

# Problematic Reasonable Accommodation Issues

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# Scenario 1

- You are the supervisor of a staff of 10 employees whose work involves providing technical support – by phone, in writing, and on occasion, in person – to recipients of grants from your agency. In general, the employees who work for you respond well to your hands-off style and like the fact that you are good at delegating tasks and trust their judgment.

# Scenario 1 (cont.)

- You have noticed, though, that one of your employees – whose work you have always considered “acceptable” but never “excellent” or “outstanding” – has been struggling more than usual during the past several months. Though his workload has always been lighter than his co-workers and you have avoided assigning the most complex projects to him, you have had complaints from some grant recipients that phone calls made to him have gone unanswered for days or weeks, and he has failed to meet deadlines for submitting drafts of technical assistance letters to you on several occasions.

# Scenario 1 (cont.)

- You raise these issues at the employee's mid-year review. He responds by saying, "I know. I have just not been myself for the past few months, but I think that if I'm given a little time, I can straighten things out." You tell him that "we'll assess things during the annual performance appraisal," but that if things haven't improved significantly, "we may need to take some more formal action."

# Scenario 1 (cont.)

- Things don't improve. If anything, they get worse. At time you tell the employee he is being rated "minimally acceptable," and will be placed on a 90-day performance improvement plan (PIP). The employee is shocked that his rating has fallen below the "full successful" level. The employee tells you that a month ago he was diagnosed with depression and with an anxiety disorder. He also says that he had told you during the mid-year review six months earlier that he was having medical problems and that he needed you to give him extra time to complete his assignments.

# Questions for discussion: Scenario 1

- Did the employee's comment during the mid-year progress review constitute a request for reasonable accommodation?
- What, if anything, should the supervisor have done differently during the mid-year review?
- Did the employee's response at the annual performance appraisal constitute a request for reasonable accommodation? If so, how should the employer respond?

# Scenario 1 (cont.)

- You respond that you never received a request for reasonable accommodation during the mid-year progress review or since then, and that the PIP is going to proceed. The employee responds angrily, throwing the performance appraisal on your desk, cursing at you and raising his voice as he says, “I’m not going to put up with this,” and abruptly leaving the office before the meeting is over, slamming the door as he goes. A few minutes later, the employee returns to your office and explains that although he was upset about the performance appraisal, he thinks he over-reacted as the result of the side effects of one of the medications his doctor is trying to alleviate the symptoms of his depression and anxiety disorder.

# Questions for Discussion: Scenario 1

- If the agency has a rule that employees who engage in conduct that constitutes insubordination toward a supervisor will be given a letter of warning as the first step in a progressive discipline policy, may the agency issue the employee such a letter?
- May the agency put the employee on the PIP if his “minimally acceptable” performance in fact resulted from the effects of his depression and anxiety disorders?

# Scenario 1 (cont.)

- You have determined that the statement about the employee's disability and the need for more time to complete assignments made during the annual appraisal meeting constitute a request for reasonable accommodation. You tell the employee about the agency's reasonable accommodation policies and give him the name of the Disability Program Manager who handles all requests for accommodation agency-wide, usually in consultation with employees' supervisors. The agency's internal reasonable accommodation procedures indicate that most requests for accommodation will be processed, and decisions whether to grant or deny them, will be made within 30 days. The 30-day period for processing requests begins after the employee has completed a "Request for Accommodation" form.

# Scenario 1 (cont.)

- The employee meets with the DPM two weeks after the meeting with his supervisor – the first day on which the DPM is back in the office following an extended vacation. He presents documentation from a psychiatrist indicating that the employee has depression and anxiety disorder, that there is an excellent chance both conditions can be managed effectively with medication, but that the employee would benefit from a reduced workload, a quiet place in the office where he could work, and permission to be excused from having in-person meetings with grantees to whom he is providing technical assistance.

# Questions for Discussion: Scenario 1

- Do you see any problems with the agency's reasonable accommodation policy?
- Which, if any, of these requested accommodations must the agency grant?
- What are some additional facts you might want to know in order to determine what accommodations are appropriate?

