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# FLORIDA
## EMPLOYMENT LAW LETTER

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## What's Inside



## What's Online

***Podcast***
To succeed, your company must embrace failure
**http://bit.ly/2xZO0Gs**

***Workplace***
Tips to brace for impending sports-betting blitz
**http://bit.ly/2yhCzt1**

***Policies***
Can you require employees to get a flu shot?
**http://bit.ly/2yaC8RA**

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*DISABILITY DISCRIMINATION*

# ADA accommodations: One call could save you 15 percent on legal fees

by Tom Harper
The Law and Mediation Offices of Tom Harper

*The federal appeals court over Florida has upheld a Tampa judge's decision that the Americans with Disabilities Act (ADA) doesn't require GEICO to allow a Lakeland employee to work from home as an accommodation for her periodic bouts of Ménière's disease. Florida is a service industry state, and technology is making it easier to work from home. This decision illustrates how the courts are dealing with an issue that's becoming prevalent.*

### *Job description spells out supervisor's duties*

Since 1992, Susan Morris-Huse has worked for GEICO in both New York and Florida. Around 2003, Morris-Huse was diagnosed with Ménière's disease, which is an inner ear condition that causes bouts of vertigo, instability in balance, and hearing loss. Over the next decade, she took a number of intermittent leaves of absence for medical procedures as well as days off work without pay for doctor's appointments because of her Ménière's.

In 2007, Morris-Huse accepted a position as a telephone claims unit supervisor at GEICO. Her primary duty in the position was to oversee the processing and settling of claims in her unit under only general supervision. GEICO's written job description for the position includes the following requirements:

(1) INTERVIEWS and/or APPROVES job applicants for employment. CONDUCTS and/or REVIEWS associate performance appraisals. INITIATES or APPROVES salary adjustments, performance ratings, and other personnel changes. COUNSELS associates and TAKES disciplinary action or TERMINATES the employment of associates as appropriate.

(2) DIRECTS technical and clerical personnel in the settlement, investigation, and processing of property and casualty claims. AUTHORIZES payments within personal authority, when they exceed customer service representative II and telephone claims representative (TCR) I authorization.

(3) SUPERVISES the activities of the TCR I.

(4) TRAINS and/or COORDINATES the training of associates. REVISES training materials as necessary.

(5) ASSISTS in preparation of plans and budgets.

(6) PREPARES reports on work volume or work quality.

(7) ADHERES to the GEICO Code of Conduct, the GEICO Claims Code of Conduct, company policies, and operating principles.

Law Offices of Tom Harper, Stearns Weaver Miller, P.A., and Sniffen & Spellman, P.A., are members of the *Employers Counsel Network*

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## AGENCY ACTION

***DOL launches initiative to strengthen H-2B compliance.*** The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) in September announced a nationwide initiative to strengthen compliance with the labor provisions of the H-2B temporary visa program in the landscaping industry. The initiative includes providing compliance assistance tools and information to employers and stakeholders as well as conducting investigations of employers using the program. The WHD announced that last year, its investigations led to more than $105 million in back wages for more than 97,000 workers in industries with a high prevalence of H-2B workers, including the landscaping industry. A key component of the investigations is ensuring that employers recruit U.S. workers before applying for permission to employ temporary nonimmigrant workers. The H-2B program permits employers to temporarily hire nonimmigrant workers from outside the United States to perform nonagricultural labor or services in the country. The landscaping industry employs more H-2B workers than any other industry.

***OFCCP announces new policies aimed at increasing transparency.*** The DOL's Office of Federal Contract Compliance Programs (OFCCP) in September announced two directives focused on providing more transparency in OFCCP activities. One directive aims to extend the agency's transparency efforts to every stage of a compliance evaluation to facilitate consistency, improve efficiency and collaborative resolution, and support contractors' ability to conduct self-audits. The other directive involves implementation of an ombuds service in the national office to facilitate resolution of specific types of concerns raised by external OFCCP stakeholders in coordination with regional and district offices.

