11 Employer FAQs: (No. 1) What exactly is this "interactive process" we hear so much about?

By Robin E. Shea on August 26, 2011

Over the next 11 business days, I'll have a series of short posts addressing common questions that employers have about the law. If there is an "FAQ" that you would like for me to address, please let me know in the comments box.

I may also have more in-depth postings as circumstances warrant.

Employer FAQ No. 1: "What exactly is the interactive process?"

The quick answer is this: The "interactive process" is simply an employer's sitting down with an employee who needs a reasonable accommodation and discussing options, *directly with the employee.* The "sit-down" can be a literal in-person meeting, or it can be done through phone calls, letters, or emails -- the main point is that it should be directly between the employer representative and the employee.

(In-person is obviously preferable but may not be possible with an employee who is on a medical leave, or who works in a remote location.)

The Americans with Disabilities Act requires that employers make reasonable accommodations to employees with disabilities. (And, as we all know by now, thanks to the ADA Amendments Act, just about everybody who claims to have a disability actually has one.)

The U.S. Equal Employment Opportunity Commission, which enforces the ADA, strongly recommends that you communicate directly with employees who need reasonable accommodations. Many employers spend time with their physicians, nursing staff, and with the employee's managers and supervisors, in assessing reasonable accommodation requests but neglect to discuss them directly with the employee seeking the accommodation. **head slap!**

In some jurisdictions, failure to engage in the interactive process is, in itself, a violation of the ADA. But even in jurisdictions that are less severe, an employer will be liable for failure to make reasonable accommodations if there was an effective accommodation that would have come to light if the

employer had held the "sit-down" with the employee. In other words, in those jurisdictions the rule is "no harm, no foul," but if there is "harm" that could have been avoided through the sit-down, the employer has to suffer the consequences.

So, no matter where you are, having the sit-down, a.k.a. "engaging in the interactive process," is very important.

And, I'm glad to say, this isn't even a complete "negative" for employers. There are a number of reasons why an employer should welcome the ADA sit-down:

***The employee may suggest an accommodation that is easier and less expensive or disruptive than the accommodations that the employer had in mind.**

***It's good for morale.** The employee will feel much more warm and fuzzy about an employer who actually takes the time to have an in-person discussion about her need for accommodation. And if she feels that you actually care about her, she is much less likely to pursue legal action.

***In the case of employees with severe conditions, the employee may frankly admit that no reasonable accommodation is possible.** (*I have actually had this happen a number of times.*) Of course, that admission will be extremely helpful to the employer later on in defending a charge or lawsuit. (*Yes, I've had people admit that no accommodation was possible and then file an EEOC charge alleging failure to accommodate - go figure! But we've always won.*)

Don't forget to send me your own employer FAQs! And don't forget that if you vote for ~~Pedro~~ *Employment & Labor Insider*, all of your wildest dreams will come true.