

What Is The Interactive Process?

A “timely, good faith” Interactive Process is now a stand-alone statutory requirement in the California Code of Regulations (CCR, title 2, section 7294.0). California State and Federal laws define the “Interactive Process” as an on-going communication between the employer and the applicant or employee with a known disability in an effort to provide reasonable accommodation.

It is unlawful for employers to fail to engage in a timely, good faith, interactive process whether or not the interactive process would have resulted in an obligation to provide a reasonable accommodation.

Under the Fair Employment and Housing Act (FEHA), if an employer fails to reasonably accommodate an applicant or employee, the Fair Employment and Housing Commission can order the employer to cease and desist the discriminatory practice; to hire or reinstate; and award actual damages including, but not limited to, lost wages; emotional distress damages; and administrative fines not to exceed \$150,000.00. If the matter is heard in civil court, the damages would be unlimited.

What is “Good Faith”?

An employer and employee must communicate directly with each other to determine essential information and neither party can delay or interfere with the process. If an employee refuses to respond or participate in the Interactive Process you should document in writing your efforts to contact the employee and offer the Interactive Process. Contact RESIG’s Sr. RTW/Ergo Advisor for more information.

How does an employer become aware of a need for an accommodation?

An employer may become aware of the need for an accommodation by:

- Request from an employee
- Request made by a third party on behalf of the employee
- Request made by a representative of the employee (such as a spouse)
- Request initiated by a manager who becomes aware of a need for an accommodation either from the employee or through observation

The request may be as direct as a specific oral or written request or may be an unassuming mention of a difficulty due to a medical condition.

Once an employer is aware of the need for an accommodation due to medical work restrictions the employer is obligated to begin this good faith, interactive process in a timely manner.

Another area to be aware of is when placing employees on a 39 month rehire listing. FEHA obligates the employer to look at all vacant jobs. Don’t assume that an employee is not able to perform a job.

Communicate, follow up and document your interactions throughout the Interactive Process.

Accommodation Strategies

Accommodation requests don't need to be daunting. One thing you always want to do is engage in the Interactive Process with your employee, but here are some more tips that might help both you as an employer and your employee while navigating the accommodation process.

- ✓ Start by exploring your options.
- ✓ Brainstorm with your employee.
- ✓ Write down all suggestions and ideas.
- ✓ Don't exclude any ideas even if they are "outside the box".
- ✓ Look at available resources and know what equipment is already available to you.
- ✓ Could you use a modified or flexible schedule?

Finally, when considering an accommodation request make sure it works for both your business needs and the employee. Once the accommodation has been chosen make sure you continue to follow up with the employee. The Interactive Process is just that....it's a process which needs to be continually monitored. Shortly after implementing the accommodation, check back with the employee to ensure the chosen accommodation is effective and working for both the business needs of the employer and the employee needs. You should also provide the employee with a contact person to report problems should there be an issue with the implemented accommodation. Lastly, be sure to document what you have done throughout the accommodation process. Accommodation requests can be a win-win for everyone involved.

If you have questions about the Interactive Process or accommodation requests you can contact

Kelly Cook, RESIG's Sr. Return to Work/Ergonomic Advisor

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Interactive Process – Supervisor’s Checklist

- Work-Related Injury Temporary Work Restrictions Permanent Work Restrictions
 Non-Industrial Injury Temporary Work Restrictions Permanent Work Restrictions

Employee: _____ Worksite: _____

ACTION	√
Review the temporary or permanent work restrictions as listed on the doctor’s Work Status Report or Return to Work Agreement as provided to you by the HR Contact. <i>Work-Related (Industrial) Injuries – Marlene Moore, Non-Industrial Injuries – Terri Walker</i>	√
Schedule an Interactive Process meeting with the employee for _____(date), _____(time). <input type="checkbox"/> By Phone <input type="checkbox"/> In Person	√
AT THE INTERACTIVE MEETING:	
Review the temporary or permanent work restrictions with the employee, as listed on the Work Status Report and/or Return to Work Agreement (which will be provided to you by the HR Contact). Does the employee agree with the work restrictions? <input type="checkbox"/> Yes <input type="checkbox"/> No	√
Review the employee’s job description and identify the essential and non-essential functions of the job with the employee.	√
Engage in a collaborative, interactive conversation with the employee and discuss various “reasonable” accommodations, if any.	√
Ask the employee for his/her input or feedback on what duties they think they can perform within their restrictions.	√
Complete the Return to Work Agreement with the employee noting whether or not you can accommodate the restrictions – provide employee with a copy and original to HR contact.	√
AFTER THE INTERACTIVE MEETING:	
Provide a narrative of the interactive meeting summarizing your discussion to the HR Contact. Your narrative should include those in attendance; what was discussed, i.e., the employee’s restrictions, accommodations, etc.; the employee’s input and/or feedback; and the outcome of the meeting; i.e., the ability/inability to accommodate; job modifications, etc. The HR contact will send a confirmation letter to the employee, which will include information from your narrative, along with information regarding the employee’s benefits under industrial accident leave and/or the 5-month differential leave.	√
If you are able to accommodate, implement the temporary work assignment that is most appropriate for both the employee and the employer.	√
The Interactive Process is continuous, so be sure to check in on the employee regularly to review the ongoing effectiveness of the accommodation and don’t forget to document. Additional interactive meetings should be held if the work restrictions change significantly.	√
Document, document, document. All steps of the Interactive Process must be timely, in good faith and documented.	√

Supervisor’s Signature

Date

Work-Related (Industrial) Injuries Examples

KAISER PERMANENTE  thrive

3975 Old Redwood Hwy.
Santa Rosa CA 95403-1719
707-393-4000

Patient Name: .
Patient MRN: .
Encounter Date & Time:

Please see below for this health care provider's directives and information relating to this encounter.

