

# JAN

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## Accommodation and Compliance Series

# Accommodation and Compliance Series: Third Party Vendors

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## **JAN'S Accommodation and Compliance Series**

### **Introduction**

In the last few years there has been an increase in companies offering to process accommodation requests for employers. Basically, what happens is a company, or third-party vendor, is paid by an employer to handle accommodations from start to finish. Accommodation requests are typically made directly to the third-party vendor. The vendor often gathers whatever medical information is needed, explores accommodation ideas, helps choose what accommodation will be made, and then oversees implementation of the accommodation. The vendor is also typically involved in any problems that come up after an accommodation is in place.

As with any workplace issue, there are pros and cons with using a third-party vendor to process accommodation requests. The pros that we've heard from employers include consistency in processing requests; for example, you won't have different supervisors or offices in different states making different decisions. Another pro is the focused attention that can be given to accommodation requests; in many workplaces, supervisors and human resource personnel are very busy people with lots to keep up with. Processing accommodations can sometimes take time and often competes with other duties – a third-party vendor probably doesn't have all those other duties and can put its full attention on the accommodation situation. A related pro is that a third-party vendor can often streamline the accommodation process, resulting in a faster process, which means employees get their accommodations faster.

On the con side, a third-party vendor isn't in the workplace on a day-to-day basis so won't be as familiar with the workplace culture and what accommodations might work best for the employer. Also, the third-party vendor doesn't know individual employees either so may not know what accommodations will work best for the employees. And, perhaps most important, the employees don't know the third-party vendor. If you think about some of the information that an employee must disclose when requesting an accommodation, there needs to be some trust involved – trust that the employee's disclosure will be treated with respect and kept private. And when you're talking about disclosing to virtual strangers who will be making very important decisions that can affect a person's job, that can be a challenge.

So how does an employer take advantage of the benefits of using third-party vendors while overcoming the potential disadvantages? Here are some things we've seen that may help.

First, employers should make sure the vendor actually understands the requirements of the ADA – employers who use third-party vendors are still responsible for making sure employees with disabilities get the accommodations they need. So it not only benefits employees for the third-party vendor to know what it's doing, but also the employer, who

certainly doesn't want to end up with ADA complaints based on the third-party vendor's actions.

Second, employers might want to have the third-party vendor, or at least the representatives who will be processing accommodation requests, come into the workplace to meet all employees. Sometimes meeting someone face to face can help overcome trust issues.

Third, employers should tell employees what the vendor will be doing and why they've chosen to hire a third party to process accommodations. Knowledge can be so helpful in this type of situation. We've had employees call after they've been told to call a third-party vendor and they have no idea who they're calling and why. The result can be that employees feel like the employer doesn't want to accommodate them.

Which leads to the fourth point – employers need to stay involved in the process. They should join in conversations during the interactive process and sign off on the final decision. Turning over the process 100% to a third party isn't generally a good idea. If a complaint is filed against the employer for failure to accommodate under the ADA, employers are not off the hook just because they've turned over the accommodation process to someone else.

And finally, as with any workplace issue, employers need to make sure to stay in communication with any employee who has requested an accommodation. Employers shouldn't tell employees they won't talk to employees about the process or any concerns employees might have. Employers should stay informed and quickly fix any problems before they get out of hand.

So, third-party vendors can help employers in their efforts to comply with the ADA and provide effective accommodations, but that doesn't mean employers should just hand over everything – they need to stay involved in the process.

## Situations and Solutions:

**An employer hired a third party vendor to process all leave and accommodation requests.**

The employer reviewed all decisions made by the vendor in order to keep track of the leave and accommodations being provided and to ensure compliance with various laws.

**An employer hired a third party vendor to process its accommodation requests, but found that employees were uncomfortable talking about their medical conditions with people they did not know.**

The employer had representatives of the third party vendor come into the workplace to meet with all employees, explain its role in the accommodation process, and answer questions. This also helped the vendor become familiar with the workplace culture, which helped with choosing effective accommodations.

**An employer was unable to keep up with all the requests it had for leave and all the laws that might apply so it hired a third party vendor to process all leave requests.**

The employer continued to monitor the requests and work with the third party vendor to help ensure production levels were maintained when employees were out on leave.

**An employer was exploring the possibility of hiring a third party vendor to process its accommodation requests, but wanted to make sure the vendor was knowledgeable about the law and the interactive accommodation process.**

The employer asked the vendor to share examples of how it processed various accommodation situations and also asked for references from other employers who use the vendor.

**An employer hired a third party vendor to process all accommodation requests and required employees to talk directly to the vendor about all issues related to accommodations.**

After an employee filed a complaint for failure to accommodate, the employer realized that it should stay involved in the accommodation process, including talking to employees who had concerns, to help ensure compliance with the ADA.

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