

Quick Tips:

Performance Discussions and Employees with Disabilities

PERFORMANCE DISCUSSIONS

A core function for any supervisor is managing employee performance. In addition to furthering a company's business objectives, performance management, if done effectively, can help avoid discrimination. Moreover, employees work most effectively when they clearly understand what is expected of them and know that their performance will be measured against a standard that is fair and applied evenhandedly. The same principles apply to workplace rules concerning employee conduct.

According to the EEOC, performance management systems help to reduce concerns about discrimination when they involve:

- Explicit performance expectations
- Clear performance standards
- Accurate measures
- Reliable performance feedback
- The consistent application of these standards to all employees

DISABILITY & PERFORMANCE DISCUSSIONS

Title I of the Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities. However, they do not impinge on the right of employers to define jobs and evaluate employees according to consistently applied standards governing performance and conduct. Under the law, employees with disabilities must meet qualification standards that are job-related and consistent with business necessity and must be able to perform the essential functions of the position, with or without reasonable accommodation.

Most jobs require employees to perform both the "essential" and "marginal" functions of a job. The essential functions are the most important job duties that must be performed to achieve the objectives of the job. Removal of an essential function would fundamentally change a job. Marginal functions are those tasks or assignments that are tangential and not as important.

Essential Functions	Marginal Functions
Most important job duties	Character of the job would remain the same if the duty were not performed
Critical duties that must be performed to achieve the objectives of the job	Failure to perform the function may have minor consequences
Removal of an essential function would fundamentally change a job	Can be reassigned; another employee could perform the work with minimal to moderate disruption or inconvenience
Degree or specialized expertise or skill required to perform the function	

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Although an employee's disability typically has no bearing on performance or conduct, sometimes an individual's disability may contribute to performance or conduct problems. When this is the case, a reasonable accommodation initiated through the interactive process often may be all that is needed to eliminate the problem.

THE INTERACTIVE PROCESS

The interactive process is a collaborative effort between employer and employee to determine the need for a reasonable accommodation and to provide the most effective accommodation. Managers, supervisors, and HR professionals need to know who to contact within their organization to begin this process. A best practice is to initiate this process as soon as possible after an accommodation need is realized, discuss how a disability may be affecting performance, and identify a reasonable accommodation that may enable the employee to perform the essential functions of the job. Accommodations must be effective in enabling the employee to meet the performance standards of the position.

QUICK TIPS

Employers typically establish job-related requirements, i.e., the specific tasks or assignments that an employee must perform, and methods to evaluate performance. Following are some quick tips:

- An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job.
- Lowering or changing a production standard because an employee cannot meet it due to a disability is not required as a reasonable accommodation.
- An employer should evaluate the job performance of an employee with a disability the same way it evaluates any other employee's performance.
- A supervisor may not require that an employee with a disability perform a job in the same manner as a non-disabled employee. In many instances, an essential function can be performed in different ways (including with a reasonable accommodation).
 - » An employee who must use an alternative method of performance because of a disability must be evaluated accordingly.

Example: One of Rhoda's essential functions is providing training. Because she is deaf and, as a result, has difficulty speaking, Rhoda uses a sign language interpreter to voice for her. Generally, Rhoda's supervisor evaluates her employees on the use of their voices – whether they speak with a monotone or use their voices to show interest and enthusiasm. Rhoda's presentation cannot be measured in this way. However, there are alternative ways to measure how she conveys her message, including body language, facial expression, and the words she uses.

- When an employee does not give notice of the need for accommodation until after a performance problem has occurred, reasonable accommodation does not require that the employer:

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- » Tolerate or excuse the poor performance
- » Raise a performance rating
- » Give an evaluation that does not reflect the employee's actual performance

Example: An employee does not disclose her chronic fatigue syndrome, even when she begins having performance problems that she believes are disability-related. Her supervisor counsels her about the performance problems, but they persist. The supervisor warns that if her work does not show improvement within the next month, she will receive a written warning. At this point, the employee discloses her disability and asks for reasonable accommodation. The supervisor should begin the interactive process, discuss the request and how the proposed accommodation will help improve the employee's performance. The supervisor does not need to rescind the oral warning or requirement that the employee's performance must improve. However, delaying the one-month period to evaluate the employee's performance pending a decision on her request for reasonable accommodation will enable the employer to assess the employee's performance accurately.

In Summary: Requests for reasonable accommodation should be handled expeditiously; unnecessary delays in determining or providing an effective accommodation may violate the Americans with Disabilities Act (ADA). An employer may need to determine what happens to an employee while it is handling a request for accommodation. For example, an employer might require an employee to perform only those functions of the job for which accommodation is not needed while processing the request.

The important point is to engage in the interactive process and involve all parties – the supervisor, the employee, and the person within the company whose job it is to arrange accommodations - in order to achieve the best possible outcome for all.

SOURCE: EEOC

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