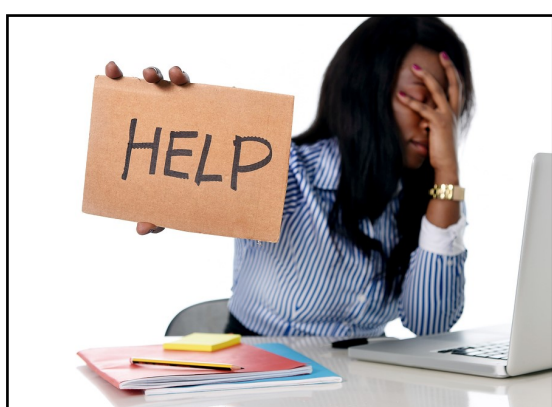


# MANAGER TRAINING

## Everyone is Depressed Sometimes ...

### Why Should I Have to Provide Reasonable Accommodation for Depression?



#### The Employer May Have to Provide Reasonable Accommodation for Depression.

It may surprise you that an employee suffering from depression may be considered disabled and entitled to reasonable accommodation under the Americans with Disabilities Act (“ADA”).

#### How Should Judy, The HR Director, Proceed?

Here, Nancy has indicated that she has a medical condition that limits her ability to work. Thus, Nancy has given Judy enough information to put the Resort on notice that she has a disability and may be entitled to reasonable accommodation (in this case a short leave of absence).

At this point, the Resort is required to engage in the interactive process with Nancy in order to determine a reasonable accommodation. This is accomplished by doing the following:

#### 1. Speaking With Nancy About Her Limitations And Discussing Possible Accommodations The Resort Can Offer

Here, Nancy has stated she is unable to work because of depression. Under the ADA, a short leave of absence can be an appropriate accommodation. While Judy is willing to grant Nancy’s request for a leave of absence as an accommodation, Judy can ask Nancy to provide her with medical certification from her health care provider that sets forth the specific accommodation requested, and, in the case of a leave of absence, the length of the leave (including an anticipated return date).

#### 2. Granting Nancy’s Request For A Leave Of Absence

After determining that a leave of absence will be the accommodation provided, Judy should also provide Nancy with all relevant paperwork regarding her leave of absence – including, if applicable, FMLA designation. In addition, Judy should also tell Nancy that the Resort will require her to provide medical certification before she will be allowed to return to work. This measure is important because the obligation to engage in the interactive process continues after Nancy returns from disability leave and she may have work restrictions that require a discussion about possible reasonable accommodation.

#### 3. “Touch Base” With Nancy During Her Leave

Judy should not inundate Nancy with phone calls during her leave. However, it is a good practice to “touch base” with Nancy several days before the anticipated return to discuss her return.

If Nancy cannot to return to work, Judy may request additional certification from Nancy’s health care provider and continue the interactive process by discussing an accommodation of additional leave.

If Nancy is able to return to work, Judy can remind Nancy of the required return to work certification and, if appropriate, Judy should continue the interactive process by discussing possible accommodations Nancy may need when she returns to work.

#### 4. Nancy’s Return To Work

If Nancy is able to return to work with restrictions, then the Resort must engage in the interactive process with Nancy “in good faith”. This means the Resort must be flexible and address the unique needs of Nancy when determining reasonable accommodation. Depending on the restrictions of a particular employee, a reasonable accommodation could include reassignment, implementing a reduced or modified work schedule, allowing the employee to work from home, etc. There is no standard list from which employers can work. Ingenuity and cooperation can often result in some very creative and inexpensive solutions.

If Nancy is able to return to work without restrictions, then she must return to the same or equivalent position. An equivalent position is one that is *virtually identical* to Nancy’s former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. In order to avoid any possible claims of discrimination when an employee returns to work from medical leave it is best that he or she be reinstated to their same position.

#### 5. Follow Up With Nancy

After Nancy is back at work, Judy should follow up with Nancy regularly and insure that Nancy’s return to work was “smooth” and that Nancy is not facing any retaliation. If Nancy returned to work with restrictions, Judy should also verify that the accommodation agreed upon is being provided and is working for Nancy. Judy should also tell Nancy that the Resort requires updated medical certifications when Nancy visits the doctor so that Judy knows if Nancy has different restrictions in order to accommodate accordingly.

#### 6. Document, Document, Document

Every step of the interactive process should be documented.

#### Conclusion

Remember, employees do not have to expressly request a reasonable accommodation. An employee need only mention a potential disabling limitation to trigger an employer’s duty to engage in the interactive process with Nancy to determine if Nancy has a disability that requires accommodation.

Please be advised that many states have enacted their own laws providing additional protections to persons with disabilities. While this manager training only focuses on the federal ADA, the laws in some states may apply to smaller employers. It is recommended that you contact an HR Professional and/or refer to our online materials regarding disabilities by logging onto the website, clicking the HR Tasks link at the top, then under the Leaves & Time off heading, click on “Disabilities—Guidance for Employers” before responding to an employee’s request for accommodation.