

## Manager/Supervisor Risk Management

#76– 7/30/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: EMPLOYMENT LIABILITY – DISABILITY DISCRIMINATION

Physical and Mental disability is another one of the protected classes under the state’s Fair Employment and Housing Act (FEHA). The law makes it an illegal employment practice to discriminate, harass, or retaliate against an individual based on a person’s physical disability, mental disability, or medical condition; everything that we have already said about DFEH claims would apply to those claims based on disability.

Disability is not a protected class under the federal EEOC, but federal law has the American with Disabilities Act (ADA) which prohibits discrimination against qualified individuals with disabilities in employment, public services and public accommodations. The ADA, in addition to prohibiting discrimination, goes a step further and requires employers to provide at their own expense “reasonable accommodation” for disabled employees.

The ADA protects “qualified individuals” with disabilities. The ADA defines disability as either a physical or mental impairment that substantially limits one or more major life activity. A qualified individual is an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position. In addition to the ability to perform, they must show that they possess the requisite skill, experience, education, and other job requirements.

Rather than delving into the specific issues associated with disability claims, let me make a blanket statement: “This is a very complex area of the law, and any supervisor would be foolish to think that they are qualified to deal with a disability related claim without significant assistance.” Disability claims are often defensible; a disability does not make an employee “bullet-proof,” but it is absolutely essential that you involve your human resource professionals and/or legal counsel as early in the process as possible. Defending a claim by showing that the employer had legitimate, nondiscriminatory reasons for their actions requires careful analysis, documentation, and evidence.

While we do not see many disability claims, those that we have experienced arise in a number of interrelated ways:

- An underperforming employee anticipating discipline asserts that they have a disability;
- An employee suffers a significant injury or illness, and fears losing their job;
- An employee asserts a disability as leverage to get a promotion or desired transfer;
- An employee asserts a disability to avoid a shift change or new assignment; or,
- An employee with a workers’ compensation claim is declared to be permanent and stationary, and the employer cannot accommodate their permanent restrictions.

Next topic: Workers’ Comp and the ADA – the Interactive Process