

Resist assuming that employee's disability might cause a safety hazard

Disabled workers who seem capable of doing their jobs sometimes end up with supervisors or co-workers who doubt their abilities. Challenging a disabled employee's capacity for work can backfire badly, especially if it looks as if the decision to challenge was really based on disability discrimination and harassment.

For example, making repeated requests for medical assessments and other records to prove the employee can safely work when he has already been doing so can create a hostile work environment.

Recent case: Joseph went to work at the U.S. Department of Homeland Security as a field technology telecommunication specialist for Customs and Border Protection. He is a veteran with a service-related disability rating, which he revealed when he was hired.

However, he had no trouble performing his job satisfactorily. Joseph had never sought an accommodation or had any safety-related problems.

One of Joseph's duties included climbing tall towers as part of a team of two. He was not required to climb daily, but did receive extra-duty pay on those occasions he did.

One of Joseph's medical issues is migraine headaches. He also suffers from back pain.

Allegedly after hearing complaints from Joseph's co-workers, a new supervisor formally asked Joseph to provide proof he could climb safely. The supervisor did nothing to verify the complaints he said he got, though. Instead, he immediately ordered Joseph to stop climbing until he got a doctor's clearance.

Joseph's doctor said Joseph was not a danger to himself or others. The supervisor asked for more information and continued restricting Joseph. He then withdrew the request, but ordered Joseph not to climb while he was taking any medication. Because of the restriction, Joseph missed annual climbing re-certification and was then prohibited from climbing because he was not certified.

Joseph sued, alleging disability discrimination. He pointed out that he had never asked for an accommodation and never needed one. He challenged the supervisor's claims that he needed an accommodation and argued that the supposed co-worker complaints either didn't happen or that his supervisor exaggerated them. And he alleged that the requests for medical information were a form of disability discrimination and harassment.

The court said Joseph's case could go to trial based on the supervisor's behavior, including not verifying safety complaints before restricting Joseph from doing work he had always done without a problem. (*Burns v. McAleenan*, WD TX, 2019)

Final note: One of the easiest ways to violate the ADA and other disability laws is to regard someone as disabled. This happens when an employer treats a worker as if she is disabled even if she is not.

Disabled workers aren't required to reveal their disabilities if they want to keep their condition private or feel

capable of doing their jobs without any sort of accommodation.

If you hear rumors or even learn directly from the employee that he's disabled, don't assume he needs an accommodation. Wait for a request. Suggesting accommodations is a form of disability discrimination because it indicates the employer may be relying on stereotypes about disabled workers' abilities. Asking for medical documentation when the employee hasn't asked for an accommodation has the same effect. It's best to wait for the employee to ask for help.

ADA requires training accommodations, too

The ADA requires employers to provide help to disabled applicants at every stage of the employment relationship if that assistance is reasonable, allows disabled workers to enjoy all the benefits other workers receive and provides the help they need to perform the essential functions of their jobs despite a disability.

That includes adapting job training so disabled employees can learn how to perform their jobs. For training workers who are deaf or hard of hearing, the ADA has long required employers to provide sign language interpreters, written materials or closed-caption videos.

Recent case: When a Walmart store in Washington, D.C., hired two deaf workers, it tried to provide onboarding training—without offering either sign-language interpreters or closed-captioned broadcasts. The workers complained that the lack of accommodations prevented them from receiving the training.

Nothing happened until the employees filed a complaint with the EEOC, which sued on their behalf. Because Walmart had neither provided the requested accommodations nor demonstrated the accommodations constituted an undue hardship, it had little chance of winning in court. Now the retailer has agreed to pay the two workers \$100,000 and revise its accommodation practices.

Walmart agreed to a two-year consent decree in which it vowed to revise its reasonable accommodations management guidelines, provide live training to management employees on the ADA's reasonable accommodations requirements, address issues related to deaf and hard-of-hearing persons and train all non-management employees on the ADA and the reasonable accommodation request process. (*EEOC v. Wal-Mart*, DC DC 2019)

Final note: Remember that all disabled employees are entitled to more than accommodations to do their jobs. They also must receive assistance to enjoy benefits like training and education that other employees can access. Tips for accommodating workplace disabilities are available at askjan.org.