

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Accommodation and Compliance Series: Performance

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JAN'S Accommodation and Compliance Series

Introduction

Establishing and uniformly applying performance standards allows employers to consistently evaluate employees and readily identify and respond to performance issues. Performance issues can occur for many reasons and can sometimes develop due to disability-related limitations, but this may not be known prior to addressing performance issues. According to the [Equal Employment Opportunity Commission \(EEOC\)](#), under the ADA, employees with disabilities may be held to the same [performance/production standards](#) as employees without disabilities in the same job. Employers are not required to disregard, change, or eliminate performance standards as reasonable accommodation.

It's not always apparent that disability-related limitations are a factor in poor performance. Performance evaluations can lead to disability disclosure when employees recognize a disability-related connection and choose to share information about their limitations, and/or request reasonable accommodation, in response to a poor performance review. In managing employee performance, it can be useful for the employer to clearly state the performance requirements (e.g., attendance policy, production standard, etc.), share what has been observed, explain the consequences of not meeting the required performance standards, and ask the employee what/if anything can be done to support them in meeting the requirements. This creates a safe space for disability disclosure and opens the door to discuss reasonable accommodation, which can play a key role in performance improvement. Reasonable accommodation is meant to enable an employee with a disability to meet the performance standards, not to exempt them from meeting the standards.

The following tips may be useful when addressing performance issues:

- Establish performance standards, and apply them uniformly and consistently to all employees, including employees with disabilities.
- Document performance issues early, and always.
- Inform employees about observed performance issues. Explain the consequences of not meeting performance requirements, establish clear expectations and a timeframe for improvement.
- Offer support and inform employees that assistance is available to enable them to meet performance standards. Explain how to request this type of assistance. For example, mention something like, "If you believe there is anything we can do to support you in meeting the required performance standards, please let [XYZ person] know."

- Recognize when disability disclosure, or a request for reasonable accommodation, is a trigger to engage in the interactive process in response to a poor performance evaluation.
- Implement reasonable accommodations to improve performance, monitor for effectiveness, and re-evaluate performance with accommodations in place.

Detailed information about applying performance and conduct standards to employees with disabilities can be found in the following [Equal Employment Opportunity Commission \(EEOC\) enforcement guidance documents](#):

- [Applying Performance and Conduct Standards to Employees with Disabilities](#) for guidance on how to respond when an employee requests accommodation for the first time in response to counseling or a low performance rating (question 6).
- [Reasonable Accommodation and Undue Hardship under the ADA](#) for guidance on whether an employer may or must ask an employee with a known disability whether they need a reasonable accommodation when one has not been requested (questions 40-41).

For more information on this topic, or any other ADA or accommodation issue, [contact JAN](#).

Situations and Solutions:

A social worker was having difficulty concentrating and prioritizing due to Attention Deficit/Hyperactivity Disorder (AD/HD).

These limitations affected her ability to complete paperwork in a timely manner, which led to a poor performance review. She requested that the employer reduce her caseload as an accommodation. While not required as accommodation, the employer was willing to reduce the employee's caseload for two weeks to enable her to catch-up with paperwork. After the two-week period, the ordinary production standards were reinstated and the employee was accommodated with a designated hour each day for uninterrupted time to work on paperwork. During this time, she was not required to accept phone calls, respond to emails, or meet with colleagues or clients. The employee's supervisor also assisted with prioritization by classifying cases by level of priority and creating checklists to assist her with completing paperwork.

A data entry clerk with low vision was having difficulty meeting production standards.

The data entry work required her to access multiple applications on her monitor. It was difficult to keep track of each application and to read smaller fonts, which slowed her daily progress. She was provided screen magnification software and a second, larger sized monitor as an accommodation. This enabled her to enlarge text and application icons for ease of access, and to simultaneously view two applications at once, which increased her productivity.

A customer service representative working in a call center was taking frequent restroom breaks.

He was away from his workstation for more breaks than were normally permitted and this was affecting his call completion number. When counseled for low completion rate, he explained that he was taking medication that required him to use the restroom about every hour. The employer would not change the call completion standard, but in an effort to help him improve performance, the employee's workstation was moved closer to the restroom, and he was permitted to restructure his two planned fifteen-minute breaks to be used as six five-minute intervals during his shift. This allowed him to use the restroom as-needed, without taking additional breaks.

A retail sales manager was frequently late to work due to flare-ups of a gastrointestinal disorder

She was late several times and incurred points that resulted in a written warning, in accordance with the employer's attendance policy. During flare-ups, she often had to stop to use the restroom during her commute to work. She was the only manager who could open the store each day and being tardy affected business operations. As an accommodation, the employer was willing to modify the attendance policy to excuse occurrences during a flare-up. However, the manager had to be reliably present to open the store. She was reassigned to an afternoon-shift manager position.

An employee with a small advertising firm started missing deadlines on a regular basis.

During a semi-annual performance review, the employee was placed on a performance improvement plan. The employer was unaware of any disability-related reasons for not meeting the performance requirements but asked if anything could be done to help the employee improve performance. The employee shared that he was experiencing limitations associated with anxiety and depression, making it difficult for him to stay on-task. He was working with his healthcare provider to change medications, which affected his ability to sleep and function effectively through the day. The employer was willing to allow the employee a flexible schedule and the opportunity to work at home, on occasion, to enable him to work at nontraditional office times, when he was most alert. He set-up electronic alerts using a project management app to remind him of important deadlines, and his supervisor checked-in with him periodically regarding his progress.

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