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Clash of the Workplace Titans: When Safety Rules Collide with Disability-Related Accommodations

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Few compliance issues put employers in a tighter spot than when an employee with a disability requests a workplace accommodation but granting it might conflict with workplace safety rules. There is an inherent tension: the Americans with Disabilities Act (ADA) encourages flexibility, while the Occupational Safety and Health Act (OSH Act) demands rigid compliance. An employer who fails to balance these (seemingly) competing interests risks a disability discrimination complaint from an employee or an inspection by the Occupational Safety and Health Administration (OSHA) – or worse, both! Avoiding this clash requires a nuanced understanding of the intricacies of both laws that ultimately aim for the same purpose: securing safe, gainful employment for all Americans.

ADA Basics

The ADA bars a Covered Employer from discriminating against a Qualified Individual on the basis of disability. Instead, a Covered Employer must try to grant a Reasonable Accommodation that allows the Qualified Individual to perform the Essential Functions of their job.

What is a Covered Employer? This is an employer – in an industry affecting commerce – with 15 or more employees (including full and part-time workers) for at least 20 weeks in a year. Independent contractors are not included.

Who is a Qualified Individual? A Qualified Individual meets the job's skill, experience, education, and other legitimate prerequisites *and* can perform the fundamental duties of the position, with or without accommodation. The ADA never requires waiving legitimate qualification standards.

What are Essential Functions? This is exactly what it sounds like: the fundamental – not marginal – duties of a job. The written job description is not the be-all and end-all for identifying the essential functions. Rather, it is one of many factors. More importantly, an employer must consider how an employee actually spends their time while on duty, as well as the consequences of not performing certain tasks that might be listed in the job description, collective bargaining provisions, and past practice.

The ADA can require an employer to modify *how* a function is performed. But it does not require the employer to entirely remove an essential function from an employee's duties or to permanently reassign it.

What is a Reasonable Accommodation? It is a change to the method or means of working that allows the employee with a disability to perform the essential functions of their job and thereby enjoy equal opportunity or access to the workplace. The ADA only requires an employer to grant a *reasonable* accommodation, not unreasonable ones. Common reasonable accommodations include minor job restructuring, modified schedules, leave, policy changes, reassignment to a vacant position, or equipment modifications.

The Reasonable Accommodation Process and Its Limitations

Employers should have a process governing how an employee requests an accommodation, and the critical feature of the process is that it must be *interactive*. This means the employer must not immediately refuse the request because on its face it appears impossible. And the employer must not base its decision purely on precedent, i.e., "we denied a similar request last year, so we will deny it again this time," with no further inquiry.

Instead, the employer must consider the merits of each request on its own, without comparing the employee, their disability, or their accommodation to others. The employer should only ask for the documentation needed to understand the limitation and then collaborate with the employee to explore options. If, despite such collaboration, a reasonable accommodation cannot be identified, then the employer should document the process: what collaboration occurred, what options were explored, and why none of them proved workable.

Unfortunately, there will be rare instances when an accommodation is not reasonable. This is often where the employer identifies an **undue hardship**, a **direct threat**, or (*drumroll, please…)* a **conflict with other laws, such as the OSH Act.**

An employer is not required to grant an accommodation if it imposes undue hardship. This is where an accommodation creates significant difficulty or expense in light of the employer's resources, facility size, and operational impact. Examples include accommodation requests for such things as: permanent remote work in a state where the employer is not registered to do business, major structural renovations to the worksite, or significant operational disruption.

The direct threat limitation means the employee poses a significant risk of substantial harm to themselves or their colleagues and that risk cannot be eliminated or reduced by an accommodation. Whether the employee poses a direct threat must be decided after an individualized assessment grounded in current medical knowledge and objective evidence — not assumptions, fear, stereotypes, or a general diagnosis. The analysis should include consideration of these four factors: duration of the risk, severity of the harm, likelihood of the harm, and imminence of the harm.

