

Suddenly stopped informal accommodations? Get ready to defend decision in court

Disabled employees are entitled to reasonable accommodations that allow them to perform the essential functions of their jobs. Employers cannot simply develop a list of one-size-fits-all accommodations for a particular condition. Each disability must be analyzed based on the unique set of circumstances that a disabled employee presents.

Before concluding that no accommodation is possible, you must take the time to work with the employee and his or her medical providers in search of solutions.

Advice: Document every part of this individualized, interactive accommodations process.

Recent case: Beth worked as a billing assistant and got good reviews for her work. However, her supervisor noted that she was overly sensitive and argumentative with her co-workers.

Beth had been receiving mental health counseling since she was 10 years old.

Sometime during her employment, she began experiencing panic attacks and sought out additional mental health help. This included regular counseling sessions with a psychiatrist and treating therapist. They diagnosed her with post-traumatic stress disorder based on several childhood traumatic events she had experienced, as well as generalized anxiety disorder.

Beth was able to work with her supervisor to arrange additional breaks on an informal basis when she claimed to need them. The company already provided two 10-minute breaks per shift, plus a lunch period. Beth took two extra 10-minute breaks.

Then co-workers began reporting that Beth was argumentative and complained if they spoke too loudly or otherwise disturbed her while she worked. Her supervisor emailed back and forth with HR, explaining that Beth essentially wanted her co-workers to not discuss upsetting topics around her. For example, because Beth had lost a newborn grandchild, she didn't want anyone to talk about babies around her because it upset her immensely. Her supervisor thought this was asking too much.

Around the same time, HR asked Beth for medical evidence that she needed additional breaks. It rescinded the informal extra breaks accommodation, even though Beth's therapist said they were necessary.

Then Beth got into an argument with a co-worker. Her supervisor noted that Beth made Facebook posts about being stressed and bullied; the supervisor interpreted some of her comments as threats. Beth was terminated.

She sued, alleging failure to accommodate her disability, among other claims.

The employer moved to have the case dismissed before going to trial. It argued that no reasonable accommodation was possible.

But Beth's doctors explained that with PTSD, patients are sometimes "triggered" and need to take a "time out" to regain control. They explained that for people with PTSD or generalized anxiety disorder, anxiety typically builds up over a two-hour period until it reaches a peak, requiring a "time out" to destress. That's why they had recommended continuing the casual accommodation of the extra breaks Beth had previously enjoyed.

The court said that a jury should decide whether removing the extra breaks violated the employer's reasonable accommodation duty. (*Schirrhofer v. Premier Comp Solutions*, WD PA, 2018)

Final note: Watch out if you rescind an accommodation that previously worked well. It will be difficult to argue after the fact that it wasn't a reasonable accommodation.

Tell supervisors that they must inform HR and get approval before offering any informal accommodations.