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Workplace Mental Health

EVALUATING ACCOMMODATIONS WHEN DISCIPLINE IS INVOLVED

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What do you do when an employee who is undergoing discipline says, “My disability made me do it”? When employees link discipline to claimed disabilities at the beginning of a performance issue or at the eleventh hour, supervisors need to know what to do and who to include in the discussions.

To begin, pause disciplinary action and notify human resources (HR) to start the interactive process in accordance with the Americans with Disabilities Act (ADA). No matter how frustrating it may be, you want to determine whether the employee has a covered disability, and if so, is the disability at play so you can address the performance concern effectively and efficiently.

Regardless of the tool used — whether it’s discipline or the disability interactive process — the goal is the employee’s successful performance. There is no “pass” for a disabled person, but you must use the right tool to have any hope of improving performance. If a disability is causing a performance issue, you can’t fix it with a letter of reprimand.



The Right Tools

After an employee claims a disability, use a consistently applied disability interactive process facilitated by HR or a member of your disability management team. When evaluating performance issues that may be caused by a disability, you can determine whether a claim is accurate by asking an employee’s healthcare provider to answer these questions:

1. Does the employee have a serious medical condition as defined by the ADA? If so, does the disability impair the employee’s ability to fully and/or safely perform one or more of the job’s essential functions?
2. If the answer to question #1 is yes, list specific and alleged performance issues in detail for the healthcare provider to comment on. Ask if the disability caused the performance deficiencies. You’re asking a provider to confirm that the employee has a disability that affected their ability to meet performance standards in a specific area(s).
3. If the answer to question #2 is yes, ask the healthcare provider to describe the employee’s underlying work restrictions/functional limitations and whether there are reasonable accommodations that, if implemented, would eliminate the alleged negative performance issue(s) or ensure that the employee does not engage in the negative behaviors/actions again.

If an employee’s healthcare provider answers these questions in an acceptable way and indicates a disability was causing some or all of the alleged performance issues, continue through the process to identify whether suggested accommodations are reasonable to support the employee’s performance or behavior expectations. While a provider can make accommodation suggestions, employers ultimately decide what is reasonable.

However, if a healthcare provider indicates that a disability is not at play, close the process and revert to discipline.

If you are not confident in the healthcare provider’s opinion, consider a third-party medical examination or fitness-for-duty examination. These tools help you determine, through an objective opinion, if the disability is causing a performance deficiency and if there are work restrictions or functional limitations that require reasonable accommodations. This tool can be useful when objective evidence suggests the employee is misusing a claim of disability to circumvent discipline or when employers get incomplete or unsupported opinions from an employee’s healthcare provider.

The goal, whether it’s through discipline or reasonable accommodation, is to support an employee’s success at work. The focus of discipline is not termination; it is intended to support successful job performance.

Using the wrong tool puts an organization at risk for litigation loss. It also doesn’t fix the problem. Using the right tool gives you the best chance to improve performance in an efficient way.