



Hypo #1: The "Temporary Accommodation" That Becomes Permanent

An employee requests an accommodation of a reduced schedule (coming to work late one day a week and leaving early two other days). Although the schedule imposes considerable hardship on other employees, the employer agrees- because the employee's medical support suggests the employee's limitations are temporary. The HR email agreeing to the "temporary" reduced work schedule does not state any anticipated time limit to the new schedule. This schedule then goes on for many months with the limitations being extended repeatedly by the employee's doctor. Now, six months later, the other employees are complaining about increased workload. When the employer announces the temporary schedule will have to end, the employee protests that the schedule must continue. The employee argues that the fact that the schedule was in place for six months means that the accommodation is both reasonable and necessary.

The "Temporary Accommodation"
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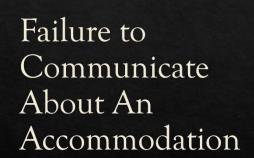
Raine v. City of Burbank (2006) 135 Cal. App. 4th 1215, 1224



Hypo #2: Failure to Communicate About An Accommodation

An employer engages in the interactive process with an employee who requested an accommodation. The employer fails to communicate with the employee regarding the steps taken internally in an attempt to accommodate. After an internal assessment of alternatives, the employer rejects the employee's preferred or requested accommodation and proposes a different but still reasonable accommodation- one that imposes less burden on the employer. Two weeks after the initial request, the employer advises the employee in writing of its decision.

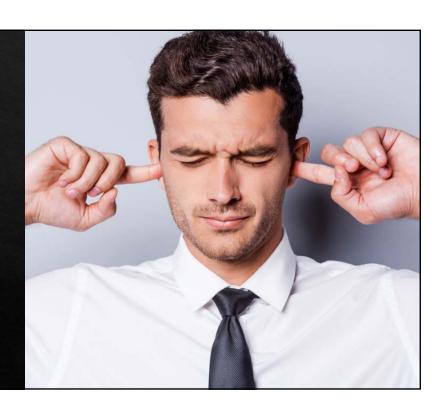
Having received no updates, the employee feels that the employer did nothing to evaluate the requested accommodation and instead summarily rejected it. The employee then seeks an attorney to address the employee's concerns.



Swanson v. Morongo Unified School Dist.
(2014) 232 Cal.App.4th 954, 959 [181
Cal.Rptr.3d 553, 568], as modified on denial of reh'g (Dec. 23, 2014)

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Failing to
Investigate in
Response to an
Employee's
Request



Hypo #3: Failing to Investigate in Response to an Employee's Request

An employee raises a concern to her HR manager and reports offensive conduct by a supervisor. The employee wants her complaint to remain confidential, and requests that HR not pursue an investigation regarding the matter. The HR manager agrees and does not investigate the complaint, although she does make notes of the nature of the complaint and the alleged perpetrator. Eightmonths to a year later, a different employee complains about the same co-worker, and reports conduct similar to the first complaint (which was never investigated).

Failing to
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Gov. Code 12940(k)

2 Cal. Code Regs § 11023(b)

DFEH Harassment Prevention Guide for
California Employers, p. 8

Torres v. Pisano (2d Cir. 1997) 116 F.3d
625, 639

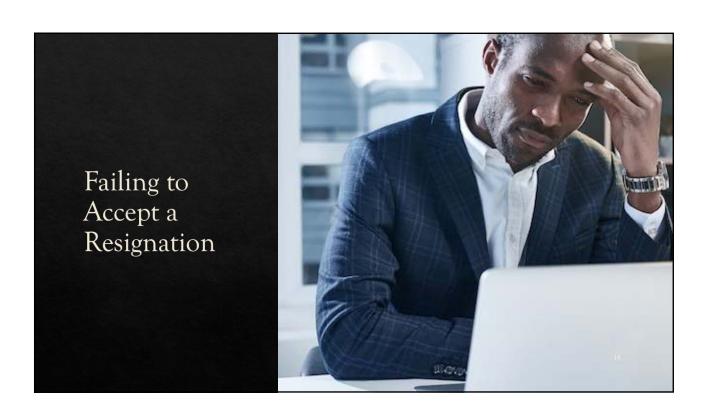


Hypo #4: Failure to Interview the Accused

An employee lodges a complaint about a co-worker and HR promptly investigates the complaint. The investigation reveals considerable evidentiary support for the complaint but some of the witnesses have possible biases or motives to be hostile to the accused. The accused person has an otherwise good record. After speaking to the "accused" employee's supervisor, who himself spoke to the accused about the incident, the HR investigator does not interview the accused during the investigation process. The accused person is terminated and sues for defamation and wrongful termination.

Failure to Interview the Accused

King v. U.S. Bank Nat'l Ass'n (2020) 52 Cal.App.5th 728



Hypo #5: Unaccepted Resignation

An employee resigns from his or her job and gives a 30 day notice by email. Due to the long notice, the supervisor hesitates to accept the resignation immediately. The supervisor wants the resigning employee to stay for a period of time to train a coworker. The employee then sends an email after two weeks, "withdrawing my resignation." Management wants the employee out. Can the employee withdraw the resignation?

