

Reasonable Accommodations Required By the ADA

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Engaging in the Interactive Process

- Generally, it is the employee's obligation to request a reasonable accommodation
 - *Dinse v. Carlisle Foodservice* (10th Cir. 2013) – “it is not the employer's responsibility to anticipate the employee's needs and affirmatively offer accommodation if the employer is otherwise open to such requests”
 - *Koessel v. Sublette County Sheriff's Dept*, 717 F.3d 736 (10th Cir. 2013)
- The employee should make a specific request for a reasonable accommodation and make it clear to the employer that there is a medical basis for that request

Engaging in the Interactive Process

- Courts, however, have reaffirmed that the employee need not use any specific words to trigger an employer's obligation to engage in the interactive process
- Some courts have held that an employer has a duty to determine whether there is a reasonable accommodation needed if an employee's disability is obvious

Accommodations

- If the City has a neutral rule, does it have to provide an exception to that rule as a reasonable accommodation for a disabled employee?
- How soon after a request for an accommodation is made, does the employer have to provide the accommodation?
 - *Cloe v. City of Indianapolis*, 712 F.3d 1171 (7th Cir. 2013) - “a responsible government is entitled to take time to evaluate alternatives before spending taxpayer money”
- How do you determine whether a requested accommodation is not required because it would impose an undue hardship?
 - *Searls v. John Hopkins Hospital*, (D. Md. 2016) – “simply comparing the cost of the accommodation to the salary of the individual with a disability in need of the accommodation will not suffice”

Accommodations

- Do you need to provide a reasonable accommodation even if the employee poses a direct threat?
 - The ADA defines direct threat as “a significant risk to the health or safety of others accommodation”
 - *EEOC v. Beverage Distribs. Co.*, 780 F.3d 1018 (10th Cir. 2015) – for a direct threat that cannot be eliminated by a reasonable accommodation, the employer must prove only that it reasonably believed that an impaired worker’s job performance would pose a significant risk of substantial harm to himself or others, not that the threat actually existed
 - *Michael v. City of Troy Police Dept.*, 808 F.3d 304 (6th Cir. 2015)

Specific Accommodation Requests

➤ Indefinite Leaves or Extended Leaves

- *Hwang v. Kansas State Univ.*, 753 F.3d 1159 (10th Cir. 2014) - “It perhaps goes without saying that an employee who isn’t capable of working for so long isn’t an employee capable of performing a job’s essential functions – and that requiring an employer to keep a job open for so long doesn’t qualify as a reasonable accommodation. After all, reasonable accommodations – typically things like adding ramps or allowing more flexible working hours – are all about enabling employees to work, not to not work”

➤ Modifying Discipline

- Generally (but not always), a request to waive or ignore discipline is not a reasonable accommodation

Specific Accommodation Requests

➤ Working from Home

- Laws to consider when determining whether working from home is a reasonable accommodation include the following
 - FLSA
 - Workers' Compensation and OSHA
 - * *AE Clevite, Inc., v. Labor Comm'n*, 996 P.2d 1072 (Utah Ct. App. 2000) – district sales manager who slipped and fell while salting his driveway in anticipation of delivery of work-related materials was entitled to workers compensation
 - * *Verizon Pa., Inc. v. Workers' Comp. Appeal Bd.*, 900 A.2d 440 (Pa. Cwlth 2006) – an employee was entitled to recovery for an injury that occurred when she fell down the stairs on her way back from getting a drink in her kitchen while talking on the telephone to her supervisor while returning to her computer to attend to a business matter that the supervisor called to discuss which she interpreted as needing immediate attention

Specific Accommodation Requests

- Title VII/ADA
- FMLA
- Cyber Security

Thank you!