

How to Talk to a Potentially Disabled Employee about a Reasonable Accommodation

The New Jersey Law against Discrimination (LAD) along with the Federal Americans with Disabilities Act (FADA) prohibits discrimination based on disability.

A disability includes any physical limitations, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness, as well as any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions, or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.

The law requires employers to make reasonable accommodations to qualified employees so they can perform the essential functions of their job. “Qualified” means that the employee satisfies the requirements of the position, in terms of education and/or experience, and that he or she can perform the essential functions of the job with or without reasonable accommodation. “Essential functions” are basic and fundamental to the job, not incidental or marginal. A “Reasonable accommodation” may require that reasonable changes to an employee’s work situation are provided, including modified duties, a reassignment to a vacant position, and/or the acquisition of equipment and devices to aid in the employee’s effective execution of their responsibilities. Employers must engage in an interactive process to determine which reasonable accommodations, if any, will enable the employee to perform their essential job functions. This does not mean that the employer is required to sit down with the employee to inform them where they cannot be accommodated. The interactive process has the employer and the employee work together to create effective accommodations that will benefit the employer while accommodating the employee’s restrictions. Transferring a qualified employee to another open job position or allowing them to take a prolonged period of time off can be a reasonable accommodation.

Supervisors should listen very carefully to what their employees tell them. The words “reasonable accommodation” do not need to be used in order to trigger the employer’s responsibilities under the Law. The following are examples of phrases an employee might use in asking for a reasonable accommodation: “I’m having trouble lifting all of those boxes;” “When I go home at night, I’m too sore to move;” and/or, “My arm hurts every time I do this.” If an employee says anything that signifies to the employer that he or she is having physical (or psychological) difficulty doing the job, it is important to include Human Resources in the discussion for accommodation.

These laws are extremely complicated. This is only a brief explanation of reasonable accommodations. A deeper assessment of each situation is necessary for specific situations.

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