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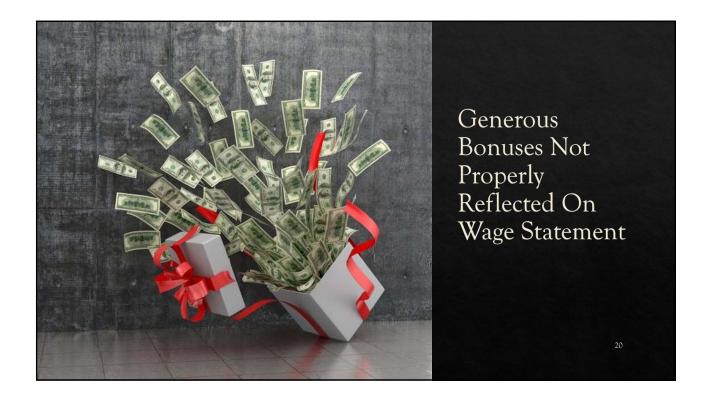
Mahoney v. Board of Trustees (1985) 168 Cal.App.3d 789, 799 Featherstone v. Southern California Permanente Medical Group (2017) 10 Cal.App.5th 1150, 1165 Ulrich v. City and County of San Francisco (9th Cir. 2002) 308 F.3d 968, 975



Hypo #6: Company Data on Personal Devices

An employer permits an employee to use a personal device to conduct the employer's business. There is no agreement in writing with the employee to provide the device to be "scrubbed" in the event of a termination or resignation. The employee is then terminated under adverse conditions and refuses to provide the device.





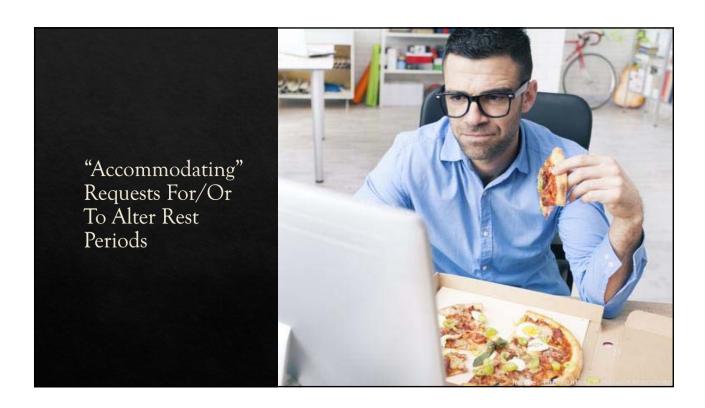
Hypo #7: Generous Bonuses Not Properly Reflected On Wage Statement

An employer pays employees a quarterly bonus and properly includes the bonus when calculating the employee's regular rate of pay for overtime purposes. When the employee works overtime his or her paystub lists the overtime payment as "overtime/incentive." The paystub does not specify how many hours the employee worked or the employee's hourly rate.

Generous Bonuses Not Properly Reflected On Wage Statement

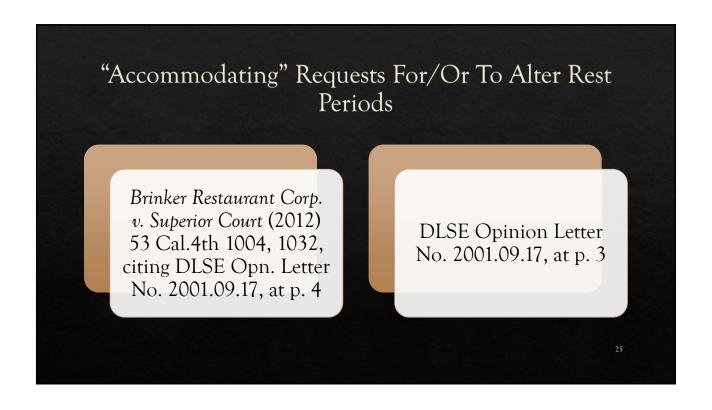
Magadia v. Wal-Mart Assocs., Inc. (N.D. Cal. 2018) 319 F.Supp.3d 1180 [Appeal pending before the Ninth Circuit, argued Nov. 19, 2020.]

Lab. Code § 226(e)



Hypo #8: "Accommodating" Requests For/Or To Alter Rest Periods

An employer allows employees to take short rest breaks or to skip rest breaks, and then add the time onto the meal break.





Hypo #9: Not Maintaining Records of Meal Periods

An employer does not keep records of when employees take their meal because it trusts employees to fill in a sheet at each worksite documenting when the employee takes a meal period. Many employees just ignore the sheet. Supervisors will testify that employees always or almost always took timely meal periods some supervisors will testify they actually told employees to leave their work stations if the employee was "due" for a meal period. However, some employees then claim that they were not allowed to take meal breaks.

Not Maintaining Records of Meal Periods

Lab. Code § 1174

DLSE Policies and Interpretations Manual § 41.1.1

Cal. Code Regs. Tit. 8, § 11050

Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1053 (conc. opn. of Werdegar, J.)

Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58, 61