***DOL awards grants to prepare workers for high-growth industries.*** The DOL announced in September nearly $110 million in Trade and Economic Transition Dislocated Worker Grants for state, tribal, and nonprofit entities that are working in collaboration with community partners and local workforce development boards to prepare Americans for professions in high-growth employment sectors. The grants will assist in implementing innovative skills instruction and career services for workers seeking reemployment as a result of changes in workforce needs or from economic changes across multiple sectors. An "economic transition" is defined as a far-reaching economic or workforce trend or event, beyond the operating conditions of one employer, that has caused significant worker dislocations in a stated geographic area. ✤

(8) MEETS attendance standard of the business location, to perform necessary job functions and to facilitate interaction with subordinates and management.

In 2013, Morris-Huse's doctor provided a note to GEICO in which he stated her "disorder produce[d] random attacks of vertigo and in her case, nearly chronic bouts of dizziness and imbalance." He opined that although Morris-Huse was "able to work a full day, she [wa]s unable to reliably drive long distances and do things that require[d] walking up and down stairs." As a result, he recommended that she be allowed to work from home with a reduced need to drive to work on a daily basis.

### *GEICO attempts to accommodate condition*

GEICO addressed the doctor's first limitation—Morris-Huse's inability to drive long distances—by suggesting and then investigating the use of mass transit and transportation provided for disabled individuals by the county. After both of those suggestions proved unsatisfactory to Morris-Huse, GEICO arranged a ridesharing agreement with her coworkers. In addition, the company allowed Morris-Huse to report to the office on a somewhat flexible schedule.

GEICO also accommodated Morris-Huse's inability to drive long distances by permitting her to transfer from its Woodbury (New York) facility to its Lakeland office. Morris-Huse found affordable housing just four miles away from her new office, which eliminated the need to drive long distances.

GEICO accommodated Morris-Huse's second limitation—the inability to walk up and down stairs—by allowing her to use the office elevator. It addressed the remaining symptoms of her disability by allowing her to use break rooms and her manager's office when she needed a respite during an episode of vertigo. According to the court, those accommodations were reasonable because they addressed the limitations identified by her physician in a way that allowed her to continue to perform the essential functions of her job.

Throughout 2013, Morris-Huse continued to insist that being allowed to work from home was the only acceptable accommodation for her condition, describing various medical problems she had experienced despite GEICO's accommodations. However, she conceded at one point that she wouldn't be able to perform all her supervisory duties from home and asked to be considered for other jobs that she could do from home. GEICO responded to one of her letters requesting the telecommuting accommodation by stating that she had to be present in the office Monday through Friday to supervise her staff.

During 2014, Morris-Huse complained of problems with the ridesharing and other accommodations being provided by GEICO. She kept insisting that working from home was her only acceptable accommodation, even though she lived only four miles from the office. And although she complained of problems working in the office, she apparently never provided medical documentation stating specifically that she couldn't work there.

Morris-Huse continued to experience flare-ups of her Ménière's, leading to days off work without pay. Frustrated,

*continued on page 4*

# ASK ANDY

## Telling an employee to stop working from home

by Andy Rodman
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

**Q** *My administrative assistant has been reading e-mails at home after hours, including on weekends. I pay her as an hourly nonexempt employee, and I really don't want her working from home. In any event, reading e-mails shouldn't be taking that much time. Do I have to pay her for the time she spends reading e-mails at home after hours?*

**A** Under the Fair Labor Standards Act (FLSA), nonexempt employees must be paid for all work that is "suffered or permitted" by their employer. Put another way, if you, as the employer, know or should know that an employee is working, then the time she spends working is compensable. So, to answer your question, you have to pay your administrative assistant for the time she spends reading e-mails at home after hours, especially since you know she's performing the work.

