Americans with Disabilities Act (ADA), Reasonable Accommodations, and the Interactive Process

Americans with Disabilities Act (ADA)

- Federal law prohibits covered entities from discriminating against qualified individuals on the basis of disability, in all employment practices, and during all stages of employment.

- Requires reasonable accommodation for known disability of a <u>qualified applicant or employee</u>, barring undue hardship or fundamental alteration to business operations.

- Undue hardship does not equal employer inconvenience.

- The EEOC believes undue hardship is measured against the entire operations of the employer and not just one department.

- Undue hardship is difficult to prove, as most data consistently show that 88 percent of all accommodations cost less than $1,000.

Americans with Disabilities Act (ADA)

Recommended steps to help establish a good faith effort in the reasonable accommodation process:

- Demonstrate a willingness to try multiple accommodations for the person's disability.

- Document any and all attempts at reasonable accommodations.

- Keep lines of communication open.

- Have the accommodation process be cooperative rather than adversarial in nature.

- Demonstrate a record of creativity in dealing with the accommodation.

Step 1: Recognize an Accommodation Request

- Employee may use "plain English" and need not mention the law or use the phrase "reasonable accommodation".

- Err on the side of caution: If it isn't clear if an employee is requesting an accommodation, ask what is being requested and why.

- Act quickly: Once an accommodation request is identified, the employer should respond immediately-unnecessary delays in processing an accommodation request can actually constitute a violation of the ADA.

- An interactive discussion with the employee regarding potential accommodations is essential.

- Use your Personnel Officer for guidance and to connect you with the DAS ADA Specialist, if needed.

Step 2: Gathering of Information

- Never make assumptions regarding ability/disability.

- The employee who requested the accommodation is often the best source of information about the disability and possible accommodations.

- To provide effective accommodations, employers need to know what limitations are interfering with job performance and what specific work tasks are an issue.

- Use the provided Reasonable Accommodation Request form that requires the employee, supervisor, and physician to complete different sections. This documents request and essential functions.

Step 3: Choosing an Accommodation

- While the employer gets to choose the accommodation, when possible, employers should consider the accommodation preference of the employee.

- Employees with some say in the accommodation tend to be happier and more productive in their work.

- Employers are free to try accommodations and stop them if they don't work.

- If an accommodation is being implemented on a trial basis, it's best to make a written agreement with the employee, so all parties are aware of how long the test will be, and what will happen if the accommodation doesn't work.

Step 4: Implementing an Accommodation

- If equipment is involved, then it needs to be properly installed or assembled and the employee needs to be trained on its proper use.

- Remember ADA confidentiality rules and only let managers and supervisors know about the accommodation when necessary.

- If the accommodation is reassignment, then the employee may need time to get to know the new job.

- You can still monitor for performance

Step 5: Monitoring an Accommodation

- This is an important but often forgotten part of the interactive process.

- Employees who are receiving accommodations need to let their employers know if there are changes or problems with the accommodation.

- If situations change, there may be options to revisit the accommodation for appropriateness.

- Ongoing communication is key to success.