

“Hold My Job, I’ll Be Right Back...”

In today's stressful economic environment, California employers find themselves faced with more employee illnesses, injuries and workplace stress claims. Increasingly burdensome employment laws can hamper an employer's ability to maintain a productive workforce with absentee employees. When an employee becomes disabled, there are several key steps to be taken by the employer:

1. Obtain a medical certification. Ask the employee to get a note from the doctor, stating the general nature of the disability, the anticipated duration of the disability and any restrictions on the employee’s ability to perform the job. Always follow the doctor’s instructions. If the employee wants to deviate from that directive, ask the employee to obtain an updated medical certification before making any modifications.

2. Engage in an interactive discussion with the employee. Talk directly with the employee about the disability, any workplace restrictions, whether the employee can do all or any portion of the job, and what accommodations might be necessary to allow the employee to do so. Document the interactive process (including your attempts to have one with the employee), and confirm the outcome in writing to the employee.

3. Consider reasonable accommodations that will not cause undue hardship. Employers must make any available reasonable modifications to permit the disabled employee to continue working, including modifying the work space, obtaining additional or different equipment, altering the employee’s schedule and providing a leave of absence. Employers are free to reject accommodations that cause “undue hardship” for the employer, defined as something more than mere hassle, loss of morale or unexpected cost.

4. Watch for applicable leaves of absence. If the employee needs a leave of absence, consider first whether there is a statutory leave available to the employee. These statutory leaves might include Family Medical Leave/California Family Rights leave (twelve weeks), pregnancy disability leave (four months), or workers’ compensation leave (indefinite). If no statutory leave applies, or if the leave period has been exhausted, go back to steps 2-4 above.

5. Address insurance continuation requirements. If the employee is on a medical plan, continue participation on the plan and the employer’s payment of its usual portion of the premiums for the required time period (which can be up to 12-16 weeks depending on the leave). Keep the absent employee on the group health plan instead of COBRA, as long as the plan will permit it and the employee pays his required premiums.

Employers would be well-advised to seek legal counsel in most disability situations, as there are numerous pitfalls in the process and significant opportunities for costly employee complaints. For questions regarding disability issues, or for other employment law questions, contact Karen Gabler at kgabler@lightgablerlaw.com or (805) 248-7207.

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