

New ADA, Old Fundamentals

Hands down, the recent amendments to the Americans with Disabilities Act (ADA) are [game-changing](#). Many more folks now meet the ADA's broadly expanded definition of having a "disability." But what should we do about it?

There's clearly a threat. In [Norton v. Assisted Living Concepts, Inc.](#), a federal court in Texas just ruled that renal cancer qualified as an actual disability, even though the cancer was in remission. New EEOC regulations say that other medical conditions "should easily" qualify as disabilities. For example, the EEOC's hit list includes fairly common medical conditions like diabetes, multiple sclerosis, major depressive disorder, bipolar disorder and post-traumatic stress disorder.

Before the ADA amendments, these medical conditions may not have qualified as a "disability." Now they probably do.

The kicker is reasonable accommodation. According to the ADA, you must discuss how to reasonably accommodate an employee's actual disability if she asks for an accommodation. And you may have to talk reasonable accommodations if the disability is obvious and will presumably affect job performance.

Time to go back to school on an old fundamental—dealing with reasonable accommodation requests. You'll see more of them.

Here's your worst case scenario. An employee with diabetes asks her supervisor for extra breaks to regulate her blood sugar. Thinking the request is bogus or exaggerated, the supervisor completely ignores the request. Maybe he even snaps off an immediate "no." HR never hears a word about it. Not long after that, the supervisor fires the employee. Congratulations, you probably just bought an ADA lawsuit.

This is an awareness issue. Make sure your supervisors and managers know that many medical conditions could qualify as disabilities. Train them to take any request dealing with a medical condition immediately to HR. Confirm that your reasonable accommodation policy makes HR the lead point of contact. Educate your employees about your policy.



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Bring HR up to speed on cutting edge techniques to discuss and document dialogue about a reasonable accommodation.

Written performance documentation is also key. An employee who knows he's been performing poorly may ask for a reasonable accommodation to buy some protection. I hope you'd been documenting his performance problems. If not, it can get risky to terminate or start disciplining him right then.

