

## Let's Talk: The Interactive Process Between Employer and Employee

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An employer who is asked for a job accommodation by an employee with a disability is required to take part in what is called the interactive process under both the federal Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (NJLAD).

So, what is an interactive process? Plain and simple, the interactive process is when the employer and employee communicate with each other to try to figure out how the employee can perform his or her job successfully when a disability is making it hard to do so.

How does an employer know when the interactive process begins? Generally, the employee has a duty to tell the employer that he or she is having problems performing his or her work duties as a result of a disability. At times, a disability may be so obvious that the employer can see that the employee is having problems performing his or her work duties, and in that case, the employer may commence communications toward an accommodation.

Are there any magic words that the employee needs to use to signal the employer that he or she needs an accommodation? There are none. In fact, the employee does not need to use the word accommodation or mention the ADA or NJLAD. The employee must simply make the employer aware that he or she is having problems because of his or her disability. For example, an employee having problems concentrating because of a severe anxiety condition might tell her employer that she is having these issues. An employee with a hearing problem may tell his employer that he is no longer able to easily distinguish words during telephone calls. Once an employer is made aware of the disability-related problem, it is the employer's duty to reach out to the employee to initiate a discussion about a feasible solution.

At the outset, the employer may ask the employee for more information about the job-performance difficulties, either by further direct discussion with the employee or by requiring more information from the employee's doctor. Although an employer is not entitled to know the employee's medical diagnosis or other protected medical information about the employee's disability, the employer is entitled to information about any symptoms of the disability that are making it hard for the employee to function at work. In addition, the employer has the right to ask the employee to have his or her doctor review the employee's job description to help inform the employer as to which functions of the job the employee has difficulty performing because of the disability. It is also acceptable for the employer, with the permission of the employee, to speak directly to the doctor about the difficulties the employee is having with the job.

Once the employer has enough information about the problem, both employer and employee should try to determine a reasonable accommodation for the employee. There is no "script" regarding the interactive process at this stage. An employee may have ideas for an accommodation that he or she initially proposes to the employer, and the employer may accept those ideas or propose different ideas. Some examples of accommodations that might help the employee with a severe anxiety condition include: more frequent breaks or lessening of last minute requests by a supervisor to complete projects. Accommodations for an employee with a hearing problem may include a headset device to make hearing easier over the telephone, or a request for a supervisor to look directly at the employee when speaking to him or her, making it easier to understand what the supervisor says. In situations where it is difficult to come up with accommodation ideas, a good resource is the Job Accommodation Network (JAN). This organization comes up with inventive ideas to help accommodate employees, particularly when the employer and employee have reached their limit of creativity.

Finally, it is important to remember that neither the employee nor the employer can unilaterally require a certain accommodation. Employers should be aware that if the accommodation request constitutes an undue hardship on the employer, the employer is not legally bound to grant the request. However, an undue hardship, according to the law, is not just an inconvenience to the employer, but a true hardship on the company, and scrutiny here is on a case by case basis, taking into account the characteristics of the company to make a determination. So, for example, a large company with many employees and assets may be required to provide greater accommodations to a disabled employee than a very small company with few employees and assets. In the end, the overarching goal is to allow all your workers equal employment opportunities while reaching the necessary business goals.

**Attorney**

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