### *Small chunks of time add up*

It's true that occasionally reading a single e-mail may not take much time, but small increments of time add up. If it takes just one minute to read an e-mail and the employee reads 15 e-mails after hours each week, she has suddenly accumulated an extra 15 minutes of work for the week. That could be enough to push her hours over 40 for the workweek, meaning you would owe her overtime. But even if her work from home doesn't trigger overtime, you must pay her at her hourly rate for the extra time.

So what should you to do if you don't want your administrative assistant working from home after hours? That's simple. Tell her that she must not work from home. As the employer, you have the right to make the rules, including rules governing after-hours work.

One surefire way to prevent employees from doing any after-hours work that requires use of the company's computer server (including e-mail) is to cut off access for employees you don't want working from home after hours. If you give nonexempt employees remote access to your computer server, it's going to be very hard to convince a jury that you didn't want or intend for them to perform work from home. Jurors will wonder why you provided remote access if you didn't want your administrative assistant to perform work from home.

### *Discipline up to/including termination*

What should you do if the employee breaks your rule and continues to work from home after hours? Apply your normal disciplinary policy, even if that means issuing her a write-up or, if the problem continues, terminating her. However, don't punish the employee by withholding her pay. The prudent course of action is to pay her for the work she performed (even though she violated your "no after-hours work" rule) and attempt to address the problem through disciplinary action. Don't confuse compensation issues with disciplinary issues.

Of course, some employers expect their nonexempt employees to perform work from home after hours. In that case, make sure the employee keeps track of her time, even if it's recorded in very small increments of a few minutes here and there. Again, those few minutes can add up.

Wage and hour compliance (and, in particular, overtime) is among the most frequently litigated areas of employment law. If you have any questions, make sure you contact your employment law counsel.

*Andy Rodman is a shareholder and director at the Miami office of Stearns Weaver Miller. If you have a question or issue that you would like him to address, e-mail arodman@stearnsweaver.com or call 305-789-3255. Your identity will not be disclosed in any response. This column isn't intended to provide legal advice. Answers to personnel-related inquiries are highly fact-dependent and often vary state by state, so you should consult with employment law counsel before making personnel decisions.* ✤

*continued from page 2*

she filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) claiming GEICO failed to accommodate her condition by refusing to allow her to work from home or transfer to another job that would allow her to work from home when she experienced episodes of vertigo. After the EEOC issued her a right-to-sue letter, she filed suit against the employer in 2016.

## *Court's decision*

GEICO asked the federal court in Tampa to dismiss Morris-Huse's case. In analyzing her claims, U.S. District Judge Charlene Honeywell noted that the ADA prohibits an employer from discriminating against "a qualified individual with a disability" because of her disability with regard to job application procedures, hiring, promotions, compensation, discipline, or discharge. To establish a disability discrimination claim, an employee must show that (1) she is disabled, (2) she was qualified for her job, meaning she could perform the essential functions with or without a reasonable accommodation, and (3) she was discriminated against because of her disability.

If the employee satisfies those three elements, the burden shifts to the employer to demonstrate that accommodating the employee would create an undue hardship on its business. But it is the employee's responsibility to identify a reasonable accommodation and demonstrate that it would allow her to perform the essential functions of her job.

In response to GEICO's request to dismiss her case, Morris-Huse argued that the accommodations provided by the employer weren't sufficient and didn't address the symptoms of her disease, and her request to work from home was a reasonable accommodation. After examining the situation, the court summarized it as follows:

> The brunt of her complaint appears to be that she would have *preferred* an accommodation [that allowed her to] work from home because she concluded that [the alternatives provided by GEICO] did not accommodate the symptoms of her Ménière's Disease. This is not the standard imposed by the ADA. *An employee is not entitled to an accommodation of [her] preference, nor is [she] entitled to an accommodation that is not supported by medical documentation.* [Emphasis added.]

