



The ABCs of ADA Accommodation, Disability Discrimination, and the Interactive Process

Presented by: Angelique A. Cramer, and Julie Kossick, Associate
Vice Chancellor, Human Resources, NOCCCD

ACHRO/EEO Fall Institute
September 25, 2025, 10:00 AM

Lozano Smith

FIRM OVERVIEW

Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Currently representing over 600 public agencies of all types throughout the State of California, our attorneys understand the intricacies and range of ever-changing laws affecting local public agencies.

AREAS OF EXPERTISE

- > Administrative Hearings
- > Charter Schools
- > Community Colleges
- > Construction Advice and Litigation
- > Facilities & Business
- > Governance
- > Investigations
- > Labor & Employment
- > Litigation
- > Municipal
- > Public Finance
- > Special Education
- > Student
- > Title IX

COST CONTROL

We recognize and understand the financial constraints placed on public agencies. Our team works tirelessly to provide the very best legal representation with those limitations in mind. We are mindful of costs and focus on getting our clients the best possible product in a cost-effective manner.

PODCAST, PUBLICATIONS, AND LEGAL UPDATES

One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs which provide an immediate summary of new laws, cases, or other developments. In addition, we provide a range of publications and podcast episodes which provide the tools to minimize liability, thus reducing the need for legal assistance down the road. All of these offerings can be found on our mobile app and website.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice for each of our offices statewide. Client calls are systematically returned within 24 hours and often sooner when required.

DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.

ONE FIRM, STATEWIDE

Our team of more than 100 attorneys span multiple offices and practice areas to cover all aspects of public agency law. With our statewide office locations, clients have the benefits of a large firm and comfortable relationships of a small firm.

- > Sacramento
- > Fresno
- > San Diego
- > San Luis Obispo
- > Walnut Creek
- > Los Angeles
- > Monterey
- > Bakersfield

GIVING BACK TO THE COMMUNITY

Lozano Smith's signature "Blue Hat" Project symbolizes our team's hands-on pledge to engage in our communities. With involvement by more than 150 Lozano Smith employees, we have assembled care kits, volunteered on campuses, and invested in our communities through partner projects. Lozano Smith has partnered with school districts, several statewide associations and various community agencies to help impact hundreds of students and many communities throughout California. Featured programs include, for example:

- > Art Scholarships
- > Backpack Giveaways
- > Bullying Prevention Awards
- > Campus Beautifications
- > Distribution of Care Kits
- > Leadership Academies
- > Mentoring Program Awards
- > Music Scholarships

MODEL WORKSHOPS AND SEMINARS

Lozano Smith is a recognized leader statewide for its successful development and implementation of topical seminars designed to provide practical advice and training. Lozano Smith's robust client training program is focused on cost control and ensuring preventative measures are in place. We invite you to explore our [Frequently Requested Workshop Listing](#).

DIGITAL LEARNING BY LOZANO SMITH

We are also proud to offer LS Illuminate (LSI), Lozano Smith's digital training platform. Designed to meet the growing list of mandatory employee trainings, LSI simplifies the process with on-demand access to essential legal curriculum and compliance reporting. For more information, including exploring enrollment options, visit illuminate.lozanosmith.com.



Lozano Smith
ATTORNEYS AT LAW

The ABCs of ADA Accommodation, Disability Discrimination, and the Interactive Process

Presented by: Angelique A. Cramer, and Julie Kossick, Associate Vice Chancellor, Human Resources, NOCCCD

ACHRO/EEO
2025 Fall Training Institute | September 25, 2025, 10:00 AM

1

Presenter



Angelique A. Cramer
Attorney at Law, Lozano Smith

Angelique A. Cramer is Senior Counsel in Lozano Smith's San Diego office. Her practice focuses on labor and employment aspects of public agency law and student issues faced by school and college districts.

Ms. Cramer frequently advises school and community college district clients, regarding hiring, discipline, layoff, termination, grievance processing, leaves, collective bargaining negotiation strategy, and PERB filings. In addition to her labor and employment advice, Ms. Cramer regularly reviews board policies, settlement agreements, and collective bargaining agreements.

acramer@lozanosmith.com
858.909.9002



2

2

Presenter



Julie Kossick
Associate Vice Chancellor, Human Resources,
North Orange County Community College District

Julie Kossick is the Associate Vice Chancellor, Human Resources, at North Orange County CCD. She is a licensed attorney with over twenty years of Human Resources expertise and has the unique experience of representing the employer and employee in every aspect of employment.