# Questions for Discussion: Scenario 2

- Can the agency get additional information beyond what the psychiatrist has provided to verify that the employee has a covered disability?
- What should happen with the PIP while the decision about whether to grant any or all of these accommodations is being made?
- If the agency grants one or more of these accommodations, may it periodically ask the employee to verify his continued need for the accommodation(s)?

# Scenario 2

- An employee went on leave for back surgery more than a year ago. Originally, she was expected to return within three months after the surgery. However, shortly before she was scheduled to return and during a follow-up medical examination, it was discovered that the employee had breast cancer that will require surgery, chemotherapy, and radiation treatments. The employee's oncologist recommends an additional six months off for treatment and recovery.

## Scenario 2 (cont.)

- While recovering from the surgery, the employee experiences two family crises. First, her daughter is severely injured in an automobile accident, and two months after that, her mother dies. The employee requests an additional six months of leave beyond the six months granted for the cancer surgery and recovery to care for her daughter and to deal with issues concerning settlement of her mother's estate and other personal affairs.

## Scenario 2 (cont.)

- The agency grants the additional leave, and just a week before the employee is scheduled to return to work, she calls to say that the previous evening, she had a fall on some ice outside her home, resulting in an aggravation of the back injury for which she had undergone the surgery 15 months earlier. Before her leave is scheduled to end, her doctor submits a note indicating that although the reinjury of her back will not require further surgery, the employee will need to be out for an additional two months, after which, “I hope she will be able to return to work, though there are never any guarantees and recuperation can sometimes take longer than is anticipated.”

# Questions for Discussion: Scenario 2

- As the disability program manager, how do you recommend the agency respond to this latest request for leave?
- What facts in addition to the ones described here would you need to know in order to evaluate the request for additional leave?

# Questions for Discussion: Scenario 2

- Suppose the agency decides to grant the additional leave. In two months, the doctor submits another note stating simply: “Employee is unable to return to work for an additional 30 days.” You are concerned that the situation may end up being one in which the doctor makes multiple additional requests for extensions of 30 days near the end of each leave period. What, if anything can you do?

# Questions for Discussion : Scenario 2

Suppose you follow up on the request for an additional 30 days by asking the employee to allow you to discuss her prognosis for recovery following an extension of 30 days of leave. The employee says she believes the doctor has already provided sufficient information and that there is no need for you to talk directly with her doctor. What options do you have?

## Scenario 2 (cont.)

- The employee allows you to prepare a letter asking certain questions about the course of the employee's recovery from her injury. Because the employee's job description says that she is required to lift packages weighing as much as 70 pounds, you ask the doctor if the employee will be able to perform this function following the additional 30 days of leave. The doctor responds: "It is impossible to know with conditions like this when or whether they will resolve themselves in such a way that an employee could do repetitive heavy lifting of up to 70 pounds. Given the progress the employee has made, it is reasonable to expect that within 30 days she will be able to return to her current job with the restriction that she lift no more than 10 pounds on a regular basis, with occasional lifting of no more than 30 pounds. I would recommend that these restrictions be kept in place for the indefinite future, subject to further evaluation."

# Questions for Discussion : Scenario

- Can the agency terminate the employee because of her inability to demonstrate that she can perform the essential functions of her job based on the doctor's recommended lifting restriction?
- What would you want to know before determining what to do?

# Questions for Discussion: Scenario 2

- Suppose lifting 70-pound packages really is required for the job, and there is no accommodation that would enable the employee to do it. Can the agency terminate her for inability to perform her job?

# Scenario 3

- An employee works at an agency facility within 15 minutes from her home by public transportation. She has a form of arthritis that causes her a great deal of pain early in the morning. However, because of the proximity of her home to her worksite and the fact that the agency has a schedule that allows employees to arrive half an hour before or after their scheduled start time, as long as they work their required number of hours, the employee is able to comply with the agency's rules concerning punctuality. On the few occasions during the year when the effects of her condition require her to arrive a little later than the half hour after her normal start time, the employee takes leave – usually no more than 30 to 60 minutes on any occasion.

