

Ten Tips for Addressing Disability Issues

The Americans with Disabilities Act (ADA) imposes certain obligations on employers, and compliance with this law is important. This article provides ten recommendations to help employers minimize potential ADA liability.

POSTED:

Dec 15, 2014

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1. **Train Supervisors.** Employers should train supervisors how to identify and respond to accommodation requests. An employee's accommodation request does not need to contain the word "accommodation" to qualify as an accommodation request. Human Resources should be notified of all accommodation requests so it can appropriately respond. Employers should also train supervisors not to ask questions about medical conditions—such questions should be asked only by the Human Resource department.
2. **Update Job Descriptions.** Employers should regularly confirm that their job descriptions accurately reflect the job's responsibilities. All essential functions should be detailed. Is getting along well with others an essential function? Regular attendance? If so, these should be included in the job description.
3. **Create Disability and Accommodation Policy.** Employee handbooks should contain a disability and accommodation policy that affirms the employer's commitment to compliance with disability laws and that outlines the process employees should follow to make an accommodation request.
4. **Document!** Employers should document the entire interactive process, including their meetings with the employee, efforts to identify reasonable accommodations and accommodations actually offered. If an employer denies an accommodation request, the reasons therefore should be documented in detail.
5. **Critically Question "Undue Hardship."** Many employers mistakenly believe they can lawfully deny an accommodation request merely because the accommodation would be expensive. Relying on the expense of an accommodation to support an "undue hardship" defense is risky. A court will consider the employer's revenue—not the employee's wages—when determining whether the cost of the accommodation is truly an undue hardship. It may be difficult to successfully argue that a \$5,000 computer

assistance device is an undue hardship if, for example, the employer was able to afford a \$10,000 holiday party.

6. **Consider Extending Leave Following Conclusion of FMLA Leave.** If, at the exhaustion of their FMLA leave, employees are unable to return to work, employers should not automatically terminate them. Instead, the employer should determine whether the employee may be entitled to additional leave as an accommodation.
7. **Eliminate Policies Requiring Employees to Work Without Restrictions.** Employers should not insist that employees be "100% recovered," or without any restrictions, in order to report to work. Instead, the employer should determine whether it may be obligated to accommodate the restrictions under state and federal disability law.
8. **Consider All Accommodation Requests.** Even if an accommodation request seems unreasonable on its face, employers should still engage in the interactive process. If the employee's initial accommodation request cannot be granted, the employer should discuss with the employee any possible alternative accommodations. Moreover, the employer will be in a better position to defend a disability lawsuit if it has gone through the interactive process.
9. **Temporary Conditions May Be Disabilities.** Under the ADA Amendments Act of 2008, temporary conditions may satisfy the ADA's definition of "disability." Therefore, employers should not assume that a temporary condition exempts an employee from ADA protection.
10. **Keep Medical Information Confidential.** Human Resources should not share an employee's medical information with the employee's supervisor. The supervisor should be advised of the nature of the accommodation only. In addition, all documentation regarding the employee's disability and accommodation should be maintained in a confidential medical file—not the employee's personnel file.

If you have any questions regarding disability compliance, please contact [Katie D. Triska](#) or your Reinhart attorney.

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