The ADA: Understanding the Reasonable Accommodation Obligation

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Key to Understanding/Complying with ADA

• Individualized Decision-making
• Get and use facts about applicant/employee and do not rely on assumptions or generalizations about the disability, the job, and the ability to perform the job
Reasonable accommodation

• Defined:
  – A reasonable accommodation is a change in the workplace, or in the ways things are usually done, that provides equal employment opportunities for individuals with disabilities
  – General rule: An employer provides a reasonable accommodation to a qualified individual with a disability if requested and if doing so does not pose an undue hardship
3 Areas Where Employers May Have To Provide Reasonable Accommodations

• Application Process
• Accommodations that enable an employee to perform her job or to gain access to the workplace (includes, e.g., bathrooms, cafeterias)
• Benefits and Privileges of Employment
  – Mandatory or voluntary training/staff meetings
  – Employer-sponsored parties: Even if off-site and outside business hours
  – Employer-sponsored programs/special events
Interactive Process !!!!!!!!

• Process usually starts with a request from an applicant/employee
  – No “magic words” needed
  – Individual must tell employer that she needs something from the employer because of her medical condition
  – Need not be in writing
  – May come from someone other than the individual needing the accommodation (doctor’s note)
  – Employer may obtain information to determine if the individual’s medical condition constitutes a disability and/or to verify the need for accommodation
  – **Cooperative Process!**
Reasonable accommodation

• Almost unlimited possibilities
• May include:
  – Sign language interpreters
  – Modifications to existing equipment or purchase/lease of new equipment that is accessible to individual with a disability
  – Modifying workplace policies
  – Changes in the working environment (e.g., flashing warning lights for evacuations)
  – Reassignment (last resort)
Reasonable accommodation

• Actions not required:
  – Removing an essential function (i.e., fundamental/critical job duty)
  – Lowering production standards (quantitative and qualitative)
  – Excusing misconduct/performance deficiencies
  – Providing personal use items, such as hearing aids, service animals
Employees Entitled to Effective Accommodation

- Employer must provide an accommodation that meets the employee’s needs and removes a workplace barrier
- But, employee is NOT entitled to accommodation of her choice
- If 2 or more accommodations would be effective, employer may choose between them
  - This means you can make counter-offers!
  - Listen with open mind to any objections (individual may be right that your suggestion has problems).
  - If possible to provide the accommodation that was requested, that may be best in many situations.
- Critical that employer understand exact nature of problem to determine all possible, effective accommodations, then assess whether any/all possibilities constitute “undue hardship”
Consider Testing A Possible Accommodation During a Trial Period

• Good option where employer (or employee) has doubts/concerns whether a proposed accommodation will work as proposed

• Do not use a trial period where clear an accommodation will or will not work (for example, do not need to test whether a sign language interpreter works)

• Accommodations where a trial period may be helpful: telework, modifying work schedules

• Generally, a trial period should last 1 to 6 weeks
  – Long enough to really test whether accommodation works or not
  – May need to tweak the accommodation, rather than revoking it, if minor issues/problems arise
  – If clear that accommodation not working, may cut short a trial period
Undue Hardship

- **Significant** difficulty or expense
- Focus here is on resources and circumstances of agency as a whole, including impact on operations
- Undue hardship refers to denial of a specific accommodation
- Consider financial difficulty as well as reasonable accommodations that are extensive, substantial, or disruptive
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EEOC Enforcement Guidance on Reasonable and Accommodation and Undue Hardship

www.eeoc.gov/policy/docs/accommodation.html