She has specific expertise in Negotiations, ADA, return to work accommodations, workforce development, Title IX, Unlawful Discrimination, investigations, developmental disabilities, Training, Employee Benefits, Staff Development, Labor Relations, organizational planning, and communications strategy.

jkossick@nocccd.edu
714.808.4818



3

3

Topics



- Legal Overview
- The Interactive Process and Why It Matters
- Reasonable Accommodations
- Essential Job Functions
- When Might a Proposed Accommodation be Unreasonable?
- Holding and Effective Interactive Process Meeting
- Response to a Request for Accommodations

LS

LozanoSmith.com

4

4

Legal Overview

5

Overview of Disability Discrimination Laws

Sources of Law

- Federal Law

 - Federal American with Disabilities (ADA)
 - Family Medical Leave Act (FMLA)
 - Pregnant Workers Fairness Act (PWFA)
- California State Law

 - Fair Employment and Housing Act (FEHA; Gov. Code §§ 12940 et seq.)
 - California Family Rights Act (CFRA)
- Enforcement Agencies

 - Equal Employment Opportunity Commission (EEOC)
 - California Civil Rights Department (CRD)

LS

LozanoSmith.com

6

6

Americans with Disabilities Act (ADA)

- ADA is a **federal law** that protects people with disabilities from discrimination.
- “No covered entity shall discriminate against a qualified individual on the basis of disability** in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”



LS

LozanoSmith.com

7

7

Fair Employment and Housing Act (FEHA)

- FEHA is a **California state law** that protects individuals from discrimination, harassment, and retaliation in employment and housing based on protected characteristics.
- FEHA makes it unlawful for employers to discriminate against an employee based on:
 - Disability (physical or mental)
 - Medical condition
 - Pregnancy & Reproductive health



LS

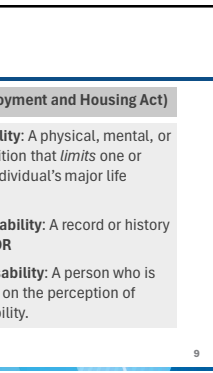
LozanoSmith.com

8

8

Defining Disability

ADA (Americans with Disabilities Act)	FEHA (Fair Employment and Housing Act)
Actual Disability: A physical or mental impairment that <i>substantially</i> limits one or more major life activities; OR Record of Disability: A record of having had such and impairment; OR Regarded As: When a person is perceived as having such an impairment.	Actual Disability: A physical, mental, or medical condition that <i>limits</i> one or more of the individual's major life activities; OR Record of Disability: A record or history of disability; OR Perceived Disability: A person who is treated based on the perception of having a disability.



LS

LozanoSmith.com

9

9

Regulations

ADAAA (2008)

- The ADAAA expressly states that the definition of disability should be **interpreted in favor of broad coverage of individuals**.
- The term "substantially limits" is to be **construed broadly in favor of expansive coverage**, to the maximum extent permitted by the terms of the ADA.

FEHA (2013)

- Strengthened basis for requesting an assistive animal as an accommodation.
- Separate violation of FEHA for failure to engage in the interactive process.
- Detail and **employer's rights to request information when disabilities are not obvious**.
- Shift the burden of determining the existence of a disability to the medical provider.



LozanoSmith.com

10

10

Disability Caused by Pregnancy



"Disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such..."



LozanoSmith.com

Cal. Ed. Code: § 87766

11

11

Pregnant Workers Fairness Act (42 U.S.C. § 2000gg et seq.)



- Federal law effective June 27, 2023.
- Requires employers to **reasonably accommodate** an employee's *known limitations related to pregnancy, childbirth, or related medical conditions*, **unless** the accommodation will cause the employer **undue hardship**.
- The PWFA applies only to accommodations.



LozanoSmith.com

12

12

When Does It Apply?

- PWFA applies when an employee is **medically able** to work but has restrictions that may impact their ability to perform the essential functions of their position.
- PWFA does not apply when an employee is **medically unable** to work (other protections like FMLA/CFRA/PDL may apply)
- Medical documentation?



LozanoSmith.com

13

13

The Interactive Process and Why it Matters

14

What is the Interactive Process?



The **Interactive Process** is the way in which employees, supervisors, and their departments determine whether **reasonable accommodations** can be made for an employee with a **known health condition or disability**.



LozanoSmith.com

15

15

It's a "Process"

ADA and FEHA require a **timely, good faith interactive process** between an employer and an applicant, employee, or the individual's representative.

