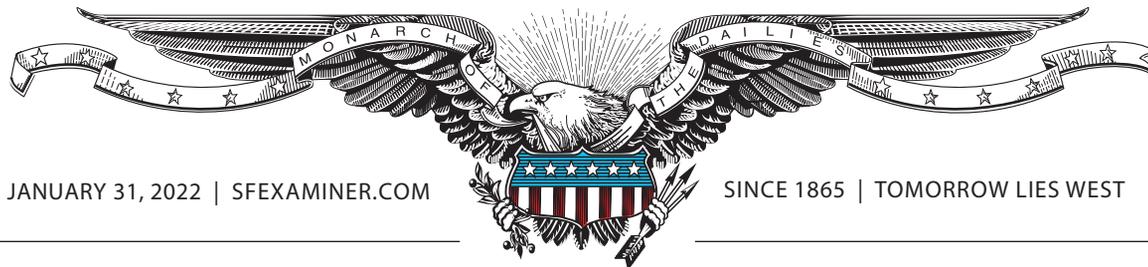


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What is a reasonable work accommodation?

By Christopher B. Dolan and Emile Davis



This week's question comes from **Cindy W. from Oakland**

I am immune compromised and have a number of related health conditions that make me much more susceptible to serious and life-threatening symptoms if I contract Covid-19. Even the less severe strains could send me to the hospital and threaten me. I have a good job and want to keep it, but I am concerned that I will be exposed. Is there anything I can do to make sure I can continue working, but that I remain safe?

Cindy W.

Thank you for your question, Cindy. Fortunately, there are protections that may be available to you and the many others who are immunocompromised, or otherwise highly susceptible to severe reactions to Covid-19.

For individuals with a disability, an employer has an obligation to provide reasonable accommodations that would allow that person to perform the essential functions of the position. These protections come Federally pursuant to the ADA (Americans with Disabilities Act) and in California from the FEHA (Fair Employment and Housing Act). There are some differences in the laws, but the ADA acts as a floor, or minimum protections, and where the FEHA has more protection available, that will control.

For an employer to be required to make accommodations, a worker must notify the employer of the fact that they have a disability and that they require accommodations. To be what the law refers to as a "qualified person with a disability," one must have the skills and experience required for the position and have a physical or mental impairment that limits a "major life function." Being seriously immunocompromised, as you are, is likely to meet that standard.

Once an employer is aware of the disability and a need for accommodations, both the worker and the employer must engage in a good faith interactive process to find suitable accommodations. It is important to understand that an employer is not obligated to provide the worker's preferred accommodation. It must, however, provide an accommodation which will allow the worker to perform the essential functions of the position. Keep in mind, no employer is required to offer an accommodation which creates an "undue hardship." An undue hardship is an action requiring "significant difficulty or expense." Each potential

accommodation is very fact specific, but to determine if it is an undue hardship, courts have looked to many factors including the nature and cost of the accommodation, the financial resources and structure of an employer, as well as the type of operations of the employer and its facilities.

In the context of those who are ill, or afraid to come to work because exposure to the virus may create severe health issues, there are a number of potential accommodations worth exploring, depending on the type of work a person performs. Historically, it did not used to be reasonable for a worker to request an accommodation to work from home. Previously, it was often considered to be an "undue hardship." However, over the last two years, for many job functions, it has become the norm for many positions. Obviously, for many positions, such as labor, customer service, and similar positions, this is not feasible. However, for many office workers, it may now be a "reasonable accommodation."

For others, another option in an office. An office may be requested, for protection, as an accommodation to work from rather than an open-air cubicle where foot traffic is high.

For more hands-on positions, it may be possible to work later in the day, or at night, where there are not so many people in the workplace presenting a danger to Covid transmission.



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If the job can be done remotely for the most part, but the position requires some in-office time, such as filing paperwork, it may be a reasonable accommodation to work part-time from home and part time in the office, thus reducing the exposure.

Importantly, there is no set list of accommodations. The law requires the interactive process for the worker and employer to come to a set of accommodations which allow the worker to perform the position without causing an undue hardship on the employer. Whether an accommodation is reasonable can truly

only be understood on a case-by-case basis.

No employer can legally retaliate against a worker for requesting accommodations. The request counts as a "protected activity" such that, if an employer were to retaliate against the person requesting, they could be liable and made to pay damages in a civil lawsuit.

Cindy, I hope this article helps you get the accommodations you deserve.

Christopher B. Dolan is the owner of Dolan Law Firm, PC. Emile Davis is a Managing Attorney in our Oakland Office. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different, and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights.

The COVID-19 (Coronavirus) outbreak is an ongoing, rapidly developing situation and the local, state, and federal responses are changing regularly. The Dolan Law Firm takes efforts to keep the information on this page updated, however, to guarantee up to date information it is necessary to confirm with publicly-available federal, state and local health organization guidance and government mandates.



Are crosswalks there to protect us or simply make more room for cars?

