

Can we make deaf employee--and his boss--learn and communicate with sign language?

Q. We recently hired a deaf employee who communicates exclusively by written notes. We are finding that this process is time-consuming and harms productivity. May we require the deaf worker and his supervisor to learn sign language? Can we terminate them if they refuse?

A. With regard to the supervisor, the answer is relatively straightforward: Employers generally have the right to require employees—especially managers—to acquire the skills the employer believes are necessary to effectively perform the functions of the job.

Requiring the deaf worker to learn sign language, on the other hand, may lead to legal liability.

The ADA requires employers to reasonably accommodate qualified individuals with disabilities. Allowing a deaf worker to write notes to communicate in the workplace will generally be considered to be a reasonable accommodation (unless it creates an undue hardship).

In an informal letter opinion issued earlier this year, the EEOC concluded that employers may not require deaf workers to learn sign language. In reaching this determination, the EEOC noted that an employer may choose among available accommodations. However, providing “a sign language interpreter for an individual who does not know sign language is not an effective accommodation.”

The EEOC also noted that guidance released earlier this year—“Enforcement Guidance on Reasonable Accommodation”—states that an employer is not relieved of the obligation to provide a reasonable accommodation simply because an individual fails to take prescribed medication, obtain treatment or use an assistive device.

The EEOC applied this finding to requiring deaf workers to learn sign language. It stated: “An employer could not refuse to provide a reasonable accommodation, such as communicating through the use of notes, for an individual who is deaf simply because the employer believes the individual should have learned sign language. Of course, a deaf person who does not know sign language might be unqualified for a position if communicating through the use of notes would not be effective or would pose an undue hardship, and if there are no other effective accommodations available.”

Thus, you may take adverse employment action against the deaf worker for refusing to learn sign language only if his failure to do so makes him unqualified for the job or if allowing him to communicate by notes would cause your company to experience an undue hardship.

In deciding how to react, it is important to note that you will face a high burden of proof if you attempt to assert either of those defenses.