

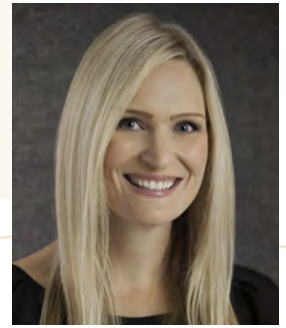
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Crossroads: When Disability and Discipline Meet

When employees link performance issues to a claimed disability whether at the start of the discipline process or in the eleventh hour, employers are triggered to start the disability interactive process.

Frustrating? Yes! But pausing to address the claim will help determine if a disability really is at play and dealing with the true root of the issue helps you deal with the performance concern more effectively and efficiently.

Disciplinary actions such as reprimand letters, suspensions, or counseling are not the right tools if the issues are related to a disability. Conversely, reasonable accommodations are inappropriate if the employee is not performing due to lack of knowledge, effort, or ability. If performance cannot be fixed, the employee will see the same outcome, either through termination or medical separation.

If multiple performance issues are at stake, don't assume the employee is claiming all issues relate to a disability. Ask the employee which performance areas are impacted by the claimed disability. For issues not attributed to the disability continue disciplinary action. For others, use the disability interactive process to determine the correct tool to use after disability is claimed. While this process may seem daunting, it can be broken into four easy steps to ensure compliance. At Step 1, obtain clear

medical information from the employee's healthcare provider to determine if the claim of disability is accurate:

A. Does the employee have a serious medical condition as defined by the Americans with Disabilities Act (ADA)? If so, does the disability impair their ability to fully and/or safely perform an essential job function(s)?

B. If yes, did the disability cause the following performance deficiencies? (List specific performance issues for provider comments.)

C. If yes again, can you suggest reasonable accommodations to mitigate the negative performance issue(s) or ensure the employee does not engage in the negative behaviors/actions again?

You can ask questions linking performance issues with possible accommodations. For example, if Amy is missing deadlines and attributes it to her disability, ask her provider directly if she has a serious medical condition that would impact her ability to know when she is behind schedule on a project and communicate that issue; and if so, could any accommodations eliminate that issue going forward?

If the provider answers such questions in a useful way and indicates a disability, then move to Step 2; identify reasonable accommodations to support the employee to meet performance expectations. If the healthcare provider indicates there is no disability, close the

process and continue with discipline.

If you don't have confidence in the medical opinion provided, then consider a third-party medical fitness for duty examination to determine if the disability is really the root of the issue and if so what specific work restrictions or functional limitations the employee has. This tool can be very useful when objective evidence suggests the employee is misusing a claim of disability to circumvent discipline or when an employee's healthcare provider offers incomplete or unsupported opinions.

The ADA says an organization may hold all employees, with or without disabilities, to the same performance and conduct standards.¹ However, when faced with an accommodation request, an employer must determine whether discipline is the right tool or if there is the presence of a disability and if an accommodation may or may not eliminate the misconduct or performance deficiency and support the employee to succeed at work. If exploring accommodation is appropriate, meet with the employee to discuss possible accommodation (Step 3) and implement (Step 4).

Remember that supporting employee success at work is the goal. Discipline is not about termination: it is about supporting successful job performance.

References

1. The EEOC guidance can be retrieved at <https://www.eeoc.gov/facts/performance-conduct.html>.