

# Employment Law Matters

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Newsletter of the Law Firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.  
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## Job Accommodations: A How-To Guide

The Americans with Disabilities Act (ADA) requires employers to provide qualified individuals (i.e., employees or job applicants) with "reasonable accommodations." A reasonable accommodation is any change in the work environment or in the way things are usually done that enables an individual with a disability to participate in the application process, to perform the essential functions (or fundamental duties) of a job, or to enjoy equal benefits and privileges of employment that are available to individuals without disabilities.

The process for making such accommodations is outlined below. As with all such procedures, open lines of communication and clearly defined steps help to facilitate the process and achieve positive outcomes for both employers and employees.

**Notify Employees:** Employers covered by the ADA are required to post notices describing the employment provisions of the ADA. It is advisable for employers to have a process in place for facilitating accommodation requests and take steps to ensure that all employees are aware of and understand it.

**Analyze Jobs:** To facilitate the accommodation process, employers should develop and maintain a detailed description for each job that lists its essential functions and duties. Such descriptions should focus on a job, not a person. For example, a warehouse position may require that boxes be stacked on shelves. The essential function of this job is that boxes be stacked, not that a person lift boxes.

When developing job descriptions, all aspects of a job must be taken

## COBRA Premium Subsidy Extended

President Obama recently signed new legislation that extends the eligibility period for the COBRA premium subsidy (originally provided for in the American Recovery and Reinvestment Act of 2009) to March 31, 2010. As you may recall, the eligibility period was extended earlier this year but that extension expired as of February 28, 2010. The new law also expands the definition of "assistance eligible individual." The term now includes as a qualifying event the loss of health care coverage because of a reduction in hours followed by involuntary termination of employment. Under these

into consideration. In addition to specific tasks, descriptions should include details such as scheduling and location, equipment necessary to complete the job, any health and safety requirements, and conduct requirements. For example, specific tasks for a receptionist's job may include answering and accurately directing phone calls, greeting and checking in visitors, and transcribing and filing documents. The receptionist must use a phone and computer. He or she must be available in the office lobby during regular office hours and be pleasant to callers and visitors.

**Identify Functional Limitations:** When a reasonable accommodation is needed to perform essential job functions, the employer and employee should discuss the employee's functional limitations and determine where they intersect with his or her duties. Again, the focus should be on a person's essential job tasks and the physical functions necessary to complete them, not his or her disability. Typically, such functions can be described in "I-N-G" action verbs: walking, pushing, reading. Again, using the receptionist's job as an example, if the person hired for the position uses a wheelchair, the functional limitation might be that he or she cannot roll his or her wheelchair under the reception desk in the office lobby. Perhaps he or she has dyslexia and cannot accurately write down phone numbers in messages. Perhaps he or she has severe repetition motion syndrome and has difficulty typing.

It is important to identify the type of accommodations that might be available to allow this otherwise qualified individual to perform the specific tasks.

**Determine Potential Accommodations:** Sometimes, an employee with a disability is aware of the modifications he or she needs to perform certain tasks. Other times, devising an effective accommodation requires creative and collaborative thinking. It is important to remember that accommodations are not limited to adjustments to a physical work environment. They may involve changes to the way a job is done or structured, modified workplace policies and procedures, adjusted work schedules, swapping or eliminating marginal functions or perhaps even changes to corporate culture. Or, they may entail procuring assistive technology or services such as readers or interpreters.

**Determine Reasonable Solutions:** The ADA requires employers to provide reasonable accommodations for qualified applicants or employees with disabilities unless doing so would cause undue hardship. Undue hardship refers not only to financial difficulty, but also to accommodations that are unduly extensive or disruptive or would fundamentally alter the nature or operation of the business.

Determination of undue hardship takes into account the nature and cost of the accommodation, the business's overall financial resources, the number of persons it employs and the accommodation's impact on the business and its expenses and resources. When cost is a concern, an employer should explore whether funding is available from an outside source, such as a state rehabilitation agency.

**Make the Accommodation:** An employer has the final say on which accommodation is implemented, based on factors such as cost, effectiveness and business feasibility. However, accommodations work best when both the employer and employee participate in the process and the employee's needs and preferences have been taken into consideration in making the decision.

circumstances, the period of continuation coverage will be determined as though the qualifying event were the reduction of hours. Health plan administrators are required to provide notice of the subsidy to the affected individuals within 60 days of the involuntary termination.

If you have any questions, please feel free to contact us.

### **New New York State WARN Act Regulations**

On February 12, 2010, the New York State Department of Labor ("NYSDOL") issued revised regulations governing the New York State Worker Adjustment and Retraining Notification Act ("NY WARN Act"). These new regulations (which are now in effect) replace those first published by the NYSDOL in January 2009.

As you may already be aware, the NY WARN Act generally requires 90-days advance notice to employees and other designated officials prior to a mass layoff, plant closing, relocation or covered reduction in hours, which impact 25 or more employees. Among the many changes made by the revised regulations are:

- 1) new requirements as to what must be included

If you need assistance or further information in this regard, please feel free to contact us.

## **New Model Forms for New Hire Salary Notices**

As most of you are aware, New York employers are now required by law to notify all newly-hired employees in writing of their hourly rate, overtime rate (if applicable) and payday. Employers are also required to obtain from each employee a written acknowledgment of this notification. Shortly after the law went into effect in October 2009, the New York State Department of Labor issued a model form to be used for this notification and mandated that all employers use it for these purposes. However, the form was only applicable to hourly employees. Recently, the Department of Labor has developed and posted a series of model forms on its website to assist employers in complying with the new-hire notification law. These model forms include a revised form for non-exempt employees paid on an hourly basis, and new forms for exempt employees as well as non-exempt employees paid on a salary basis or using a piece rate method. You can access these forms at the links below:

Hourly Employees -

<http://www.labor.state.ny.us/formsdocs/wp/LS54.pdf>

Multiple Hourly Rate Employees -

<http://www.labor.state.ny.us/formsdocs/wp/LS55.pdf>

Employees with Fixed Hours Receiving a Salary -

<http://www.labor.state.ny.us/formsdocs/wp/LS56.pdf>

Employees with Varying Hours Receiving a Salary -

<http://www.labor.state.ny.us/formsdocs/wp/LS57.pdf>

Prevailing Wage Employees -

<http://www.labor.state.ny.us/formsdocs/wp/LS58.pdf>

Exempt Employees -

<http://www.labor.state.ny.us/formsdocs/wp/LS59.pdf>

Temporary Help Firms -

<http://www.labor.state.ny.us/formsdocs/wp/LS51.pdf>

If you have any questions about completing these forms, please feel free to contact us.

in the various notices to employees and designated officials;

2) a revised definition of "date of layoff" which prevents an employer from avoiding its notice obligations by keeping its employees on the payroll without requiring them to come to work;

3) employers can now provide email notice to affected employees, provided certain procedures are followed;

4) a requirement that the notice from the employer be signed by an individual who can bind the employer and that the individual attest to the truthfulness of all information contained in the notice.

For more information on these and other changes to the regulations, please contact us at 315-437-7600.