By Christopher Dolan and Nancy Villatoro

This week's question comes from Fran in San Jose:

I enjoy walking and like to do so as much as possible. If I can avoid having to drive, I will do so and complete some errands on foot. Even when I drive, I don't mind parking at the end of a parking lot where there is plenty of room rather than circling for a spot that will only save me a few seconds. In my walks I have noticed how restrictive sidewalks can be and how we are herded along crosswalks. Don't get me wrong, I realize it's for my safety to use crosswalks, but I can't help to think that crosswalks are not engineered to protect pedestrians. While waiting for a light to turn green, I have seen some dangerous street corners where only an imaginary line stands between me and a car going 40 mph. One wrong turn or distraction is all it would take for me to get hit by a car. Are crosswalks there to protect us or simply make more room for cars?

Thank you for your question, Fran. You have a good point of view and excellent question. Prior to the 1920s, city streets looked dramatically different than they do today. There were few crosswalks on the street, and they were generally ignored by pedestrians. Streets were considered to be a public space: a place for pedestrians, children at play, similar to a stroll in the park or a walk in the mall. People would move in any direction without really thinking about it. Author Peter D. Norton in the book *Fighting Traffic: The Dawn of the Motor Age in the American City* (Inside Technology), describes pedestrians as walking "in the

streets anywhere they wanted, whenever they wanted, usually without looking."

As cars began to spread widely during the 1920s, there was a spike in the number of pedestrian deaths. Over the first few decades of the century the number of people killed by cars skyrocketed.

Before formal traffic laws were put in place, judges typically ruled that in any collision, the vehicle was to blame. A movement began to regulate the speed of vehicles to reduce the number of pedestrian deaths. In response, automakers, dealers and car enthusiast groups worked to legally redefine the street.

By the 1930s, most streets were primarily motor thoroughfares where children did not belong and where pedestrians who failed to use the crosswalks were condemned as "jaywalkers." Cities and downtown businesses began to regulate traffic in the name of "efficiency." The articles printed in that era shifted blame for accidents to pedestrians, signaling that following the new traffic laws were important.

Today, in California, the driver of a vehicle must yield the right-of-way to a pedestrian crossing a roadway within a marked crosswalk or within an unmarked crosswalk at an intersection. (California Vehicle Code § 21950(a).) If the driver approaches a pedestrian within a marked or unmarked crosswalk, he or

she must exercise all due care and must reduce speed or take any other action as necessary to safeguard the safety of the pedestrian. (California Vehicle Code § 21950(c).) However, a pedestrian is nevertheless responsible for exercising due care for his or her safety, thus cannot suddenly "leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute and immediate hazard." Additionally, no "pedestrian may unnecessarily stop or delay traffic while in a marked or unmarked crosswalks. (California Vehicle Code § 21950(b).) The duties of the pedestrian do not relieve the driver from the duty to exercise due care for the safety of a pedestrian within a marked crosswalk or within an unmarked crosswalk at an intersection. (California Vehicle Code § 21950(d).)

Although some intersections and crosswalks can be designed better, crosswalks serve a purpose to keep pedestrians safe while allowing drivers the room they need to travel across city streets. As more people begin to rely less on their cars, more people like yourself will see how we need better designed crosswalks. Continue making your voice heard. You will find you are not alone.

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Accidents involving pedestrians are on the rise

By Christopher Dolan and Jeremy Jessup



This week's question comes from Jordan from Emeryville:

As people have started to get out more, I keep hearing about pedestrians being struck by cars. I know this is nothing new but seems to be coming up a lot more lately. Do you know what the trend is, I hope I am just paranoid, and whether or not anyone is doing anything to address the issue, if there is one?

With the holiday season upon us, and despite the cold weather, people are out shopping and just being out more. With the current status of COVID, ridership on public transportation is still down, so those without vehicles, have taken to walking. But unfortunately, you are correct, though not a new problem, accidents involving pedestrians are on the rise. Earlier this year, the Governors Highway Safety Association (GHSA) projected that 2020 had the largest ever annual increase in the rate at which drivers struck and killed pedestrians, and they were correct.

According to the GHSA the likely culprits are speeding, drunk driving, drugged driving, and distraction, which were rampant on U.S. roads during the COVID-19 pandemic. In addition, the March GHSA report also examined the 2019 FARS data to provide insights on trends regarding these issues. Some of the findings include the following:

- Pedestrians accounted for 17% of all traffic deaths in 2019, compared to 13% in 2010. While pedestrian deaths have risen by 46% over the past decade, the number of all other traffic deaths has increased by only 5%.
- Drivers struck and killed a larger proportion of pedestrians that were minorities, including Black, Indigenous and People of Color, than expected based on the population. On the other hand, white/non-Hispanic pedestrians accounted for a considerably

smaller proportion based on population.

- Most pedestrians are killed on local roads, in the dark and away from intersections. During the past 10 years, the number of pedestrians struck and killed after dark increased by 54%, compared to a 16% rise in pedestrian fatalities in daylight.
- Alcohol impairment by the driver and/or pedestrian was reported in nearly half of traffic crashes that resulted in a pedestrian fatality.
- Although passenger cars make up the largest categories of vehicles involved in fatal pedestrian crashes, over the past decade the number of pedestrian deaths in crashes involving SUVs has increased at a faster rate – 69% – than deaths in crashes involving passenger cars, which increased by 46%.

