CHAPTER 13
INDIVIDUALS WITH DISABILITIES IN THE WORKPLACE

NOTES

I. FEDERAL LAWS (pp. 467-473)
   a. ADA (Title I of ADA addresses employment discrimination)
      i. “Covered employers” may not discriminate against “qualified” individuals with a disability in employment actions
         1. private sector employers with 15 or more employees are covered
      ii. Covered employers must provide “reasonable accommodation” to applicants or employees with a disability unless it would impose an “undue hardship.”
      iii. Title I is enforced by EEOC.
      iv. [Title III of ADA covers private sector offering “public accommodation” such as customer service. Title III enforced by the U.S. Department of Justice]
   b. Rehabilitation Act of 1973
      i. Federal sector as employer and provider of “public accommodation” must provide “reasonable accommodation”
      ii. 1992 amendments: language changed to reflect ADA
      iii. affirmative action requirements for federal sector employers and contractors.

II. CALIFORNIA FEHA
   a. “Prohibited factor” includes disability
   b. Broader definition of disability than under ADA (see below)
   c. DFEH: guidance and enforcement

III. WHAT IS A “DISABILITY?” (pp. 473-482)
   a. ADA
      i. Medically recognized physical or mental impairment that
      ii. Substantially limits a
      iii. major life activity
      iv. “mitigating measures” such as eyeglasses, medication, devices, etc. which lessen the impact of impairment on
daily life are taken into account in assessing whether an individual is “substantially limited.” (Sutton v United Airlines 1999 see p. 474)

v. specific job-related tasks are not a “major life activity” like brushing teeth. (Toyota p. 476).
vi. Includes disfigurement and morbid obesity as medically recognized impairments
vii. Includes alcoholism and drug addiction as medically recognized impairments

1. does not protect employee from adverse employment action based on related behaviors (e.g. current drug use)

b. FEHA
   i. Medically recognized physical or mental impairment that
   ii. Limits a
   iii. Major life activity
   iv. Amendment regarding Sutton

IV. WHO IS PROTECTED FROM DISABILITY DISCRIMINATION?
   a. All three of the following categories of employees and applicants:
      i. Individuals with disability under the statutory definition
      ii. Individuals with a record of such an impairment
      iii. Individuals who are regarded as having such an impairment (“perception of impairment” – see pp. 482-483)
   iv. Contingent workers are also protected from discrimination and have right to reasonable accommodation
   v. Individual must be “qualified” (pp. 483-504)
      1. requisite skills, abilities, education, and experience
      2. can perform the essential job functions (expected outcomes)
      3. with or without reasonable accommodation
      4. does not pose a direct threat to the health and safety of others that cannot be overcome through reasonable accommodation
V. PRE-EMPLOYMENT INQUIRIES (pp. 506-507)
a. Pre-employment Inquiries: divided into pre-offer and post-offer
   i. Medical exams and disability-related inquiries: post-offer
b. Pre-offer inquiries and the applicant with "obvious impairment"
   i. ADA-EEOC guideline: may make disability-related inquiry related to job and qualifications
   ii. However, unclear whether under the ADA employer can continue with a discussion regarding needed reasonable accommodation on the job.
   iii. FEHA: do not make any disability-related inquiry pre-offer, whether the impairment is "obvious" or not.

VI. THE DUTY OF REASONABLE ACCOMMODATION
a. case-by-case basis
b. interactive process (503-504)
c. Barnett (495): seniority systems and undue hardship
d. Chevron (2003): employer may refuse to place employee in desired job if employee's medical condition will be worsened as a result.
e. if applicant requests accommodation for interview/testing, must allow applicant to have it - but could require applicant to provide his/her own accommodation (e.g. special keyboard, cushion, etc.)
f. Examples of reasonable accommodation: Exhibits 13.1 and 13.2
g. “undue hardship:” (500)
   i. employer may need to be flexible in policies and expectations regarding marginal job functions, but need not dismiss essential job functions (Jovanovic p. 491)

VII. EMPLOYERS’ DEFENSES TO DISABILITY DISCRIMINATION CLAIMS
a. Valid business reason
b. Accommodation needed would create "undue hardship"
c. Direct threat to health and safety of others that cannot be reasonably accommodated
d. BFOQ defense is not available under ADA: case-by-case determination of whether individual can perform the essential job functions with or without reasonable accommodation is required.

VIII. RELATED ISSUES
   a. DISABILITY HARASSMENT (p. 504)
   b. GENETIC TESTING (pp. 505-506)

IX. MANAGEMENT TIPS
   a. pp. 512
   b. employees with disabilities can be among the most productive and loyal members of an organization: not discriminating against these individuals based on their disability not only prevents liability but can support other HR goals.