The process is not a singular event, but an **ongoing series of interactions** from which the employer can **identify** and offer effective **reasonable accommodations** to the employee.



16

Why it Matters



- Addresses the needs of employees with medical conditions/disabilities.
- Allows employees and employers to develop collaborative solutions.
- Improves the employee – employer relationship.
- Protects employer against growing claims of disability discrimination.



17

17

Interactive Process Triggers

3 ways an Employer is triggered to start the Interactive Process:

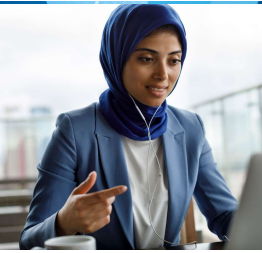
- 1. Requests:** An Employee with a known disability or medical condition **requests** reasonable accommodations;
- 2. Perception:** The Employer **becomes aware of the need** for an accommodation through a third party or by observation; or
- 3. Knowledge:** The Employer **becomes aware of the possible need** for an accommodation because the disabled Employee has exhausted medical and other leaves, **AND** the Employee's physician suggests further accommodations.



18

18

Interactive Process – Employer’s Duties



An Employer’s duties include:

- Analyze essential functions of the job.
- Work in consultation with the employee.
- Initiate discussions regarding alternative accommodations.
- Grant or deny requested accommodations.
- Consider preferences of the employee.



LozanoSmith.com

19

19

Interactive Process – Employer’s Duties

An Employer may also:

- Request clarification from the employee.
- Request reasonable medical information if needed.
- Consult experts.





LozanoSmith.com

EEOC Interpretive Guide, 29 C.F.R. § 1630.9 App. (2011).

20

20

Interactive Process – Employee Duties



An Employee’s duties include:

- Making a request.
- Participating in the process.
- Engaging in a good faith effort throughout the process.
- Respond to requests for medical documentation.
- Respond to requests for educational and work experience information if reassignment is considered.



LozanoSmith.com

21

21

Interactive Process – Employee Duties



LS
LozanoSmith.com

An Employee may also:

- Be represented in the process through an attorney or union, but direct communication between the Employer and Employee is preferred under the law.
- Refuse to provide more medical information than is necessary to make a determination regarding his/her functional limitations and ability to perform essential functions of the job with accommodations.

22

22

Failure to Engage in the Interactive Process



LS
LozanoSmith.com

2546. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n))

[Name of plaintiff] contends that [name of defendant] failed to engage in a good faith interactive process with [him/her/their person] to determine whether it would be possible to implement effective reasonable accommodations so that [name of plaintiff] meet job requirements regarding accommodation. In order to establish this claim, [name of plaintiff] must prove the following:

1. That [name of defendant] was [an employer/other covered entity];
2. That [name of plaintiff] [was an employee of [name of defendant]/ applied to [name of defendant] for a job/describe other covered relationship to defendant];
3. That [name of plaintiff] had [a] [select item to describe basis of limitation, e.g., physical condition] that was known to [name of defendant];
4. That [name of plaintiff] requested that [name of defendant] make reasonable accommodation for [his/her/their person] [e.g., physical condition] so that [his/her/their person] would be able to perform the essential job requirements;
5. That [name of plaintiff] was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that [his/her/their person] would be able to perform the essential job requirements;
6. That [name of defendant] failed to participate in a timely good-faith interactive process with [name of plaintiff] to determine whether reasonable accommodation could be made;
7. That [name of defendant] could have made a reasonable accommodation, when the interactive process should have taken place;
8. That [name of plaintiff] was harmed; and
9. That [name of defendant]'s failure to engage in a good-faith interactive process was a substantial factor in causing [name of plaintiff]'s harm.

23

23

Reasonable Accommodations

24

Reasonable Accommodations

A reasonable accommodation is a modification or adjustment that:

- Enables an applicant with a disability to have an **equal opportunity** to be considered for a job;
- Enables an employee to perform the **essential functions** of the job the employee holds or desires; or
- Enables an employee with a disability to **enjoy benefits and privileges of employment** equivalent to employees without disabilities.

LS

LozanoSmith.com

25

25

Assessing the Limitations and Potential Accommodations



What are the employee's limitations?

What job functions does it impact?

Interactive dialogue is just that – interactive – two-way conversation.

