



REASONABLE ACCOMMODATIONS AND COVID-19 VULNERABLE EMPLOYEES

July 21, 2020

As the pandemic continues, departments will see more employees refusing to perform certain job functions due to underlying medical conditions that place them at risk for severe illness from contracting COVID-19. Departments must follow the City's Reasonable Accommodation process and immediately begin interactive discussions with employees and their health care providers. Goals for these discussions include assessing risks and determining what, if anything, can be done to mitigate threats to employees' health and safety while allowing the employee to continue performing essential job functions.

Employees have been submitting generic notes from Kaiser health facilities, and other health care providers, that repeat CDC and California DPH recommendations for groups at increased risk for serious illness related to COVID-19. These notes typically verify that employees are members of the "vulnerable population" because they have a medical condition or are over 65 years of age, and should therefore avoid crowds, mass gatherings, public transit, and other similar circumstances. Employees submitting these notes generally seek medical leave, job modifications, telecommuting or reassignment. However, some of the notes state that employees can perform essential services even with the noted risk factors or that the employer should make the determination as to whether the employee can continue to perform their essential job functions.

These types of notes do not typically support a finding that the employee is prohibited from performing their essential job functions. These types of notes and similar employee requests do, however, put departments on notice that employees may have qualifying disabilities and need reasonable accommodations to enable them to perform their essential job functions.

Departments should not assume that employees cannot remain in their current jobs because they are "vulnerable" to COVID-19, or because employees refuse to perform certain essential job functions. Nor should these employees remain on temporary, interim, or indefinite leave. Instead, upon receiving a note indicating that an employee is in the "vulnerable population," departments should start the interactive process. Starting the interactive process immediately can help employees stay at work or return to work with minimal or no risk to their health.

Part of the interactive process will be individual assessments of employees' specific medical conditions. The assessment may include analyzing factors such as:

- duration of the condition;
- nature and severity of the potential for harm to the employee when they perform their job;
- likelihood the harm will occur;
- the imminence of the potential harm;
- whether the employee can, with the risk, perform the essential job functions without threatening their health; and
- what, if anything, can be done to reduce or eliminate the potential harm.

The threat assessment for vulnerable employees must be based on a health care provider's reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence about the employee's disability and the transmission of COVID-19. This means that employee fears and speculation are insufficient to determine whether an accommodation is required. Consequently, departments usually must request additional information from health care providers before making any determination on whether an accommodation can reduce or eliminate COVID-19 related threats to vulnerable employees' health.

An employee's medical condition is not considered a direct threat to their health if the employer can reduce or eliminate the threat through a reasonable accommodation. In the case of employees with medical conditions that make them vulnerable to COVID-19 illness, reasonable accommodations could include:

- adjustments to the manner in which the work is done, such as virtual site visits;
- providing PPE, such as gloves, face coverings or gowns;
- eliminating marginal job functions;
- moving the employee's workstation;
- erecting barriers between employees and others; or
- reassignment to a telecommuting job.

The COVID-19 pandemic is very likely to continue for the foreseeable future. Departments should be creative and flexible about what can be done to enable vulnerable employees to perform their essential job functions in this new environment. If the department's interactive process concludes and there is no accommodation that will enable an employee to remain in their current job performing all essential job functions, then the employee should be referred to the citywide job search.