



Bringing Employees Back to Work: How to Make Your Program Interactive and Compliant with the ADA

Infiniti HR

Proactively evaluating and managing workers' compensation and Americans with Disabilities (ADA) compliance issues concurrently is a best practice for employers.

The ADA requires employers to reasonably accommodate the disabilities of their employees. The Equal Employment Opportunity Commission (EEOC) has broadened the requirements of “reasonable accommodation” under the ADA so that the requirements apply to employees who have suffered a workplace injury. In the largest settlement to date, Verizon Communications was fined a total of \$20 million as a result of its refusal to provide reasonable accommodations to disabled employees.¹

It is imperative that employers have policies in place to provide reasonable accommodation to employees with disabilities and those that have been injured on the job.

The EEOC is responsible for enforcing all federal laws that make it illegal to discriminate against anyone with a disability or because of their race, color, religion, gender, origin, age, or genetic information.

To learn what four steps your interactive program should include, see page 3.



For the purposes of this white paper, we will be discussing Title I section of the ADA and how this section pertains to workers' compensation.

The ADA, signed into law in 1990, was written to protect the civil rights of people with disabilities. It prohibits discrimination against anyone with a disability and ensures that they have every opportunity to pursue and access all areas of life that are open to the general public. **In short, the provisions of the ADA make it clear that anyone with a disability is to have the same rights as everyone else.**

There are five titles, or sections, to the ADA:

- ❖ Title I relates to aspects of access to equal employment.
- ❖ Title II prevents discrimination by public entities such as state and local governments.
- ❖ Title III prohibits restriction of access to public accommodation such as restaurants, hospitals, or health clubs.
- ❖ Title IV provides that telecommunication companies must provide accommodations for those with hearing and speech difficulties.
- ❖ Title V contains legal provisions relating to the ADA as a whole.

In 2008, the ADA Amendments Act (ADAAA) was signed into law. It substantially broadened the definition of disability. This was done by Congress in response to several Supreme Court cases that Congress thought construed the definition of “disability” too narrowly. A disability, as defined by the Act, is a physical or mental impairment that limits one or more life activities. The ADAAA’s changes make it easier for those seeking protection under the ADA to establish if they have a disability that falls within the expanded definition.

An integral purpose of the ADAAA’s Title I employment provision helps people with disabilities obtain and keep gainful employment regardless of the cause of their disability. If the disability is as a result of a work-related injury, the requirements to accommodate the employee set forth by Title I will apply.

Why should I give our current accommodation policies a second look?

The EEOC's Aaron Konopasky, JD, and Jennifer Christian, MD, recently provided guidance regarding when employers must start discussions regarding return-to-work accommodations. The article, [ADA May Apply in Immediate Post-Injury Period](#), clearly expresses to employers that the ADA's interactive process to determine a reasonable accommodation must begin much earlier than previously thought. The interactive process is triggered by the employer or employee's identification of a disability and the desire for an accommodation.

The interactive process includes several steps:

1. Job analysis to determine essential functions.
2. Identification of barriers to performing the essential job functions.
3. Identification of reasonable accommodations to allow the employee to perform the essential functions.
4. Determination by the employer if any of the accommodations pose an undue hardship on the employer.

As the EEOC and courts continue to interpret the ADA, employers are becoming more and more confused and, as a result, are exposed to possible ADA claims. Questions include:

When do we need to evaluate the injury or illness?

What are my responsibilities?

Who should be involved?

What is the process?

Until recently, the understanding was that the interactive process was only necessary at the time an employee reached maximum medical improvement (MMI) from his or her occupational injury and the employee had permanent restrictions that interfered with his or her ability to perform his or her job. Some employers did not engage in the interactive process at all when a settlement was negotiated to include the employee's resignation. In the past several months, experts have begun recommending that employers expand their thinking, begin the interactive process sooner, document every interaction with the injured employee, and ensure all actions are reasonable.



We recommend that employers begin the interactive process with the employee as soon as they receive information that indicates the employee will be unable to perform the physical demands of the job without modifications.

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WHAT DOES THE INTERACTIVE PROCESS LOOK LIKE?



Open discussion with the employee. The discussion and decision to offer accommodation should always include the injured employee. When the employer receives the work status from the treating physician, a member of Human Resources or Risk Management should meet with the supervisor and the injured employee. This meeting should discuss the work restrictions, the physical demands, and job duties to determine what accommodations can be made to return the employee back to work.



Work assignments. The work assignment should be considered temporary until the next work status is received, at which time another meeting should take place to review the new work restrictions, the employee's continued improvement and abilities, and effectiveness of the assignment and to determine if the employee can increase their tasks on the way to full recovery.



Offer letters. At each stage of this process when work restrictions change and the tasks change, an offer letter is provided to the injured employee for their acceptance of the new temporary work assignment. This process should continue until the employee reaches MMI.

CONCLUSION

In an effort to make this process easier to understand, Lockton has developed an interactive process flowchart, appropriate documents and forms, and a guide for our clients. We hope this will enable you to implement these recommendations and mitigate your exposure to ADA-related claims. If you would like electronic copies of these documents, please access our Lockton Sharefile site [here](#). Your Lockton team is available to help create a personalized return-to-work program.



