
Employer-Provided Leave and the Americans with Disabilities Act (Part 3 of 4)

Communication Issues for Employers with Maximum Leave Policies

Many employers, especially larger ones and those with generous maximum leave policies, may rely on “form letters” to communicate with employees who are nearing the end of leave provided under an employer’s leave program. These letters frequently instruct an employee to return to work by a certain date or face termination or other discipline. Employers who use such form letters may wish to modify them to let employees know that if an employee needs additional unpaid leave as a reasonable accommodation for a disability, the employee should ask for it as soon as possible so that the employer may consider whether it can grant an extension without causing undue hardship. If an employer relies on a third party provider to handle lengthy leave programs, including short- and long-term disability leave programs, it should ensure that any automatic form letters generated by these providers comply with the employer’s obligations under the ADA.

An employer and employee should continue to communicate about whether the employee is ready to return to work or whether additional leave is necessary. For example, the employee may contact a supervisor, human resources official, or anyone else designated by the employer to handle the leave to provide updates about the employee’s ability to return to work (with or without reasonable accommodation), or about any need for additional leave.

If an employee requests additional leave that will exceed an employer’s maximum leave policy (whether the leave is a block of time or intermittent), the employer may engage in an interactive process as described

above, including obtaining medical documentation specifying the amount of the additional leave needed, the reasons for the additional leave, and why the initial estimate of a return date proved inaccurate. An employer may also request relevant information to assist in determining whether the requested extension will result in an undue hardship.

Return to Work and Reasonable Accommodation

Employees on leave for disability may request reasonable accommodation in order to return to work. The request may be made by the employee, or it may be made in a doctor’s note releasing the employee to return to work with certain restrictions.

100% Healed Policies

An employer will violate the ADA if it requires an employee with a disability to have no medical restrictions -- that is, be “100%” healed or recovered -- if the employee can perform her job with or without reasonable accommodation unless the employer can show providing the needed accommodations would cause an undue hardship. Similarly, an employer will violate the ADA if it claims an employee with medical restrictions poses a safety risk but it cannot show that the individual is a “direct threat.” Direct threat is the ADA standard for determining whether an employee’s disability poses a “significant risk of substantial harm” to self or to others. If an employee’s disability poses a direct threat, an employer must consider whether reasonable accommodation will eliminate or diminish the direct threat.

Issues Related to the Interactive Process and Return to Work

If an employee returns from a leave of absence with restrictions from his or her doctor, the employer may ask why the restrictions are required and how long they may be needed, and it may explore with the employee and his doctor (or other health care professional) possible accommodations that will enable the employee to perform the essential functions of the job consistent with the doctor's recommended limitations. In some situations, there may be more than one way to meet a medical restriction.

If necessary, an employer should initiate the interactive process upon receiving a request for reasonable accommodation from an employee on leave for a disability who wants to return to work (or after receiving a doctor's note outlining work restrictions). Some issues that may need to be explored include:

- the specific accommodation(s) an employee requires;
- the reason an accommodation or work restriction is needed (that is, the limitations that prevent an employee from returning to work without reasonable accommodation);
- the length of time an employee will need the reasonable accommodation;
- possible alternative accommodations that might effectively meet the employee's disability-related needs; and
- whether any of the accommodations would cause an undue hardship.

Reassignment

In some situations, the requested reasonable accommodation will be reassignment to a new job because the disability prevents the employee from performing one or

more essential functions of the current job, even with a reasonable accommodation, or because any accommodation in the current job would result in undue hardship. The Commission takes the position that if reassignment is required, an employer must place the employee in a vacant position for which he is qualified, without requiring the employee to compete with other applicants for open positions. Reassignment does not include promotion, and generally an employer does not have to place someone in a vacant position as a reasonable accommodation when another employee is entitled to the position under a uniformly-applied seniority system.

What This Means for Counties

For more information, please contact CTSI at 303-861-0507. "Undue hardship" will be explained in the fourth and final part of this series.

U.S. Equal Employment Opportunity Commission. (5/9/2016). *Employer-Provided Leave and the Americans with Disabilities Act* [Press release]. Retrieved from <https://www.eeoc.gov/eeoc/publications/ada-leave.cfm>