

WORKING WITH EMPLOYEES WITH DISABILITIES

By Karen Sutherland

The Americans with Disabilities Act (“ADA”) and the Washington Laws Against Discrimination (“WLAD”) prohibit employers from discriminating against employees or applicants with disabilities, and require the employer to implement reasonable accommodations if the disabled person needs them to perform the essential functions of the position. The ADA and WLAD also require employers to shift non-essential job functions that a disabled person cannot perform to other employees. The law also requires employees’ medical information to be kept confidential. Most employers understand the gist of the disabilities laws, but have difficulty with implementation.

Whether a condition qualifies as a disability under the ADA hinges on whether it interferes with a major life function, such as eating, sleeping, breathing, speaking, walking, etc. Under the WLAD, a disability is a sensory, mental or physical abnormality that substantially limits a person’s ability to perform the job.

When an employer learns that an employee has a disability that affects the employee’s ability to do the job, the employer should first assess which job functions cannot be performed. If they are non-essential, then they should be assigned to someone else. If they are essential, then the employer should work together with the employee, the employee’s doctors, and if necessary, other outside resources to determine exactly what parts of the job the employee can and cannot do, and what accommodations, if any, would allow the employee to perform the work.

The law is vague on accommodations because of the wide variety of jobs and disabilities and possible accommodations. However, there is some guidance in EEOC publications, which can be found online at www.eeoc.gov in its section on the ADA. Also, advocacy or support groups for various disabilities may be able to provide information about what accommodations are available. It may take more than one try to find the right accommodation, which may take some time and patience on the part of the employer. An employment attorney can assist you in finding experts and determining of a proposed accommodation is reasonable or not.

Most accommodations are neither expensive nor time-consuming. However, occasionally they can be, and supervisors may resent the added burden of implementing reasonable accommodations. One way to address this is by including training on the disabilities laws in advance of any need for accommodation so that all supervisors understand that implementing these laws is an integral part of their jobs. Providing the supervisor with the tools and support to be successful is also important, as the supervisor may need additional employees or reallocation of other employees’ tasks to cover for employee absences, or to shift the non-essential functions of the job to other employees. The supervisor may also need to have additional funds budgeted to allow for equipment, facility or workstation modifications that may be necessary.

Co-worker resistance can also be addressed through training that takes place before the need to implement accommodations arises. If employees understand the bigger picture of the reasons behind the disabilities laws and how the accommodation process works, they are more likely to accept the process instead of seeing it as unfair.

Overcoming co-worker resistance may be more difficult where the disability is not obvious, due to the ADA's requirements that medical information be kept confidential. For example, co-workers may not understand why an employee gets to have a reduced work schedule or does not have to perform non-essential tasks that other employees with the same job have to perform. In this situation, the employer can tell the co-workers that the employer is aware of the situation, that there are legitimate reasons for the situation that the employer cannot share, and that the employer is certain that the complaining co-worker would be appreciative of similar respect for his or her privacy if he or she was in a similar position.

With respect to disciplining employees with disabilities or addressing any performance deficiencies they may have, the disability does not excuse the employee from meeting the same requirements as other employees, assuming that the employer has provided any reasonable accommodations that are necessary.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com