

## Did You Know...

An employer is generally required to reasonably accommodate a qualified employee's disability unless it would create an undue hardship on the organization?

### Employer Risks and Exposures

#### *Background of Federal and New York State Regulations*

The federal Americans with Disabilities Act (ADA) and New York State Human Rights regulation prohibit covered employers from discriminating against individuals based on their physical or mental disabilities. Both regulations require covered employers to provide a reasonable accommodation, if needed, to allow applicants to participate in the interviewing process and to allow qualified employees to perform the essential functions of their jobs. An accommodation is not required, however, if it would cause an undue hardship on the organization. The ADA covers employers with 15+ employees while NYS regulation covers employers with four or more employees.

#### *Reasonable Accommodations*

A reasonable accommodation can involve modifying the work environment (e.g., facilities, equipment, materials) so that a disabled employee is able to participate in the benefits and privileges of employment to the same extent as non-disabled employees.

A reasonable accommodation can also be a change in the way a job is performed to enable a disabled employee to perform the essential job functions. (Note: The Equal Employment Opportunity Commission (EEOC) has indicated that eliminating one or more essential functions of a job or lowering quantity or quality standards are not considered reasonable accommodations.)

The accommodations needed by disabled individuals can vary widely, even by individuals with the same type of disability. Examples of reasonable accommodations include, but are not limited to:

- modifying work schedules
- making facilities accessible and usable
- purchasing or modifying equipment and materials
- granting medical leaves of absence
- restructuring a job by reassigning marginal job functions to other employees
- reassignment to another position
- providing readers and interpreters
- modifying pre-employment exams

A covered employer's obligation to provide a reasonable accommodation begins during the application/hiring process and continues throughout employment.

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The EEOC states that 20% of accommodations do not involve any monetary costs while the median cost for an employer to provide an accommodation is \$240.

### *Undue Hardship*

How do you determine if an accommodation is reasonable or an undue hardship? The ADA defines an undue hardship as an action that requires significant difficulty or expense in relation to an organization's size, the resources available, and the nature of the operation. Determining whether an accommodation is reasonable or an undue hardship must therefore be done on a case-by-case basis.

### *Complaints*

Applicants or employees who believe they have been discriminated against because of a disability may file charges with the EEOC or the NYS Division of Human Rights. An individual can be awarded front pay, back pay, attorney's fees, expert witness fees, court costs, reasonable accommodation, reinstatement, and/or a job offer. If an employer is found guilty of intentional discrimination, the individual may recover compensatory and punitive damages based on the size of the employer (maximum of \$50,000 for employers with up to 100 employees and up to a maximum of \$300,000 for employers with 500 or more employees).

In fiscal year 2005, 14,893 disability discrimination complaints were filed with the EEOC and the agency recovered \$44.8 million in monetary benefits (this does not include awards obtained through litigation).

## **Avoiding Disaster**

Implement an EEO policy that prohibits discrimination based on all federal and NYS protected groups, including mental and physical disabilities. Include a statement in the EEO policy and on your *Application for Employment Form* indicating the procedure for requesting an accommodation. Supervisors should be educated on the ADA and the steps to follow if they receive accommodation requests.

*Next week's eNews will address the steps an employer should take when it receives a request for an accommodation.*

**For more information about the ADA, contact AMTEK's Human Resource Hot Line at 1.800.457.8829.**

**This HR eNews is not intended to render legal advice but is meant for general informational purposes only.**

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