

If an employee discloses a medical condition during a disciplinary meeting, must an employer consider a reasonable accommodation?

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This type of scenario happens from time to time—an employee with a disability waits until he or she is being disciplined for performance or conduct at work before mentioning the need for an accommodation. According to guidance (<https://www.eeoc.gov/facts/performance-conduct.html>) from the Equal Employment Opportunity Commission (EEOC), "Although the ADA [Americans with Disabilities Act] does not require employees to ask for an accommodation at a specific time, the timing of a request for reasonable accommodation is important because an employer does not have to rescind discipline (including a termination) or an evaluation warranted by poor performance." That being said, employers must be mindful of the timing when they find out about medical situations to determine how to proceed. Let's look at some examples of how timing can be critical.

Example 1

An employee has had performance issues for several months, and the employer has taken the employee through the disciplinary process. The employee has never disclosed a medical condition to the employer, even when the final warning was delivered. When the employee's performance still does not improve, the organization decides to terminate employment. During the termination meeting, the employee divulges a medical condition. Does the employer have to rescind the termination? According to the EEOC's guidance, the answer is no. The employee waited too long to ask for the reasonable accommodation, and the employer does not have to change its position on the termination.

Example 2

An employee has had performance issues and knows they are related to a medical condition. The employer has monitored the employee's performance and has determined that it is time to address the issues. During the first counseling meeting about the performance issues, the employee reveals the medical condition to the employer as the reason for the performance issue. Must the employer consider the medical condition and make a reasonable accommodation? According to the EEOC, yes, the employer must start the interactive process with the employee and consider reasonable accommodations going forward. However, the employer may proceed with the initial counseling of the employee for the performance issues.

Example 3

An employee has performance issues and discloses a medical condition during counseling sessions with the employer on several occasions. The employer never addresses the employee's medical situation and continues to discipline the employee. The employer ultimately decides to terminate the employee for performance issues. Could this be a potential ADA violation? According to the EEOC's guidance, yes. Given that the employer never went through the interactive process with the employee, the employee may have a potential ADA claim against the employer for not making reasonable accommodations.

Employers must be cautious when handling issues related to an employee's medical condition. The timing of the disclosure of the condition is key to knowing how to handle a situation. Because each situation is unique, employers should obtain legal advice prior to discipline or termination of an employee who discloses a medical condition affecting his or her performance or conduct to reduce the risk of ADA