

PUBLICATION

Disability Accommodations in the Workplace: An HR and Legal Perspective

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The HR Perspective

Cory Christmas, training manager at Baker Donelson, has worked in human resources for more than 15 years, and he still recalls his first role with managerial responsibilities and advice he received that he still uses today. Cory's director told him, "Cory, now that you are part of the management team, you'll have to be more careful about conversations in which you may become involved. I have **one rule** that I live by when it comes to workplace conversations." Cory opened his notepad, flipped to a clean page and prepared himself to record his director's advice: "Don't make comments on or ask questions of people about things they cannot change about themselves in five minutes. This will keep you out of the HR office defending your intent versus what someone else may have interpreted." And that was his HR training – all 60 seconds of it.

Over the past 15 years, Cory has taken his director's advice to heart. But the first time he deviated from the rule, he almost found himself on the wrong side of HR guidelines relating to employee accommodations. He discovered, merely through observation, that he had a direct report with what he expected to be a vision impairment. The employee's work quality was great – but he noticed the employee leaned in really close to the PC monitor. Cory thought, "Hey, I'll be a nice guy and see if I can secure a larger monitor or screen magnifier." He asked his director how he might go about securing additional equipment. She succinctly stopped him in his tracks – and explained to him how employee accommodations work; they start with a request from the employee, not the other way around.

Legal Perspective – Accommodation Requests Under the ADA

Cory's director was partially right when it comes to accommodation requests under the Americans with Disabilities Act (ADA). The EEOC's *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* provides that "as a general rule, the individual with a disability – who has the most knowledge about the need for reasonable accommodation – *must inform the employer that an accommodation is needed.*" The request can be made verbally or in writing. The employee does not need to use any "magic" language when making the request, reference the ADA or even use the term "reasonable accommodation." The request does not mean that the employer is required to provide the change; rather, the request is the first step in an informal, interactive process between the employee and the employer. Nevertheless, the EEOC notes that *there may come a time when the employer should initiate* the reasonable accommodation interactive process without being asked by the employee. This should occur if the employer (1) knows that the employee has a disability; (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability *and* (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation.

Regardless of whether the employee or employer initiates it, the interactive process requires (1) direct communication between the employer and employee to explore in good faith the possible accommodations; (2) consideration of the employee's request and (3) offering an accommodation that is reasonable and effective.

So, should Cory have initiated the interactive process even though the employee had not requested an accommodation? The answer is *no*. In this scenario, he had no notice that the employee had a disability. Second, Cory had no indication that the employee's alleged disability – a vision impairment – impeded the

employee's ability to perform his essential job functions. In fact, he noted that the employee's work quality was great. Finally, there was no indication that the employee's alleged disability prevented him from requesting a reasonable accommodation himself.

While Cory's situation did not trigger the employer's duty to initiate the interactive process under the ADA, employers should recognize that this duty *does* exist and that the employee is not the only party who may need to initiate the accommodation process under the ADA.

If you have any questions on this issue or would like training to understand your company's obligations under the ADA, please contact the author or any member of Baker Donelson's Labor & Employment Group for more information or assistance.