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# **GUIDANCE ON ACCOMMODATIONS**

**Topic: Evaluating Requests for Modified Work Schedules**

*“Companies that create a fixed response to requests based on a policy…leave no room for considering a modified work schedule as an accommodation.”*

Each request should be evaluated on a case by case basis. Consider the unique circumstances of an individual’s medical condition. Companies that create a fixed response to requests based on a policy, e.g., per company policy, every employee must have open availability to work a rotation schedule as an essential function of the job, leave no room for considering a modified work schedule as an accommodation. This may not withstand challenges.

Determining if a request for a modified work schedule is reasonable requires a thorough and the employee.

There are a number of scenarios where an employee may request a modified work schedule as an accommodation. Scenarios may include but are not limited to the following:

1. **Employee requests a modified work schedule due to night blindness.**

An employee requests to work 7 a.m. to 4 p.m. due to their inability to drive after daylight. Even if an employee does not need an accommodation to perform his essential job functions, he may need an accommodation to get to work. Such accommodation requests have been determined to be reasonable in some cases. An evaluation should be completed to consider whether the employee can be accommodated. Often such requests are accommodated by adjusting the employee’s schedule according to the seasonal change in daylight hours.

***EXAMPLE****:**While the employee may be scheduled to work from 9 a.m. to 6 p.m. during spring/summer months, an employer may adjust employee’s schedule during fall/winter months when it becomes dark as early as 4:30 or 5:00 p.m. to support the employee’s needs. However, it is important for management to ensure the employee’s schedule is readjusted to work the later hours during spring/summer months. This will allow the company to defend against any future claim suggesting the ability to work a later shift is not an essential function of the job.*

*NOTE: When analyzing these requests, it is always important to determine what other policies/practices may exist that could help or hinder your decision to support/deny the request. Consider, for example, a tuition reimbursement benefit offered encouraging employees to continue their college education. Management may modify an employee’s work schedule to accommodate their class schedule. If this is true – the employer would not be successful in denying a modified schedule for an employee making the request pursuant to an ADA accommodation.*

1. **Employee requests an adjusted start time of 9am to accommodate a permanent medical condition that requires medication that occasionally makes him “slower” in the morning.**

The employee has a history of tardiness and only initiated the request for an accommodation after management began the corrective action process. What should you do? Speak with the manager to find out the impact to the business if employee does not report to work until 9 a.m. (Consider size of dept., staff available, etc.). Then, review the employee’s attendance record to determine history of tardiness at 5 minutes, 30 minutes, 1 hour late. Now, consider offering an accommodation for an adjusted start time. For example, if an employee is scheduled to work 8 a.m. to 5 p.m., can you offer a flexible start time of 8-8:30 a.m.? If the employee arrives after 8:30 a.m. he is considered tardy. This demonstrates the company’s willingness to support the medical condition yet still have predictable arrival time to support the needs of the business. Because this is a permanent medical condition, directing someone to use intermittent FMLA may not be the best solution for the business. Another solution might be a job reassignment to a position that satisfies the requested start time.

1. **An accommodation requesting to “work when I want to” is not a reasonable request.**

A request for a flexible schedule is not a reasonable request if the employee requests to work whenever he/she wants to work. This often comes in the form of an escalation from management for HR to review an attendance issue that includes late arrivals and/or early departures from work. The employee suggests to management that this is due to their own medical condition. HR has the opportunity to support the business by learning the specific facts of the case and addressing the issue through an interactive process. If appropriate, this process may result in an accommodation supporting an adjusted start time. The key here is to establish reasonable boundaries of accountability so an employee’s attendance may be managed going forward.

**4. Evaluating a request for a “reduced work schedule.”**

A reduced work schedule is often requested upon an employee’s return to work following a medical leave of absence. Such requests are typically for a fixed period of time with a planned progression in the number of hours an employee may work in a given shift or workday. For example, an employee has been on leave for heart surgery. The doctor has released the employee to return to work for 5 hours per day for the first week, increasing to 6 hours in week 2, and the full 8 hours in week 3. The employee has no FMLA time remaining (FMLA should always be used if available for reduced work schedule requests) and requests a reduced work schedule as a workplace accommodation. This accommodation would be reasonable given the expected progression to resuming a full time schedule. Management should continue working with HR to ensure the employee resumes a full time schedule as expected.

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