



How Employers Can Navigate Disability-related Misconduct and the Interactive Process

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Complying with the laws and regulations governing how to address the needs of employees with disabilities can be complicated. It becomes even more challenging when an employee with a disability has engaged in behavior that warrants termination. Navigating that kind of situation can be tricky. Attorneys Dena B. Calo and Joshua E. Knapp offer some insights into how an employer can handle such a situation, by using a hypothetical scenario.

Dear Employment Law Specialists,

I work in human resources for a furniture delivery service. Last night, one of our drivers, "Harris," drove through a stop sign and caused a major accident, damaging cargo in the process. When I approached Harris to terminate his employment, he mentioned for the first time that he suffers from a disability (macular degeneration) and has trouble seeing road signs when it is dark outside. Can my company move forward with terminating Harris even though the accident may have resulted from his disability? Does it matter that we do not have any written policies on employee discipline? – P.C., HR Director

Dear P.C.,

Terminating an employee is never easy, especially when he or she may have a disability, so you are wise to exercise caution. Assuming your company has 15 or more employees, the [Americans with Disabilities Act Amendments Act](#) applies to your workplace, and can understandably lead to some difficult questions.

Can my company move forward with terminating Harris even though the accident may have resulted from his disability?

The U.S. Equal Employment Opportunity Commission provides guidance on this specific topic, in a memorandum titled "[The Americans With Disabilities Act: Applying Performance And](#)

Conduct Standards to Employees With Disabilities.” When an employee does not give notice of the need for accommodation until after a performance problem has occurred, reasonable accommodation does not require that the employer:

- tolerate or excuse the poor performance;
- withhold disciplinary action (including termination) warranted by the poor performance;
- raise a performance rating; or
- give an evaluation that does not reflect the employee’s actual performance.

If an employee’s conduct is such that the appropriate discipline is termination, then the employer may follow through with the termination, without further investigation into the employee’s disability. However, when an employee’s conduct necessitates discipline but not termination, the employer should engage in further discussion with the employee to determine whether reasonable accommodation will be necessary to prevent future misconduct.

Based upon your assertion that Harris did not provide notice to your company that he suffered from macular degeneration until after the accident, your company is not required to excuse Harris’s poor performance and can terminate his employment without regard to his disability. Had he mentioned his medical condition before the accident, however, your company would have been obliged to engage in the interactive process in order to investigate whether Harris should be granted a reasonable accommodation, such as driving only during daylight hours or switching to a non-driver position with the company.

Does it matter that we do not have any written policies on employee discipline?

According to EEOC guidance, an employer may enforce conduct rules that are not found in workplace policies, employee handbooks or similar documents so long as they are:

1. job-related and consistent with business necessity; and
2. applied consistently to all employees and not just to a person with a disability.

It is clear that your company’s success relies upon safe driving and furniture arriving at its destination without any damage, conditions which evidently are job-related and consistent with the business necessity of your company. As long as your company is consistent in how it disciplines employees for unsafe driving and damaging truck cargo, then a written policy to support your disciplinary actions, including terminations, is not necessary.

In this instance, Harris was not driving safely when he caused the accident and damaged furniture in his truck. While having a written policy on employee discipline would be ideal, based upon the information you provide, your company may terminate Harris without violating ADA’s protections.

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