date)

the job of Position Title pose a significant risk of substantial harm to the health and safety of the employee.

duration, nature, severity, likelihood, and imminence of each specific risk.

Date \_\_\_\_\_

Physician's license number \_\_\_\_\_

FAX TO: \_\_\_\_\_

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# The Hallway: door #1

e. Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off?

- NO, it would not be expected his/her leave needs would be predictable and/or allow notice in advance.
- YES, Mr./Ms. Name should be able to provide his/her employer with notice at least \_\_\_\_\_ hours/days (please circle one) before his/her need for leave is taken.
- OTHER (additional information) \_\_\_\_\_

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 employees to remain at work with reasonable 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 appreciate your assistance to help us ensure we have a full and correct understanding of 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 receipt of your report dated \_\_\_\_\_ for Mr./Ms. Employee Name in which you provide the following:

**List the exact language of the report, exclude any information on diagnosis, condition or treatment!**

**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 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 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:

- 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 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.”

... request to provide medical information pertaining to your patient. We are not requesting, nor can we receive, private or protected medical information that allows us to request and receive the information requested in the attached questionnaire are the following two California Laws:

able to perform the essential functions of his or her job because of a medical condition that poses a direct threat because of a medical condition. Medical information about an employee when the employee has requested a disability or need for accommodation is not obvious. Medical information about employees when they are required by federal law or regulation (e.g., DOT medical certification requirements for pilots).

As further decisions regarding accommodation are pending your reply, I look forward to hearing from you not later than 10-calendar days from the date of this notice. If you have not contacted me directly at \_\_\_\_\_ (phone number).

Job Description (if applicable)  
Position / Medical File (if applicable)

... work, see health care provider, MENTAL impact

... currently affected, his/her ability to perform his/her ability to

... to complete the

... STIONS: Please see

... all Hours Off

Work
741
598
1023
1194
826

... the following information

... was

... condition you are treating his/her for? Please identify.

YES, ALL of the leave that Mr./Ms. Name has taken in the following years is due to a serious medical condition: (mark all that apply)

- 2017
- 2018
- 2019
- 2020
- 2021

YES, SOME of Mr./Ms. Name's past leave was related to a condition that is being treated by me. I would estimate he/she has needed the following leave in each of the above years: \_\_\_\_\_ days per year

NO, his/her leave has not been due to a serious medical condition as defined by the ADA and FEHA

UNKNOWN, I am not treating him/her for a condition that would have caused the above leave in the past, but I cannot comment if he/she has other conditions that I am not treating him/her for.

Additional Clarification \_\_\_\_\_

d. Is it medically expected Mr./Ms. Name will have FUTURE LEAVE annually and on-going due to a medical condition(s)?

- YES, it is expected Mr./Ms. Name will have the SAME leave needs going forward.
- YES, it is expected Mr./Ms. Name will have SOME leave needs going forward, and averaging \_\_\_\_\_ days off per year OR \_\_\_\_\_ (clarify)
- NO, it is not medically expected that Mr./Ms. Name will have leave needs on-going due to the following reasons: \_\_\_\_\_

e. Are Mr./Ms. Name's leave needs able to be predicted, allowing his/her employer to plan for his/her time off?

- NO, it would not be expected his/her leave needs would be predictable and/or allow notice in advance.
- YES, Mr./Ms. Name should be able to provide his/her employer with notice at least \_\_\_\_\_ hours/days (please circle one) before his/her need for leave is taken.
- OTHER (additional information) \_\_\_\_\_

Mr./Ms. Name's disability impact his/her ability to be available for work more than \_\_\_\_\_ days per year.

Mr./Ms. Name's disability impact his/her ability to be available for work more than \_\_\_\_\_ days per year.

Mr./Ms. Name's disability impact his/her ability to be available for work more than \_\_\_\_\_ days per year.

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Mr./Ms. Name's disability impact his/her ability to be available for work more than \_\_\_\_\_ days per year.

Mr./Ms. Name's disability impact his/her ability to be available for work more than \_\_\_\_\_ days per year.

