

FEHA AND ADA - THE EMERGING THREAT TO EMPLOYERS HARD LESSON OR EASY FIX?

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The California Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) are being used against employers by the California Applicants Attorneys Association (CAAA) to recoup lost revenue as a result of SB 899. Many employers are not aware of what this means and the detrimental impact on their businesses. Failure to follow a very simple process can cost an employer hundreds of thousands of dollars in defense alone!

The main focus has been on improper handling by employers of an injured/disabled worker who is ready to come back to work, but not to their normal job. Amendments to the workers' compensation laws (SB 899) replaced Vocational Rehabilitation benefits for injured workers with a Supplemental Job Displacement Benefit Voucher. This change severely impacted the revenue stream of the Applicant Attorneys. Their answer to their impaired revenue stream was to attack an unsuspecting employer by catching them violating FEHA and ADA laws. How are the laws violated? Here are some examples that can lead to fines and lawsuits:

- Failure by the employer to notify the injured worker in a timely manner of the eligibility to receive a voucher, and provide modified work.
- Failure to have a modified work program. This also applies for non work-related disabilities.
- Lack of appropriate evaluation using a JFA (Job Function Analysis) of an injured worker for modified duty. The JFA is used to determine the essential functions of the job.
- Improper management of a claim and improper care of an injured worker.
- Failure to educate your management staff on the "Interactive Process", the laws and rules governing workers' compensation and disability management.
- Improper use of e-mail by Supervisors or Management that documents discriminatory attitude or practice that violates the returning employee's rights.
- Not having a written policy on disability and return-to-work.

CAAA has told their members that they may be sued for malpractice by not advising their client of potential suits under FEHA and ADA. We encourage all businesses to take steps immediately to educate their staff and obtain assistance to put the appropriate policies and practices in place to protect your company's valuable assets.

Please look for an invitation to our seminar titled "*Preventing Disability Discrimination Disasters in the Intersection of California Workers' Compensation and FEHA*" on Thursday, December 7, 2006 at the Hilton Hotel in Glendale, CA.

If you have any questions or need more information, please contact Bolton & Company at (626) 799-7000.

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