"Last year was filled with so much death and loss as COVID swept across the country. As America gets vaccinated and returns to normal, we need to treat pedestrian safety like the public health emergency that it is," said GHSA Executive Director Jonathan Adkins. *"We must strengthen our efforts to protect those on foot from traffic violence by implementing equitable and proven countermeasures that protect people walking and address those driving behaviors that pose the greatest risk."*

However, given the wide-open roads that existed following the stay in place order, many drivers have failed to adjust to more people being out and about. *"The wrecks that are occurring are at higher speeds,"* said Dr. James Augustine, the medical director for emergency medical services in Atlanta, as well as a spokesman for the American College of Emergency Physicians.

To help with this issue, AB43 was introduced by State Assemblymember Laura Friedman out of Glendale, to assist

cities struggling to combat pedestrian fatalities. Beginning in 2022, cities will be able to force drivers to slow down on accident-prone streets. AB43 gives cities new authority to reduce limits in increments of 5 mph by factoring the safety of pedestrians and cyclists in traffic surveys. The state's existing standards set limits based upon certain findings determined by an engineering and traffic survey and on the speed drivers feel comfortable driving at, rather than what's actually safe.

Unfortunately, while it should be the ultimate duty of drivers to pay attention and follow the rules of the road, pedestrians should be mindful of the hazards and follow a few basic tips:

- Increase your visibility at night by carrying a flashlight when walking and wearing reflective clothing, such as reflective vests.
- Cross streets at a designated crosswalk or intersection whenever possible.
- Walk on a sidewalk or path instead of the road. Walk on the shoulder and facing traffic if a sidewalk or path is not available.
- Avoid using electronic devices like earbuds or walking if you have been using alcohol or drugs. They can cause distractions and impair judgement and coordination.

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Traffic Collision Reports: What information is in them and who can get a copy?

By Christopher Dolan and Casey Hultin



This week's question comes from William from the Bay Area:

My friend rides a motorcycle and was recently injured when he was hit by a car. He believes the police officer who arrived at the scene was biased against him and didn't even take his statement. He is worried that the police officer found him at fault. Is there some type of report he can get a copy of and if so, who writes them? How can he get a copy of his report? If the report puts him

at fault, what can he do? Can he submit a supplemental report?

Great question William.

A traffic collision report is a form filled out by the investigating police officer at the scene. The form seeks basic information such as where the collision took place, the names of the people involved along with their contact and insurance information, the vehicles involved, any property damage, and any injuries. It will also generally include a summary of any statements taken at the scene or as part of the investigation, as well as the names of any witnesses interviewed about the collision. There may also be other additional scene investigation information, such as the locations of any cameras that may have caught footage of the incident or measurements for any debris or skid marks.

To obtain a copy of the traffic collision report, you must qualify as a party of interest in the crash. This generally includes drivers, passengers, vehicle owners, or a parent or guardian of an involved minor. You must complete and sign a request form for the information and provide the date of the collision (or approximate date), collision or incident location (as much information as you have if you do not have a specific address), the name of the driver or owner of one of the involved vehicles, and your name and address. There may also be a small fee. If you are represented by an attorney, your attorney can also help you obtain a traffic collision report.

If the traffic collision report places you at fault, it will likely make your injury claim difficult to resolve without filing a lawsuit. Insurance companies heavily rely on the traffic collision report when determining who is at fault for claim assessment purposes.

However, if the traffic collision report places you at fault, that does not mean any claim to injury is doomed. The conclusions in the traffic collision report are often not admissible at trial, meaning

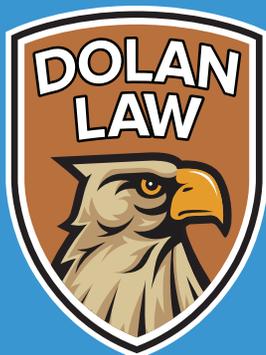
that the judge or the jury cannot consider it when deciding who is at fault for the collision. Further, through the litigation process and depositions (questioning witnesses before trial under oath), it is possible to get the officer to walk back the conclusions in the report. For example, often investigating officers do not have the benefit of canvassing for all possible witnesses at the time of the collision because they are dealing with many other competing interests, including making sure any injured people receive medical care and clearing the area for through traffic.

If you find additional information that the investigating officer failed to consider, you can contact that officer and provide the additional information to them. For example, if there is an additional witness the officer missed, you can call and provide that witness's information so the witness can give a statement. If there are additional photographs, you can send them in as well. If there are inaccuracies in the report, you can point them out. All of these can lead to the officer amending and our supplementing the traffic collision report. You also have the option to get a formal dispute form from the Department of Motor Vehicles in the event the officer is not responding.

In practice, if the traffic collision report is inaccurate or comes to the wrong conclusion, while you can try to get the officer to author a supplemental report, you are better off navigating the circumstances through an experienced attorney. Especially because, as discussed above, the traffic collision report conclusion is not determinative of fault in a court of law.

We wish your friend a speedy recovery.

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