The court went on to provide some useful guidance for employers deciding whether they must allow employees to work from home:

> No [clear-cut] test has been established for determining whether physical presence is an essential function of a job, or whether telecommuting is a reasonable accommodation. The [U.S. 6th Circuit Court of Appeals (whose rulings apply to all Florida employers)] has determined that as a general rule, "[r]egular, in-person attendance is an essential function—and a prerequisite to essential functions—of most jobs, especially the interactive ones." The [6th] Circuit noted that this was consistent with informal guidance by the [EEOC] that "[a]n employer may refuse a telecommuting request when, among other things, the job requires 'face-to-face interaction and coordination of work with other employees,' 'in-person interaction with outside colleagues, clients, or customers,' and 'immediate access to documents or other information located only in the [workplace].'"

The federal district court in Tampa concluded that permitting Morris-Huse to work from home wasn't reasonable because it didn't allow her to perform the essential functions of her position. In this case, working from home wasn't a reasonable accommodation because Morris-Huse's job required her to provide in-person guidance to the workers she supervised and monitor their calls using software available only at GEICO's offices.

*WAGE AND HOUR LAW*

## Florida's minimum wage increasing to $8.46 on January 1

by Lisa Berg
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The minimum hourly wage in Florida is set to increase from $8.25 to $8.46 on January 1, 2019. The 21-cent increase is based on the percentage increase in the federal Consumer Price Index for Urban Wage Earners and Clerical Workers in the South Region for the 12-month period preceding September 1, 2018.

Restaurant and hotel employers may still take a tip credit of up to $3.02 per hour against the new minimum wage. As a result, tipped employees whose employer takes a tip credit must receive direct wages of at least $5.44 per hour starting January 1.

The change in the minimum wage means Florida employers will need to post a new minimum wage poster by January 1. That's in addition to the U.S. Department of Labor's requirement that you post a notice of the federal minimum wage. The state poster may be downloaded in English, Spanish, and Creole from the Florida Department of Economic Opportunity's website at www.floridajobs.org.

*You may contact Lisa Berg at lberg@stearnsweaver.com.* ✤

Judge Honeywell's ruling was affirmed on review by the federal court of appeals that covers Florida. The appeals court stated, "The record supports GEICO's assertion—and the district court's finding—that physical presence [is] an essential function of [Morris-Huse's TCR I supervisor] position, because the job require[s] her to interact with, coach, and lead a team of associates on a daily basis. Further, the appeals court noted that Morris-Huse held an "interactive job that used technology available only at the office . . . and . . . required her to have a regular, physical presence [there]." *Susan Morris-Huse v. GEICO,* Case No. 18-10660 (11th Circuit, September 26, 2018).

### *Takeaway*

ADA cases are highly fact-specific. Before making a decision about how to accommodate an employee with a disability, you must consider and evaluate the doctor's recommendations and the employee's response to what the doctor recommends. You should also consider the accommodations identified by the employee. You can't simply conclude as a matter of policy that working from home isn't an acceptable accommodation. The reasonableness of an accommodation will depend on many factors, including the type of job the employee holds, the essential job functions (which should be documented in a written job description), and the medical restrictions issued by the employee's doctor. As you consider your options, it's wise to keep Proverbs 15:22 in mind: "Plans go wrong for lack of advice; many advisers bring success."

*You can reach Tom Harper at tom@employmentlawflorida.com.* ✤

*EMPLOYEE RIGHTS*

## New technologies create new employee privacy issues

*Unless you work for a company that's very small or very low-tech by nature, chances are, one of your biggest challenges is keeping up with technology. If your competitors are taking advantage of the many new technological advances that promote efficiency and productivity while you're stuck in 1999, your business will struggle to compete.*

*Yet many new technologies, while providing a business advantage, have the potential to violate your employees' privacy rights if you don't implement them in a careful and thoughtful manner. From offering online benefits enrollment to encouraging the use of fitness trackers as part of your wellness program, you are asking employees to trust you with their personal information. Yet too many employers give little thought to privacy until they're forced to by concerned employees or—worse yet—some sort of breach occurs.*

