Best Practices for ADA Compliance

Jessica Thaller-Moran
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This summer marked the 29th anniversary of the original Americans with Disabilities Act.

I have Type 1 Diabetes, which makes me a beneficiary of the ADA (as amended). The ADA protects my right to wear my insulin pump on a plane, eat a snack when my glucose is low and bring needles when I go to court. As an individual, I rely on ADA protections on a daily basis.

As an attorney, I regularly counsel employers who feel overwhelmed by administering such a technical law.

Put succinctly, Title I of the ADA requires employers to make certain reasonable accommodations for otherwise qualified individuals with disabilities. This is easier in theory than practice. Even a letter-perfect ADA policy might be insufficient if management is not properly trained or if employees are not given guidelines for how to raise the need for a potential accommodation. There are, however, some steps employers can take to protect themselves and their employees.

The ADA requires employers to engage in an "interactive process" with an employee who signals a potential need for an accommodation.

If a company doesn't know about the problem, it's difficult to address the issue or provide the accommodation. Clear policies outlining how employees should request an accommodation are essential. This typically includes specific direction on whom to contact and how. Employees at all levels should be educated on how to address a possible accommodation need.

By contrast, policies that are silent on this point or that direct employees to an "immediate supervisor" or "management" could foster dead-end conversations with someone who inadvertently misinforms an employee or ventures to make his or her own determination of whether the individual has a legally protected disability, creating significant liability for the company.

The corollary is training management at all levels on how to respond to an employee's remark that "the fluorescent lights give them migraines" or that they "can't stand at the register for the whole shift." If the employee's communication could indicate a need for a medical accommodation, liability could arise for the company even if the individual to whom it is disclosed is not serving in an official HR role.

Consider the company that recently landed in hot water when a well-intentioned but misinformed supervisor unequivocally informed an employee that she could not miss work or take a leave of absence to treat her anxiety. The employee subsequently resigned. By failing to direct the issue through the proper channels, the supervisor misinformed the employee, failed to fulfill the company's legal obligations, caused the employee to resign and led to costly litigation that could have been avoided with an ADA-compliant response.

Well-intentioned employers may also miss the mark determining whether the individual has a "disability."

While it may seem straightforward, ADA protections extend to conditions that may not be visible, and the determination is highly fact-specific. For example, migraines, irritable bowel syndrome and mental health issues may be considered disabilities in the right circumstances.

While employers may request certain medical information under appropriate circumstances, it should be handled with care to avoid legal violations for mishandling medical information. This, again, makes it essential to direct employees to the appropriate recipient for such a disclosure.

Even if an individual has a legally protected disability, the ADA does not require that an employer automatically provide the requested accommodation. It does, however, require an accommodation that is reasonable, i.e., one that does not pose an undue hardship for the employer.

Reasonableness is a fact-specific determination that should be made through an interactive process between the employer and the individual. Depending on the circumstances, it could include anything from a modified work schedule to providing accessible workplace equipment, or even a leave of absence from work. The fact that it would cost the company money, or that co-workers will be jealous, or that you've always scheduled shifts for specific eight-hour windows, does not automatically mean that the accommodation is unreasonable.

Returning to the example above about the employee with anxiety, the company was not under an obligation to give the employee precisely what she requested. What was not permissible, however, was her supervisor's immediate rejection of the accommodation that she requested without further dialogue about what she needed to do her job.

To avoid liability, employers should position employees to navigate complicated medical issues when they arise. At a minimum, everyone should be trained to direct inquiries to the same, central location, such as HR or a member of upper management. Finally, legal advice should be sought when the answer is in doubt; it is cheaper to resolve an issue on the front end than to clean up in litigation.

Jessica Thaller-Moran focuses her practice on employment law, with experience in both issues of employee management and dispute resolution, as well as complex business matters and litigation.