

Scent or sensitivity? 'Bad smell' accommodation isn't automatic

Say you have an employee who complains that certain workplace smells make him or her sick. If the employee asks for an accommodation to block out the offending odors, must you make the requested change? In some cases, yes. But you don't need to take any actions that are too expensive or too disruptive. Nor must you accommodate the employee if he or she still wouldn't be able to perform the job's "essential functions."

Still, don't shrug off bad-smell complaints. So-called "multiple chemical sensitivity" can, in some cases, be deemed a protected disability under the Americans with Disabilities Act (ADA). Each complaint must be evaluated on a case-by-case basis, and it will hinge on whether the sensitivity impairs a person's major life activity (such as breathing).

Best bet: Do your best to accommodate such requests by moving an employee's workstation or asking the person's co-workers to voluntarily refrain from wearing perfume. But, as the following case shows, you don't need to turn your business operations upside down to fix the problem.

Recent case: Desiree Nanette asked to work from home to accommodate her respiratory sensitivity to environmental smells at the office, including perfumes, cleaning chemicals, copy machines, carpets and a nearby building's use of pesticides. The employer declined her work-at-home request, but it offered to transfer her to another facility.

After returning to work from an eight-month absence, Nanette's symptoms resurfaced, and she never came back to work. The employer fired her, and she sued, alleging disability discrimination.

A district court sided with the employer because Nanette couldn't perform the essential job functions from home, including attending meetings, interacting with customers and travel. Her doctor said that even a retrofitted room probably wouldn't eliminate every one of the sensitivities she complained about. In some situations, the court said, a reasonable accommodation simply doesn't exist. (Nanette v. Snow, No. RWT 03-CV-925, D.Md., 2004)

Online resources: For more information on chemical sensitivity in the workplace, go to these Web sites: www.jan.wvu.edu/media/fragrance.html (includes a sample policy); www.dlrp.org; www.ciin.org.