

Do You Need To Ban Personal Fragrances When An Employee Requests An ADA Accommodation?

When an employee has an extreme sensitivity to fragrances, resolving the issue is made more difficult by the fact that, in order to help him/her, you must typically ask for other staff members' cooperation in refraining from wearing scents in the workplace. Find out how you can help an allergic employee and overcome other employees' resistance.

Is The ADA In Play?

Severe allergies may rise to the level of a disability under the Americans with Disabilities Act (ADA). So the first thing you need to do is find out whether your employee has a disability. Apply the same principles you do to other disability accommodation requests.

- Ask for certification that shows the sensitivity impairs a major life activity.
- Discuss accommodation options with the employee.
- Determine whether any of the options can be implemented without posing an undue hardship.

If an employee does have an ADA-protected disability, an employer might not have any choice but to ban fragrances and scented soaps and lotions. A no-perfume policy may seem unreasonable to other employees, but it's not; wearing perfume or cologne is not a need or a protected right. Some employees still may not like it, but they'll be less likely to argue with the law.

However, you do not have to go so far as to provide an absolutely odor-free environment, as one employee demanded. A court ruled that her employer met its ADA accommodation obligation by instituting a no-perfume policy. (*Kaufmann v. GMAC Mortgage Corp.*, 3rd Cir., No. 06-3019, 2007)

What If The ADA Is Not A Factor?

Your organization may still restrict fragrances in the workplace even if the ADA does not come into play. Here's how a Pensacola, FL-based medical facility did it.

CFO Steve Dunn explained that the ADA wasn't an issue for his organization when it came to one of its administrators, who is highly allergic to all kinds of perfumes. He never required medical certification from her. "All I ever needed to do was look at her," Dunn said. "Her eyes will go from white to pink by the end of the day if there is an allergen present. She cannot stop crying and her nasal passages will slowly start clogging." The fact

was, she could not work without getting sick.

Whether motivated by compassion or law, it's imperative you communicate fragrance restrictions to all employees, not just those known to have a heavy-hand when applying fragrances.

Dunn noted that it is best handled at the beginning of employment "so you are addressing someone you don't know, and you do not know if they are a would-be offender. You can then take the approach that you know they would never do it, but we have to cover with everyone."

On employees' first day, "we review the more important company policies so they cannot claim that they did not know. One policy we review closely is our dress code," Dunn explained. The policy states, in part: "Good personal hygiene is a must. No heavy perfumes, colognes, scented lotions, creams, or moisturizers are permitted."

"I reiterate that I do not care how the scent gets on their body," he said. "I don't care if it is soap, lotion, cream, perfume, etc. If it is strong, they cannot wear it."

Such a policy is likely to raise two questions in a new hire's mind:

- 1. What do you mean by "heavy" or "strong" perfume?** Dunn's answer: "If I can smell it at a normal personal distance of between three and four feet, it is too strong." Acceptable fragrances are "ones that are barely noticeable." If there is a question whether the scent is "heavy," Dunn "errs on the side of caution."
- 2. Why do you have such a policy?** Dunn explains that "some people have allergies" and leaves it at that; he does not disclose which employee is allergic. Plus, he stresses that it makes good professional sense, since employees deal with sick patients with digestive track issues who don't necessarily want to smell the employee's favorite scent regardless of how "good" it smells.

Lessons to learn from Dunn:

- Put the restrictions in writing, whether as part of a dress code policy or a stand-alone policy.
- Define your terms, e.g., what you mean by the terms "scents," "heavy," etc.
- Communicate the policy to all employees.
- Explain the reason for the policy, but not at the expense of employee privacy.

What If An Employee Continues To Resist?

"When we have an employee that uses a scented soap or lotion or whatever, I will ask them to come speak with me and try to act as if it is almost an afterthought, like we would not have had the conversation if I had not happen to run into them in the hallway. When dealing with personal hygiene, it can be very embarrassing for the employees, so keeping it casual allows them to save face," said Dunn.

"Basically, I take the approach, 'Hey, Jenny, I noticed you are wearing a new perfume seems a little strong for our office. Can you change it tomorrow?' Most of the time that will solve the problem."

"If I notice it again, I like to involve the manager, as they need to know that their employee has been spoken to about an issue previously and did not respond. Only once have we had an employee not stop wearing perfumes after the manager also spoke to her. She was asked to go home to de-odorize herself," Dunn recounted. "She has not been a problem since."

Had she refused, said Dunn, it would become an issue of insubordination and progressive discipline — counseling, verbal warning, written warning, suspension, and termination. "Why have a policy you are not

willing to enforce?"