*For example, employers are increasingly using GPS tracking software, apps, or devices to monitor the progress of delivery drivers, truckers, and other employees who travel from one location to another as part of their regular duties. There are a number of reasons you might want to do that—from tracking mileage to providing customers with updates on the status of their deliveries or an estimated time of arrival for a service call. Other employers use biometric identifiers (such as fingerprints, facial recognition, and even retinal scans) for*

## WORKPLACE TRENDS

***Survey shows attitudes about talking politics at work.*** Job search platform Indeed in September reported results of a survey of 2,000 U.S. employees showing that 20% of those workers felt the workplace wasn't politically censored enough. The research also showed that 54% were comfortable with the current amount of sharing of political beliefs at work. Just 10% of respondents said they believed the workplace needed more political talk. The survey found that 23% of the respondents felt certain groups were being silenced at work. Of those, 60% reported that the source of silencing was statements or actions of peers, and 40% said it came from statements or actions from leadership.

***Lack of information on compensation big frustration for jobseekers.*** A survey from job and recruiting site Glassdoor says that a lack of information about a job's total compensation package is among the biggest frustrations for U.S. workers and jobseekers during the interview process. The survey found that 50% of U.S. workers/jobseekers surveyed called lack of information on compensation one of their biggest frustrations, with an equal number saying potential employers canceling or postponing interviews is their biggest frustration. Forty-seven percent named potential employers not responding in a timely manner.

***"Lunch hour" found to be less than 30 minutes for most.*** Research from staffing firm OfficeTeam shows that 56% of workers surveyed said their typical lunch break lasts 30 minutes or less. Among professionals in the 28 U.S. cities surveyed, those in San Francisco, Los Angeles, and Miami take the longest lunches. Employees in Salt Lake City, Des Moines, and Cincinnati have the shortest breaks. The survey also addressed what workers do during lunch besides eating. Respondents said they most frequently surf the Internet or social media (52%), followed by catching up on personal calls or e-mails (51%). Twenty-nine percent of professionals said they work during lunch.

***Research finds nearly a fourth of workers have left a job over a bad commute.*** Research from staffing firm Robert Half has found that 23% of employees have left a job because of a bad commute. Among workers in the 28 U.S. cities surveyed, respondents in Chicago, Miami, New York, and San Francisco have most often resigned because of their commute. While 39% of professionals reported their travel to and from the office has improved over the past five years, 22% said the trip has gotten worse. Of those who noted a negative change in their commute, 60% said their company hasn't taken steps to reduce the burden on employees. ✤

## UNION ACTIVITY

***Union files claims with EEOC against targeted Facebook ads.*** The Communications Workers of America (CWA), along with the American Civil Liberties Union (ACLU), announced in September that it has filed charges with the Equal Employment Opportunity Commission (EEOC) against Facebook and 10 other employers claiming unlawful discrimination on the basis of gender by targeting their job ads on Facebook to male Facebook users, excluding all women and nonbinary users from receiving the ads. The CWA alleges most of the employers' male-targeted ads highlighted jobs in male-dominated fields. It also claims that Facebook delivers job ads selectively based on age and sex categories that employers choose and that it earns revenue from placing job ads that exclude women and older workers from receiving them.

***UMWA delivers letters to congressional pension committee.*** The United Mine Workers of America (UMWA) announced in September that it delivered 1,756 letters written by UMWA retirees, their families, and their widows to the congressional Joint Select Committee on the Solvency of Multiemployer Pension Funds, asking the panel to take action to preserve their pensions. The committee is supposed to make recommendations to the rest of Congress by November 30 on how to prevent pension funds like the UMWA 1974 Plan from failing. The letter writers' pensions "are at risk through no fault of their own, and Congress is the only body that can save them," UMWA International President Cecil E. Roberts said. "They have no more time to wait. It is time for this committee to do what it is supposed to do and preserve their pensions."

