Making Reasonable Accommodations

Do you know what steps to take when an employee requests an accommodation for a disability? Responding correctly can mean the difference between defending against a discrimination claim and creating an effective working environment.

You probably understand that you have two major obligations under the Americans with Disabilities Act (ADA). First, you must not discriminate against qualified disabled individuals, and second, you must provide reasonable accommodations so that those qualified individuals can perform the essential functions of the job. This second duty is the most difficult to implement because it requires you to engage in a series of steps to determine when and what accommodations would be appropriate. To help you comply with this duty, the editors have reviewed and analyzed the ADA statute, regulations, court cases, and guidance to develop a step-by-step guide for responding to accommodation requests.

FOUR BASIC PRINCIPLES OF ACCOMMODATION

Under the ADA, employers with 15 or more employees must accommodate qualified individuals with disabilities to allow them to perform the essential functions of the job, unless doing so would create an “undue hardship.”

According to the Equal Employment Opportunity Commission’s (EEOC) Technical Assistance Manual, a reasonable accommodation is “a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.” Generally, accommodations must be provided to ensure equal access to the application process, to allow a disabled person to perform the essential functions of the job, and to ensure equal benefits and privileges of employment. For example, an employer may have to provide a reader to a blind applicant to fill out an application form or put in a ramp to allow an employee in a wheelchair to access the workplace.

The EEOC, in its Technical Assistance Manual, suggests four basic principles that employers should apply to every accommodation decision:

1. The accommodation must be effective. In other words, it must provide an opportunity for the disabled person to achieve the same level of performance or enjoy equal benefits or privileges as an average, similarly situated, nondisabled person would.

2. The accommodation does not have to be the best accommodation or the one preferred by the disabled person.

The employer does not have to provide an accommodation that is primarily for the disabled individual's personal use (such as a wheelchair or eyeglasses). The ADA sets minimum guidelines for accommodation. Employers, of course, can do more.

STEP ONE: THE REQUEST FOR ACCOMMODATION

The accommodation process typically begins when the disabled individual requests some change to the application process, the way he performs the job, or to the provision of employment benefits. The person does not have to mention the ADA or use any "trigger" words like "reasonable accommodation" to initiate the process. Instead, he only has to use "plain English" and give you enough information to alert you to the fact that he needs an adjustment or change at work because he has a medical condition. So, for example, if an employee tells you he needs a change in his scheduled start time because of medical treatments, that statement is an accommodation request. However, if the employee simply asks for a change in his start time for "personal reasons," this request is insufficient to put you on notice of his need for accommodation. Note also that the request does not have to be in writing or take any particular form.

Generally, it is the disabled individual's responsibility to alert you to any need for an accommodation. You are not expected to be clairvoyant and, therefore, are not required to accommodate any disability you do not know about. However, you may initiate the accommodation process if you have noticed a change in the ability of a

person with a known disability to perform the job. For example, if an employee who has never been tardy begins to come into work late and you suspect the tardiness may be related to a medical condition, you may want to discuss this possibility with the employee and evaluate your duty to accommodate.

STEP TWO: CERTIFYING THE DISABILITY

Since an employer only has to accommodate disabled individuals, the next step in the accommodation process is to determine whether the individual is disabled and to confirm the need for accommodation. Not every medical condition is considered an ADA disability. Therefore, according to the EEOC's recent guidance on accommodation, you may require the individual to provide reasonable documentation from an appropriate health care or rehabilitation professional that certifies the disability and any functional limitations requiring accommodation. Appropriate professionals who may provide the documentation include doctors, psychologists, nurses, physical and occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

Reasonable documentation may include information that supports the existence of the disability, its functional limitations, and the need for an accommodation so the individual may perform the job. To help the health professional determine if the individual is disabled for the purposes of the ADA, you should explain the ADA's definition of disability (i.e., a physical or mental condition that

substantially limits a major life activity) and ask the health professional to identify specifically what the condition is, what major life activity it affects, and how it substantially limits that activity. In addition, you should provide a job description specifying the person's essential job functions so the professional can verify that an accommodation is needed.

If the disabled individual does not provide the requested medical documentation, you may refuse to provide the accommodation. However, if the individual provides insufficient information to determine whether he has a disability and needs accommodation, you must give him an opportunity to provide the missing information. The ADA also does not allow you to require documentation that is unrelated to the particular accommodation or disability, such as requesting that the individual provide a complete medical history. Further, if the individual has an obvious disability, you may not require him to provide medical certification of his disability. However, you may be able to request information to verify the need for an accommodation, unless that need is also obvious. For example, if a person in a wheelchair requests a desk the wheelchair will fit under, you cannot ask him to document his disability or the need for the accommodation since both are apparent.

