

Welcome to the twelfth and final issue of *Compliance Check 2020*. We hope you've found our monthly self-assessments of your company's compliance with federal, state and local employment laws and regulations helpful and informative. We've covered everything from handbooks to internal investigations to OSHA inspections and a variety of issues in between to help you get your company ready for the new decade. In this last edition we help you evaluate your company's readiness to address requests to accommodate disabilities and religious needs.

The Americans with Disabilities Act requires an employer to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment, unless doing so would cause the business undue hardship. Similarly, Title VII of the Civil Rights Act of 1964 requires employers to reasonably accommodate the religious beliefs and practices of applicants and employees, unless doing so would cause more than a minimal burden on the operation of the employer's business. A reasonable religious workplace accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion.

Although these two topics seem distinctly different, both types of accommodation requests have fundamentally similar process requirements, including a standard interactive process, verification that the underlying request is bona fide, an individualized analysis and documentation of the process. And the risk of failing to meet any of these requirements is equally high, with the EEOC and individual plaintiffs increasingly pursuing discrimination claims in court.

Here are some questions to help you evaluate your company's ability to respond to accommodation requests:

- ☑ **Does your company have a defined process to address accommodation requests?** A defined process typically includes several steps: evaluating the request, obtaining appropriate documentation from the

employee, analyzing any burden the request would place on the business and documenting the process.

- ☑ **Are your supervisors and managers trained to identify and act on requests for accommodation?** Not all accommodation requests come in written form that can easily be passed along to HR for review. The EEOC has said explicitly that accommodation requests do not have to be made in writing. As a result, supervisors and managers must be able to recognize a request for disability or religious accommodation and know what they need to do after a request has been made.
- ☑ **Does your company have documentation prepared to help clarify the nature of the employee's request?** If an employee seeks an accommodation for a disability, do you have paperwork his or her doctor can complete to explain the employee's disability and functional limitations? With respect to a religious accommodation request, do you have a document the employee can complete to identify the relevant religious belief or practice and provide specific information about how the accommodation would enable participation in the religious practice or belief without affecting the ability to perform his or her required job functions? Is your company prepared to seek documentation or other authority to support the need for an accommodation based on the employee's religious practice or belief?

- ☑ **Are the employees who will be responsible for engaging in the interactive process properly trained and prepared to respond to accommodation requests?** Can they appropriately determine whether a requested accommodation meets the criteria for a disability or bona fide religious practice or belief? If the accommodation requested by the employee is not feasible, are they able to describe alternative accommodations the company might consider? With respect to disabilities, certain websites can provide a wealth of ideas for possible accommodations for all types of medical conditions. Can they determine whether an accommodation would actually create an undue burden on the company? It is important to understand what issues could truly cause a hardship for a company. Will they accurately document all aspects of the above process, including through letters to the employee confirming the accommodations that are being provided?
- ☑ **Is your company prepared to ensure that supervisors or co-workers will not retaliate against employees with accommodations?** Retaliation can come in many forms, so you should have non-retaliation policies in place and regularly conduct training to ensure your employees understand them.

FOR MORE INFORMATION

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