

## Americans with Disabilities Act (ADA): Performance & Conduct Standards

PRESENTATION PREPARED SPECIALLY FOR  
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

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NOVEMBER 15, 2018

## Agenda

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- Welcome and Introduction
- Importance of Performance Management
- ADA Refresher
- Performance Standards & Disability
- Key Takeaways
- Questions and Answers

## Why is performance management important?



## Importance of Performance Management

- Maintain effective and productive workplace
- Set expectations and goals for employees
- Retain employees
- Foster and maintain strong culture
  - Culture of learning and constant improvement
- Increase employee engagement
- Assist in defense of legal claims
  - Consistent performance management can be a shield against claims of unfair treatment

## Importance of Performance Management

- Active, consistent, and effective performance management includes:
  - Providing positive and developmental feedback
  - Engaging employees in self-evaluation
  - Articulating employee behavior that is unsuccessful and successful
  - Providing resources for development
  - Addressing issues through remedial action and discipline
  - Ensuring job descriptions and performance standards are accurate and are communicated to employees

**What happens when an employee is struggling to meet performance standards because of a disability?**



## For Example . . . Clothing Store Dilemma

Mary has worked as a supervisor at a retail clothing store for 5 years and has always been an excellent employee. She recently returned from knee surgery and has trouble standing for long periods of time. In her most recent review, Mary received a “satisfactory” score and feedback stating that she has to walk the sales floor more frequently as part of her supervisory duties. What, if anything, should you do?



## ADA Refresher

- Duty to engage in the interactive process with an employee who may need a reasonable accommodation.
- Duty to make a reasonable accommodation if, in doing so, the employee could perform the essential functions of the job, and it would not create an undue hardship.
- Duty to provide an effective reasonable accommodation.

## ADA Refresher – Identifying/Exploring Possible Accommodations

- Meet with the employee.
- Ask the employee to provide specific information about the extent of the impairment.
  - If necessary, provide a letter to the employee to provide to his/her health care provider requesting clarification of the impairment and what, if any, reasonable accommodations are necessary for the employee to perform the essential functions of the job.
- Review the job description including the essential functions of the job.
  - Such job descriptions should be enclosed with any letters to the employee and/or treatment provider.
- Explore various alternative accommodations that may be effective.

## ADA Refresher – Reasonable Accommodations

- Reduced/changed hours
- Job restructuring
- Reassignment to a vacant position
- Modified workplace policies, training materials
- Modifying dress code, break policies, eating in the workplace, etc.
- Modified workplace/working conditions/equipment/devices
- Leave

## ADA Refresher – Not Reasonable Accommodations

- No duty to create a new job that does not exist.
- No duty to provide personal use items (e.g., eye glasses).
- No duty to ensure employees take their medications (though still *must accommodate if they don't*).
- No duty to lower quality or production standards.
- No duty to tolerate misconduct.
- No duty to eliminate essential functions of the job.
- No duty to give the reasonable accommodation the employee wants if there are several alternatives and one is less costly or burdensome than the other.

**Can employers apply the same performance standards to both employees with and without disabilities?**



## Performance Standards & Disability

- Qualitative and quantitative standards may be the same for all employees, both disabled and non-disabled

But . . .

- A reasonable accommodation may need to be made to allow an employee to meet a specific standard.

## For Example . . . The Sales Associate

Mark is a Sales Associate whose territory consists of 6 states. Due to back issues, he is having trouble covering the territory. He would like to have a 3-state territory instead. What should you do?

Would the answer change if Mark was asking for a half-day of work each Wednesday so he could rest his back from the traveling?



## Performance Standards & Disability

- Job descriptions must reflect the actual job requirements and duties of the position.
- Job descriptions cannot be used as grounds to refuse reasonable accommodation requests where they do not reflect the actual job requirements/duties of the position.
  - For example, there is a warehouse job description that states that all employees must be able to lift 50 pounds. John returns to work with a 40-pound weight-lifting restriction. If employees in this position are lifting 30 pounds or less for most of the time, the company is likely unable to refuse John's request for reasonable accommodation since he can perform the essential functions of the job despite the job description.

## Performance Standards & Disability

Jose works in HR. He has asked to work from home 2 days per week due to severe anxiety. It is a company expectation and policy that all employees must report to work and that employees are not permitted to work remotely except during inclement weather. What should you do?





## Performance Standards & Disability

Amy comes to work with her arm in a sling. She works at a construction site. It is the company's policy that employees must be 100% able to return to work or else they are not permitted to do so. What should you do?

You send Amy home but pay her salary for several weeks while she recovers. Is that okay?



## Performance Standards & Disability

Lisa is a Sales Associate. All Sales Associates must hit a sales target each year. Lisa did not meet her target last year or this year. Earlier this year, Lisa had a shoulder injury which has prevented her from meeting her sales target. What should you do? Typically, employees are terminated if they have not met their sales target for two consecutive years.



## Performance Standards & Disability

Alan was on a final written warning when he skipped work without providing notice. When you addressed this issue with him, he said he is taking new medication and had not realized it would make him oversleep. You would typically terminate employees under these circumstances. What should you do?



## Key Takeaways

- Effective performance management is key to organizational success.
- Engaging in the interactive process is legally-required and critical to ensure that employee needs are being addressed.
- Evaluate requests for reasonable accommodation on a case-by-case basis which may require reexamining the job requirements/duties and performance standards.

## Questions?



## Thank You.



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