

## Reasonable Accommodations: Exploring Specific Accommodation Circumstances

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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. 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."

When a reasonable accommodation request is received, employers have a duty to initiate the interactive process and follow specific best practices, discussed here. Common accommodation requests include leaves of absence, modification of work schedule, reassignment, telecommuting, light-duty work and fragrance-free workplaces, discussed here. Employers often face exceptional challenges with specific accommodation requests, including accommodations for drug use and alcoholism as well as Equal Employment Opportunity Commission (EEOC) guidance on cancer, epilepsy, diabetes and intellectual disabilities.

### Reasonable Accommodations for Drug Use and Alcoholism

Under the ADA, "current" drug users are not qualified individuals with disabilities. Specifically, Section 12114(a) of the ADA Amendment Act (ADAAA) excludes from its protection employees "currently engaging in the illegal use of drugs."

"Currently" means that the drug use was sufficiently recent to justify the employer's reasonable belief that the drug abuse remained an ongoing problem. Courts have concluded that persons who had used illegal drugs in the weeks and months prior to being fired from their jobs were "current" drug users for the purposes of the ADA. However, if the employee is a recovering alcoholic or recovering drug user, the employee may be considered a qualified individual with a disability under the ADA and, therefore, entitled to a reasonable accommodation (*i.e.*, time off or a modified work schedule to complete a rehabilitation program).

### EEOC Guidance on Cancer, Epilepsy, Diabetes and Intellectual Disabilities

On May 15, 2013, the EEOC released guidance in the form of revised "Questions and Answers" specifically addressing cancer, epilepsy, diabetes and intellectual disabilities in the context of disability discrimination in the workplace. It also addresses the EEOC's position regarding obtaining, using and disclosing employee medical information. Employers should pay particular attention to the guidance because it is referenced by EEOC staff when investigating charges of disability discrimination.

#### ACCOMMODATING INDIVIDUALS WITH Cancer

The EEOC guidance provides several examples of the types of accommodations that an employee with cancer may need. Of particular note, the EEOC takes the position that an employer may not automatically deny a request for leave from an employee with cancer solely because the employee cannot specify an exact date of return, explaining that granting leave without a fixed date of return may be a reasonable accommodation because the treatment and severity of side effects are often unpredictable. The EEOC cautions employees, however, that the employer has the right to require that an employee provide periodic updates on his/her condition and

possible date of return in order for the employer to evaluate whether continued leave constitutes an undue hardship.

## Accommodating Individuals with Epilepsy

Epilepsy is a chronic neurological condition characterized by recurrent seizures. The EEOC provides several examples of the types of accommodations that an employee may need, such as a consistent start time or schedule change (for example, from the night shift to the day shift). Interestingly, the EEOC provides specific guidance with respect to applicants and employees who do not have a driver's license because of epilepsy, explaining that an employer need not eliminate driving as a job duty if driving is an essential function of the position. The EEOC cautions employers to consider whether driving actually is an essential job function, rather than a marginal job function or simply one way of accomplishing an essential function. If driving is not an essential function of the job, the employer may have to reassign this job function.

## Accommodating Individuals with Diabetes

Diabetes is a group of diseases characterized by high blood glucose or sugar levels that result from an impairment in the body's ability to produce and/or use insulin. The EEOC states that reasonable accommodations for this condition may include a private area to test blood sugar levels or to administer insulin injections. The EEOC further explains that if a federal law prohibits an employer from hiring a person who uses insulin, the employer will not be liable under the ADA. However, the EEOC cautions employers to be certain that compliance with the law is required, not voluntary. For example, the Department of Transportation's Federal Motor Carrier Safety Administration includes exemptions to certain individuals with diabetes who wish to drive commercial vehicles.

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

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