***Judge orders back pay for workers who backed union.*** The United Farm Workers (UFW) union announced in September that a California administrative law judge (ALJ) ordered Gerawan Farming Inc. to pay back pay to four workers the tree fruit producer refused to recall to work beginning in 2013 because they were "outspoken" in supporting the UFW. The workers also claimed the employer retaliated against them for testifying before or attending Agricultural Labor Relations Board hearings. The ALJ recommended two of the workers receive nearly seven months of back pay and one be awarded back pay from April 2015 until the employer offers him reinstatement to his job. The union said the workers wore union T-shirts to work, passed out UFW fliers, and spoke with coworkers about the union during work breaks. In addition, the workers attended union negotiating and mediation sessions and joined other workers at Gerawan's offices to urge the owners to sign a union contract. ✤

*logging in to systems and accessing secure facilities. Even employee ID cards can be used to track and gather information about employees, including their location and speech patterns (if you don't believe us, google "Humanyze").*

### *Legal concerns*

Employers considering the use of new technologies should proceed with caution. For the most part, the law is way behind the times when it comes to new technology and how it affects employee privacy. Currently, the two applicable federal laws are the Electronic Communications Privacy Act (ECPA) and the Health Insurance Portability and Accountability Act (HIPAA). This article focuses on technologies that aren't covered by either of those or any other federal law.

While federal laws have fallen behind and are unlikely to catch up anytime soon, employee privacy has long been the subject of litigation under the common law (nonstatutory law) in state courts. States also are more likely to have laws governing the use of new technologies, including biometric information (Illinois, Texas, and Washington), GPS tracking (quite a few states address this), and employer monitoring/access to employees' social media accounts (about half of the states have laws on this).

### *Steps you should take*

Because there is no overarching federal law and state laws vary so widely, it's extremely important to seek legal advice whenever you are collecting or accessing employees' personal information. However, there are some key steps you should follow in most situations:

(1) Analyze the privacy implications *before* implementing new software or technologies that could collect sensitive information about employees. Think broadly about the information you could gather if you wanted to—or that employees might think you're gathering. For example, if you ask employees to download a secure app to access their work e-mail on their personal phones, they might fear you're getting access to other information on their phones as well. If you offer them a wearable device as part of your wellness

program, they might think you're monitoring their heart rate. While these things might sound ridiculous, they are actual concerns employees have raised in the past couple of years.

(2) Pay close attention to state law, especially if you have locations in different states. But don't focus only on state statutes because the boundaries between legitimate employer actions and employee privacy have historically been set by the courts (i.e., through case law).

(3) Develop a written policy describing the technology, how it is to be used, what employee information may be gathered, and how you intend to protect it from unauthorized disclosure.

(4) Train all employees who will be gaining access to personal information on the appropriate handling, use, and protection of the information.

(5) Consider getting signed consent from employees before asking them to use any new technology that will gather personal information (such as biometric identifiers) or track their activities (such as GPS apps or devices).

(6) Rinse and repeat with each new technology you implement. ✤

*PERSONNEL POLICIES*

# Mandatory flu shots: Can you make employees roll up their sleeves?

*Believe it or not, it's time to think about flu vaccines again! How effective will the shots be this year? Will you and your family get them? Can you require your employees to be vaccinated? Many employers believe that employees should be inoculated to keep the workforce healthy and the office fully staffed during flu season. Before you issue such a mandate, however, a simple question needs to be answered: Can employers lawfully require all employees to be vaccinated against the flu?*

## *Don't take a shot in the dark*

Although the question is simple, the answer most certainly isn't, even for employers in the healthcare industry. Some states have passed laws requiring healthcare workers to be vaccinated, and the Centers for Disease Control and Prevention (CDC) recommends vaccines for all workers who have patient contact. You might think that healthcare facilities, more than most employers, have a legitimate basis for adopting blanket mandatory flu shot policies and would therefore have no problem enforcing them. However, medical facilities have been slammed with litigation over flu vaccinations in the last few years, with the Equal Employment Opportunity Commission (EEOC) either filing or joining several lawsuits over mandatory vaccination policies in the last year alone.

