

Returning to the Workplace & ADA Compliance

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With most workplace restrictions and state-wide public health safety mandates being lifted, employers across the state are welcoming employees back to the workplace. The return of employees may also bring an increased number of workplace accommodation requests. Now is a good time to examine some best practices for complying with the Americans with Disabilities Act (ADA) and Oregon's disability law when handling an employee request for a reasonable accommodation.



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Am I a Covered Employer?

The ADA and Oregon's disability law requires employers to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment. The ADA applies to employers with fifteen or more employees and Oregon's disability law applies to employers with six or more employees working in Oregon. Employers covered by both state and federal law must apply the law that is most beneficial to the employee, but the general process for handling accommodation requests is the same.

The Interactive Process

Accommodation Request

Once a covered employer is alerted that an employee needs an adjustment or change at work for a reason related to a disability, both the employer and employee should work together to identify an effective and reasonable accommodation. As a reminder, an employee is not required to use any magic words when requesting an accommodation. Instead, an employee might say something as inconspicuous as "I think I need to take some time off for health reasons" or "I am nervous about returning to in-person work." If you hear something like this from an employee, be careful not to dismiss it as the employee being difficult or not wanting to work, but, rather, consider whether the employee is requesting an accommodation for a disability.

Gathering Information

In many instances, after receiving an accommodation request from an employee, the employer will need to gather more information. Specifically, this will be information regarding the employee's condition, limitations, the specific work tasks at issue and the type of accommodation the employee is seeking. However, if an employee's disability and need for an accommodation are obvious, or if an employer already has sufficient medical information from an employee, the employer may not need to gather any additional information.

Employers can gather the information they need directly from the employee. Otherwise, an employer may need to request the employee provide medical documentation from their healthcare provider. The best way to obtain this information is to ask the employee to take a request for information to their healthcare provider. Employers should prepare this request in conjunction with counsel to be sure they are narrowly tailoring the inquiry to the situation and requesting only information necessary for the interactive process. Typically, this includes a brief description of the current situation, including a description of the employee's

job functions, and targeted questions about the nature of the employee's disability, its severity, likely duration, activities limited by the disability, the extent to which the disability impacts the employee's ability to perform the essential functions of their job, and possible accommodations that would allow the employee to perform the essential functions of their job. In some instances the employer may interact directly with the employee's healthcare provider to obtain this information if they have a written medical release or permission from the employee, but it is best practice to have all communications go through the employee.

Identifying Reasonable Accommodations

Once the employer has gathered sufficient information regarding the employee's limitations and determined that the employee has a qualifying disability, the next step is to discuss what, if any, accommodations will allow the disabled employee to continue to perform the essential functions of their job. The employee and their healthcare provider will likely suggest a specific accommodation, but an employer is not required to provide the employee's preferred accommodation. The law only requires an accommodation to be effective and reasonable.

There are various types of reasonable accommodations that an employer may have to provide, including job restructuring, part-time or modified work schedules, remote work, acquiring or modifying equipment, providing qualified readers or interpreters and reassignment to a vacant position.

Navigating the ADA and Oregon's disability law can be a complex and confusing process. If you find yourself in a situation you are not sure how to handle, or you simply want to make sure your company's current disability accommodation process is compliant with the ADA and Oregon law, contact your employment law counsel for assistance.

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