LS

LozanoSmith.com

26

26

Examples of Accommodations

- Job restructuring (non-essential job functions).
- Leaves of absence (paid or unpaid for treatment or recovery).
- Modified facilities and/or equipment.
- Modification of qualifying exams, training materials, and providing additional training.
- Providing qualified readers or interpreters.
- Providing a part-time or modified work schedule.
- Reassignment to vacant position.



LS

LozanoSmith.com

27

27



28

Essential Functions



An employer is **not** required to eliminate essential functions of a position as a reasonable accommodation.

LS LozanoSmith.com Nealy v. City of Santa Monica (2015) 234 Cal.App.4th 359. 29

29

Essential Functions Under ADA/FEHA

ADA	FEHA
“Essential functions” of a job are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation. (29 C.F.R. § 1630.2(n).)	“Essential functions” means the fundamental job duties of the position the individual with a disability holds or desires. (Gov. Code, § 12926.)

LS LozanoSmith.com 30

30

Essential Job Functions

A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

- The function may be essential because the reason the position exists is to perform that function.
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
- The function may be highly specialized, so that the incumbent in the position is hired based on expertise or the ability to perform a particular function.

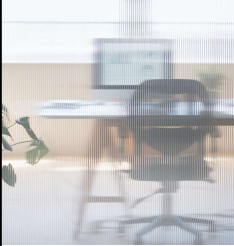
LS

LozanoSmith.com

31

31

Essential Job Functions



Essential job functions do NOT include:

- Job duties that are “marginal” functions of the position.
- Job duties that “if not performed would not eliminate the need for the job, or those that could be readily performed by another employee, or those that could be performed in another way.”

LS

LozanoSmith.com

32

32

Determining Which Functions Are Essential

Employer’s judgement	Terms of collective bargaining agreement
Work experience of past incumbents of position	Job description
Amount of time spent performing the function	Work experience of those in similar positions

LS

LozanoSmith.com

33

33

When Might a Proposed Accommodation be Unreasonable?

34

Undue Hardship

Undue hardship = Not "reasonable"

- Findings of undue hardship must be based on an **individualized assessment of current circumstances** that show that a specific reasonable accommodation would cause significant difficulty or expense.
- Undue hardship is determined in light of:
 - Nature and cost of accommodation.
 - Financial resources of employer.
 - Number of employees.
 - Impact on employer's operation.
 - Overall size of business with respect to number of employees and number/ type/ location of facilities.
 - Type of operations.
 - Geographic separateness or administrative/fiscal relationship of facilities.



LozanoSmith.com

35

35

Direct Threat

- "Direct threat" = **significant risk of substantial harm** to the health or safety of the applicant/employee or others that cannot be eliminated or reduced by reasonable accommodation.
- Factors for assessing whether an employee poses a direct threat:
 - Duration of risk,
 - Nature and severity of potential harm,
 - Likelihood that potential harm will occur; and
 - Imminence of potential harm.



LozanoSmith.com

36

36

Absenteeism

- Extensive and unpredictable absenteeism may be caused by an employee's disability.
- Courts have differing views regarding proper considerations for analyzing attendance issues.
 - Some courts have held that regular attendance is an essential function of most jobs. (*Laurin v. Providence Hospital* (1st Cir. 1998) 150 F.3d 52.)
 - Other courts have held that even if a fixed work schedule is an essential job function, the court must consider whether there is an effective reasonable accommodation. (*Jacques v. Clean-Up Group, Inc.* (1st Cir. 1996) 96 F.3d 506.)

37

CFRA/FMLA: Chronic conditions

Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

- 1) Requires "periodic visits" for treatment by a health care provider or nurse under the supervision of the health care provider,
- 2) Continues over an extended period of time; and
- 3) May cause episodic rather than continuing periods of incapacity.

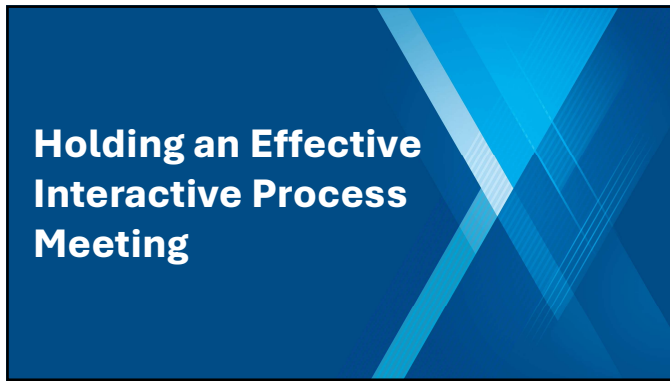
38

EEOC Guidance – Frequent Absences

The chronic, frequent, and unpredictable nature of such absences may put a strain on the employer's operations for a variety of reasons, such as the following:

- an inability to ensure a sufficient number of employees to accomplish the work required;
- a failure to meet work goals or to serve customers/clients adequately;
- a need to shift work to other employees, thus preventing them from doing their own work or imposing significant additional burdens on them;
- incurring significant additional costs when other employees work overtime or when temporary workers must be hired.

