A Holiday Guide To The ADA

Interactive Process

The Americans with Disabilities Act requires employers to engage applicants and employees with medical limitations in an “interactive process” to see what (if any) “accommodation” should be provided to help them do their jobs. But that’s a dry legal concept. Let’s be more practical – and festive! Think of the accommodations process as a dance. And the next time you need to discuss a potential accommodation, follow these simple steps...

1) **Don’t Talk In Legalese** – Though easy to do, don’t discuss “disabilities” or “accommodations” (or “undue hardships”) with your employees. They’re legal conclusions, and if you need to make them at all you should make them AFTER you gather case-specific information. As you do that, talk instead about an employee’s “conditions” or “restrictions” and ways you can “help” or “assist.”

2) **Talk To The Employee** – Actually, do mostly listening. Start with a simple “how can we help you?” and take good notes. Ask follow-up questions focused on “what can you do” and “what can’t you do” in relation to the particular job/position. In return, promise nothing except prompt review and follow-up.

3) **Talk To The Doctor** – The employee’s info is (usually) helpful, but it’s (usually) not enough. Get written professional medical verification of the nature, duration, and severity of restrictions and possible forms of assistance (but keep it focused and try to avoid getting extraneous or legally protected information...good legal counsel can be a big help with these communications).

4) **Talk To The Supervisor(s)** – Consult those supervisors who know the job better than anyone and explore what can, can’t, and might be done and why.

5) **Do Your Homework** – Spend time researching possible accommodations. The Job Accommodation Network, vocational rehabilitation counselors, various websites and other resources can often offer ideas you haven’t thought of yet. Let other people’s experiences be a helpful teaching tool! Even if you can’t find a perfect (or any) solution, you’ll always be better off if you can say (and show) you made a comprehensive search effort.

6) **Document (Well)** – Keep thorough, accurate notes of: communications with employees and their doctors; steps taken to research possible accommodations; and your thought process for pursuing or rejecting specific options. For rejected requests/suggestions, be prepared to show – with details – why they would be unworkable for your business (don’t rely on cost except in rare cases, and seriously consider working with counsel on this point if nothing else). Confirm significant conversations and decisions in written memos/letters/emails to the employee.

7) **Tell The Employee What You’ve Decided. Then keep Talking** – Medical conditions are rarely “static.” Even after an accommodation has been “approved” or implemented, periodic follow-up across an appropriate span of time is critical and often over-looked. Touch base with employees after significant doctor appointments or procedures, after a few weeks have passed since your last chat, etc. Make sure you know if anything has changed and whether concerns have been addressed.

And remember: everyone’s medical status is unique, so the ADA requires *individualized* treatment. Don’t hesitate to add some customized moves or “flair” to the basic steps above.

Season’s Greetings & Happy Dancing From Joe Pettygrove (jpettygrove@kgrlaw.com) With