## Scenario 3 (cont.)

- The employee moves to a home located more than an hour away from her worksite by car or public transportation. She knows that she will not be able to comply with the punctuality rule, and would need to take leave probably four out of five days a week in order to make up for late arrivals. Concerned that she will spend most of her leave making up for time lost as the result of late arrivals due to her medication, she asks her supervisor whether she can have a flexible work schedule that allows her to arrive later than half an hour past her scheduled start time and to work later in the afternoon or evening to make up the time.

# Questions for Discussion: Scenario 3

- What should the supervisor do?
- Does it matter that the problem the employee is having with arriving to work on time is related to her decision to move to another location further from her worksite?
- What facts would be important in determining whether a modified work schedule of the type the employee proposes is an appropriate accommodation?

# Questions for Discussion: Scenario 3

- Suppose a modified work schedule can't or need not be provided. The employee then requests reassignment to a job at an agency facility only 25 minutes from her home. The employee knows that someone at the facility will be retiring in the next couple of months. Does the agency have to consider the reassignment?
- Does it matter that the employee's need for the reassignment was the result of her decision to move?

# Scenario 4

- An employee at one of your agency's facilities in northern Wisconsin says that she would like to telework from south Florida. Most of her work involves interacting with federal contractors by telephone, by email, and by teleconference. The employee explains that "There is a facility where I can get better medical treatment for a condition I have. My parents, who are getting older and experiencing health problems are also down there. It would be good to be closer to them, since I am their only child." The agency has a facility in Miami, but no vacant positions for which the employee is qualified are available for reassignment.

# Questions for Discussion: Scenario 4

- Does the agency have to grant the request for telework?
- What are some questions you would want to have answered before granting this accommodation?

# Scenario 5

- An employee who uses a wheelchair says he needs a seat in first class and a personal assistant to help him with such tasks as dressing, eating, and using the bathroom while on travel.

# Questions for Discussion: Scenario 5

- Does the agency have to grant either or both of these accommodations?
- What facts would be important to know or what questions would be important to answer before deciding whether to grant or deny the accommodations?
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# Scenario 6

- A pregnant employee with pelvic inflammation and pregnancy-related sciatica that make it difficult for her to walk requests that she be assigned one of the designated “accessible” parking spaces in the employee parking lot so that she will be closer to the entrance. There is an available space, but the agency refuses to allow the employee to park there because it claims that pregnancy is not a disability, that the employee’s limitations in walking (which are expected to last for only three months) or temporary and so cannot be a disability, and that only employees with government-issued parking placards are allowed to use the accessible spaces.

# Questions for Discussion: Scenario 6

- Are the employee's limitations related to pregnancy disabilities within the meaning of the Rehabilitation Act?
- Can the employer limit access to the parking spaces only to those with government-issued parking placards?
- Suppose the employer decides to give the employee the space, and a month later, a newly-hired employee who uses a wheelchair asks for an accessible space but there are none available. How should the agency handle the request from the new employee?

# Scenario 7

- A federal agency periodically sends out emails with information about training opportunities available to federal employees. All emails include the same language stating that any employee who would like to take advantage of a particular training opportunity should contact his or her supervisor and complete a specific form. The agency directs all employees to contact the training providers, who may be other federal agencies or private vendors, about specific questions, including questions related to reasonable accommodations.

# Scenario 7 (cont.)

- An employee who decides that he is interested in taking a one-day course on planning for retirement from federal service. A private vendor conducts the training at a facility operated by another federal agency. He contacts the vendor to ask whether it will provide a sign language interpreter. A representative of the company says “that will be no problem” and asks the employee to send an email confirming the request. Two weeks later and one day before the training is scheduled to begin, the employee follows up with an email stating that his request has not been acknowledged and that he wants to make sure the interpreter will be available as previously agreed to by the company. The employee receives an email from someone else in the company who states that the person with whom the employee had communicated had no authority to approve the request, and that the company considered the employing agency to be the entity responsible for providing the interpreter.

# Questions for Discussion: Scenario 7

- The employee contacts you, as the reasonable accommodation coordinator, asking that the agency provide the interpreter as a reasonable accommodation. Is your agency required to do so? Why or why not?