

## I. The Interactive Process Generally

Under the ADA, once an employee identifies the need for an accommodation, the employer and employee must engage in the Interactive Process. The Interactive Process is necessary to assess any possible reasonable accommodation for the employee's physical or mental impairment.

The Interactive Process is the dialogue between the employer and employee with the objective of finding a means by which a disabled employee can perform the essential functions of a job in the employer's workplace. The EEOC, in a description uniformly adopted by the courts, defines the Interactive Process as "an informal, interactive process ... [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." The EEOC's interpretive guidelines also state: "Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with the disability."

The EEOC has outlined four steps involved in the Interactive Process:

- (1) Analyze the particular job involved and determine its purpose and essential functions;
- (2) Consult with the [disabled] individual ... to ascertain the precise job-related limitations imposed by the ... disability and how those limitations could be overcome with a reasonable accommodation;
- (3) In consultation with the [disabled] individual ... identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and
- (4) Consider the preference of the [disabled] individual ... and select and implement the accommodation that is most appropriate for both the employee and the employer.

Both the employer and the employee have the responsibility of making the process interactive and productive. "[T]he employer and employee must work together in good faith to help each other determine what accommodation is necessary." The responsibility to enter into the process is shared because "each party has information the other does not have and cannot easily obtain." Where any missing information is of the type that can only be provided by one of the parties, failure to provide the information may be the cause of the breakdown, and the party withholding the information may be found to have obstructed the process. For example, the employer must bring to bear and share with the employee its greater knowledge of the equipment involved in various jobs, vacant positions that might be available, and the essential functions of various jobs. If the employee suggests a particular accommodation, the employer should bring this knowledge to bear in the discussion and state its concerns or objections. The employee must be candid and responsive. If the employer needs additional information concerning the employee's mental and physical condition and resultant limitations, the employee must provide it. If the employer proposes an accommodation to which the employee has an objection or concern, the employee must express that objection or concern during the Interactive

Process. If the employee does not state objections or concerns during the Interactive Process, the court will be reluctant to hear the employee testify to them in court.

## **II. Actual Steps in the Interactive Process**

The following factors are integral to an effective completion of the interactive process.

- Identify the job at issue.
- Identify the essential job functions. Include a review of any applicable job descriptions or documents describing the duties and responsibilities.
  - Essential functions are more than tasks and job duties. For example, customer service includes the ability to be nice, professional, and communicative to others.
- To understand the full scope of the job, also list the marginal or nonessential job functions.
- Identify each restriction/impairment of the employee that may affect his or her ability to engage in the function or process that is associated with the work.
  - This may require additional medical information that the employee must provide.
- Arrange for the employee to submit medical information from the medical care provider that identifies the limitation on the physical or mental ability. The request should relate only to the limitation on a work-related function. For instance, the physician should indicate that there is a limitation on entering data into the computer rather than just stating the employee has carpal tunnel symptoms.
- Engage in a meeting or series of meetings with the employee to ascertain the essential functions of the job and any limitations and to discuss reasonable accommodations, if any, to permit him or her to perform ALL essential job functions.
- At the meeting with the employee, review and confirm the limitations provided by the physician. If this needs to be done at a second meeting (first one to identify essential job functions), that is fine. The employer is entitled to the information provided by the medical care provider.
- Next, review each accommodation proposed by either side for feasibility and effectiveness. List the proposed accommodation and indicate its viability.
- Document the plan and confirm with employee in writing.
- Monitor the plan.

The employer does not need to provide accommodations that impose an undue hardship.

Additionally, participating in the Interactive Process does not mean the employer is admitting that the employee has a disability.