



ENGAGING THE INTERACTIVE PROCESS: LEGAL DUTY AND HUMAN IMPACT

Focus: Supporting Employees with Physical and Psychological Conditions under ADA & FEHA

1. LEGAL FOUNDATIONS

Federal: ADA (Title I)

- Requires “reasonable accommodation” for qualified employees with disabilities (42 U.S.C. § 12112(b)(5)).
- Obligation to initiate an interactive process once aware of a possible need.
- Regulation: “To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process.” (29 C.F.R. § 1630.2(o)(3))

CALIFORNIA: FEHA (GOV. CODE § 12940(M), (N))

- Explicitly mandates engagement in a timely, good-faith interactive process.
- Applies when an employee or applicant has a known disability or medical condition, or when the employer becomes aware of the need for accommodation through observation or information from others.
- Regulation: “An employer shall initiate an interactive process when it becomes aware of the need for accommodation through a third party or by observation.” (2 CCR § 11069(b))

2. WHEN THE DUTY IS TRIGGERED

Trigger Source	ADA	FEHA
Employee requests accommodation	<input type="checkbox"/>	<input type="checkbox"/>
Supervisor or HR becomes aware of condition	Known <input type="checkbox"/> Should have known <input type="checkbox"/>	Mandatory under §11069(b)(2) <input type="checkbox"/>
Observation of behavioral/mental health changes	<input type="checkbox"/> Initiate conversation sensitively	<input type="checkbox"/> Must explore possible need for accommodation
Information from third party	<input type="checkbox"/>	<input type="checkbox"/>
Employee returns from leave with restrictions	<input type="checkbox"/>	<input type="checkbox"/>

3. MENTAL HEALTH-SPECIFIC CONSIDERATIONS

- **Common Triggers:** Noticeable performance or attendance changes, emotional outbursts, withdrawal, or medical certification for stress, anxiety, or depression.
- **Employer's Obligation:**
 - Ask, don't assume. Inquire about job impact, not diagnosis.
 - Maintain confidentiality under ADA & FEHA privacy rules.
 - Offer EAP, modified workload, flexible scheduling, or quiet workspace.
- **Documentation:** Keep notes of dates, participants, and options discussed.

4. BEST PRACTICES FOR COLLEGES AND JPAS

1. **Early Identification:** Train supervisors to recognize behavioral cues and consult HR before discipline.
2. **Engage Promptly:** Begin the interactive process once aware of potential limitations.
3. **Collaborative Dialogue:** Use open-ended questions about what's needed to perform essential duties.
4. **Evaluate Essential Functions:** Define what's essential vs. flexible.
5. **Balance Confidentiality & Safety:** Coordinate with HR, legal, and campus police if risks arise.
6. **Follow Up:** Review accommodations regularly, especially for fluctuating conditions.

5. KEY TAKEAWAY

Under both ADA and FEHA, the obligation arises when the employer knows or should know of a condition affecting job performance—regardless of the source of information. Engaging early, documenting thoroughly, and approaching with empathy protects both the employee's well-being and the institution's legal position.

“INTERACTIVE PROCESS = DIALOGUE, NOT DECISION”

LISTEN → CLARIFY → IDENTIFY → DECIDE → DOCUMENT