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Did You Know...

An employer is generally responsible for engaging in an “informal, interactive process” with a disabled employee who has requested an accommodation to perform the essential functions of his or her job?

Employer Risks and Exposures

The Americans with Disabilities Act (ADA) and New York State Human Rights regulation require employers to accommodate the known limitations of an otherwise qualified individual with a disability so that the individual can participate in the application process, perform the essential functions of the job, or receive equal benefits and privileges of employment unless it would create an undue hardship. Generally, it is the obligation of an applicant or employee to request a reasonable accommodation. When requesting an accommodation, an individual does not need to specifically refer to the ADA or use the term “disability” or “reasonable accommodation” as long as he or she provides sufficient information to put the employer on notice that a work modification is needed because of a medical condition.

If an employer fails to provide a reasonable accommodation to an applicant or employee, the individual can file a charge with the EEOC and/or the NYS Division of Human Rights. An individual whose claim is successful can be awarded front pay, back pay, attorney's fees, expert witness fees, court costs, reasonable accommodation, reinstatement, and/or a job offer. If an employer is found guilty of intentional discrimination, the individual may recover compensatory and punitive damages based on the size of the employer (maximum of \$50,000 for employers with up to 100 employees and up to a maximum of \$300,000 for employers with 500 or more employees).

Avoiding Disaster

Your employee handbook should include a comprehensive ADA policy that indicates the procedure that employees should follow when requesting an accommodation. Communicate this procedure to applicants on your *Application for Employment Form*.

Take the following steps once an employee requests an accommodation:

- 1) Determine if the employee has a disability that is protected by the ADA or NYS Human Rights regulation. (Note: The obligation to provide a reasonable accommodation generally exists only if an employee is qualified to perform the essential functions of the job with or without reasonable

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accommodation and if his or her medical condition meets the Act's definition of a disability.)

2) If the employee's disability or requested accommodation is not obvious, request medical documentation from his or her health care provider indicating the nature of the disability, any functional limitations, and the need for accommodation. (Note: An employer may not generally request medical documentation if both the employee's disability and the need for accommodation are obvious or if the employee has already provided enough information to show that he or she has an ADA disability and that an accommodation is needed.)

3) Once the disability and need for accommodation have been substantiated, the Equal Employment Opportunity Commission (EEOC) states that you should engage in an informal, interactive process with the employee to identify his or her limitations and appropriate reasonable accommodations. The employee does not have to indicate the precise accommodation needed but must describe the problems affecting his or her ability to perform the essential functions of the job.

The EEOC indicates that the principal test in determining a particular accommodation is "effectiveness" in allowing the employee to perform the essential functions of the job. If there are several accommodations that are "reasonable," you may choose the one that is easier to provide or that is less expensive. Although you should give strong consideration to the preference of the employee, you are not required to choose the accommodation that he or she would prefer.

4) 4) Determine if the accommodation would create an undue hardship on your organization due to cost, disruption to the workplace, or a fundamental alteration to the nature or operation of the business. If an accommodation would create an undue hardship, attempt to identify another accommodation that would be 'reasonable.'

If an accommodation is a hardship due to its cost, the ADA requires you to see if funding is available from a vocational rehabilitation agency or through government tax credits or deductions. If financial assistance is not available, the employee should be given an opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes the undue hardship.

If you have questions or for more information about the ADA and reasonable accommodations, call AMTEK's Human Resource Hot Line at 1.800.457.8829.

This HR eNews is not intended to render legal advice but is meant for general informational purposes only.

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