

Reasonable Accommodations: Examining Common Requests

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Labor and Employment Alert
6.29.15

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.

A reasonable accommodation is "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." Reasonable accommodation means modifications or adjustments which are classified in three categories:

- **Job Application Process:** A modification is made to enable a qualified applicant with a disability to be considered for the job,
- **Work Environment:** A modification is made to the work environment or the way a job is customarily performed to enable a qualified individual with a disability to perform essential job duties, and
- **Benefits and Privileges of Employment:** A modification is made to enable an employee with a disability to enjoy benefits and privileges of employment equal to those of similarly situated employees without disabilities.

The following information summarizes some of the most common accommodation requests:

Leaves of Absence

An unpaid leave is a form of reasonable accommodation and may be appropriate when an individual expects to return to work after getting treatment for a disability, recovering from an illness or taking another action in connection with his or her disability.

Indefinite leave is not a reasonable accommodation, particularly where the employee presents no evidence of the expected duration of the impairment and no indication of a favorable prognosis. How much leave an individual must be given as a reasonable accommodation is a fact-specific inquiry depending on whether a particular amount of time imposes an undue hardship on the employer and on whether the individual is still considered "qualified."

When presented with a request for leave, employers should also determine whether leave would be effective. Leave may serve many purposes in enabling a disabled employee to return to work, including obtaining medical treatment or to recuperate from an illness.

One significant challenge to employers is assessing an employee's request for an extension of an already provided leave period. Once a leave request has been granted, it may become problematic for the employer to argue that an extension of a few more days or weeks turns the leave into an undue hardship. A possible solution is for an employer to make an undue hardship analysis determining the length of a leave it can support at the beginning of the employee's time off.

Modification of Work Schedule

Work schedule modification may be a reasonable accommodation depending on the nature of the job and the modification. The critical inquiry is whether there is a nexus between the disability and the requested schedule, as the modified work schedule must be needed *because* of the disability.

A modified work schedule may include flexible start or stop times, permanent shift reassignment or temporary shift change. A critical question, however, is whether attendance during particular hours or shifts is an essential function of the job. Some work schedule modifications would negatively affect the services offered by the employer. Even if adherence to a schedule is not an essential job function, modification may not be reasonable if it interferes with the jobs of other employees.

When presented with a request to modify a work schedule, employers should analyze whether the requested modification is feasible and whether such modification or adjustment will enable the employee to perform the essential functions of the job.

Reassignment

Reassignment to a vacant position may be appropriate if other efforts to accommodate the employee have not succeeded. A position is vacant if it is available at the time of the request for accommodation or the employer knows it will soon become vacant. Only current employees are entitled to reassignment as a reasonable accommodation, not applicants or former employees.

The Equal Employment Opportunity Commission (EEOC) describes reassignment as an "accommodation of last resort," appropriate only if either:

- there are no effective accommodation options that will allow the employee to perform the essential job functions of the current position, or
- all other reasonable accommodations would impose an undue hardship on the employer.

If reassignment is offered, it must be to a position of equal status, pay and other terms and conditions of employment unless there is no equivalent position as a reasonable accommodation. Only then can the employer reassign an employee to a less senior position. Employers are not required to reassign employees to positions for which they are not qualified or to offer a promotion to a more senior position. The EEOC has specifically stated that "there is no obligation for the employer to assist the individual to become qualified."

Telecommuting

Courts vary with respect to telecommuting as a reasonable accommodation, but largely focus on the nature of the work performed and less on an employer's preference for having workers physically on site. If employees without disabilities are permitted to telecommute, it becomes much more difficult to argue that a particular employee with a disability in the same job should not receive a similar option as an accommodation.

With advances in technology, more employees will argue that telecommuting is a reasonable alternative to attendance at the employer's worksite. Employers should make certain that their policies define "attendance" as being at the employer's facility, and not merely "on the job" at some off site location. When presented with an accommodation request to work from home, employers should determine whether the request is feasible, considering the employee's job duties, and whether telecommuting will enable the employee to perform the essential functions of his or her job.

Light-Duty Jobs

Another reasonable accommodation is providing an available light-duty job to an employee whose disability has rendered that person unable to perform the more strenuous tasks of their regular position. Light-duty jobs may be a transitional step for a worker with a disability to return to a previous job, or may be a permanent change in job responsibilities, although an employer is not required to transform a temporary light-duty job into a permanent position.

The ADA does not require employers to create light-duty jobs to enable a worker with a disability to return to a job, but may be required to place an employee in a light-duty job if it exists. According to the EEOC, if an employer reserves light-duty positions for employees with occupational injuries, the ADA requires the employer to consider reassigning an employee with a disability who is not occupationally injured to such positions as a reasonable accommodation.

When faced with a request for light duty, employers should ensure that the employee is both qualified and medically cleared to perform light duty work. In addition, employers should be mindful to confirm that any assigned light duty position fits within the employee's specific restrictions.

Fragrance-Free Workplace

Courts have generally held that an employee's accommodation request for a fragrance-free workplace is reasonable if the employee's disability is caused by one particular substance in the workplace, such as perfume or the smell of popcorn. To the contrary, courts have generally held that an employee's request for a completely "irritant-free" environment is unreasonable. When presented with such a request, employers should consider whether they can reasonably prohibit the use of a particular substance in the workplace, create a work station in another room with better ventilation, and/or develop a system whereby if the employee is sensing an irritant, he or she can notify a supervisor and move to another area until the issue is remedied.

Interactive Process

Once an accommodation has been requested by an employee, the employer should initiate an interactive process with the individual to analyze job functions to establish the essential and non-essential job tasks, identify the barriers to job performance by consulting with the employee to learn the employee's precise limitations, and explore the types of accommodations which would be most effective. Employers can demonstrate a good faith attempt to accommodate by meeting with the employee, requesting information about the limitations, considering the employee's requests, and discussing alternatives if a request is burdensome.

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

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