

A Smart Approach to Accommodating Employees with Disabilities

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As the overall U.S. population shifts, so too do workforce demographics. Based on the different ways the population is changing, employers can expect that more future employees will have disabilities covered by the Americans with Disabilities Act (ADA).

One reason for this is that, as the National Center for Health Statistics reports, U.S. obesity rates have more than doubled since the 1970s—which means there has been an associated rise in weight-related health problems such as high blood pressure, high cholesterol and diabetes.

In addition, more older employees are in the workforce, and some of these seniors have disabilities.

Meanwhile, the U.S. Centers for Disease Control and Prevention has reported a significant rise in the number of children—the workforce of the not-so-distant future—with such developmental and behavioral conditions as attention deficit hyperactivity disorder, autism, and various mood and anxiety disorders.

Unfortunately, many employers are overwhelmed and underprepared when it comes to accommodating employees who have disabilities. What's more, employers often face a maze of regulations that can complicate the situation. For example, California employers must comply with several overlapping laws, including the ADA, which was broadened by the ADA Amendments Act of 2008, and the California Fair Employment and Housing Act, which must be followed in coordination with various laws on workers' compensation, pregnancy leave and family leave.

Here are five tips for how employers can engage more effectively with employees on disability accommodation issues and avoid disability-related lawsuits—or at least be better prepared to defend themselves against such suits.

1. Create a Written Policy

Make sure your employee handbook includes a disability accommodation policy that clearly describes the interactive dialogue process and focuses on the need for communication between employees and HR professionals.

The policy should:

- Be separate from—and in addition to—the typical nondiscrimination and anti-harassment guidelines found in most handbooks.
- Spell out what the interactive dialogue process consists of, including information about documenting the existing disability if it isn't obvious and discussing options for reasonable accommodation.



- Stress the necessity for open and ongoing two-way conversations about the employee's needs and how those requirements might affect how the worker performs the job's essential functions.
- Designate specific HR professionals who will handle accommodation requests. This approach helps to ensure that employees will connect with the people in the company who are most qualified in this area. Employers are often found legally liable if a worker can prove that his or her supervisor had knowledge of an accommodation request and failed to take proper action. A policy that names the specific individuals responsible for receiving such requests helps avoid this problem.

2. Train All Employees

Supervisors are the eyes and ears of the company. In fact, the law deems that whatever they know or should know is what the company knows or should know as well. Thus, employers that fail to train their managers on how to handle accommodation requests are setting themselves up for lawsuits.

These requests come in many forms and are not always easy to recognize. Legally, they don't even have to be made in writing: Office chatter in which an employee mentions a disability in the context of his or her personal life could later be used to show that the employer had "constructive knowledge" of the disability.

Imagine, for example, an employee sharing with his boss that he struggles to make it to work in the morning due to physical therapy sessions he must attend. Believe it or not, that conversation would likely be deemed an accommodation request in the courtroom. An untrained supervisor not only may fail to initiate an appropriate interactive dialogue but also could subject the employee to disciplinary action that could later be deemed unlawful retaliation.

Consider training nonsupervisors on the accommodation policy as well. If every employee understands when accommodations should be sought, how requests should be made and who they should be made to, there is a greater likelihood that the company will handle these situations appropriately overall.

3. Make Individualized Assessments

Once a supervisor or HR professional becomes aware of an employee's need for accommodation, he or she is legally required to engage in an interactive dialogue to determine any job-related limitations that might stem from the disability, as well as whether—and which—reasonable accommodations are in order.

This is not a one-size-fits-all process; each request requires an individualized assessment that should include suggestions from the employee as well as the manager. Think of it as a brainstorming session. The company cannot simply rely on an approach that worked previously for an employee with a similar disability.

Keep an open mind and carefully evaluate each individual's request and medical condition. Consult with the company's lawyers to understand what can and cannot be asked of the employee during this assessment.

4. Keep Talking

An employer's obligation does not end after a worker is given a reasonable accommodation. Continue to follow up with the employee and his or her supervisor to ensure that the accommodation is effective, and do not assume that the initial discussion and decisions will suffice. The job conditions and the health of the employee can change.

That's why the dialogue should continue when an employee is on ADA leave. He or she may need additional time off, for example, due to an unforeseen complication. Be sure employees know to inform designated HR professionals if the accommodation provided becomes insufficient.



5. Document Conversations

Every communication you have with the worker regarding the accommodation process should be documented and maintained in his or her confidential medical file (separate from the personnel file). Too often, managers fail to make note of the daily two-minute exchanges they have with a worker who has a disability. But it is those very conversations that constitute the ongoing interactive dialogue. No discussion about accommodation is too brief to be documented, given that the burden of proving an interactive dialogue took place will ultimately fall to the employer.

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