
CHAPTER 4. MEDICAL DETERMINATIONS/REASONABLE ACCOMMODATION

4-1 Americans with Disabilities Act

- A. The Americans with Disabilities Act (ADA) which was enacted July 26, 1990, specifically Title V, Section 512, amends the Rehabilitation Act of 1973 to exclude persons who currently illegally engage in the use of drugs from the definition of an individual with a handicap. With respect to claims of discrimination, this means that the Department has no legal obligation under the Rehabilitation Act to provide reasonable accommodation to individuals whose performance problems are caused by current illegal drug usage.
- B. For purposes of Title V of the ADA, the term "individual with handicaps" does not include an individual who is currently engaging in the illegal use of drugs when an employer takes action on the basis of such use.
- C. The Rehabilitation Act, as amended in 1992 by Section 104(c) of the ADA, provides that:
- D. A covered entity (1) may prohibit ... the use of alcohol at the workplace by all employees; (2) may require that employees shall not be under the influence of alcohol ... at the workplace; ... (4) may hold an employee who ... is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees even when unsatisfactory performance or behavior is related to the ... alcoholism of such employees ...

4-2 Medical Considerations

- A. Medical documentation may be helpful in determining whether a particular accommodation is feasible and reasonable under the circumstances. If an employee alleges in an oral or written reply to a proposed action that a medical condition is causing the unacceptable performance, he or she must be afforded an opportunity (1) to explain how the medical condition contributed to his or her performance problems; (2) to provide any medical documentation concerning the nature of the condition to the agency for review; and (3) for consideration of any request for accommodation(s) which the employee believes will allow him or her to perform in an acceptable manner such as treatment or rehabilitation. 5 CFR Part 339 contains considerable guidance concerning medical issues relating to employees with performance problems.

- B. An employee may be offered (or ordered to take, if authorized) a medical examination in connection with his or her claim of a medical condition which impacts upon performance. Consideration must be given to the affirmative obligations of 29 CFR Part 1613.704 (Reasonable Accommodation) when an employee asserts that his/her medical condition contributed to the performance problems at issue.
- C. When the employee requests an accommodation which would require additional time to demonstrate acceptable performance following treatment and/or rehabilitation for his or her medical condition, consideration should be given to extending the notice period of the action, putting a decision to take action in abeyance, or entering into some form of last chance agreement with the employee.
- D. If an employee alleging a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, he or she shall be provided information concerning application for disability retirement. This process should not preclude or delay any decision on the performance-based action.

4-3 Alcoholism and Drug Abuse

- A. When proposing a performance-based action that may be attributable to alcoholism or drug abuse, refer to HUD's Drug-Free Workplace Plan and to HUD's Employee Assistance Program, Handbook 792.2 REV-3, dated August 12, 1997, or current edition for guidance.
- B. If a supervisor or manager knows, or has reasonable grounds to believe, that the employee's performance might be attributed to alcoholism or drug addiction, the employee must be made aware in general terms: (1) that the supervisor or manager suspects he/she has a problem that is affecting his or her performance; (2) that counseling is available through the Department's Employee Assistance Program; and (3) that the supervisor or manager recommends that the employee participate in a rehabilitation and/or counseling program. The supervisor or manager must allow the employee to take leave to participate in such a program, if necessary to meet any reasonable accommodation requirements under the ADA.
- C. Supervisors may provide reasonable accommodation for employee drug addiction or alcoholism when the individual circumstances in the case warrant it, even

though the ADA removes illegal drug addiction as a handicapping condition.

- D. Last chance agreements may be appropriate in some cases. However, it is important that the Deciding Official, employee, and employee's representative sign the agreement. Last chance agreements are best used to delay a decision on a proposed action after the Deciding Official has concluded that the proposed action is merited and that there is a chance of improving the employee's performance.

4-4 Employee Assistance Program

Supervisors must offer an opportunity for counseling and assistance through the Department's Employee Assistance Program to employees whose performance problems are suspected to be causally related to a documented medical condition, alcoholism, or drug addiction.