

# Demand the medical info you need to set up ADA accommodations

Disabled employees are entitled to reasonable accommodations, which must be decided on the basis of an interactive discussion between the employer and employee.

Some employees, perhaps sensitive about their medical histories, try to limit the information their employers can see. That can compromise the interactive process. Without knowing what the employee's limitations—or indeed whether the employee is disabled under the ADA—employers may be left guessing how to accommodate. Don't let that happen.

As the employer, you are entitled to enough information about the employee's condition to determine whether she is indeed disabled.

If the employee refuses to provide relevant medical information or assessments, then the interactive process fails. She can't later claim that you refused to consider a reasonable accommodation.

**Recent case:** Jami went to work as a pharmaceutical sales representative. From the beginning, it was clear that she was not going to get along with her direct supervisor. However, she performed well during her initial months despite personality clashes.

Then Jami, citing stress from work, took FMLA leave. She also asked for reasonable accommodations for claimed disabilities, stating that she could not travel to training sessions her employer wanted her to attend due to a wrist injury and a peanut allergy.

She provided a letter, purportedly from her doctor, stating that she "has a history of peanut allergy which was diagnosed prior to December 14, 2008, for which she has been given an EpiPen."

Jami had crossed out the doctor's name, address and phone number and attached a note to the letter stating, "Providing this doctor's note does not give you or permission to contact or question my doctor and is not acting as a medical release in any way form or function."

HR repeatedly asked Jami for her physician's contact information so the company could engage in the interactive process and make reasonable accommodations to enable Jami to travel. She was denied further time off and eventually she was fired.

She sued, alleging among other claims that the company had refused to engage in the interactive process required under the ADA.

The company defended its decision by arguing that having no access to Jami's medical records tied its hands, making it impossible to determine whether she was disabled and what accommodations might be possible.

The court dismissed Jami's claim, noting that it was she who refused to engage in the interactive process, not the company. (*Russo v. Sanofi-Aventis*, No. B246717, Court of Appeal of California, 2nd Appellate District, 2014)

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## **ADA interactive process: Employee's burden of proof**

An employee has to prove all of the following to win an ADA suit alleging failure to engage in the interactive accommodations process:

- Her employer knew she was disabled.
- She requested a reasonable accommodation allowing her to perform essential job functions.
- She was willing to participate in the interactive process.
- Her employer failed to participate in a timely, good-faith effort to reach a reasonable accommodation.
- The employer's failure to do so was a substantial factor in an adverse employment action.