

Job Accommodation Network

March 11, 2015. JAN Webcast: Best Practices for Complying with Section 501 of the Rehabilitation Act – Audience Questions

How can an employee make sure his/her condition is kept confidential?

The Rehabilitation Act and ADA require employers to keep all applicant and employee medical information confidential, and it can only be disclosed in limited circumstances. While managers should already be aware of this obligation, there is certainly nothing that would prevent an employee from discussing any particular concerns with management in advance. For example, an employee could tell the manager or DPM with whom she is dealing on an accommodation request that she wants to make sure no co-workers learn about her medical condition, and ask that the manager be careful to answer any questions from others about changes in her schedule or work duties carefully so as to not reveal confidential medical information. Suggestions for managers in handling questions from co-workers appear in question-and-answer #42 in the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship, <http://www.eeoc.gov/policy/docs/accommodation.html>.

I have heard a supervisor say he didn't believe the employee needed a reasonable accommodation, but his personal belief doesn't matter, does it? If an employee requests a reasonable accommodation and provides medical documentation, it is the supervisor's duty by law to work to provide a reasonable accommodation, right?

There are some instances in which a supervisor may have information based on observations in the workplace or otherwise that are relevant to whether an individual in fact needs the accommodation that has been requested. In other situations, the documentation the employee provides might lack information sufficient for the supervisor to determine whether an accommodation is needed. In these situations, the best course is for the supervisor (if the supervisor is making the decision about whether to provide an accommodation) to let the employee know why the supervisor believes an accommodation is not needed and/or what additional information would be helpful to make a decision. The employee and/or the employee's health care provider may then be able to provide further clarification through the interactive process. This will ensure that the employer's decision on the accommodation request is based on correct information rather than unsupported assumptions.

A person was dealing with depression from her bipolar disorder. She had missed a few days of work because she did not feel well. Her supervisor approached her and asked why she had missed days. She told him because she was depressed. He suggested she take a month of FMLA, but she doesn't want to do that and

neither does her mental health provider. Can he push her off on FMLA?

ADA: It would violate the ADA to require an employee to take leave if the employee is in fact qualified to perform the essential functions of the job and does not pose a direct threat to safety. FMLA: With respect to an employer's rights to designate sick leave to run concurrent with FMLA leave, and any other questions regarding the FMLA, contact the US Department of Labor, which enforces the FMLA. Information about the FMLA rules is available on their website at this link: <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>.

We require our security guards to rotate shifts, but one of them just disclosed that he has a sleep disorder and asked to only have to work dayshift. Is this something we even have to consider?

Yes it is. See the PowerPoint presentation at slides 36-43 and accompanying discussion of case examples in the transcript.

Can you talk about reassigning employees and how far we have to go? Can we limit the search to our local area?

The scope of the reassignment search is subject only to undue hardship, not geographic boundaries. See question-and-answer 27, EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship, <http://www.eeoc.gov/policy/docs/accommodation.html#reassignment>.

As a practical matter, however, as part of the interactive process, the employer should explain to the employee with a disability why the employer has concluded that the employee cannot be accommodated in his or her current position, and should find out (and document) what limitations, if any, the employee has with respect to the reassignment. For example, the employer should inquire:

- what types of work the employee is willing and qualified to perform, and what medical restrictions or limitations he has;
- whether the employee is willing to be reassigned outside the facility or outside the commuting area, and if so, to what locations;
- whether the employee is willing to be reassigned to a different type of position for which he or she may be qualified, and if so to what type(s);
- whether the employee is willing to be reassigned to a different sub-component of the department, and if so, to which one(s); and
- whether the employee is willing, if no position is available at his or her current grade level, to be reassigned to a lower-graded position, and if so, down to what grade.

The employer can then conduct the search within the parameters the employee has set. This method considers the employee's preferences while minimizing the scope of the vacancy search. If the employer conducts a search within the parameters developed with the employee and no appropriate position is found, the employer should determine whether the employee wants to expand the scope of the search. See <http://www.eeoc.gov/federal/qanda-employment-with-disabilities.cfm#reassign>.

One of our employees has had 2 seizures at work and says she doesn't need us to do anything for her. She brought a doctor's note saying the seizures should be under control soon, but we'd like to have a plan in case something else happens. Can we require her to work with us on this?

It may depend on the type of job, workplace, what happened when the employee had the seizure at work, and whether it affected the workplace in anyway. If there was any workplace impact, you should explain to the employee and her doctor what your concerns are, and ask them to participate in a dialogue about how to address them if a seizure occurs in the future. See the JAN example of a plan of action, <http://askjan.org/media/epplan.doc>, which may be useful as a guide.