Position Analysis (EPPA), are there any additional unmodified job activities listed other than those listed in the attached Essential Job Function List that are already restricted?

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any specific work restrictions(s) that, if accommodated, would reduce or eliminate the employee's ability to perform the essential functions of the position?

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# The Hallway: door #1

f. [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: \_\_\_\_\_

Employee Health Care Provider Name  
Address  
Address

**DISABILITY INTERACTIVE PROCESS:  
Supplemental Medical Questionnaire Request**

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 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 employees to remain at work with reasonable 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 appreciate your assistance to help us ensure we have a full and correct understanding of 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 receipt of your report dated \_\_\_\_\_ for Mr./Ms. Employee Name in which you provide the following:

**Just the exact language of the report, exclude any information on diagnosis, condition or treatment!**

**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 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 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:

- 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 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."

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(f) (ir 2 § 11069(d)). Your patient must:

We shall cooperate in good faith with the employer or other covered entity, obtainable medical documentation where the disability or the need for accommodation is requested by the employer or other covered entity..."

the above!

If 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 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:

Information about an employee's medical condition when it is job related and necessary. This means that the employer must have a reasonable belief based on information, as follows:

Information about an employee's medical condition when it is job related and necessary. This means that the employer must have a reasonable belief based on information, as follows:

able to perform the essential functions of his or her job because of a 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:

As further decisions regarding accommodation are pending your reply, I look forward to hearing from you no later than 10 calendar days from the date of this notice. If you have not yet responded, please do not hesitate to contact me directly at \_\_\_\_\_ (phone number).

Mr./Ms. Name's position of Position Title and Description (EPPA)\* / Job Description

Position / Medical File Number (if applicable)

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Work, on average, 87% of the time. Please indicate the PAST LEAVE Mr./Ms. Name has taken in the last 12 months.

name has taken in the last 12 months:

currently affect Mr./Ms. Name's ability to perform the essential functions of his/her position.

Mr./Ms. Name will have the following leave in each of the following categories:

to complete this questionnaire:

QUESTIONS: Please see your patient's leave history over the last few years below:

Hours Off Work	% of Hours Off Work
741	38%
598	31%
1023	53%
1154	62%
825	43%

ing the following questions:

Mr./Ms. Name will have the following leave in each of the following categories:

Mr./Ms. Name will have the following leave in each of the following categories:

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currently affect Mr./Ms. Name's ability to perform the essential functions of his/her position.

Mr./Ms. Name will have the following leave in each of the following categories:

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QUESTIONS: Please see your patient's leave history over the last few years below:

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Shaw HR Consulting, Inc.  
www.shawhrconsulting.com  
Phone: 802-498-2400

Supplemental Medical Questionnaire  
Health Care Provider's Name

(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: \_\_\_\_\_

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:

YES, Mr./Ms. Name's disability does impact his/her ability to notify his/her employer as follows:

- Calling his/her employer once he/she learns that he/she is too ill to report to work.
- Calling his/her employer and providing an accurate assessment of when he/she can be expected to arrive to work (when tardy) or when he/she may be able to return to work (full day).
- Provide a medical notice when he/she is off work due to his/her medical condition.
- OTHER (please clarify) \_\_\_\_\_

NO, Mr./Ms. Name's disability DOES NOT impact his/her ability to notify his/her employer when he/she needs to be off work for a partial or full day.

OTHER \_\_\_\_\_

Are there any accommodations that, if implemented, would be expected to reduce Mr./Ms. Name's leave needs? Please list all accommodation ideas that would be expected to reduce Mr./Ms. Name's leave needs by as much as \_\_\_\_\_%. (Please list all accommodation ideas)

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Supplemental Medical Questionnaire  
Health Care Provider's Name

(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: \_\_\_\_\_

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:

YES, Mr./Ms. Name's disability does impact his/her ability to notify his/her employer as follows:

- Calling his/her employer once he/she learns that he/she is too ill to report to work.
- Calling his/her employer and providing an accurate assessment of when he/she can be expected to arrive to work (when tardy) or when he/she may be able to return to work (full day).
- Provide a medical notice when he/she is off work due to his/her medical condition.
- OTHER (please clarify) \_\_\_\_\_

NO, Mr./Ms. Name's disability DOES NOT impact his/her ability to notify his/her employer when he/she needs to be off work for a partial or full day.

