



ENGAGING IN THE INTERACTIVE PROCESS REQUIRED BY THE ADA

by Laura K. Sitar

The Americans with Disabilities Act ("ADA") was enacted more than twenty years ago to protect qualified individuals with disabilities from discrimination in employment opportunities. The ADA requires employers to make reasonable accommodations to assist disabled individuals to perform the essential functions of their jobs. Sounds pretty straight forward doesn't it? Unfortunately, complying fully with the ADA can be a challenge for even the most diligent employers. One hotbed of current litigation involving ADA related claims is the Act's requirement that reasonable accommodations be determined by an "interactive process" between employee and employer. Courts have found that engaging in the interactive process in good faith is a mandatory requirement. Employers' alleged failures to do so has become the basis of an increasing number of law suits. So what is an effect interactive process and how can you assure compliance?

The interactive process contemplated by the ADA is nothing more that a dialogue between an employee with a disability and his or her employer regarding reasonable accommodations that can be made to allow the employee to perform the essentials functions of his or her job. Below are steps you can take to make sure the required interactive process occurs.

COMMUNICATE YOUR POLICY REGARDING THE INTERACTIVE PROCESS

Inform your employees in your employee handbook that the ADA requires that employees and employers communicate in good faith regarding a disabled employee's need for a reasonable accommodation to allow the employee to perform the essential functions of his or her job. Tell employees that if they request an accommodation you will review the requirements of their job with them and discuss possible accommodations that will assist them in performing their job.

TRAIN YOUR SUPERVISORS TO RECOGNIZE AN ACCOMMODATION REQUEST

A simple statement by an employee that he or she is having difficulty performing his or her job *because of a medical condition* is generally sufficient to constitute a request for accommodation. The request need not be in writing, nor must it use any magic words including the word "accommodation." The employee must simply be asking for a change in his or her job because of a medical condition. The employee has the obligation to provide you with enough information about the disability to enable you to determine a reasonable accommodation. If an employer knows about an employee's disability and knows or should know that the employee is experiencing workplace problems because of the disability the employer may be obligated to begin the interactive process in the absence of a formal requests from the employee. When in doubt, your best course is generally to begin the dialogue if you believe an disabled employee needs an accommodation to perform his or her job.

ENGAGE IN THE INTERACTIVE PROCESS IN GOOD FAITH

Once an accommodation request has been made you should initiate the interactive process. Act promptly and communicate directly with the employee. Schedule a meeting in person or by phone, but talk. The goal of the meeting is to determine what problems the employee is having performing his or her job because of a disability and to engage in a *collaborative* process to find solutions to enable the employee to continue to work. Collaboration is important. The interactive process requires open communication and a good-faith exploration between you and your employee of possible accommodations. Consider all your employee's requests and offer alternatives if those requests are too burdensome. Often the interactive process requires multiple conversations and an ongoing dialogue. While an employer ultimately has the right to select the appropriate accommodation, the interactive process requires that the employee's thoughts be considered in good faith. Employers are not required to provide the specific accommodation requested by an employee, but are required to provide a reasonable accommodation, if one is available.

DOCUMENT THE PROCESS

Document. Document. Document. Memorialize each conversation you have with an employee requesting an accommodation. Record the possible accommodations which were discussed and accepted or rejected. Include the reasons why an accommodation suggested by an employee would cause undue hardship and therefore was not reasonable. Provide written confirmation of every accommodation considered and offered to the employee.

CONTINUE INTERACTING

The duty to engage in the interactive process and provide reasonable accommodations is ongoing. As circumstances change a different accommodation may be needed. Keep talking.

Engaging in the interactive process with your employees with a disabilities means talking with them and truly considering their suggestions regarding reasonable accommodations. Ultimately, the decision regarding implementing a reasonable accommodation for any employee is yours, but the employee involved should feel that you really listened to and truly considered his or her suggestions regarding possible accommodations.

About the Author:

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation.

Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California.

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