

NORTHERN WESTMORELAND CAREER & TECHNOLOGY CENTER

ADMINISTRATIVE
REGULATION

347-AR-2. RESPONSE TO REQUEST FOR LEAVE/ACCOMMODATION

Re: Request for Leave/Accommodation

Request For Leave

You have reported a workers' compensation injury and are taking time off as a result of that injury. Because taking time off from work can be considered an accommodation under the Americans with Disabilities Act (ADA), the Center sends this letter and will discuss relevant issues with you to ensure the center complies with the ADA.

Initially, the center is asking whether you are claiming to be a disabled individual as defined in the ADA. The center will not make any assumptions and will not regard you as disabled if you are not claiming to be disabled under the ADA. It is important to note that the definitions of disability are different under the Workers' Compensation Act and the ADA. Therefore, even if you are disabled under the Workers' Compensation Act, you may not necessarily be disabled under the ADA. The center is asking you to reply simply and specifically whether you are claiming to be disabled as that term is defined in the ADA. If you are not disabled under the ADA, you have no right to any accommodations.

To assist you in determining whether you are claiming to be disabled as defined in the ADA, the term disability is defined in the ADA as follows:

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

Under the first clause of this definition, in order to be disabled, a person must have both: a physical or mental impairment, and that impairment must substantially limit a major life activity. Under applicable regulations and guidance statements from the Equal Employment Opportunity Commission (EEOC), an impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs, which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain system, emotional or mental illness, and specific learning disabilities.

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If there is a substantial limitation, the impairment must be one that “substantially limits a major life activity.” Major life activities include such things as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Whether an individual has a limitation of a major life activity cannot be assessed taking into consideration mitigating measures, such as auxiliary aides and services.

If your only substantial limitation is with respect to work, special rules have been adopted by EEOC and applied by the Courts. Specifically, in order to be disabled as the result of having a substantial limitation with respect to the ability to work, the limitation must be with respect to a broad classification of jobs and not with respect to any particular job. The inability to perform specific functions within a particular job or to perform the essential functions of a specific job does not constitute a substantial limitation of a major life activity. For example, one Court held that a lifting restriction due to a back injury did not qualify as a statutory disability because no showing was made that the employee was disqualified from a range of jobs. Another Court held that a 25-pound weight restriction in work was not a serious limitation on a major life activity of working so that the employee did not have a disability under the Americans with Disabilities Act. A third Court held that an employee did not have a disability under the ADA because there was insufficient evidence that his disabilities had eliminated him from a broad range of jobs within the region based on skill, education, training and knowledge.

The foregoing is provided so that you have a basis for advising the school (center) whether you consider yourself to be disabled under the ADA. Further information can be obtained on the web site of the United States Department of Labor.

Request For Accommodation

The guidelines below are provided by the Equal Employment Opportunity Commission as to how employers are to respond to a request for accommodation.

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, using a problem solving approach, should:

1. Analyze the particular job involved and determine its purpose and essential function.
2. Consult with the individual with the disability to ascertain the precise job-related limitations imposed by the individual’s disability and how those limitations could be overcome with a reasonable accommodation.
3. In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position.

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4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

I am enclosing with this letter a listing of what the center has determined are the essential functions of your job. However, sometimes the employee who performs the job may have a different idea of what the purpose and essential functions of the job are than does the center. It is useful to know what the employee believes the purpose and essential functions of the job are in order to fully analyze the job functions. Therefore, the center is asking that you provide a listing of what you believe are the purpose and essential functions of your job. Please respond reasonably promptly whether you believe the enclosed listing is inaccurate in any respect. If you believe the enclosed listing of essential functions is inaccurate or incomplete in any way, please provide what you believe to be accurate information.

What do you believe the precise job-related limitations imposed by your alleged disability are, in the event that you are claiming to have a disability? Would it be useful to have an independent medical examination of you so that the school (center) can receive medical documentation of what your precise job-related limitations are? If so, I suggest that it may be proper and appropriate to have existing medical records shared with the IME doctor so that s/he has necessary background information. The school (center) itself does not need to see those records for this purpose, unless you decide to share that information for the purpose of engaging in an interactive process.

How or why do the suggested accommodations stated in your physician's letter impact the precise limitations that you may claim you have and how do those accommodations overcome those limitations? Are there other accommodations that may also overcome the precise limitations that you may claim you have? If so, what are they?

A center representative(s) would like to meet with you at a mutually convenient time to engage in the interactive process required by the Americans with Disabilities Act. Please contact me and provide dates when you are available for such a meeting. I look forward to hearing from you.

Signature

Title

Date