

March 2023 | VOL. 15 NO 2

@work™

Official Publication of Disability Management Employer Coalition



Employment Practices Compliance



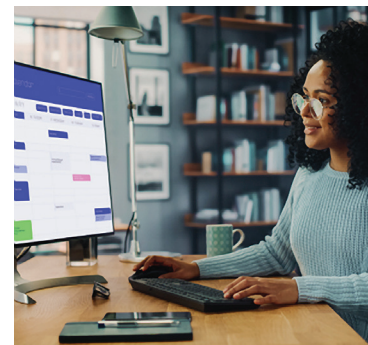
DEFINING “TIMELY” IN THE ADA INTERACTIVE PROCESS

By Rachel Shaw, MBA, President, Principal Consultant, Shaw HR Consulting

Under Title I of the Americans with Disabilities Act (ADA), employers are required to engage in a timely, good faith interactive process with employees or applicants who request or need reasonable accommodations. Employers must also provide reasonable accommodation for employees or applicants who, because of a disability, are limited in or unable to perform one or more of the essential functions of their jobs unless doing so would impose an undue hardship.

So, what is timely? The word refers to both the time it takes for the organization to begin the process and to conduct it. An organization must begin the process when triggered, which typically occurs in one of three ways:

- 1. Request for accommodation.** An applicant or employee verbalizes concern, regardless of the words used. For example, “My back really hurts when I use that vacuum cleaner.” Or, “I’m so stressed from this project. My doctor says if I keep this up, it’s going to really affect me!”
- 2. Perception of a disability.** While medical needs may not be expressed, there is a belief that medical conditions affect an employee’s ability to perform jobs fully or safely, and the employer wants to use the right tool to address the issues.
- 3. Knowledge of work restrictions or functional limitations that affect work.** For example, an employee brings in a medical note listing work restrictions or a disability is visible, such as wearing a cast or using a cane at work.



An organization cannot wait to start the process until it receives proof that an employee or applicant is disabled. It’s also important to note that starting the process does not mean an employer must offer reasonable accommodations or that the team believes an employee or applicant is entitled to an accommodation. The process is conducted to gather information, understand if the employee has covered disabilities, and identify work restrictions and/or leave needs.

For the process to be timely, employers must know they have been triggered and start communication with the employee and appropriate healthcare providers to gather information and assess whether the interactive process is the right tool to address performance, safety, or attendance issues. If performance is an issue, it is best to pause discipline while conducting the interactive process and only resume if the disability is not found to be a cause of the performance deficiency.

Employers must take the time they need to evaluate reasonable accommodations without delay. The Equal Employment Opportunity Commission¹ states that determining an unnecessary delay when responding to a request for reasonable accommodation includes:

- reason(s) for the delay;
- length of the delay;
- how much the individual with a disability and an employer contributed to the delay;
- what the employer was doing during the delay; and
- whether the required accommodation was simple or complex to provide.

Employers should take the necessary time to find reasonable accommodations if they exist. Sometimes the process takes a matter of days; sometimes it takes months. The key is to communicate with everyone in the process about work underway.

In addition to meeting the “timely” mandate, employers should follow a transparent and consistent process of communication with all parties involved. Employers should also create and follow communication protocols, such as ensuring an email or letter is sent to employees and their representatives following verbal communications to document the process and demonstrate how the time invested in the process is meaningful and purposeful.

REFERENCES

1. EEOC. “Requesting Reasonable Accommodation: Note 10. How Quickly Must an Employer Respond to a Request for Reasonable Accommodation?” Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA. Retrieved from https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#N_33_