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INFORMATION MEMO
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EEOC Issues Strong Reminder to Employers About Their Obligation to Provide Accommodation Under the ADA

In theory, employers are all generally familiar with the "interactive process" and the need to provide disabled employees with reasonable accommodation absent undue hardship. But in practice are employers actually complying with these legal obligations? Maybe not, says the EEOC.

On May 9, 2016, the EEOC issued a strong reminder to employers about their legal obligations under the Americans with Disabilities Act related to accommodation of disabled employees. According to the EEOC, it continually receives complaints that indicate employers may not be fully aware of their legal obligations: "For example, some employers may not know that they may have to modify policies that limit the amount of leave employees can take when an employee needs additional leave as a reasonable accommodation. Employer policies that require employees on extended leave to be 100 percent healed or able to work without restrictions may deny some employees reasonable accommodations that would enable them to return to work. Employers also sometimes fail to consider reassignment as an option for employees with disabilities who cannot return to their jobs following leave."

The EEOC has recently taken a particularly close look at employer leave policies to ensure they are not so inflexible as to foreclose the possibility of a leave of absence being provided as an accommodation.

So what exactly is a "reasonable accommodation"? Generally, a reasonable accommodation is "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." But what this means in any given situation will necessarily depend on a number of factors, including for example the particular position held by the employee, the particular restrictions the employee's disability places on his/her ability to perform that job, and the projected duration of the restrictions. Perhaps for one employee reasonable accommodation means providing a leave of absence after he/she has already exhausted any leave available under the Family and Medical Leave Act so that the employee is able to recover from a serious health condition before returning to work. Or perhaps it means allowing an employee to return to work from a leave of absence in a light duty capacity while he/she completes recovery. For another it could mean moving an employee's work location to an area where he/she has easy access to a restroom, or restructuring an employee's marginal (or non-essential) job duties so he/she does not have to lift items over a certain weight.

It is also important to remember that although it will never be deemed "reasonable" for an employee, as an accommodation, to be excused from having to perform the essential functions of his/her job, whether something actually is an essential function is not always intuitive. For example, is it an essential function of a firefighter's job to be physically able to fight fires? Perhaps not. In *Stone v. City of Mount Vernon*, the Second Circuit Court of Appeals reversed a decision granting summary judgment to the employer in an ADA lawsuit filed by a former fire department employee, holding that there was a genuine issue of material fact warranting a trial regarding whether fire suppression was an essential function of the job. Or is heavy lifting necessarily an essential function of a manual laborer's job? Again, perhaps not (according to the 1993 decision of the U.S. District Court for the Northern District of New York in *Henchey v. Town of North Greenbush*).

A key take-away when dealing with accommodation issues is that there is no one-size-fits-all approach. That is why it is so important for an employer to engage in the "interactive process" with the employee and find out exactly what his/her limitations are and whether there is an accommodation that can reasonably be provided to enable the employee to perform the essential functions of his/her job. It may be that the interactive process reveals there is no accommodation that can be provided without imposing an undue hardship on the employer, or that will enable the employee to perform the essential functions of his/her job. If that is the case, accommodation need not be provided under the law. But the employer will not know that unless and until it engages in the interactive process and finds out.

Following predetermined policies and rules might seem to be the essence of fairness. But when it comes to accommodations of disabilities, employers who follow rules too inflexibly can get into trouble. One rule that employers should always follow is to engage in good faith in the "interactive process."

If you have any questions about this Information Memo, please contact Jessica C. Moller, any of the attorneys in our Labor and Employment Law Practice, or the attorney in the firm with whom you are regularly in contact.

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