

Reasonable Accommodations: Employer Best Practices When Receiving a Request

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Under the Americans with Disabilities Act (ADA), an employer with 15 or more employees is required to provide a covered job applicant or employee with a reasonable accommodation, unless doing so would pose an undue hardship or constitute a direct threat. Examples of common reasonable accommodations may include job restructuring, modifying work schedules or providing leave, but do not include eliminating or reallocating an essential function of a job, lowering production standards of quality or quantity or promoting the individual with a disability.

In the instance that an accommodation is requested by an employee, the employer should initiate an interactive process with the individual. The interactive process requires employers to: (1) analyze job functions to establish essential and nonessential tasks; (2) identify barriers to job performance by consulting with the employee to learn his/her precise limitations; and, (3) explore the types of accommodations which would be most effective.

Because the interactive process imposes mutual obligations on employers and employees, an employer cannot be liable for failure to accommodate if a breakdown in the process is attributable to the employee. If, however, the breakdown in the interactive process is attributable to the employer, courts have generally held this to be an adverse employment action. An employer's failure to initiate the interactive process, however, is, not itself a "per se" violation of the ADA, where no accommodation is possible.

Under the ADA, employers are not obliged to provide the *specific* or preferred accommodation requested by the employee; rather, employers are required to provide a *reasonable* accommodation.

When presented with an accommodation request, the employer should:

- Document in writing the receipt of any request for accommodation.
- Determine whether the individual seeking the accommodation is a qualified individual with a disability.
- Ask the individual for information about the extent of the impairment. If someone requests a reasonable accommodation, and the disability and/or the need for accommodation is not obvious, an employer may ask for reasonable documentation about the individual's disability and functional limitations.
- Confer with the individual to discuss accommodation alternatives, which includes listening to the individual's preference and the option to suggest alternatives.
- Document in writing the discussion about the accommodation and the final determination about how the accommodation request is resolved.

Through these procedures and protocols, employers can demonstrate a good faith attempt to accommodate.

If you have any questions about reasonable accommodations or other employment law matters, please contact George Morrison (610.782.4911; morrison@whiteandwilliams.com) or any member of our Labor and Employment Practice Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.