

ADA Workshop Talking Points

1. Disabilities in Employment Coordinator (DEC) or ADA Coordinator
 - a. Coordinates decisions
 - b. Maintains original records
 - c. Serves as staff to the ADA Advisory Committee
 - d. Audits ADA efforts
 - e. Provides training/updates
2. Existing policy/procedures
 - a. Accommodation requests made known to supervisor (usually)
 - b. Interactive discussion to determine nature of possible accommodation(s)
 - c. Request form completed and approved at the unit (usually involves the PREP)
 - d. Submitted to DEC for review and coordination of decision
3. New legislation (effective 1 January 2009)
 - a. Change focus from who is protected to whether the employer is complying with their obligations
 - b. Make a renewed focus on the interactive process with disabled workers
 - c. If an employee refuses to engage in the interactive process and discuss possible reasonable accommodations with the supervisor, any ADA claim may be denied.
 - d. If the employee refuses to provide medical information so the employer can evaluate reasonable accommodations, that refusal will be a defense to any claim.
 - e. In most cases, employers are no longer able to argue over whether the worker is covered by ADA
 - f. In most cases, employers are no longer able to contest whether a worker's impairment qualifies as a disability under ADA
 - g. Employee must be able to perform the essential duties of a job. If there is no reasonable accommodation that will allow the employee to do so, he/she is not protected by ADA
 - h. The employer gets to determine what the essential job functions are.
 - i. If an employer is unaware of a disability, the employer cannot be accused of discrimination and has no duty to accommodate the worker.
 - j. Poor job performance is not enough to infer the employer knows the worker is disabled.
 - k. An employer need not violate a collective bargaining agreement in order to provide a reasonable accommodation
 - l. Providing a reasonable accommodation does not mean the employer necessarily regards the worker as disabled.
 - m. A person with a disability need not be employed if he or she poses a safety threat to themselves or others
 - n. ADA requires that as a final attempt at accommodation, a worker who cannot perform his/her job even with reasonable accommodations may be transferred to a vacant job or if no vacant job, an unpaid leave might be a reasonable accommodation until a vacancy opens up.

- o. If an employer fires a worker with a disability for a reason unrelated to his or her disability, the ADA provides no protection to the worker.
- p. Undue hardship for an employer (under the new legislation) is so restrictive that this defense is rarely applicable.
- q. Reasonable accommodations can be:
 - i. Making existing facilities used by employees readily accessible
 - ii. Job restructuring
 - iii. Part time or modified work schedules
 - iv. Reassignment to a vacant position
 - v. Unpaid leave awaiting an assignment to another position
 - vi. Acquisition or modification of equipment or devices
 - vii. Appropriate adjustment or modifications of examinations
 - viii. Training materials or policies
 - ix. Provision of qualified readers or interpreters
 - x. Other (this is not an exhaustive list)

Source: SHRM Legal Report, "ADAAA Will Result in Renewed Emphasis on Reasonable Accommodations" by Lawrence. P. Postol (Seyfarth Shaw LLP) January 2009

Reference: SHRM ADA Toolkit

http://moss07.shrm.org/TemplatesTools/Toolkits/Pages/CMS_014042.aspx

Reference: UWM ADA Policy

http://www4.uwm.edu/secu/acad+admin_policies/S45-1.pdf

Reference: UWM ADA Accommodation Request Form

<http://oser.state.wi.us/docview.asp?docid=1128>