

Accommodating Disabilities in the Workplace

What you need to know about the Americans with Disabilities Act.

Small businesses may or may not be subject to Family and Medical Leave Act requirements to provide leave for serious health conditions. However, all but the very smallest of employers must comply with the reasonable-accommodations provisions of the Americans with Disabilities Act—and that often includes allowing employees time off on a long-term, short-term or intermittent basis.

Recent amendments to the ADA have expanded its scope and muddied the waters for small business owners and human resources professionals trying to maintain an adequate workforce while avoiding claims of discrimination.

Employers must learn to implement the ADA's standards pertaining to employee relations and leave requests, as federal and state agencies monitor and police employment environments and complaints. Consider the following common stumbling blocks an introductory lesson for properly evaluating potential disability accommodations in the workplace:

Snap judgments // The Americans with Disabilities Act Amendments Act changes are still working their way through agency enforcement decisions and the courts, but one aspect is abundantly clear. The scope of “disabilities” entitled to protection has greatly expanded, as has the Equal Employment Opportunity Commission’s appetite for pursuing claims based on “perceived disabilities.” The end result is that employers should not make snap decisions about

which medical conditions qualify as disabilities and which are merely short-term or less serious health concerns.

Exhausted leave leading to termination //

Many employers confuse leave under the FMLA or an employee’s entitlement to paid time off with the obligation to accommodate an employee’s disability. Thus, unfortunately, many employers mistakenly use the exhaustion of such leave as the jumping-off point for termination decisions, without additional consideration. In fact, an employee’s entitlement or use of FMLA or other leave is a separate determination and has little or no bearing on an employee’s right to reasonable accommodations, which may take the form of additional leave, depending on the circumstances.

The absence of interactive dialogue //

The EEOC and most judges and juries are very big on the interactive dialogue in disability cases. Even where an employee does not have an actual disability, the EEOC is more likely to find a “perceived disability” in instances where the employer made decisions without involving the subject employee. The fortunate converse is that the EEOC looks very favorably on employers who have explored options, even when it’s determined that no reasonable accommodations exist. At its most rudimentary level, the interactive dialogue requires an

employer to engage a potentially disabled employee about any limitations and to brainstorm about possible reasonable accommodations. Significantly, the interactive dialogue does not require the parties

to reach a mutually agreeable resolution, but only to interact in good faith when presented with a disability accommodation issue.

In conclusion, the good news for employers is that disability does not allow for a get-out-of-jail-free card. If properly addressed and documented, a disability that requires reasonable accommodations does not generally entitle an employee to underperform or poorly perform his job. Disabled employees who happen to be poor performers may be counseled, disciplined and even terminated so long as such employment actions are consistent with how the employer treats nondisabled employees.

Like most human resources issues, the key to liability avoidance is consistent implementation and clear documentation. Small precautionary steps can help small business owners and employers avoid common stumbling blocks and troublesome claims down the road. ■

The key to liability avoidance is consistent implementation and clear documentation.



Paul F. Pautler is a labor and employment partner in the Kansas City, Mo., office of Husch Blackwell LLP.

(816) 983-8295 // paul.pautler@huschblackwell.com // www.huschblackwell.com