Although the EEOC says there's no law that prohibits employers in any industry from having mandatory vaccination policies, the agency cautions that employees may be entitled to exemptions from such mandates under Title VII of the Civil Rights Act of 1964 or the Americans with Disabilities Act (ADA). Once an employee objects to a mandatory vaccination policy based on a protected status (in this context, usually for medical or religious reasons), the employer has the same obligation it would have for any other request for accommodation under Title VII or the ADA: It must evaluate each request for exemption individually and engage in an interactive process with the employee to determine what, if any, reasonable accommodations are available.

Questions that arise while you're evaluating an employee's request to be exempted from getting a mandatory flu shot don't always have simple answers, either. For example, if the request is based on the employee's religion, it must involve a sincerely held religious belief or practice. Courts have expanded the meaning of "religion" for Title VII purposes, so employees' religious beliefs about vaccinations may not necessarily conform with traditional religious tenets. It's important to engage in discussions with the employee to understand her request and the reasons behind it.

Some employees may object to flu shots based on the method of delivering the vaccine; others might object to the vaccine entering their bodies in the first place. If an employee's request for exemption from the policy has to do with a medical condition, you may need to consult a healthcare professional after you engage in a thorough discussion of the employee's concerns. The consultant should be able to address the possible effects of the flu vaccine on the employee's medical condition as well as any accommodations that may meet both of your needs.

The required interactive process doesn't end once you understand the employee's request to be exempted from a flu shot. The employee needs to be included throughout the entire reasonable accommodation process. Even when you think you've found the perfect solution, it may prove unworkable from the employee's perspective. Neither of you may get your "ideal" accommodation in the end, but the interactive process provides a reminder that each party's interests must be considered.

## *Give it your best shot*

An effective policy should clearly state a legitimate need or basis for requiring employee vaccinations. Employees who prefer not to be inoculated are less likely to request exemption from the policy if they understand it has a beneficial purpose. The policy should explain the process for requesting exemptions and list the type of information that will be needed to establish the legitimacy of an exemption request.

## TRAINING CALENDAR

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11-28 Marijuana in the Workplace: Legal Concerns and Limits on What Employers Can Do

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11-29 HR Audits in California: What to Watch for and How to Fix Problems Before They Spark Lawsuits and Costly Legal Liability under State and Federal Law

12-4 Data Security and Cloud Storage – Does the Email You Delete Really Disappear?

12-4 2019 Employee Handbooks Update: How to Revise Employment Policies to Stay in Compliance for the Coming Year

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12-5 OSHA Reporting Requirements at the Intersection of Workers' Comp: When an Illness or Injury Is Work Related and Must Be Reported

12-6 Dealing with Opioids and Marijuana in the Workplace: A Dozen Strategies for Drug Testing, Managing Leaves and Accommodations, and Limiting Liability

12-6 The New Formula for Winning Performance Management: How to Use Ongoing Feedback and Mentoring for Yearlong Success

After you've formulated the policy, distribute it to all of your employees, and discuss it with them. In my experience, people are more likely to accept rules made by others (including their employer) if the rules are communicated and implemented openly. Employees who are responsible for enforcing the policy should be trained on what it says—and doesn't say—and how to process exemption requests. They should never threaten or take disciplinary action against an employee without exploring the reason she is refusing to comply with the policy. And they should *always* document every step of the interactive process because despite your best efforts, litigation does happen.

### *Bottom line*

If the not-so-simple answer to the simple question posed at the beginning of this article has made you rethink your decision to require your employees to get flu shots, don't despair. There are steps you can take to help your workforce remain healthy during flu season.

The EEOC recommends that employers encourage employees to be vaccinated on their own. Some health plans and employers offer vaccines at no cost to employees. You can offer flu shots at your workplace or provide employees with information about their local availability. You can also provide hand sanitizer for employees and have your facility cleaned more frequently or thoroughly during flu season. And finally, you can console yourself with an Internet search that may uncover one or two studies indicating mandatory flu shot policies don't produce significant benefits. ✤



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