

ADA Compliance

Last year, 28,000 complaints were filed with the Equal Employment Opportunity Commission (EEOC) about violations of the Americans with Disabilities Act (ADA). The ADA became law in 1990 with the goal of guaranteeing equal opportunities for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. In 2016, the number of employees filing complaints with the EEOC rose to record numbers.

The largest share of ADA lawsuits against employers pertains to ADA qualification standards and inflexible leave policies. In order to safeguard against potential ADA complaints, Dana Connell of Littler Mendelson, P.C. and Matt Morris, VP of FMLASource, ComPsych Corporation in a recent presentation for the Society of Human Resource Management recommended taking the following proactive steps.

Flexible Policy

In 2016, the EEOC offered guidance concerning the ADA. While the guidance is not legally binding, it does offer employers a good basis for dealing with ADA cases. The EEOC guidance states employers must consider sick leave as an accommodation even if the employee is not otherwise eligible for leave under FMLA or has exhausted regular employer-provided leave. Employers need to work with ADA-eligible employees to create a leave policy relevant to their individual situation instead of having blanket one-size-fits-all policies.

Identify an ADA Request

Unlike FMLA, which does not apply until an employee has been employed for one year, the ADA covers new and probationary employees. According to Connell and Morris, even in cases where an employee does not specifically request an ADA accommodation, if the employer is aware of the employee's

condition and request for related leave, then that may be considered a request for accommodation by the EEOC.

Engage in an Interactive Process

While employers cannot require updates on an employee's condition, they can require communication about when an employee can return to work, as well as relevant information to support extensions of leave or work restrictions from a healthcare provider. Employers should communicate with employees on ADA leave and ask if there is anything the employer can do to help them return to work, such as allowing telecommuting, part-time work schedules, or job reassignment should no other accommodation be possible.

Determine a Reasonable Accommodation

The ADA is not intended to pose an undue hardship on employers. Employers may refuse ADA requests in cases where they pose "significant difficulty or expense ... [to] the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business (42 U.S.C. § 12111(10))."

What This Means for Counties

Employers need to be flexible when dealing with ADA requests, but are not required to pose an "undue hardship" on their organization as defined by the ADA. For questions on ADA requests, please contact Dana Mumey at 303 861 0507. 