

Juggling a Workers' Compensation Claim with the Interactive Process

By Barbara L. Harris Chiang

If an employee is injured and files a workers' compensation claim, you can just sit back and wait for the claim to be processed, right? No, employers must also assure compliance with the requirements under the ADA and other state laws such as California's Fair Employment and Housing Act to engage in the interactive process and provide reasonable accommodations for employees' work restrictions.

Regular communication with the injured employee, also known as the interactive process, and diligent documentation can help prevent related, expensive civil claims.

If the employee misses work due to the injury, ask the employee to provide documentation from the medical provider authorizing the absence. Begin a discussion of the return-to-work process by letting the employee know that they need to keep you up to date about their work status, including how long they expect to be off work and when follow-up appointments are scheduled.

Once an employer becomes aware of an employee's need for accommodation, the employer has a duty to engage in the interactive process. There is no special form or specific language required for a request for accommodation. Any notice of work restrictions, whether temporary or permanent, should be treated as a request for accommodation.

Begin the interactive process by obtaining work restrictions from the employee. Most initial requests for accommodation do not contain all the information an employer needs to identify and select appropriate reasonable accommodations. Ask the employee for more details regarding the accommodation requested. Document your requests and the information that the employee provides. If you need ideas for

an appropriate reasonable accommodation, Job Accommodation Network (JAN) , offers a free

searchable online database of accommodations for a variety of issues.

To formulate a reasonable accommodation, identify the "essential functions" of the employee's job. Essential functions are the fundamental purpose of a job. Discuss the actual activities, demands, and environmental conditions required by the employee's job with the employee and his or her supervisor. Once you and the employee agree on the essential functions and duties, document it, in writing.

Ask the employee to provide documentation, in writing, from his or her doctor outlining all work restrictions. If the information from the doctor is unclear, ask for further clarification.

If the employee has temporary work restrictions, ask for the anticipated end date of the restrictions, in writing. If the employee has permanent restrictions, continue engage in the interactive process determine a reasonable accommodation. Streamline the process by instructing the insurer to notify you as soon as a Permanent and Stationary finding or other finding of permanent disability has been issued.

After receiving sufficient information to assess potential accommodations, schedule a meeting with the employee to discuss reasonable accommodations. The discussion should include suggestions for modifications to the employee's present position or assignment to an alternative open position. With the employee, assess how effective each accommodation would be in allowing the employee to perform the job. Share all important information, communicate openly, and encourage a genuine, meaningful dialogue.

Once a reasonable accommodation has been offered, implement and monitor the accommodation. Support the employee's return to work and establish an open line of communication with the employee to adjust accommodations accordingly to aid the recovery process.

The interactive process requires each side to engage in a good-faith exchange of information. Document all communications with the employee contemporaneously, and if written communication is provided to the employee, require a signature confirming receipt. If an employer fails to respond, reach out to the employee more than once and in multiple ways (phone, email, mail, overnight mail) before concluding that the employee has failed to participate.

Remember the key to a successful interactive process with a pending workers' compensation claim, or any medical condition, is open and regular communication and documentation of the process.

DOCUMENT, DOCUMENT, DOCUMENT, and COMMUNICATE, COMMUNICATE, COMMUNICATE.

Thank you to Stacey Chiu for her assistance with this blog.