

# **The ADA, Title VII, and the Interactive Process**

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to applicants and employees who are qualified individuals with disabilities, unless such accommodations would cause an undue hardship to the employer.

Title VII of the Civil Rights Act (Title VII) also requires employers to reasonably accommodate an applicant or employee's religious practices and observances, unless an employer can demonstrate that such an accommodation would constitute an undue hardship.

## **Defining Reasonable Accommodation**

Generally speaking, an accommodation is a change in the work environment or in the way things are customarily done that enables the individual with a disability or a conflicting religious belief or practice to enjoy equal employment opportunity. There are three categories of reasonable accommodations:

1. Modifications to the job application process,
2. Modifications to the work environment or to the circumstances under which the position is customarily performed, or
3. Modifications that enable the employee to enjoy equal benefits and privileges of employment as other similarly situated employees without disabilities.

Modifications comply with the law when they are effective in meeting the needs of the individual.

## **Failure to Accommodate**

To prevail on a claim based on failure to accommodate under the ADA, an individual must show:

1. the individual had a "disability" within the meaning of the ADA;
2. the individual suffered an adverse employment action;
3. the individual was able to perform the essential functions of his/her job, with or without reasonable accommodation; and,
4. the employer was aware that a reasonable accommodation was necessary and possible, but failed to provide one.

Similar to the ADA, an individual can bring a claim of religious discrimination for failure to accommodate religious beliefs under Title VII. To establish such a claim, such an individual must show:

1. the individual has a bona fide religious belief that conflicts with an employment requirement;
2. the individual notified the employer of this belief;
3. the individual experienced adverse action for failing to comply with the conflicting employment requirement.

## **Requesting a Reasonable Accommodation**

An employer's accommodation obligations for disability and religion are similar in that employers are required to provide a reasonable accommodation to an employee once it is on notice that an

accommodation is needed. Obligations under Title VII and the ADA are additionally similar in that both require employers to engage in the interactive process with the employee to determine effective accommodations necessary.

An individual need not mention the ADA, Title VII, or use the phrase "reasonable accommodation" when requesting one. Under the ADA and Title VII, before any accommodation obligation arises, an employee must provide sufficient information about his or her medical condition and/or religious beliefs to make the employer aware of the existence of conflicts between the employee's medical condition and/or religious practices and the employer's job requirements.

Once the employer is cognizant of the conflict between the individual's medical condition and/or religious beliefs and the job requirements, the employer must engage with the individual in an interactive process.

### **Engaging in the Interactive Process**

Upon learning that an individual needs a change at work related to a medical condition and/or religious belief, engage the individual in an informal, interactive process to explore options, brainstorm about ideas, learn more about any specific employee requests, etc. This process can take any form, so use the form that makes the most sense under the circumstances (e.g., email exchange, informal conversation, formal meeting, etc.); however, person-to-person meetings are preferable. Below are some tips for engaging in this process:

- **Beginning the Process**
  - Begin the process by communicating with the individual and asking the individual to identify the job duties that he or she can and cannot perform. Job descriptions can be a useful tool when identifying the functions of a position, but remember that the range of essential job functions may extend beyond a written job description.
    - Remember: It is unreasonable to remove essential job functions from an individual's duties, therefore a request for such accommodation need not be granted.
  - Ask the individual if he/she has a specific request for accommodation for the Company to consider.
  - Regarding ADA accommodations, medical documentation may be requested at this time if needed to understand the disability and/or the need for an accommodation.
  - Regarding religious accommodations, the employer is entitled to make a limited inquiry of the employee into the facts and circumstances of the employee's claim that the belief or practice at issue is religious, sincerely held, and creates the need for the accommodation only if the accommodation request itself does not provide sufficient information to allow the employer to decide and the employer has a "bona fide" doubt about the basis for the accommodation request.
  - In most cases, an employer should not decide on a specific accommodation on the spot. Take time to think about the individual's request and to consider whether the request should be granted, denied, or whether the individual should be offered an alternative accommodation.
- **Considering Possible Solutions**
  - After meeting with the individual, discuss the individual's requested accommodation internally, if necessary, and make notes of those internal conversations when it makes sense to do so.

- If the requested accommodation is not reasonable, consider alternatives. Employers are not obligated to provide individuals with the accommodations that they prefer. Rather, employers are obligated to provide only accommodations that are reasonable and effective.
- If it is not reasonable to provide an accommodation, consider denying the request.
  - Remember: Undue hardship under Title VII is defined as "more than de minimis" cost or burden, which is a lower standard for employers to satisfy than the "undue hardship" required under the ADA.
- Making a Decision
  - If the decision is to provide the accommodation requested, communicate that decision to the individual and others who need to know in order to implement the accommodation.
  - If the decision is to either deny the accommodation or offer an alternative, be sure to give the individual an explanation for such decision.
  - Instruct the individual to contact Human Resources if he or she has any additional questions or concerns.
- Closing the Loop
  - Document the interactive process and the result reached (even if not final).
  - Consider calendaring a follow-up with the individual and the individual's supervisor to assess whether the accommodation provided has been effective in assisting the individual in performing his or her essential job functions.
  - If the accommodation is not effective, begin the process again.