

EEOC Advisory Letter Makes Clear that “Sample” ADA Policies and Forms Can Get You in Trouble

Labor & Employment Law Update

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The internet can be an excellent resource, but it can also be a very dangerous resource. Recently, the EEOC issued an advisory letter addressing a sample ADA policy and sample forms for responding to an accommodation request that were posted on a state agency's website. Although the sample policy and forms were posted by a state agency, the EEOC advisory letter identified several parts of the sample policy and forms that would be considered as violating the ADA.

The EEOC advisory letter specifically states that setting absolutes in how circumstances are addressed in an ADA policy is dangerous. A one size fits all approach will not work and reasonable accommodation requests must be reviewed on an individualized basis. For example, the advisory letter provides that it is not recommended to have an ADA policy state that you are not required to permit “unscheduled (erratic, unpredictable, intermittent) or excessive absenteeism or tardiness as a reasonable accommodation,” as such is not only unclear, but the ADA may require you to do so in certain circumstances.

The advisory letter also makes clear that what is considered a reasonable accommodation is evolving with technology and positions. Specifically, the letter states that telecommuting is a reasonable accommodation, depending on the circumstances and position. This is in line with the recent Seventh Circuit case, *EEOC v. Ford Motor Co.*, in which the court held that telecommuting was a reasonable accommodation for an employee with irritable bowel syndrome based on her position and the circumstances.

In addressing sample forms, the EEOC cautions that forms often include many questions that may not be applicable to every situation. Indeed, employers should only be asking questions that are necessary to establish that the person has a disability (unless it is obvious) and/or needs a reasonable accommodation. As such, if you are going to use a form, the questions should be simple and straightforward like the following:

- The nature of the employee's impairment and its expected duration?

- The kind of activities, including major bodily functions, that the impairment affects?
- The way in which the activities are affected?
- The use of mitigating measures and the extent to which they eliminate or control the impact of the medical condition?

The takeaway from the EEOC advisory letter is to review your ADA policies and procedures to make sure they are in line with the current law. Additionally, if you use forms to address accommodation requests, you should consider using forms that have simple and straightforward questions and that can be modified depending on the request and the circumstances.

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