



## Eye On The Law

### **Requests for Accommodation Amidst the COVID-19 Pandemic**

Like many employers, you may have had employees ask for accommodations related to COVID-19. Recently, we have had clients ask us what to do when an employee reports that his phobia of contracting COVID-19 prevents him from returning to the workplace. Another employee reported to her employer that certain physical conditions, including being overweight, put her at risk for severe illness if she contracted the virus and, for that reason, requested that she be allowed to work from home indefinitely.

Each of these requests for accommodation, whether or not made in writing and no matter how far-fetched they may sound, require the employer to engage in an interactive process with the employee to determine what accommodations can and should be made for the employee. Simply dismissing the request is a mistake and puts the employer at risk of being on the losing end of a lawsuit brought under the Americans With Disabilities Act (“ADA”) for failure to accommodate.

Simply put, the ADA requires employers to engage in an interactive process with an employee who requests, either formally or informally, an accommodation for a disability. Engagement in the interactive process is also triggered when an employer gains knowledge that an employee may need an accommodation, even if the employee has not asked for an accommodation.

In very general terms, the interactive process should include the following steps:

- Step 1: Initiate the Process By Contacting the Employee**
- Step 2: Gather Information and Conduct Research**

□ **Step 3: Plan and Attend a Meeting**

□ **Step 4: Take Action**

Depending on the nature of the employee's medical condition, the employee's job duties and the potential accommodation, there are differences in the specific actions that should be taken at each step in the interactive process. We can help guide you in the interactive process, whether the employee's medical condition is related to COVID-19 or something completely different, such as alcohol or drug addiction (which may constitute a disability under the ADA). For instance, we can offer you guidance on:

- The questions that should be asked of the employee's health care provider in the medical questionnaire,
- Suggestions for potential accommodations,
- Preparing for and attending the meeting with the employee, and
- Information that should be included in a final accommodation agreement.

Carefully planning the actions that will be taken at each step of the interactive process and documenting everything you have done will prove to be invaluable should you need to defend yourself against an ADA claim.

**Note:** We have expressed concerns to some of you of anticipated future increases in unemployment rates for employers. It was recently reported that Connecticut's unemployment fund is now depleted. The State is turning to the federal government for help and has already borrowed hundreds of millions of dollars. Very likely, the costs to repay these loans with interest will be passed onto employers. We will follow these developments and let you know when we have more information.

<https://www.newhavenbiz.com/article/cts-unemployment-trust-fund-goes-broke-employers-on-hook-for-millions-in-federal-borrowing>

**Reminder:** We provide training for employers on handling Americans With Disabilities Act issues, with a current focus on COVID-related requests for accommodation, as well as sexual harassment training, which is required by Connecticut law (the statutory training deadline was recently extended to January 1, 2021). Please call to ask us about our training packages.

***If you have concerns about this or any other labor or employment issue, please contact David Ryan at [david.ryan@ryan-ryan.net](mailto:david.ryan@ryan-ryan.net) or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).***

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