

No need to engage in accommodation process if disabled employee doesn't request help

Except in very rare circumstances, an employer isn't obligated to provide an accommodation for a disabled worker who doesn't ask for one. Otherwise, employers would be stuck having to read their employees' minds.

Only when a disability and the need for a reasonable accommodation is obvious should an employer even consider looking for an accommodation. And even under those circumstances, there must be some reason the employee can't ask before an unsolicited accommodation offer should be made.

Some disabled employees may not want to ask for help and trying to force them to discuss their disability and apparent needs may itself actually be a form of disability discrimination—by regarding the employee as disabled and unable to do his or her job.

The good news is that if the worker doesn't ask for an accommodation, you aren't obligated to start the accommodations process.

Recent case: Shaneis was diagnosed with schizophrenia in 1997. She was doing well enough by 2014 to accept a job with New York City Health and Hospitals as a peer counselor at Kings County Hospital Center.

Soon, however, it became apparent she was not getting along with her supervisor, whom she later accused of scolding her and telling her how to dress, among many other allegations.

What Shaneis called emotional abuse from her supervisor affected her mental state and triggered a decline in her health to the point she became "violent and angry," preventing her from being able to work. She took a four-week leave of absence under the FMLA.

When her FMLA leave expired, she didn't return to work and was eventually terminated for not showing up.

Shaneis sued, alleging that she had not been accommodated for her disability.

But New York City Health and Hospitals argued that Shaneis had never mentioned her mental condition or asked for any kind of accommodation, and that it had no way of guessing that her mental condition was in any way related to her supervisor's alleged poor treatment.

The court dismissed Shaneis's lawsuit, reasoning that this was not a case where the disability and the need for help was so obvious that the employee would not need to ask for an accommodation. Nor was there anything preventing Shaneis from asking. And, of course, she did receive FMLA leave when her doctor certified she had a serious health condition, which could be seen as an accommodation. (*Garcia v. Kings County et al.*, SD NY 2017)

Final note: The employer did everything right in this case. When Shaneis asked for medical leave backed up by a doctor's certification that the employee could not perform the essential functions of her job because of a

serious health condition, she was allowed to take FMLA leave.

When Shaneis's psychiatrist asked for an extension of the leave two more times, the hospital approved the request. It then sent Shaneis multiple letters informing her she was due back at work and would face termination for being absent without leave. She never responded and thus never asked for extended leave as a reasonable accommodation after her FMLA leave expired.