

## **This Week's Feature:**

### **A review of the ADA's interactive process**

*excerpted from Kentucky Employment Law Letter  
written by the law firm of Greenebaum Doll & McDonald PLLC*

The Americans with Disabilities Act (ADA) and its Kentucky counterpart, the Kentucky Civil Rights Act, place an affirmative obligation on you and your disabled employee to participate in an interactive process to assess any possible reasonable accommodation for the physical or mental impairment. How should that process be conducted? What issues should be discussed?

#### **Checklist**

The following factors are integral to an effective completion of the interactive process as required by the ADA:

- Identify the job at issue.
- List the essential job functions (if they haven't already been set forth). Include a review of any applicable job descriptions or memorandums indicating or describing the duties and responsibilities.
- To understand the full scope of the job, also list the marginal - or nonessential - job functions.
- Identify each restriction or limitation of the employee that may affect her ability to engage in a function or process that's associated with the work.
- Arrange for the employee to submit a note or statement from her medical care provider that identifies the limitation on the physical or mental ability. The request, however, should relate only to the limitation on a work-related function without inquiring into the nature or extent of the illness. For instance, the physician should indicate that there's a limitation on using pneumatic tools instead of generally stating that the employee has carpal tunnel symptoms.
- You should engage in a meeting or series of meetings with the employee to assess the limitations and discuss and identify reasonable accommodations, if any, to permit her to perform all of the essential job functions.
- At the meeting with the employee, first review and confirm the limitations provided by the physician. It's very important that you document that conversation.
- If the employee doesn't agree with the limitations, she needs to obtain clarification from the physician. If your company wants a second opinion, follow the applicable provisions of the ADA.
- Next, review each accommodation proposed by either side for feasibility and effectiveness. Document the entire conversation by listing each proposed accommodation and indicating its viability. That process will

require an exchange of ideas from both parties.

- If questions arise regarding the manners or ways in which a particular limitation may be accommodated, you can contact the Job Accommodation Network for advice and information. The phone number is (800) 526-7234.
- If accommodations may impose an undue hardship on your company or other employees, you need to fully consider those factors. That evaluation needs to be documented.
- Consider the employee's preference, and select and implement the accommodation most appropriate for your company and the employee.
- Conclude the interactive process by documenting a plan for implementing the selected accommodation.
- Confirm with the employee in writing that the agreed-on plan covers her limitations and details the accommodations that will be implemented.
- Monitor the plan by (1) meeting with the employee to establish or implement the accommodations and (2) periodically confirming with her that the accommodations are effective. Document the plan's progress.

This flexible, interactive process should be used both for an employee who needs a reasonable accommodation to perform the essential functions of a job already held and as a part of the job application process. It's extremely important to document every step of the process. It's also a good idea to have the employee verify and confirm the documentation.

#### ***Final note***

Last, note that by participating in the interactive process, you aren't admitting that your employee has a "disability" as defined by the ADA. As many of you probably already know, many ADA suits are dismissed before trial because of the employee's (or ex-employee's) inability to prove that he's in fact disabled.

#### ***Additional Resources***

Need to know more information on the ADA? Visit our newly updated [ADA Hot Topic](#) on HRhero.com to find everything you need to know about the Americans with Disabilities Act and how to comply.

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