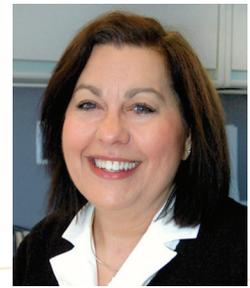




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## The ADA and RTW: Success Through Partnership

The Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act (ADAAA) in 2008 created a new work environment, enabling more persons with disabilities to participate in the workforce. When employees are recovering from an injury or illness, employers often wonder about their role in this context.

The ADAAA broadened the definition of disability, so the ADA now covers many persons who have health problems that in some way limit their work ability. Instead of trying to figure out whether an employee who is returning from leave is covered, employers are advised rather to focus on identifying accommodations to support the RTW process.<sup>1</sup>

A coordinator or liaison, whether in-house or outsourced, needs to gather background information about the employee's job requirements, and impairments due to their medical condition. Employers can request information from providers about medical restrictions such as lifting limits, but not about the treatment plan, medications, or test results. The employer needs accurate, detailed information about job requirements and medical restrictions to determine whether an accommodation is needed to enable RTW.

Guidance from the Equal Employment Opportunity Commission (EEOC) suggests an interactive process as the best way to develop accommodations.<sup>2</sup>

The employer should have a job description identifying the essential job functions, including those that cannot be changed by accommodation, and the employee can supply medical information on the functional implications of their condition, plus their experience in the work environment.

Several steps in the interactive process will benefit from a coordinator or liaison — whether in-house or an experienced vendor partner — to maintain timely progress on key activities:

- Helping the employee to identify barriers to their success at work involving key tasks that are difficult to perform, and what might help them perform successfully
- Facilitating communication with the employee
- Securing a signed release form and providing the employer with appropriate medical information

And what makes an accommodation “reasonable”? That depends on several factors: the size of the company, essential job functions, and any significant, immediate safety risks. The EEOC has provided detailed guidance<sup>3</sup> on how to evaluate whether an accommodation is reasonable and necessary, another area in which a vendor's broad experience with accommodations may help their employer partners.

The “interactive” requirement also relates to how an employee's condition

may change over time. Ideally, an employee will gradually regain functional ability and eventually resume their former job duties. During this process, the type and extent of accommodation may change.<sup>4</sup> This process is best managed through an ongoing, regular dialogue between the employee and supervisor<sup>4</sup> and may involve others in the workplace.<sup>5</sup>

The ADA has created new obligations for employers, but also new opportunities for employees to return to work earlier, making a valued contribution in the workplace. An experienced coordinator or liaison can help guide this process by creating an effective partnership among all parties.

### References

1. The EEOC's notice introducing the ADAAA can be retrieved from [https://www.eeoc.gov/laws/statutes/adaaa\\_notice.cfm](https://www.eeoc.gov/laws/statutes/adaaa_notice.cfm).
2. The EEOC guidance for requesting reasonable accommodations can be retrieved from <https://www.eeoc.gov/policy/docs/accommodation.html#requesting>.
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4. Durand MJ, M Corbière, MF Coutu, et al. A Review of Best Work-absence Management and Return-to-work Practices for Workers with Musculoskeletal or Common Mental Disorders. *Work*. 48:579-89. 2014.
5. Buys NJ, J Selander, J Sun. Employee Experience of Workplace Supervisor Contact and Support During Long-term Sickness absence. *Disability and Rehabilitation*, pp. 1-7. December 2017. LCN-2191028-072518