OTHER \_\_\_\_\_

Are there any accommodations that, if implemented, would be expected to reduce Mr./Ms. Name's leave needs? Please list all accommodation ideas that would be expected to reduce Mr./Ms. Name's leave needs by as much as \_\_\_\_\_%. (Please list all accommodation ideas)

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Phone: 802-498-2400

Supplemental Medical Questionnaire  
Health Care Provider's Name

(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: \_\_\_\_\_

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:

YES, Mr./Ms. Name's disability does impact his/her ability to notify his/her employer as follows:

- Calling his/her employer once he/she learns that he/she is too ill to report to work.
- Calling his/her employer and providing an accurate assessment of when he/she can be expected to arrive to work (when tardy) or when he/she may be able to return to work (full day).
- Provide a medical notice when he/she is off work due to his/her medical condition.
- OTHER (please clarify) \_\_\_\_\_

NO, Mr./Ms. Name's disability DOES NOT impact his/her ability to notify his/her employer when he/she needs to be off work for a partial or full day.

OTHER \_\_\_\_\_

Are there any accommodations that, if implemented, would be expected to reduce Mr./Ms. Name's leave needs? Please list all accommodation ideas that would be expected to reduce Mr./Ms. Name's leave needs by as much as \_\_\_\_\_%. (Please list all accommodation ideas)

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# The Hallway: door #1

**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 accommodations were able to be implemented, it would be expected that Mr./Ms. Name's leave would be reduced by as much as \_\_\_\_\_ %: (Please list all accommodation ideas) \_\_\_\_\_

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 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: \_\_\_\_\_

2. 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:

YES, Mr./Ms. Name's disability does impact his/her ability to notify his/her employer as follows:  
 Calling his/her employer once he/she learns that he/she is too ill to report to work.  
 Calling his/her employer and providing an accurate assessment of when he/she can be expected to arrive to work (when tardy) or when he/she may be able to return to work (full days).  
 Provide a more notice when he/she is off work due to his/her medical condition.  
 OTHER (please describe) \_\_\_\_\_

NO, Mr./Ms. Name's disability DOES NOT impact his/her ability to notify his/her employer when he/she needs to be off work for a partial or full day.  
 OTHER \_\_\_\_\_

3. 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 accommodations were able to be implemented, it would be expected that Mr./Ms. Name's leave would be reduced by as much as \_\_\_\_\_ %: (Please list all accommodation ideas) \_\_\_\_\_

Hours Off Work	% of Hours Off Work
741	38%
508	31%
1023	53%
1194	62%
826	43%

# The Hallway: Door #1

## 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



# The Hallway: Door #1



## 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)”*

# The Hallway: Door #1

## 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.

# The Hallway: Door # 1

## 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

# The Hallway: Door # 1

## 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!**

# The Hallway: Door # 1

## 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

# The Hallway: Door #1

## Medical Questionnaire Completed and indicates: NOT Disabled

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

# The Hallway: Door # 1

## Customize Notice of File Closure (sample 8)

Shaw HR Consulting, Inc.  
[www.shawhrconsulting.com](http://www.shawhrconsulting.com)  
Phone: 805.498.9400

Date

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 workplace accommodations.**

**Or**

**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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© 2022, Shaw HR Consulting, Inc., all rights reserved Page 1 of 1	Disclaimer: This sample template/example should not be acted on without legal advice. Organizations are encouraged to contact their legal counsel prior to relying on any templates/examples.
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# Scenario # 4

## Questionnaire Returned = Disability Caused ALL Performance Issues

# The Hallway: Door # 1

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 reasonable accommodation 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
2. 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

1. 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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