

**AIDS Legal Referral Panel
Employment Issues Facing Clients with HIV/AIDS
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Citations and Resources

FMLA/CFRA Leave:

29 U.S.C. § 2601 et seq. (FMLA)

29 C.F.R. 825.100 et seq. (FMLA regulations)

Cal. Gov. Code § 12945.2 (CFRA)

2 Cal. Code of Regs. § 11087 et seq. (CFRA regulations)

Liu v. Amway Corp. (9th Cir. 2002) 347 F.3d 1125, 1135

Blohm v. Dillard's, Inc. (E.D. N.C. 2000) (rejecting the employer's argument that the employee should have scheduled their FMLA leave around the needs of the company).

U.S. Department of Labor, Wage and Hour Division, Fact Sheet #28: The Family Medical Leave Act,

<http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>

California Department of Fair Employment and Housing, California Family Rights Act, https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_CFRA_Pamphlet.pdf

Income Replacement:

State of California Employment Development Department, State Disability Insurance Frequently Asked Questions,

<http://www.edd.ca.gov/Disability/FAQs.htm>

Intermittent Leave:

29 U.S.C. § 2612(b)(1)

29 C.F.R. §§ 825.202, 825.203, 825.205

Cal. Gov. Code § 12945.2(p)

2 Cal. Code of Regs. § 11090

HIV/AIDS as a Disability:

Cal. Gov. Code § 12926.1(c) ("Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS...")

Maureen K. v. Tuschka (2013) 215 Cal. App. 4th 519, 527-530 (a person who is HIV+ is disabled as a matter of law)

42 U.S.C. § 12102 (definition of disability)

29 C.F.R. 1630.2(j)(3)(iii) ("[I]t should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: . . . Human Immunodeficiency Virus (HIV) infection substantially limits immune function . . . The types of impairments described in this section may substantially limit additional major life activities not explicitly listed above.")

Bragdon v. Abbott (1998) 524 U.S. 624, 637 (HIV substantially limits major life activity of reproduction)

Reasonable Accommodations:

Cal. Gov. Code § 12926(p) (definition of the term "reasonable accommodation")

2 Cal. Code Regs. § 11068

Jensen v. Wells Fargo Bank (2000) 85 Cal. App. 4th 245 (discussing transfer to vacant position and leave of absence as reasonable accommodations)

42 U.S.C. § 12111(9) (definition of the term "reasonable accommodation")

Equal Employment Opportunity Commission, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, <http://www.eeoc.gov/policy/docs/accommodation.html>

Job Accommodation Network, <https://askjan.org/indiv/index.htm> (a service of the Office of Disability Employment Policy of the U.S. Department of Labor, JAN provides helpful information for employees with disabilities, including identifying disability-specific possible reasonable accommodations)

Legal Aid at Work, Disabilities in the Workplace: Reasonable Accommodation, <https://legalaidthatwork.org/factsheet/disabilities-in-the-workplace-reasonable-accommodation/>

Interactive Process:

Cal. Gov. Code § 12940(n)

2 Cal. Code Regs. § 11069

29 C.F.R. § 1630.2(o)(3)

Disability Discrimination:

Cal. Gov. Code § 12940(a)

Jensen v. Wells Fargo Bank (2000) 85 Cal. App. 4th 245, 254 (To establish a prima facie case of disability discrimination, the employee must demonstrate that: (1) he or she suffers from a disability; (2) he or she is otherwise qualified to do her job with or without a reasonable accommodation; (3) he or she was subjected to adverse employment action; and (4) the adverse action was because of his or her disability).

CACI 2540 (jury instruction for disability discrimination – disparate treatment) (causation standard is “substantial motivating reason”)

Wallace v. County of Stanislaus (2016) 245 Cal. App. 4th 109 (an employee seeking to prove disability discrimination need not prove that the employer’s actions were motivated by animosity or ill will; it is sufficient for the employee to prove that the employer’s actions were motivated by the employee’s disability)

Humphrey v. Memorial Hospitals Association (9th Cir. 2001) 239 F.3d 1128, 1140 ("The link between the disability and termination is particularly strong where it is the employer's failure to reasonably accommodate a known disability that leads to discharge for performance inadequacies resulting from the disability.").

Retaliation:

Cal. Gov. Code § 12940(m)(2) (unlawful for an employer to retaliate against an employee for requesting a reasonable accommodation)

Coons v. Secretary of U.S. Department of Treasury (9th Cir. 2004) 383 F.3d 879, 887 ("[T]he ADA prohibits an employer from retaliating against an employee who seeks an accommodation in good faith.")

FMLA/CFRA Retaliation/Interference:

Xin Liu v. Amway Corp. (9th Cir. 2003) 347 F.3d 1125

Bachelder v. America West Airlines, Inc. (9th Cir. 2001) 259 F.3d 1112

Edgar v. JAC Products, Inc. (6th Cir. 2006) 443 F.3d 501

Lichtenstein v. University of Pittsburgh Med Ctr. (3rd Cir. 2012) 691 F.3d 294

Avila v. Continental Airlines (2008) 165 Cal. App. 4th 1237