

# Employee Medical Issues Interactive Process

Puiggari & Associates

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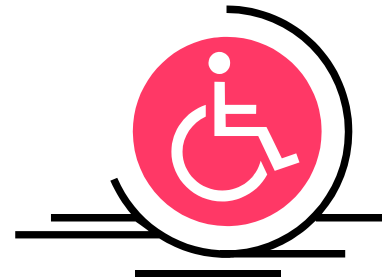
(505) 690-4052



# Statutes

## ▶ Americans With Disabilities Act

- Requires Interactive Process
  - When employee may need accommodation
    - Employee or Applicant requests
    - After FMLA exhausted–still issue
    - WC: after MMI
    - Employer learns of medical issue



# FMLA/WC / ADA

- ▶ When FMLA/WC–MMI or medical leave ends and ADA begins
  - MUST CHECK IF MEDICAL ISSUE DISABILITY
  - Interactive process
  - Communicate during FMLA /WC and after it ends
  - If employee requests additional leave after FMLA expires or WC MMI,
    - Need to know what they can and can't do
    - Whether reasonable accommodations are available to help them perform essential functions
    - Whether additional leave will help them perform those essential functions

# Interactive Process

- ▶ Do regardless of question disability or not
  - Shows good faith
  - Does not preclude argument it is not disability

# EEOC's 4 Steps–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;  
(1) Ask questions. nature of disability, what can and can't do
- (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.

Obligation on employee to cooperate in process

# STEPS

- ▶ Get Job Description
- ▶ Review with employee and agree to essential functions
- ▶ Discuss with employee what they can and cannot do
- ▶ Discuss accommodation options / plan

# Job Description

- ▶ Get copy
- ▶ Ensure it is accurate
- ▶ If not accurate –revise
- ▶ Make list of essential functions

# Pre Discussion with Employee

- ▶ Give them handouts on ADA/Interactive Process
  - These are on MACo website
- ▶ Ask them to review before you meet
  - Employee/applicant needs to understand their rights

# Discussion with Employee

- ▶ Do not ask what disability they have—usually will be volunteered BUT you don't need to know
- ▶ Give them job description with list of essential functions
- ▶ Ask if any questions from Materials provided to them.
- ▶ Go over each essential function: ask if can do or not
- ▶ If not ask what would help them do it
- ▶ Send medical provider questionnaire. Copy to person. Tell employee they need to ensure medical provider completes questionnaire.

# Medical Questionnaire

- ▶ Sample on MACo website
- ▶ Provides information to assist with accommodation
- ▶ Leave requests
- ▶ Undue hardship analysis
- ▶ And whether it is disability or not
  - Won't be used unless need to defend

# Document

- ▶ Document each step of every meeting and discussion with employee
- ▶ After each meeting send summary of discussion to employee and ask them to review and let you know if anything needs to be revised

**I MEAN IT!!!**

# Good Faith

- ▶ Both parties must participate in good faith
  - Employer and Employee
  - This means employee must provide information related to what limitations they have
  - Employee must provide medical information if employer requests

# Develop Plan

- ▶ Accommodation fact specific
  - ▶ Can have graduated plan
  - ▶ Document
  - ▶ Have employee sign
- 
- Call JAN if necessary
  - Think outside the box
  - Don't dig in your feet

# Undue Hardship

- ▶ Do not need to accommodate if Undue Hardship
- ▶ Action requiring Significant difficulty or expense
  - Analysis must be done: More than money

# Factors for Undue Hardship

- ▶ The nature and cost of the accommodation needed.
- ▶ The overall financial resources of the facility making the reasonable accommodation, taking into account the number of persons employed at the facility and the facility's expenses.
- ▶ The overall financial resources, size, number of employees and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity).
- ▶ The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer.
- ▶ The impact of the accommodation on the operation of the facility.

# More Factors:

- Significant losses in productivity because work by less effective temp workers or substitutes or overburdened employees
- Lower quality and less accountability for quality
- Lost sales
- Less responsive customer service and increased dissatisfaction
- Deferred projects
- Increased burden on management to find replacement workers or readjust workflow or priorities
- Increased stress remaining workers
- Lower morale

# Types of Accommodations

- ▶ More training
- ▶ Job Restructuring: functions, altering how performed
- ▶ Leave (paid and unpaid)
- ▶ Modified schedule
- ▶ Physical space: desk, chair, lamp, monitor
  
- ▶ Different Job
  - Vacant or will be soon
  - Qualified for
  - Can perform
  - At that jobs pay

# resources

- ▶ MACo
- ▶ Job Accommodation Network