

HANDLING THE TOUGHEST ADA CASES: REASONABLE ACCOMMODATIONS, THE INTERACTIVE PROCESS, AND MORE

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- **Disciplining an employee who has made an accommodation request**

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- **Suspicious requests for accommodation**

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- **Repeated requests to extend leave**

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- Making a “temporary” accommodation permanent

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- Eliminating the position of an employee with accommodations

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- Requests to work at home as an accommodation



Sally has been a production worker for five years. In March, her old supervisor retired and a new supervisor, Manny, was hired. In early May, Manny came to you, his HR partner, and said that Sally was not meeting the same production requirements as the rest of his workers. He also said that she is often away from her work area. You and Manny put together a 30-day Performance Improvement Plan for Sally.




When you meet with Sally to give her the PIP, she says she has been managing some major intestinal issues for the past two years. She says that her old supervisor knew about it and said she should take breaks whenever she needed to. Due to her medical issue, she takes several bathroom breaks throughout the day, which impacts her performance.


The next day, she brings in a doctor's note dated six months earlier, saying she was under long term treatment and would need to take frequent breaks. Of course, you can't find any documentation on this issue from her prior supervisor.

What do you do about the PIP?

- A. Keep her on the PIP, because she needs to meet production standards.
- B. Keep her on the PIP, but extend it to 90 days to give her more time to engage in the interactive process.
- C. Remove the PIP while you engage in the interactive process, but tell her that she needs to meet production standards and if she cannot, with or without reasonable accommodations, she will be placed on a PIP.
- D. Remove the PIP and excuse her performance, because the company has set a past practice of accommodating her medical issues by having reduced performance requirements.




Tim began employment 10 months ago as a relief operator and has amassed 4-1/2 attendance points on a 5-point scale. On Thursday, he was 6 minutes late to work and also left 30 minutes early, saying he must have pulled something in his back when loading a 50 pound bag of ingredients into a mixer. On Friday, he did not come to work.




The following Tuesday, while you are looking at the Facebook post of Tim celebrating his lacrosse team's weekend victories at an out of state tournament and preparing Tim's termination notice, Tim pops in your office with his union rep and a medical note excusing Tim from work from Thursday through Tuesday due to a work-related back strain. The note also imposes a 30-pound lifting restriction and an 8 hour per day work limit for the next 12 weeks.

What do you do?

- A. Confirm that Tim signed and received training on your No Fault attendance policy. If his points put him over the maximum allowed points, proceed to terminate and wait for the grievance filing.
- B. Hold Tim's attendance point count at 4-1/2, and excuse his absence for any points that would have applied from Thursday to Tuesday.
- C. "Like" Tim's Facebook post and send him a Tweet: "Congrats on the big V; #URfired @CoachTim"
- D. Crumple up the dismissal notice, and invite Tim in for an interactive discussion before deciding what action to take.




Suzanne is a new employee in customer service whose job requires her to answer customer calls and help resolve customer issues with the company's product. After a few months on the job, Suzanne submits a doctor's note stating that she needs to take two weeks off work due to the flare up of a chronic medical issue.




The company's third-party administrator asks if you can temporarily accommodate this request. There are five other customer service employees on Suzanne's team. So, you can probably handle Suzanne's request, given the short duration of the accommodation. But this is followed by a request to extend the leave by two weeks, and then another two weeks, and then another two weeks.

What do you do?

- A. Grant Suzanne's request because, given the short duration of the requested accommodation, it is not an undue hardship to have her coworkers cover for an additional two weeks.
- B. Grant Suzanne's request because the fact that you have granted her request three times previously shows that you can accommodate the additional request.
- C. Deny Suzanne's request because she cannot perform the essential functions of her job.
- D. Deny Suzanne's request because, given that this is Suzanne's fourth request, her accommodation request is not "temporary;" rather it is "indefinite."




Julian is a production worker who has been a great employee for the last five years. Last month, he tweaked his back working in his yard, and came to work with a doctor's note giving him a 10-pound lifting restriction for the next three weeks. He was very worried that he would be fired, because his normal job requires lifting up to 50 pounds. You told him not to worry; he was a valued employee and you could accommodate his restriction by shifting work around and having him do some sorting and light cleaning.



At the end of the three-week period, he brought another note extending his restriction another week. He then brought in yet another note, requesting the same restriction for another week after that. You have continued to accommodate his requests, but other employees are starting to complain and it has been hard to find enough tasks to keep Julian busy. It has now been five weeks, and Julian comes to you and says that his doctor tells him that the restriction will continue for at least several more months and maybe longer.

Now what do you do?


- A. Continue to accommodate this restriction as long as he needs it, since you told him at the outset that you would be able to accommodate his restrictions and you did not mention any time limit.
- B. Tell him that you will be able to accommodate for another two weeks (an arbitrary date, but it seems fair to you!), but after that if he is unable to return to full duty he will not be able to stay in that position and you will have to discuss other options.
- C. Same as B, but tell you him will be able to accommodate for another five weeks
- D. Tell him you can no longer accommodate his restrictions effective immediately, because he is now effectively requesting an indefinite restriction, and you will need to discuss other options.




Maria is a 20-year employee and has been working full time as a maintenance clerk for her entire career. She had a work comp injury seven years ago and has been in a light duty job ever since. In reality, this “full time” position is one where her tasks can be completed in 15 to 20 hours per week. The plant manager is being asked to identify cost reduction opportunities and sees the elimination of Maria’s light duty job as an obvious choice. The plant manager intends to reallocate Maria’s duties to a temp agency worker who currently does the same duties as Maria plus the maintenance duties that are outside of Maria’s restrictions.

What is the best course of action in proceeding with a potential job elimination?

- A. Go ahead and eliminate her job. There is no risk of liability, since her light duty tasks can be seamlessly absorbed by workers in other non-eliminated positions.
- B. Meet with Maria to get updated restrictions from her and explore whether she can resume the full duties of the maintenance clerk role. If she cannot perform the full duties, go ahead and RIF Maria and keep the non-restricted temp worker who can perform all of those duties.
- C. Change Maria's position to a part-time, non-benefit eligible role working 15 to 20 hours per week and continue to accommodate her work restrictions.
- D. Do nothing and hope the challenging economy passes.



Ellen is a Technical Service Analyst who provides technical support to users and clients as needed on workstation, peripheral and application problems. Ellen has an anxiety disorder that causes her to have the following work restrictions: “difficulty maintaining focus and concentration, difficulty interacting with others, and unable to walk more than 200 meters at a time.” Ellen asks if you can accommodate her work restrictions by allowing her to work from home.



You ask Ellen's doctor for clarification on what she means by "difficulty maintaining focus" and "difficulty interacting with others." The doctor tells you that Ellen can focus and concentrate but that her condition is impacted by environmental factors which can be a distraction for her. She further explains that ambient noises and having people walk near or around Ellen's desk is problematic. The doctor also states that Ellen can email and talk on the phone but that face-to-face interactions may exacerbate her symptoms. When her symptoms flare-up, phone and email are Ellen's only effective means to communicate.

Do you grant Ellen's request to work from home as an accommodation?

- A. Yes, it appears that working from home is a medical necessity for Ellen.
- B. No, but accommodate Ellen by putting her in a remote office which will allow her to do her work without face-to-face interactions with others.
- C. No, because Ellen cannot perform all of the essential functions of her Technical Service Analyst position from home.
- D. No, because Ellen is not qualified for the Technical Service Analyst position if she has "difficulty maintaining focus" and "difficulty interacting with others."



QUESTIONS?