

# **EMPLOYMENT RIGHTS FOR PERSONS WITH DISABILITIES** **IN THE CITY AND COUNTY OF SAN FRANCISCO**

## **POLICY**

The Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA) prohibit employment discrimination against qualified applicants and employees on the basis of disability. In accordance with the law, it is the policy of the City and County of San Francisco to provide equal employment opportunities to qualified individuals with disabilities.

## **WHO IS PROTECTED?**

The law covers qualified applicants and employees with disabilities. A qualified individual with a disability is defined as an individual with a disability who meets the skill, experience, education and other job-related requirements of a position held or sought, and who, with or without reasonable accommodation, can perform the essential functions of the job.

A person with a disability is an individual who:

- has a physical or mental impairment that limits a major life activity; or
- has a record of such an impairment which is known to the employer; or
- is regarded by the employer as having, or having had, such an impairment; or
- is regarded by the employer as having, or having had, a disorder or condition that has no present disabled effect, but that may become a disability.

Impairments that require special education or related services are also disabilities.

Major life activities include seeing, hearing, breathing, walking, speaking, learning, working, caring for oneself, performing manual tasks, lifting, and other physical, mental and social activities, etc.

## **YOUR RIGHTS UNDER THE LAW**

### **Applicants**

- An employer must provide equal employment opportunity for qualified applicants with disabilities to enable them to participate in the job application process and to be considered for a job.
- Reasonable accommodations must be provided, as needed, to ensure that individuals with disabilities have equal opportunity in the application and

selection process, unless to do so would be an undue hardship or pose a direct threat to the health and safety of others.

- An employer does not have to accommodate individuals who are not otherwise qualified for the position that they seek.
- Tests must be job-related, that is, designed to measure the skills and abilities that an employee will need on the job.
- The law prohibits discrimination, but does not require affirmative action. The employer is free to hire the most qualified applicant.

### Employees

- The law prohibits discrimination in all employment practices, including, but not limited to, promotion, transfer, termination, compensation, job assignments, leaves of absence, fringe benefits, training, activities, and any other term, condition, or privilege of employment.
- The employer must provide reasonable accommodations to qualified employees with disabilities, unless to do so would be an undue hardship or pose a direct threat to the health and safety of others.
- An employer does not have to accommodate employees who are not otherwise qualified for the position that they hold.

### Medical Examinations and Inquiries

- An employer may not require applicants to take medical examinations or answer any disability-related questions. The employer may ask a job applicant or employee about his or her ability to perform job-related functions and may respond to an applicant's or employee's request for reasonable accommodation.
- Once a conditional offer of employment has been made, the employer may require a medical examination or ask disability-related questions, provided that the examination or question is job-related and consistent with business necessity and all entering employees in the same job classification are subject to the same examination or question.
- An employer may require medical examinations or ask disability-related questions of an employee, provided that the examination or question is job-related and consistent with business necessity.
- An employer may require medical documentation to evaluate a request for reasonable accommodation by an employee or an applicant.

- Tests to detect illegal use of drugs are permitted under the law and are not subject to the above restrictions.

### **Confidentiality**

Medical-related information shall be confidential, except for those supervisors, safety personnel, compliance officers, or other specified individuals who have a need to know.

### **HOW TO REQUEST A REASONABLE ACCOMMODATION**

**In general, it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed.** A reasonable accommodation is a modification or adjustment to a job, employment practice, or work environment which enables a qualified individual with a disability to enjoy equal employment opportunity. An employee may request to be represented in this process by the employee's union, attorney, or any other individual designated by the employee.

### **Applicants**

- To request a reasonable accommodation in the application and selection process, contact the personnel analyst or personnel officer at the number or address on the job announcement as soon as you are aware that an accommodation will be needed.

### **Employees**

- An employee may request a reasonable accommodation by notifying the employee's supervisor, personnel officer, ADA coordinator, or department head. Such request may be made verbally or in writing by the employee or his or her representative. The employee will be provided with information on the reasonable accommodation process and the necessary forms to be completed by the employee and the employee's doctor or health care provider.
- When the completed forms are returned, the department's ADA coordinator will review the information to determine if the employee is a qualified individual with a disability, and if so, whether an accommodation is appropriate. The coordinator may confer with the employee's supervisor, the employee's health care provider, or the ADA coordinator in the Department of Human Resources to review the requested accommodation and/or other alternatives. The coordinator will also contact the employee to discuss the requested accommodation and/or alternatives.
- This process will be completed as quickly as possible. However, if the information on the forms is incomplete or unclear, the process may be delayed. The employee who is requesting reasonable accommodation should make sure that forms are completed accurately and returned as soon as possible. The department will provide the employee with a written update on the status of the request within fifteen days from the day that the request is acknowledged.

- The department ADA coordinator will review the recommended action with the department head and with DHR, and will notify the employee of the department's decision on the request. If the request is not approved, the employee will be informed of other options that could be explored.

## **ADA PLACEMENTS**

If a qualified disabled employee cannot be accommodated in the employee's current class in the current department or to another class in any department, the department will refer the employee to the Department of Human Resources for consideration of an ADA placement to the same class in a different department, or to another class in any department.

## **APPEAL AND COMPLAINT PROCEDURE**

An employee may appeal a department's interpretation and/or implementation of the procedures for reasonable accommodation to the Human Resources Director. An employee or applicant who believes that he or she has been discriminated against in an employment action or reasonable accommodation request may make a complaint with the equal employment opportunity officer or ADA coordinator in either the employee's department or in the Department of Human Resources; or through the grievance procedure of the appropriate employee organization. An employee or applicant may also file a complaint with the California Department of Fair Employment and Housing or the Federal Equal Employment Opportunity Commission.

## **RESOURCES**

- Departmental ADA Coordinator or Personnel Officer in your department
- City's EEO Division, DHR, 1 South Van Ness Avenue, 4th Floor, San Francisco, CA., 94103; 557-4832 or 557-4838, DHR TDD 775-9484;  
[www.sfgov.org](http://www.sfgov.org)
- Department of Fair Employment and Housing (DFEH), 1515 Clay Street, Suite 701, Oakland, CA., 94612, 510-622-2973; TTY 1-800-700-2320;  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- Equal Employment Opportunity Commission (EEOC), 350 The Embarcadero, Suite 500, San Francisco, CA., 94105, 1-800-669-4000; TTY 1-800-669-6820;  
[www.eeoc.gov](http://www.eeoc.gov)