

## **REASONABLE ACCOMMODATION: WHAT IS IT?**

If there is one area of employment law that appears to draw the most questions, it is the question of what is reasonable accommodation and how does one in the real world draw from the split decisions of the multiple entities that attempt to define this issue for us. I have recently come upon an interesting article about EEOC guidelines that have been drafted as guidance for law firms, that I thought might be helpful to all types of employers.

Remember, the ADA requires employers with 15 or more employees to provide reasonable accommodations to qualified applicants and employees with disabilities. The Wisconsin Fair Employment Act (WFEA) applies to any employer who employs at least one individual and requires that qualifying employers reasonably accommodate an employee's or prospective employee's disability unless the accommodation poses a hardship.

The EEOC has suggested to law firms two examples of how they can reasonably accommodate applicants in the application process. The first example deals with hiring a sign language interpreter for a hearing impaired individual. The second requires the law firm changing lunch accommodations where an interview is to take place to make sure that a wheelchair bound candidate can have full access. The EEOC also provides guidance that Braille or large print may need to be provided to certain applicants. It is suggested that employers identify a contact person who will deal with requests for accommodation. It is also highly suggested to you that employers should avoid asking applicants whether they have disabilities and/or require any accommodation. If an applicant voluntarily reveals this information however, the employer must deal with the information accordingly.

Typically, employers are advised to usually wait for the employee to ask for a reasonable accommodation. However, every employer must understand that the employee does not have to mention the ADA or WFEA, use the word "accommodation", or provide evidence of the disability at the time the request is made. It is highly suggested that law firms (and you as employers) offer an employee with cerebral palsy in an office position access to voice-recognition software to reasonably accommodate their computer needs. Another example provided by the EEOC, is a high executive who has bipolar disorder and needs to request reasonable accommodation for a time period when their medication is being changed. An employer can always terminate or discipline the employee who is granted reasonable accommodation subsequently if he or she does not perform the job to legitimate expectations after the reasonable accommodation is implemented, but the Employer must document that it has treated the individual fairly in order to avoid a Discrimination Complaint.

The EEOC goes on to discuss the Interactive Process. Once the request for reasonable accommodation has been made by either an applicant or an employee, the employer is actually required to involve itself in an "interactive process." The employer can address questions to the

employee that it may have about the nature of the impairment, whether the impairment is a disability and the nature of the requested accommodation. At this point, the Employer can request documentation from relevant care providers relevant to disability and limitations, recommended reasonable accommodation.

It is important to note that pursuant to the WFEA, “the scope of an employer’s accommodation is not limited to accommodations requested by the employee.” *Parker v. Dane County* (LIRC, 11/10/03). Further, the employer’s real accommodation obligation is not a static one but one very much affected by the information it has, which may change with time. *Target Stores v. LIRC and Crivello*, 217 Wis. 2d 1, 576 N.W.2d 545 (Ct. App. 1998). While most employers would like to retrench in this situation for fear of saying the wrong thing and being accused of discrimination, the converse is what is legally expected.

**Bottom line:** Understand the individual needs of the particular situation presented and involve the applicant or employee in an actual dialog with the intent of exchanging that information and processing that information with the input of relevant healthcare practitioners. Copying in treating practitioners, if they are known, on all written communication also opens the interactive process. When a disability is within the employer’s knowledge, it is clear that some interaction must take place and efforts to reasonably accommodate, based upon the evolving needs of the disabled individual, must be made. The employee must be given a fair opportunity to perform the job.