

HR Advisor

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Welcome to the February edition of the HR Advisor newsletter. This month we cover the ADA interactive process, the new I-9, and why training employees is good for retention.

HR Alerts

The Occupational Safety and Health Administration (OSHA) mandates that all employers who are required to maintain the OSHA 300 Log of Work-Related Injuries and Illnesses post a summary of the previous year's log between February 1st and April 30th each year, even if no incidents occurred in the preceding calendar year. The summary (OSHA Form 300A) must be certified by a company executive and posted in a conspicuous location where notices to employees are customarily posted.

All employers who had more than ten employees at any point during the last calendar year are covered by this requirement unless they qualify as part of an exempt low-risk industry.

New this year: electronic reporting begins. The OSHA 300A form will need to be submitted online to OSHA by July 1.

What Is the Interactive Process, Anyway?

The Americans with Disabilities Act (ADA) requires employers to reasonably accommodate the disabilities of their employees and to engage in an interactive process when a request for accommodation is made. What is the interactive process?

The Equal Employment Opportunity Commission describes it this way: the employee and the employer "communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs."

The employer's part in this process entails some specific steps. When you go through the interactive process with an employee, we recommend you do each of the following:

1. Analyze the specific job position involved to determine its essential job functions. These are the tasks of the job that must be done by whoever holds the position. A chef must be able to cook. An editor must be able to proofread, correct, and revise text. The essential job functions are used to determine whether an accommodation can be made. If an employee cannot do one or more of the essential job functions, even with accommodation, then the employer is not required to make an accommodation.
2. Request medical information and supporting documentation as needed and as appropriate. You don't need to take the employee's word that they have a disability or that an accommodation is needed. However, be careful not to request or require more than is reasonable. For instance, a note from a licensed physician that says an employee suffers from anxiety and may need additional break time to implement coping mechanisms should be sufficient. You should not request the details of his diagnosis, past mental health history, exactly what those coping mechanisms might be, etc.
3. Talk with the employee about the challenges they have in the workplace and the way these challenges may affect their work performance. This conversation will help you determine what specific solutions might work for the employee.
4. Explore with the employee a range of potential reasonable accommodations to help minimize or remove the identified challenges.
5. Assess the effectiveness of each agreed-upon reasonable accommodation. The accommodations you set up today might not always work well for the employee or the company. It's okay to reassess later whether an accommodation remains reasonable given changed circumstances. Keep in mind that not every accommodation suggested may be reasonable; employers do not have to provide accommodations that would create an undue hardship for them. However, "undue hardship" is a high bar to meet and should not be relied upon in most circumstances.
6. Communicate regularly with the employee throughout the process and once accommodations are in place. Regular communication demonstrates good faith on your part and shows the employee you take their challenges and concerns seriously. Document these conversations.

As you can see, the interactive process is simply an ongoing conversation with an employee who has requested a reasonable accommodation under the ADA. Together, you and the employee look at what can be done to accommodate them so the essential functions of the job get done, and you keep the lines of communication open to ensure maximum productivity going forward.

Question & Answer

Q: Our receptionist has bad hygiene and an unacceptable appearance. She looks as though she's just rolled out of bed, her body odor is noticeable to customers and vendors, and her attire is often dirty, torn, or poor fitting. What is the best way to handle this situation?

HR Tip of the Month

Not all employee information is best kept in the same place. For instance, the United States Citizenship and Immigration Services (USCIS) recommends storing I-9s in a different file than other personnel records. This way they can easily be audited (by you or the government). You may also want to keep medical records and related accommodation and leave requests in a separate location so you can more easily evaluate what kind of accommodations and leaves you've provided in the past.

Make sure you are diligent about locking up confidential employee information and information you'd prefer to keep private. Most people cannot resist a glance at a visible document that appears to contain juicy information. In some cases, leaving out private information will only cause you a gossip-fueled headache; in other cases, it could lead to liability for failure to protect confidential information.

A: Poor hygiene and clothing are certainly sensitive matters, and ones you'll want to address directly with the employee. A sensitive and straightforward approach is usually best.

To help minimize embarrassment, we recommend meeting with the employee in a private location where you will not be interrupted. It is also best to conduct the meeting just prior to the end of the workday, so the employee may leave immediately after the meeting.

The first conversation on these topics should not take the tone of a disciplinary counseling session. Explain the problem with the employee's hygiene and dress in the context of how it affects the workplace. If you have a written policy regarding personal appearance and hygiene, you can use that as a framework for the meeting. If you don't have one yet, now may be the time.

It's possible that the odor results from a cultural or religious preference. On rare occasions, bad hygiene may be the result of a disability. Although you should keep those things in mind, we recommend you do not attempt to figure out the cause of the employee's bad hygiene. We also recommend against making suggestions for how to fix the issue, unless the employee asks for suggestions. Be compassionate, but focus solely on the company's expectations.

When the conversation turns to her clothing, you should be prepared to offer concrete guidelines and examples so she understands what has been unacceptable about her attire thus far. If the employee expresses concern about not having appropriate clothing, let her know that she needs to follow your dress code. However, you may want to have some places in mind where she would be able to purchase acceptable work attire without breaking the bank.

As a final thought, ensure that you are holding this employee and others to the same standard. If you address the need for her clothes to be ironed or well-tailored, or her hair to be neatly brushed, be prepared to require the same of other employees.

Why Training Your Employees Is Good for Retention

There's an old joke about an executive who worries that training their employees will be a bad investment because they might leave, to which the sage CEO says, "What if we don't train them and they stay?"

Did You Know?

If you have unused electronic equipment laying around the office – whether jumbles of cables, homeless mice, ancient monitors, or 25-pound desktop computers – there are people who will come take them away free of charge. You of course can instead try to sell those items, deliver them to a charity, or take them to designated electronic recycling sites. But if all of these sound like more work than you've got time for, never fear! A quick Google search for "free computer recycling" should turn up several options.

The people who will take your electronics for free will generally resell them, but they bear the cost and commit the time to hauling them away, advertising, and making the deals. In return you get to free up office space quickly and for free! Most people who offer this service guarantee to wipe your drives, but computer security experts recommend you wipe your drives before handing off electronics. Doing so is particularly important if a drive houses any confidential information, such as Social Security numbers or medical information.

Contrary to common fears, training employees doesn't usher them out the door. Yes, training may prepare employees for employment outside your company, but it also prepares them for a better future working for you.

You can increase the likelihood that your employees will use the training they receive for your benefit by giving them opportunities to put what they've learned to immediate use and rewarding them when the new

skills and extra effort pay off. Prompt application of what they've learned will help solidify their knowledge, while the positive reinforcement will encourage continued use of the new skills.

Aside from developing practical skills and knowledge among employees that will contribute to your bottom line, training can be a way of building good professional relationships. This goes for both team training and individual training. Training shows you trust your employees and that you're committed to their career growth. Be up front about this. Tell them that you hope the training you provide to them gives them more opportunities within your organization, but also more opportunities in their overall career development and growth. Then involve them as much as you can in the future of your organization. They'll be more likely to stay if they believe they have a place as your company grows, overcomes challenges, and prospers.

Having trouble getting buy-in? Employees will be more receptive to training if they're involved in deciding where to focus their development. Ask them what knowledge, skills, and abilities that would like to work on. The training might pertain directly to their jobs or cover matters beyond their day-to-day work. Time management, injury prevention, and customer relations are popular training topics.

In sum, training makes for a better workplace. When your employees expand their knowledge, skills, and abilities, they'll do better work. When they do better work, they'll better the company. Morale will increase as their passion and excitement grow and as the company performs better.

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