

## News & Insights

### **Hilary Wise for the Journal Record - How to Know When an Employee is Requesting Reasonable Accommodation Under the ADA**

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One of your best employees comes into your office, shuts the door, and asks if you can talk. You brace to hear her give two weeks' notice, but what she says instead catches you off guard. She asks to work remotely twice a week to manage side effects of a new medication for a recent diagnosis.

Your thoughts start racing about issues her working remotely could cause... Some of her responsibilities require being present in the office. She may not work as well at home. Plus, it would not be fair to her coworkers, all of whom work on-site. Your knee-jerk reaction is to just say no.

That would be a mistake. Your employee has just requested reasonable accommodation under the Americans with Disabilities Act (ADA). The ADA requires employers to engage in an interactive process with employees who request accommodation. Failure to engage in this process can create legal liability. To be clear, remote work may indeed be impossible for this employee's position. There may, however, be other ways to accommodate her which do not pose an undue hardship on company operations.

But how do you know when a request has been made in the first place? Requests do not have to be formal or in writing. Nor does the employee have to mention the ADA or use the phrase "reasonable accommodation." Sometimes a request comes in the form of a doctor's note which excuses absences from work or restricts an employee's ability to perform certain job functions.

Here is an easy rule to follow: A request for accommodation is made when an employee (1) makes it known an adjustment or change is needed at work (2) due to a physical or mental health impairment. There must be a connection between the health impairment and a work-related barrier. If an employee does not connect the health impairment to a work-related barrier or request for adjustment or change, this is not a request for accommodation.

If you are not sure whether an employee has requested an accommodation, consider asking them, “How can I help?” This response will help you steer clear of violating the ADA’s rules which place restrictions on asking employees disability-related questions.

Sometimes an employee has a known disability and has not asked for accommodation, but it appears she needs one. In that case, employer should ask if accommodation is needed when it knows or has reason to know the employee is having workplace problems due to the disability and knows or has reason to know the disability prevents the employee from requesting accommodation. Similarly, an employer may ask an individual with a known disability whether she needs accommodation when it reasonably believes the employee may need one.

ADA compliance is daunting, but if you remember these easy cues, you will be ready to recognize and properly respond to a request for accommodation the moment it comes your way.

## Attorneys

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