Because of the difficulty of determining whether a particular medical condition meets the criteria of a disability under the ADA, some employers choose to accommodate any individual with a serious health problem, not just those who meet the ADA definition of disabled. The advantage to this approach is twofold. First, it may be better employee relations to accommodate all employees with legitimate medical problems rather than only those who are legally disabled under the ADA. Second, any efforts at accommodation can be used as proof of the employer's attempts to comply with the ADA if its decisions are later challenged. This approach also has drawbacks, however. In particular, the employer could set a precedent that it must accommodate anyone with medical problems and not just those who are disabled.

STEP THREE: THE INTERACTIVE PROCESS

Once you have established that the person is disabled and needs an accommodation, the EEOC encourages you to engage in a flexible, interactive process with the disabled individual. Working with the individual, you should attempt to identify both the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome those limitations. To this end, the EEOC, in its Interpretive Guidance to the ADA regulations, recommends the following process:

1. Analyze the particular job involved and determine its purpose and essential functions;
2. Consult with the individual to determine the precise job-related limitations imposed by the disability and how the limitations could be overcome with a reasonable accommodation;
3. With the individual, identify potential accommodations and assess the effectiveness each would have in enabling the employee to perform the essential functions of the position; and
4. Consider the individual's preference for a particular accommodation and select and implement the accommodation that is most appropriate for both the individual and the employer.

In addition, in order to find possible accommodations, you may also need to consult the individual's doctor, rehabilitation specialists, and others with expert knowledge about dealing with the particular disability. Reasonable accommodations may include:

- Modifying the application process
- Making existing facilities readily accessible to and usable by employees with disabilities
- Job restructuring
- Part-time or modified work schedules and leaves of absence
- Acquisition or modifications of equipment or devices
- Appropriate adjustment or modifications of examinations, training materials, or policies
- Provision of qualified readers or interpreters
- Reassignment to a vacant position.

Reassignment to a vacant position should be considered only when an accommodation in the disabled person's current position would pose an undue hardship.

STEP FOUR: DETERMINE THE APPROPRIATE ACCOMMODATION

In some cases; the interactive process will yield more than one potential accommodation, so that the next step in the process is to choose one that will allow the disabled person to perform the job. Although the EEOC regulations suggest that you should give consideration to the preference of the disabled individual, you do not have to provide the best accommodation available or the one specifically requested by the disabled individual. You only have to provide an effective accommodation that meets the job-related needs of the individual. Thus, if one accommodation is less expensive or easier to provide, it will be acceptable as long as it allows the person to perform the job effectively.

In addition, you do not have to provide an accommodation if doing so would create an "undue hardship." The undue hardship standard is very tough to meet and requires employers to show that the accommodation involves significant difficulty or expense; is unduly extensive, substantial, or disruptive; or would fundamentally alter the nature or operation of the business. In determining whether an accommodation would impose an undue hardship on the employer, the EEOC generally will consider several factors, including:

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and outside funding
2. The overall financial resources of the facility or facilities involved in providing the reasonable accommodation, the number of persons employed at the facility, and the effect on expenses and resources
3. The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities
4. The type of operation or operations of the covered entity (including the composition, structure, and functions of the workforce of the entity) and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity
5. The impact of the accommodation upon the operation of the facility,

including the impact on the ability of other employees to perform their duties and the impact on the facility’s ability to conduct business.

STEP FIVE: IMPLEMENT THE ACCOMMODATION

Once the accommodation has been identified, you should implement it as soon as possible to allow the disabled individual to function effectively in the job. Although the ADA does not specify a particular time period for responding to accommodation requests and providing accommodations, the EEOC has indicated that employers should “act promptly.” Any unnecessary delays could result in an ADA violation.

When providing an accommodation, the ADA prohibits you from disclosing to other employees any medical information, including the fact that an employee has a disability that is being accommodated. Thus, you cannot explain why you are making the job modifications or treating an employee differently. However, according to the ADA regulations, you can tell the disabled employee’s supervisor about necessary restrictions on the work or job duties and about necessary accommodations.

Note, too, that you cannot require a disabled individual to accept an accommodation. However, if the person cannot perform the essential functions of the job without the accommodation, he is not considered qualified for the position and therefore may be terminated. If the person refuses the accommodation, document your attempts to provide the accommodation. In fact, as a general practice, you should document all of the steps you take to accommodate a disabled individual.

ACCOMMODATING CAN BE PAINLESS, GOOD BUSINESS

The idea of accommodating a disabled individual under the ADA can be overwhelming. In addition to having to master a new vocabulary, you may feel as though you must be a legal expert, a physical therapist, and a building accessibility specialist to determine what accommodations are appropriate. However, as a practical matter, disabled individuals often know what accommodations they need to work effectively, and most accommodations are relatively inexpensive. Thus, by following the steps above, you can both comply with the requirements of the ADA and show disabled individuals your commitment to providing a productive and accessible workplace.