

# From the courtroom: ADA accommodation do's and don'ts

ADA accommodation, or lack thereof, is often a reason why employers end up in the courtroom. Take these recent lessons from the courtroom into consideration when you are handling an ADA accommodation request at your workplace.

## **DO take all ADA accommodation requests seriously**

When an employee asks for an ADA reasonable accommodation, take that request seriously even if you don't think it's valid. Start the interactive process and see where it goes.

**Recent case:** Kecia was placed on medical leave after a series of workplace conflicts led to a psychiatric evaluation, which concluded she could not work at that time. She was out for a year.

Her employer told Kecia she would be terminated unless it received medical evidence of her recovery. She was advised that she might have accommodation rights under the ADA. She sent a short doctor's note describing her condition. The employer decided it was inadequate and fired her.

She sued, alleging ADA violations, since the employer hadn't begun accommodation efforts. The court said Kecia's lawsuit could proceed. (*Kemp v. New York City, et al.*, ED NY, 2019)

## **DO track every accommodation request to show when employees asked—or didn't**

Disabled employees who need reasonable accommodations must request them. If no request is made, no ADA accommodation is due.

That's why it is important to routinely track when you receive accommodation requests. It helps you know when to begin the interactive accommodations process.

It also enables you to state confidently that you never received a request.

**Recent case:** Angela, who suffers from anxiety and agoraphobia, took a job at a Macy's selling cosmetics. She requested every Wednesday off, and her supervisors didn't schedule her to work on those days.

Then she went out on medical leave. Macy's told her if she needed accommodations when she returned, she needed to request them. She didn't.

Meanwhile, Macy's adopted an automated scheduling system that eliminated preference-based scheduling. Employees were required to contact HR for religious or disability accommodations. When Angela returned to work, she never made any special requests.

When she quit showing up for work on Wednesdays, Macy's fired her.

She sued, alleging ADA violations. The court tossed out her lawsuit, reasoning the employer had made it clear how to ask for accommodations and she hadn't done so. (*Vitti v. Macy's*, 2nd Cir., 2018)

**Final note:** Macy's did everything right in this case. It made clear how to ask for a religious or disability accommodation for scheduling. It tracked all those requests. It provided notice to employees returning from leave about how to ask for help.

## **DON'T assume temporary injuries as qualifiers for ADA disability**

Minor injuries are not generally considered disabilities under the ADA. In order to qualify as disabling, a physical or mental condition must substantially limit a major life activity such as walking, talking, breathing or working. The condition doesn't have to completely prevent or severely restrict the individual in the performance of a major life activity, but it must be more than transitory or minor.

Each condition must be assessed individually. Here's how that played out in a recent case.

Recent case: Yvonne was an assistant principal at a middle school. She twice injured herself at work and received limited workers' compensation benefits for each injury.

First, she hurt her shoulder. She was cleared to return to work with two restrictions: not lifting with her right arm and no pushing or pulling with the same arm. Two months later, her doctors said she was fully recovered.

Then she hurt her knee. She was off for a while, but returned with a temporary restriction of no stair climbing. Soon, she was again released with no restrictions.

Shortly afterward, she was terminated. She sued, alleging she was disabled and had been targeted for discharge because of her disability.

A lower court concluded she was not disabled because of the temporary nature of both injuries. She appealed to the 2nd Circuit Court of Appeals, which refused to reinstate her lawsuit. Her temporary ailments and injuries just weren't disabling. (*Francis v. Board of Education*, 2nd Cir., 2019)