

Reasonable Accommodations And The ADA

Many business owners don't give the ADA much thought beyond handicapped parking

By Jeffrey L. Braff, Esq.

For many small businesses, the Americans with Disabilities Act (ADA) is not something that comes up on a daily basis. Other than making sure that their offices are wheelchair accessible and that they have designated spaces for handicapped parking, most small business owners don't give the ADA much thought. That is, until they are faced with making "reasonable accommodations" for a new or existing employee with a disability covered under the Act.

According to the ADA, "disability" is defined as "a physical or mental impairment that substantially limits a life activity." Any employer with 15 employees or more is obligated by law to make "reasonable accommodations" that will allow a "disabled" employee to perform the essential functions of the job and enjoy the benefits and privileges of employment enjoyed by employees without disabilities. Required accommodations need not cause "undue hardship" on the employer, according to the Act.

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When the ADA was written, legislation was proposed to give employers guidelines as to what 'undue hardship' meant when applied to the bottom line. Initially a bright line was drawn at 10 percent of the disabled person's annual earnings. In other words, for a clerical worker earning \$25,000 a year, an investment up to \$2,500 was deemed reasonable. More than that would cause undue hardship.

However, this rule of thumb was rejected because lawmakers felt that the financial resources available to a company was a more germane way to make the ultimate determination. Unfortunately, by the time a third party is involved in making this deci-

sion, a suit has been filed and conditions are already adversarial between the employee and the employer. What many employers and employees don't realize is that the ADA also contemplates an "interactive process" to be used to determine which reasonable accommodation, if any needs to be made.

Unless the employer already knows of the disability and the need to make a reasonable accommodation, the onus is on the disabled individual to initiate the process by making a request for an accommodation. This request can also be made by another person on behalf of the disabled employee. Once the request has been made, the parties are to engage in problem solving: working together to clarify the individual's functional limitation and identify what might enable the person to perform the essential functions of the job. Both the employer and the employee should approach this process in good faith.

During the interactive process, the employer is permitted to verify the individual's disability by requesting

documentation from the individual and/or his or her physician. If the employer isn't satisfied with the documentation, he can seek a medical review from a doctor of his own choosing.

There are no hard and fast rules - all people with asthma, for example, are not limited in exactly the same way when it comes to performing their job. A dialog with the disabled employee will determine what they think they can and can't do.

However, the reasonable accommodation that the employer offers doesn't necessarily have to match what the employee requests. For instance, a worker may have a back injury that

prevents him from lifting more than 15 pounds. He asks to be transferred from the warehouse into an office clerical position. But the employer wants the person to stay in the warehouse, with a new job description that takes lifting out of the equation. Or, perhaps if a box has to be moved from point A to point B, the employee can work with an assistive device that enables him to do the task without lifting.

Another example is a truck driver whose back problems prevent him from driving long hauls. He wants to stop driving altogether, but his employer wants him to stay on the road and take regular breaks to stretch his back and walk around. That is a reasonable accommodation, although the employee may not like it. The courts are very clear - if an individual refuses an accommodation that would enable them to perform the essential functions of their job, they can be let go.

Sometimes an accommodation that would appear to be reasonable is not enough to help someone do their job. In one case, a developmentally challenged young woman was unable to learn her job. The employer hired a job coach to work with her for 10 days. The coach determined that no matter how much training she received, she was incapable of grasping her tasks. The employer did his part - any other measures would represent undue hardship.

Reasonable accommodation can include such actions as modifying job duties, obtaining accessible technology or other workplace adaptive equipment, providing interpreters, restructuring work sites or transferring the individual to a vacant position. While some of these adaptations are costly, the average accommodation costs less

than \$200 per employee, according to the Equal Employment Opportunity Commission (EEOC).

Examples of accommodations that require little to no investment could include redistributing the marginal functions of a job among other employees, modifying a work schedule to allow for treatments or therapy, or using simple adaptive technology, like a telephone amplifier for the hearing impaired.

In this tight job market, and with ever-spiraling workers' compensation costs, employers have more reason than ever to keep a good employee working, even if circumstances change. Each employee represents a sizeable investment in training - making the necessary accommodations to allow the disabled person to continue working in a productive manner makes good business sense. Many employers have found, and empirical data supports the theory, that disabled employees often outperform their non-disabled co-workers when it comes to dedication, motivation and work ethic, perhaps in part because of the adversity they have faced. While this is a generalization, employers should consider affirmatively looking for and hiring people who are disabled. The employer can look on the reasonable accommodation he will have to make as simply an investment in the future - for both the employee and for the business.

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