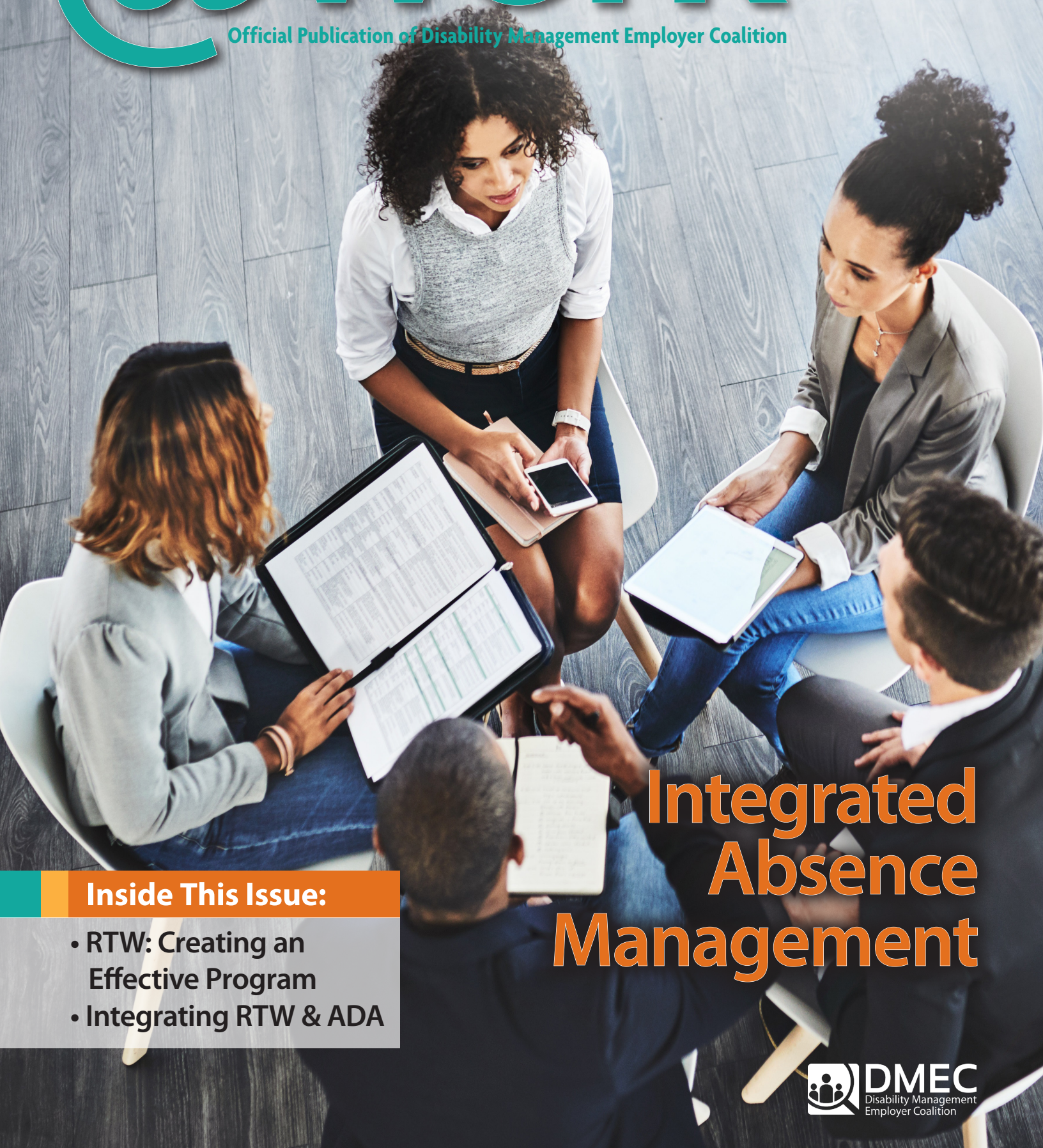


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# @work

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## Integrated Absence Management



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# What to Do When the Disability Interactive Process Is Not So Interactive

The Americans with Disabilities Act (ADA) Amendments Act mandates employers “must engage in a timely good faith interactive process, and employers must provide reasonable accommodation” for an employee who has a disability.

But what does an employer do when an employee isn’t engaged? For example, the employee does not return phone calls or emails, responds sporadically or not at all, or says they didn’t request or don’t need the process. It’s not unusual for employees to misunderstand or distrust the process, which makes communication and consistency very important.

What follows are some options to ensure you keep the process timely and that you retain control of the process. As you lay out the steps for the interactive process, follow them and refer back to them. This will help employees understand those same steps will always be followed and establishes an organizational culture that encourages employees to be more compliant and interactive.

## *Do you perceive the employee to be disabled?*

When an employee is not being interactive, as they are obligated to do, ask yourself if you perceive the employee as having a disability impact-

ing their performance or safety at work. If the answer is no, it may be appropriate to conclude the disability interactive process with a letter and inform the employee efforts can be restarted if they engage with you.

## *Is there a safety concern for the employee at work?*

If there is a concern the employee has a disability that places them or others at a safety risk, then consider a fitness-for-duty examination. This step allows you to move the process forward and understand if there is a need to stay in the disability interactive process or if closing the process is appropriate. When a safety concern is present, it is not advisable for the employer to close the process without legal counsel.

## *Did the employee disclose a disability during performance evaluation or discipline?*

Did the employee originally indicate that a performance matter was related to a disability, yet now is unwilling to interact or provide requested information? Consider closing the process with a detailed letter that documents what happened with a timeline of events, then restart the performance tool.

## *Did the employee fail to attend the interactive meeting?*

Provide an employee one opportunity to reschedule the meeting. If they don’t confirm their availability or if they try to reschedule again for a reason other than something out of their control (e.g., a death or surgery), meet without them. At the meeting, take notes and send the notes to the employee for their review and signature. The employee should be given seven to ten calendar days to review the notes and submit their comments and ideas in writing. If nothing is submitted, the employer should implement preliminary decisions made at the meeting.

While it can be frustrating when an employee does not engage in the interactive process, employers still need to follow and communicate the process properly. When closing the process, be sure to document all events and conversations before starting or restarting any appropriate disciplinary process. If you determine you must continue the interactive process, know the tools you have available to both get the information you need and to document the necessity to proceed. After repeated cases, your employee base will understand your organization is committed to engaging in the interactive process when any and all claims of disability arise.