Reference Material

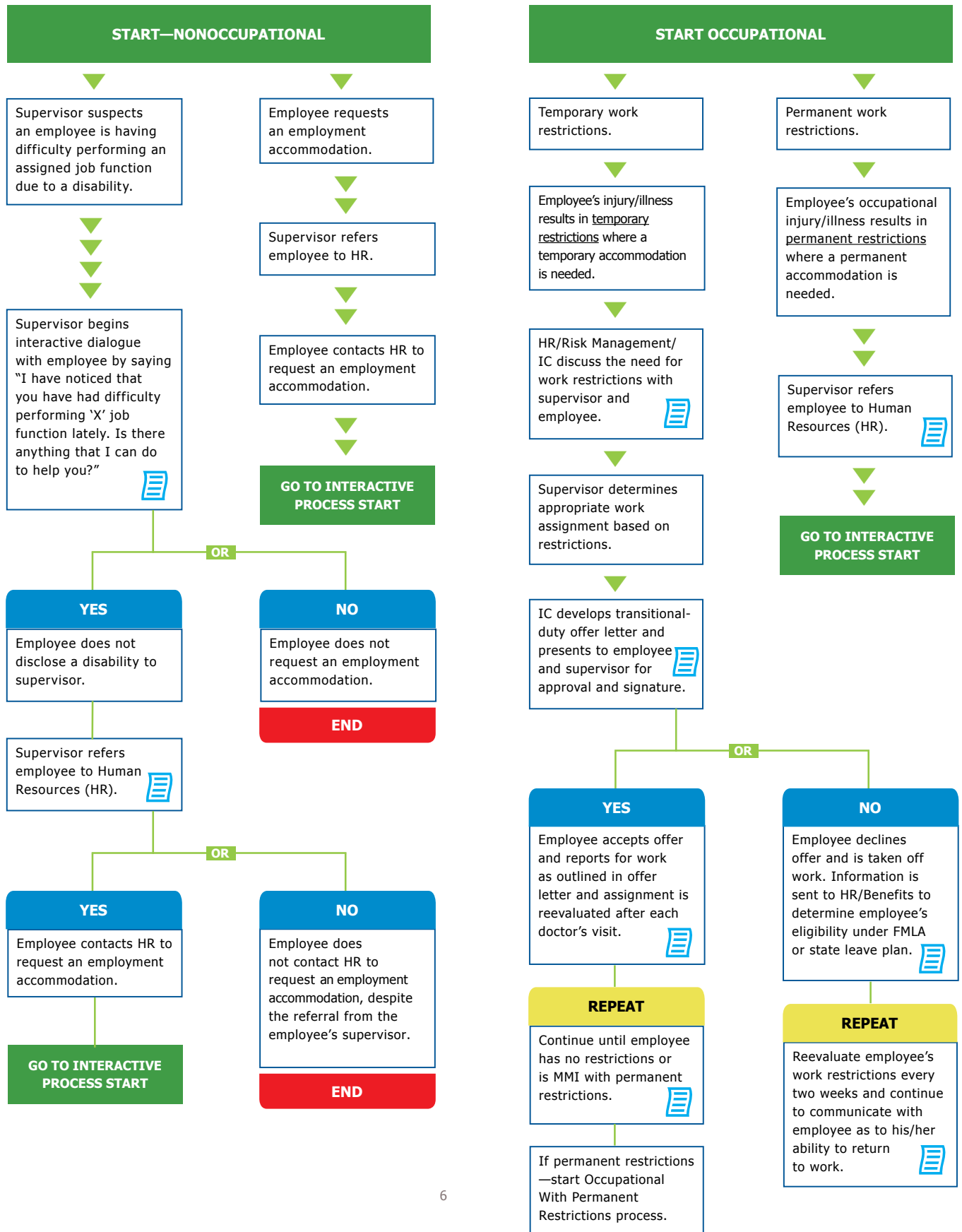
¹<http://www.eeoc.gov/eeoc/newsroom/release/7-6-11a.cfm>

<http://www.weability.md/ada-and-mmi.htm>

<http://www.workerscompensation.com/compnewsnetwork/workers-comp-blogwire/20345-eeoc-speaks-out-on-workers-compensation-ada-obligations.html>What laws should I understand when creating a policy?

UNDERSTANDING ADA WITHIN WORKERS' COMPENSATION

ADAAA-Compliant Interactive Process Flowchart



THE INTERACTIVE PROCESS—TRIGGERS TO A COLLABORATIVE OUTCOME

This document is a tool to illustrate to supervisors the points at which the interactive process can start and end. It also illustrates each person's responsibilities and interactions at each point in the process in order for it to stop or continue. This illustration is meant as a general guide to the interactive process and should not take the place of consulting with your human resources team in the instance of complex employee disability-related issues.

Instructions: Use this flowchart to identify the starting point that most closely represents your current scenario. Follow the appropriate arrows to proceed along the path that best matches the scenario. When you encounter an "end" point, it signifies that the interactive process has ended for the time being.