Industrial Work Status Report

Date of Injury: .
Claim #: .
Next Appointment Date:

Modified Activity (Applies to work and home)

This patient is placed on modified activity at work and at home from through

If modified activity is not accommodated by the employer then this patient is considered temporarily and totally disabled from their regular work for the designated time and a separate off work order is not required.

Other needs and/or restrictions:

No forceful or repetitive use left hand
Wear splint as needed

Comments:

Follow up: 3 weeks

This form has been electronically signed and authorized by

This form contains your private health information that you may choose to release to another party; please review for accuracy.

Work-Related (Industrial) Injuries Examples

Return to Work Agreement

IMPORTANT: This program is available on a short-term basis only when the District has available, productive work appropriate for your temporary work restrictions. Your participation in the Return to Work Program is limited to a maximum of 12 weeks (in some instances temporary job task assignments may be extended).

Employee:	Jimmy Olsen		
Claim Number	2017XXXX		
Date of Hire	July 1, 2015	Date of Injury	March 9, 2017
Next Office Visit	March 30, 2017 @ 3:30 p.m.		
Assigned Supervisor:	George Taylor		
Temporary Restrictions:	No forceful or repetitive use left hand Wear splint as needed		
Temporary job task assignments:			
Work Schedule:			
Effective date of temporary restrictions:	March 9, 2017 - March 30, 2017		

EMPLOYER INFORMATION (please check one):

- A temporary job task assignment can be provided, beginning on _____ date.
- A temporary job task assignment is not available at this time.

EMPLOYEE INFORMATION:

1. All regular personnel policies and procedures with respect to attendance and performance will apply as usual while you are participating in the RTW program.
2. If you are unable to perform any of your assigned temporary job tasks because of your injury, immediately advise your supervisor and the district's H.R. Workers' Compensation Coordinator. You will need a Work Status Report / disability slip from your treating physician to cover any lost days.
3. After each medical appointment, you will need to provide the HR Workers' Compensation Coordinator with an updated copy of a **Work Status Report** listing your restrictions.

I understand and agree to the guidelines of the Return to Work Program as outlined above whether or not a temporary job task assignment is available. An updated work status report may change your RTW Agreement.

Employee Signature _____ Date _____

Supervisor/Manager _____ Date _____



401 Bicentennial Way
Santa Rosa CA 95403-2149
707-393-4000

Patient Name:

Encounter Date & Time:

Please see below for this health care provider's directives and information relating to this encounter.

Work Status Report

Date onset of condition:

Next Appointment Date:

Modified Activity (Applies to work and home)

This patient is placed on modified activity at work and at home from _____ through _____

If modified activity is not accommodated by the employer then this patient is considered temporarily and totally disabled from their regular work for the designated time and a separate off work order is not required.

This patient's activity is modified as follows:

- Stand: Occasionally (up to 25% of shift)
- Walk: Occasionally (up to 25% of shift)
- Bend at the waist: Occasionally (up to 25% of shift)
- Torso/spine twist: Not at all.
- Climb ladders: Not at all.
- Use of scaffolds/work at height: Not at all.
- Lift/carry/push/pull no more than 10 pounds.

Other needs and/or restrictions:

Able to lift/carry up to 20lbs; with elbow of the right arm kept adjacent to the trunk; no work above shoulder level. No climbing of ladders.

This form has been electronically signed and authorized by _____

This form contains your private health information that you may choose to release to another party; please review for accuracy.

Non-Industrial Injuries or Illnesses Examples

Return to Modified Duty Work Agreement (Non-Industrial Injuries/Illnesses)

Employee:	Lois Lane
Date of Injury/Illness:	February 10, 2017
Next Office Visit:	April 21, 2017 @ 2:00 p.m.
Assigned Supervisor:	Perry White
Temporary Restrictions:	Stand – Occasionally (up to 25% of shift), Walk – Occasionally (up to 25% of shift); Bend at the waist – Occasionally (up to 25% of shift); Torso/spine twist – Not at all; Climb ladders – Not at all; Use of scaffolds/work at height – Not at all; and Lift/carry/push/pull – no more than 10 pounds Other needs and/or Restrictions: Able to lift/carry of up to 20 lbs.; with elbow of the right arm kept adjacent to the trunk; no work above shoulder level. No climbing ladders.
Temporary Job Task Assignments	
Work Schedule:	
Effective Date of Temporary Restrictions:	February 10 - April 21, 2017

EMPLOYER INFORMATION (please check one):

- A temporary modified duty assignment can be provided, beginning on _____ Date.
- A temporary modified duty assignment is NOT available at this time.

EMPLOYEE INFORMATION:

1. All regular personnel policies and procedures with respect to attendance and performance will apply as usual while you are participating in the modified duty assignment.
2. If you are unable to perform any of your assigned temporary transitional duties because of your injury, immediately advise your supervisor and Terri Walker in Human Resources. You will need a Work Status Report/disability slip from your treating physician to cover any lost days.
3. After each medical appointment, you will need to provide an updated copy of a Work Status Report listing your restrictions to your supervisor and Terri Walker in Human Resources.
4. An updated Work Status Report may change your Return to Modified Duty Work Agreement.
5. This accommodation will be provided as long as it is effective at allowing the employee to perform the essential functions of the job within the documented job-related limitations or until SCOE is no longer able to provide this accommodation based on an assessment of business/operational necessity.

All parties understand that if at any point the accommodation does not appear to be effective at allowing the employee to perform the essential functions of the job within the documented job-related limitations, they are to immediately notify Terri Walker in Human Resources.

Employee Signature

Date

Supervisor/Manager

Date