



Legal Issues for Recruiting and Retaining Workers with Disabilities

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Fundamental Requirements for Employers Under Federal and Oklahoma Law, When It Comes to Disabled Workers

- May not discriminate against disabled individuals.
- Must reasonably accommodate an individual's disability, so long as it does not create an undue hardship.

“Disability” Under Federal and Oklahoma Law

- An impairment that substantially limits one or more major life activity.
 - * Look to the condition’s, nature, severity, duration and impact.
 - * Includes physical and mental conditions.
- Also: if an individual is perceived as having a disability (a history or regarded as).

“Qualified Individual with a Disability”

- One who can perform the essential functions of their job with or without reasonable accommodations.

Hiring Process

YOU MAY NOT:

- Refuse employment to an individual based upon an assumption or concern they cannot perform the job on account of a disability (or concern about additional costs to employer).
- Ask questions about a medical condition or disability or require an examination.

YOU MAY:

- Ask an applicant whether they can perform specific job functions.
- If disability is obvious or volunteered, ask what they will need as accommodations.
- After conditionally offering employment:
 - * Require a medical examination.
 - * Request documentation from a health care provider.

Review Hiring Process

- Does the application material seek any impermissible information?
- Interview process:
 - * Are we asking questions in the interview stage that should not be asked?
 - * How are we handling unsolicited medical information volunteered by candidates?
 - * Do we use a consistent outline in our interviews?
 - * Training?

The Almighty Job Description

- Prepare a detailed, accurate job description that clearly defines the job's requirements.
 - * Use employee contributions.
 - * Periodically revise and update.
 - * Make sure supervisors and interviewers are familiar with the job description.
- Use the job description as a guide for the interview process and when making reasonable accommodation decisions.

Reasonable Accommodation

- The employer's affirmative obligation
- Examples include:
 - * Job restructuring (temporary or long term)
 - * Part-time or modified work schedule
 - * Reassignment to a vacant position
 - * Acquisition or modification of equipment or devices
 - * Adjustment or modification of examinations, training, or policies

Reasonable Accommodation

- Examples (continued)
 - * Providing qualified readers or interpreters
 - * Use of accrued paid leave time for medical treatment for disability
 - * Providing additional unpaid leave for treatment or recovery
 - * Making employer-provided transportation accessible
 - * Providing reserved parking spaces
 - * Altering work facilities

Determining Whether an Accommodation is Reasonable or Causes an Undue Hardship

- Determined on a case-by-case basis, taking into account:
 - * Nature and cost of accommodation
 - * Financial resources of the employer (also number of people)
 - * Impact on employer's operations
 - ✓ Use your job description.

Considering Accommodation Must Be An Interactive Process

- Think of it as problem-solving discussions between the employer and the employees.
 - * Good faith and open-ended
- The obligation to engage in an interactive process begins when the employee requests accommodation or the employer is alerted to the need for accommodation.

- ✓ Be proactive
- ✓ Train your supervisors on their role
- ✓ Include HR
- ✓ Document the interactive process

Accommodating Medical Restrictions or Limitations

Things to consider:

- Does the medical circumstance rise to the level of a “disability” under Federal and State laws?
- Duration of limitation.
- Nature and extent of the severity.
- Is this a job-related medical condition?
- Is light duty an option?
- ✓ Ask for medical documentation.

Accommodation Documentation Can Include Medical Information

- Keep segregated from general personnel records and limit access.

Job Evaluation

- Document job performance issues and use a regularly scheduled evaluation process.
 - * Combats retaliation accusation, if you take job action.
 - * Can cause inability to perform issues to be addressed.

What To Do

- ✓ Review application documents and interview process to insure we are not asking for or obtaining impermissible information.
- ✓ Put into place and use accurate job description (include attendance as essential function).

- ✓ Review policies:
 - * Attendance
 - * Leave
 - * Light duty.

- ✓ Train supervisors so they are sensitive to disability issues in hiring and accommodation process.

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