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**Healthcare
& Wellness**



REQUESTS FOR A “BOSS-ECTOMY” EVALUATING ACCOMMODATIONS WITH SUPERVISOR RESTRICTIONS

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P psychological issues related to an employee's ability to work with a certain person or supervisor can represent a true disability. It may entitle an employee to leave or accommodations covered under the federal Family and Medical Leave Act.

However, accommodations other than temporary leave are typically not reasonable under the Americans with Disabilities Act (ADA) and ADA Amendments Act (ADAAA).¹ This means an employer would not be required to consider transfers or staffing changes for co-workers or supervisors as an accommodation.

So what do you do when an employee brings in a note from a healthcare provider that states, “No working with Rachel Shaw,” a scenario some might describe as a “boss-ectomy”?

Almost all mental disabilities are covered under the ADA, so your organization must engage in an interactive process with the employee to determine reasonable accommodations that, if implemented, would help the employee fully and safely perform the job even with a disability.

Start with medical clarification to help employees and their healthcare providers understand that you need underlining work restrictions to evaluate whether an accommodation could be implemented. For example, what starts with a healthcare provider's dictate of “no working with Rachel Shaw” may end up as “no being alone in a room with Rachel Shaw with the door closed” once you have gotten the medical clarification.

Talk with your employee. Be candid and explain that while the employee may have a real disability, a request to not work with a supervisor or co-worker is not one that will be accommodated. And if an employee

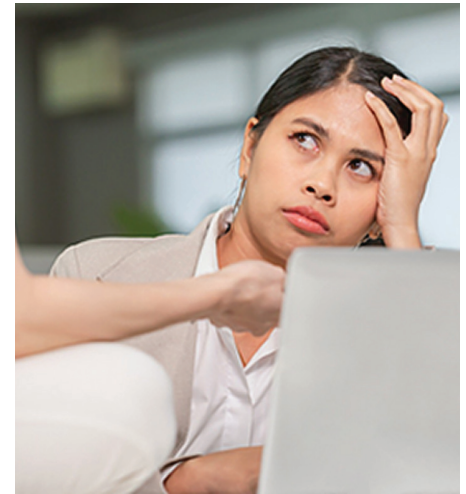
cannot safely work with a different type of accommodation other than a staffing change, leave may be the only option. Explain that you will work with the employee and the employee's healthcare provider to understand underlining work restrictions or functional limitations to find alternatives that might be reasonable.

Follow up on this conversation by drafting a medical questionnaire that educates the provider on this unique exclusion of accommodations under the ADA, and ask for work restrictions or functional limitations that need to be accommodated. For example:

1. SUPERVISOR RESTRICTION:
In your report dated Oct. 30, 2023, you indicate: “He is not to work with/for Rachel Shaw.” Please clarify what functional limitations led you to this accommodation recommendation.

My patient may NOT have any of the following interactions with Rachel Shaw. Please check all that apply. If a box is left unchecked, it will be assumed that it is ALLOWABLE.

- May NOT be supervised directly by the above person.
- May NOT be indirectly supervised by the above person. Indirect supervision indicates that my patient may not be under the direct supervision of Rachel Shaw and the person who indirectly supervises my patient is responsible for the workgroup my patient's direct supervisor may be in.
- May NOT be in the same room with Rachel Shaw, even if others are present.
- May NOT be in the same room with Rachel Shaw when no one else is present.



- May NOT be in the same building when Rachel Shaw is also in the building.
- May NOT talk on the phone with Rachel Shaw.
- May NOT communicate via email with Rachel Shaw.
- Employer MUST ensure that my patient does not have any casual contact with Rachel Shaw, including passing in the hall, break room, common work areas, etc.
- Other: Please be as specific as possible.

This data will help you find a reasonable accommodation if one exists.

There is one exception to the above: If the supervisor or co-worker has engaged in legal harassment, discrimination, or bullying, or if the supervisor has acted outside of accepted supervisory standards, consider personnel solutions to address the employee's concerns.

Always talk with your legal counsel in situations like these. Though the ADA and many state laws are clear on this matter, employers need to be consistent and abide by legal requirements to accommodate employees in need.

REFERENCES

1. Adams v. Alderson, 723 F. Supp. 1531 (D.D.C. 1989). Retrieved from <https://law.justia.com/cases/federal/district-courts/FSupp/723/1531/1630392/>