Even if the employer determines the employee poses a significant risk of substantial harm, the employer must still consider if an accommodation would eliminate the risk or reduce it to an acceptable level. Only if both answers are no would the employer be justified in denying the accommodation request.

What about the OSH Act and Other Safety Laws?

An accommodation is inherently unreasonable if providing it would require the employer to violate other binding laws or regulations issued by such governmental bodies as OSHA, Department of Transportation, Federal Aviation Administration, or Nuclear Regulatory Commission. Employers are not expected to choose between

ADA liability and federal regulatory compliance. But there's an important distinction when it comes to the effect of OSHA regulations on ADA-related accommodations...

The Distinction that Decides Most Cases

Under the OSH Act, employers owe employees both a general duty to provide employment free from recognized hazards and a specific duty to comply with applicable standards. But not all standards constrain employers equally:

- **Prescriptive standards** dictate the exact method of compliance, leaving an employer no room for discretion — for example, OSHA regulation 29 C.F.R. § 1910.215(b)(4) prohibits a grinding wheel guard's angular exposure from exceeding 180°, measured from a point no more than 65° above the spindle's horizontal plane.
- **Performance-based standards** dictate the outcome and leave the method to the employer. For example, the commonly cited machine guarding standard at 29 C.F.R. § 1910.212 requires employers to protect employees from machine hazards such as ingoing nip points or sparks. The employer may choose how to protect its employees from those hazards.

Performance-based standards leave room for an equally protective alternative; prescriptive ones sharply limit what an employer can offer. This distinction drives the analysis of whether to grant an accommodation that seems to impinge on safety precautions. In those situations, the employer should first identify the specific workplace rule at issue and trace it to its source, whether OSHA, another binding federal authority, or an internal policy. The employer can then identify if the rule is legally mandated by OSHA or if it's a best practice or company-created rule.

- If the employer's internal rule is stricter than the legal mandate, then employer should determine why and whether that stricter approach is necessary. Is the stricter, internal mandate merely a best practice? Would an accommodation allowing for a different, but still protective, approach suffice?
- If the internal rule stems from a legal regulation/standard, is that regulation prescriptive or performance-based?
    - If the original regulation is performance-based, the employer should explore if there are alternative means of achieving the same level of protection.

For example, OSHA requires employers to provide equipment that protects employees' eyes from flying particles. If an employer stocks standard safety glasses, and an employee with reduced vision indicates that the standard safety glasses are inadequate, then it would likely be a reasonable accommodation for the employer to provide specialized, prescription safety glasses. The prescription glasses are equally protective and allow the employee to continue working safely while ensuring the employer complies with OSHA requirements.

- If the rule is prescriptive, the employer should consider whether OSHA has approved any alternative means of compliance; if no approved alternative exists, an accommodation that renders the employee less safe is not required. The employer should still consider whether there are alternatives that don't reduce safety but still accommodate the employee's disability.

For example, is there other equipment that might accommodate the employee's needs, such as extra task

lighting, or might a change in their work hours suffice as an accommodation?

Remember, regardless of the path the analysis takes, the individualized assessment is never optional.

Final Takeaway

An employer cannot be held liable under the ADA for failing to offer an accommodation that is expressly prohibited by law. But before an employer denies an accommodation because it "violates OSHA," they should:

- Engage in the interactive process – understand the employee's hurdle and explore alternatives for overcoming it.
- Know the source of the safety rule – if the accommodation affects an employee's ability to follow a safety rule, identify the legal underpinnings of that rule. Does the law allow the employer any discretion in how employees are protected from the hazard at issue?
- Document the process – especially if the employer is inclined to deny the accommodation request, it is important to document the analytical process used to reach the denial.

When an employer's safety and disability-related accommodation obligations appear to collide, the best approach is a careful, individualized, and well-documented process that protects both the employee's rights and the employer's legal duty to maintain a safe workplace.