



Protecting What Matters To You[®]

Avoid 10 Common ADA Mistakes

The ADA Amendments Act of 2008 broadened the definition of disability previously established by the Americans with Disabilities Act (ADA) and effectively expanded the group of people who would qualify as disabled. The amendments put more pressure on employers to provide reasonable accommodations and created more potential liability for companies that are not in careful observance of the law. This article provides helpful guidance for employers to follow, as well as common mistakes to avoid.

What Employers Can Do

There are steps employers can take to protect themselves from liability and prepare their company in case of a future lawsuit.

Keep Job Descriptions Detailed and Accurate

It is important that job descriptions are kept up to date and include essential functions of a job. Remember that employers generally have a responsibility to reasonably accommodate an employee who cannot perform an essential function. However, an employer does not have to eliminate an essential function of a job position as part of a reasonable accommodation. Essential functions in a job description can be one factor in legally proving that the task is indeed essential to the job; these functions can include physical requirements like lifting or standing and stamina requirements like working long hours or weeks.

Develop an Accommodation Policy

Creating and distributing a reasonable accommodation policy can demonstrate your commitment to honoring the ADA. The policy should direct all reasonable accommodation requests to HR rather than to supervisors, as HR professionals are better equipped to deal with the nuances and legal risks of handling these types of requests.

Even though you direct employees to HR, supervisors still need to know how to handle the situation if a reasonable accommodation is requested of them. They should not respond either yes or no to the request, regardless of how feasible it may or may not be, but should instead refer the situation to HR. In addition, supervisors must be trained to handle potential ADA situations that may arise during a job interview or in their daily work with employees.

Common Mistakes

In navigating the ADA, HR professionals should be careful to avoid these common mistakes.

1. Ending accommodation dialogue with an employee if no reasonable accommodation can be found to help the employee perform an essential job function. In this situation, employers should consider other accommodations such as working part time, reassigning the employee or providing an unpaid leave of absence.
2. Taking a manager's word that a function is, in fact, essential. This will be contested if the issue goes to court, so employers should investigate themselves to determine whether a function in question is essential or not.
3. Using the "undue hardship" provision too liberally. For instance, reasons such as cost or other employees' reactions will generally not be accepted by the court as an undue hardship for providing a reasonable accommodation.
4. Discussing details of a disability with the employee's manager. The manager should generally only know the nature of the accommodation being provided. An exception is if the disability affects how the manager will interact with the employee,

such as a hearing impairment.

5. Failing to consider other laws applicable to an employee's disability. For instance, a disability under the ADA often also qualifies as a serious health condition under the Family and Medical Leave Act (FMLA), so FMLA laws and provisions might come into play.
6. Rejecting an employee's request because it seems unreasonable or impractical. Employers should still engage in a dialogue with the employee to see if a solution can be reached. Even if you still determine that the request is not feasible, it is important to follow the full process to reach that decision (and document it completely).
7. Eliminating essential functions as an accommodation, even for a limited period. Though sometimes this is a feasible solution, it can also make it harder to argue later that the function is essential for this or any employee. In addition, other employees may argue that the function should not be essential for them either, or claim discrimination. To do this safely, emphasize that suspending or relaxing the essential function is temporary and document the specific reasons for this action to avoid discrimination claims from other employees.
8. Failing to properly document a denied accommodation request. Documenting the process followed and the reason for denial will help your defense in the event of litigation.
9. Taking performance into account when deciding if an accommodation is reasonable. All workers should be treated the same in this process, whether high performers or underachievers.
10. Not considering reasonable accommodations just because the employee doesn't offer any specific ideas. If an employee tells HR that he or she needs an accommodation, it is the employer's responsibility to investigate potential accommodations.

Now more than ever, the burden has shifted to employers to provide reasonable accommodations when possible and show care in handling disability-related issues in the workplace. It is important that you are familiar with the nuances of the ADA and the ADA Amendments Act to keep your company in compliance and avoid costly lawsuits and penalties.

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