

What are our obligations to smell-sensitive employee and her co-workers?

Q. Our office of about 30 people has been “asked” to stop using perfume and any other type of product that contains a fragrance because one employee claims those smells “bother” her. She has not identified a certain chemical or family of smells, but claims sensitivity to all scents. Everyone else feels this unfairly restricts the freedoms of the majority. Is there any legal backing to either side of this debate?

A. It is possible that this employee could successfully claim that her sensitivity to smells is a disability under the ADA, if it affects her ability to breathe. If the employee does have a disability, then you would have an obligation to reasonably accommodate her, which could involve taking steps to minimize her exposure to smells.

There have been a handful of cases in which employees brought “disability” actions based on the sensitivity to smell. In one case (*Kaufmann v. GMAC Mortgage*, No. 15963, 3rd Cir., 2007), the employer attempted to accommodate the employee by enacting and enforcing a perfume-free policy, appropriately reminding employees of the policy, providing a new air filter and a fan for the plaintiff’s work space. The court held that the employer reasonably accommodated the employee. It also held that it would be impossible to prevent all violations of the perfume policy.

The most prudent option in your situation is to create a perfume/fragrance-free policy and advise employees of it. Also, consider if it is possible to move the employee’s work space to an area where she will be less susceptible to offending smells. You do not have an obligation to accommodate an employee if the accommodation would cause an undue hardship.