39



40

The Meeting



How to Prepare?

- Determine who will attend.
- What are your roles?
- What are the District's goals?
- What questions will you ask?
- Continuation meeting vs. first meeting.

LS

LozanoSmith.com

41

41

The Meeting: Types of Questions/Talking Points

Does the Employee have a disability?

- Discussion of existing doctor's note
- Temporary vs. Permanent Restrictions
- Discussion of limitations

Accommodations

- Specific requests/thoughts regarding reasonable accommodations
- Other effective accommodation options

Is the employee qualified under the ADA/FEHA?

- Review job description
- Discussion of essential functions

Summary/Next Steps

LS

LozanoSmith.com

42

42

Ask Jan - <https://askjan.org/>

43

Response to a Request for Accommodations

44

Responding to Accommodation Requests

If you grant it – Provide a detailed letter to employee:

- Document the accommodations.
- Indicate a time limit on the accommodations, when relevant.
- Indicate that the District and employee will reconvene at the end of the time limit to reassess the situation.

If you deny – Provide a detailed letter to employee:

- Explain why the District is denying the request.
- Provide a recap of the interactive process engaged in by both employer and employee.
- If relevant, provide an overview of all the alternative accommodations considered.

45

45

Accommodation Decisions



LS
LozanoSmith.com

46

- A good faith effort includes consideration of input from the employee and his/her medical provider.
- Employer is not required to provide the best accommodations or the employee's requested accommodations.
- Employer makes final determination.

46

Keys to Remember

LS
LozanoSmith.com

47

- Establish and follow set procedures.
- Know who owns the process.
- The District speaks with one voice. Know who is communicating with the employee.
- Engage in the interactive process. This is a two-way conversation.
- Ask the employee what they need but understand you are not required to agree to the specific requested accommodation.
- Work collaboratively with the individual and maintain a process, not just one meeting.
- Reasonably and specifically identify the essential functions and the precise job-related limitations.

47

Final Thoughts

LS
LozanoSmith.com

48

- Explore how the limitations might be overcome with reasonable accommodation and give a good faith consideration of all potential accommodations.
- **Document** your assessment of the effectiveness of all accommodations considered.
- If considering denying an accommodation, can you articulate the reason, and does it comply with the legal standards? Can you **document** the basis for the denial?
- **Document** the process, including meeting dates, times, persons present, discussions held, and agreements made.

48



49



Thank you from Lozano Smith!

Together with you, we are impacting communities and lives through:

- Professional development
- Volunteer projects
- Sponsorships and award programs
- Scholarships

#BlueHatProject
#LozanoSmithFoundation

 LozanoSmith.com

50

For more information or questions about the presentation, please feel free to contact:



Angelique A. Cramer
Attorney at Law, Lozano Smith
858.909.9002 | acramer@lozanosmith.com



Julie Kossick
Associate Vice Chancellor, Human Resources,
North Orange County Community College District
714.808.4818 | jkossick@nocc.edu

 Or any of the attorneys in one of our 8 offices.

51

Transform Your Training With LSI

Designed to meet the growing list of mandatory employee trainings, **Lozano Smith Illuminate** simplifies the process with on-demand access to essential legal curriculum and compliance reporting.

Featured Courses:

- Ethics Training for School Board Members
- Sexual Harassment Prevention Training
- Special Education Training Series
- Title IX Training Series
- Workplace Violence Prevention Program

Your go-to source for streamlined employee training programs.


illuminate.lozanosmith.com


52



52



Lozano Smith Podcast

Balancing law and public agency applications.

Stay informed on your time!

Check out the latest episode:
From Resume to Red Flag:
District Responsibilities Under AB 2534


lozanosmith.com/podcast.php
Subscribe on your favorite app or device.

53



53

Connect with us on social media for the latest updates.





@LozanoSmith

Disclaimer: These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservice@lozanosmith.com or call (925) 424-5680.

Copyright © 2025 Lozano Smith.
All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.

54

54

Disclaimer:

These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2025 Lozano Smith

All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.