Interactive Session

DEAR OGLETREE

ANSWERS TO YOUR WACKIEST AND MOST CHALLENGING SCENARIOS

Jennifer S. Rusie – Ogletree Deakins (Nashville)

Roger G. Trim – Ogletree Deakins (Denver)
Reasonable Accommodation/Interactive Process Letter & Questionnaire
Response to Request for Accommodation

[Name of Company Contact]
[Employer Name]
[Address]
[Telephone Number]
[Email]

[Date]

Via Overnight Delivery

[Employee Name]
[Street Address]
[City, State Zip]

RE: Request for Accommodation

Dear [Employee Name]:

Thank you for [meeting with us yesterday to discuss/your letter regarding] your return to work and the medical limitations placed upon you by Dr. [______________]. Because your present medical limitations may limit your ability to perform some or all of the essential functions of your job as [Job Title], we are treating your request to return to work as a request for a reasonable accommodation.

To determine whether you may be entitled to a reasonable accommodation under the Americans with Disabilities Act (“ADA”) and/or applicable state law, we must first engage in a dialogue with you to determine the nature of your condition, the nature and extent of any physical or mental limitations that you may have as a result of your condition, and whether there may be a reasonable accommodation that would allow you to perform the essential functions of your job as a [Job Title]. This is referred to as the “interactive process.”

Enclosed is a form that must be completed by a qualified healthcare provider relating to your current condition and a job description / list of job functions. Please take this letter, and the enclosed form and job description to your healthcare provider and ask him/her to provide all of the requested information. The form must be signed by your healthcare provider and returned to us by [Date]. Failure to provide the requested information in a timely manner will frustrate the interactive process and may lead to the denial of an accommodation. Thank you for your anticipated cooperation in securing your doctor’s response to this request. Please contact me if you have any questions or concerns.
Sincerely,

Enclosure
{Note: In situations where an employee’s disability is obvious (e.g., blindness, deafness, missing limbs), the employer may not ask questions to establish if the person’s impairment is a disability. Even when the disability or need for accommodation is not obvious, the ADA prohibits employers from asking disability-based questions of employees unless they are job-related and consistent with business necessity (e.g., questions necessary to establish that the person has a disability and/or needs a reasonable accommodation). For more information, see EEOC Informal Discussion Letter (Feb. 25, 2014).}

[COMPANY NAME]

INTERACTIVE PROCESS QUESTIONNAIRE

[Company Name] is engaged in the interactive process with [Employee Name] (“the Employee”) to determine whether the Employee may be entitled to a reasonable accommodation. As part of that process, we require the information requested herein.

NOTE: The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers from obtaining genetic information as to any employee or family member except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family members receiving assistive reproductive services.

1. What is your diagnosis of Employee’s condition?
   
   Response: ____________________________________________
   ____________________________________________
   ____________________________________________
   ____________________________________________

2. Is it your opinion that the cause of Employee’s condition was work-related?
   
   Response: ____________________________________________
   ____________________________________________
   ____________________________________________
3. Provide a detailed description of the nature and severity of Employee’s symptoms.
   Response: __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________

4. Please describe the proposed course of treatment.
   Response: __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________

5. What is your prognosis as to the duration of Employee’s condition?
   Response: __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________
6. Please describe in detail the limitations on the Employee’s regular life activities as a result of the Employee’s condition and/or the treatment of the condition (e.g., ability to care for himself/herself, ability to stand, sit, walk, see, eat, sleep, lift, climb stairs, read, concentrate, think, etc.) and the expected duration of such limitations. The description of the Employee’s limitations must be as objective and specific as possible. Regarding the duration of the Employee’s limitations, please be as specific as possible (e.g., ten days; three weeks; two months, etc.). If the duration of the Employee’s limitations is indefinite or permanent, so indicate.

Response: 

7. State whether the Employee’s condition precludes him/her from performing any of the physical or cognitive functions of his/her job. To assist you in this regard, a job description that sets forth the physical and cognitive functions of the Employee’s job is attached.

____ Yes  ____ No

8. If the Employee’s condition does preclude him/her from performing any of the functions of his/her job, please identify the specific job functions the Employee is unable to perform.

Response: 

9. If you believe there are any reasonable accommodations (e.g., modifications or changes to the work environment or to how the work is typically done) that would permit the Employee to perform the essential functions of his/her job listed in the response to Item No. 8 at this time, please describe the accommodation(s).

Response: 
10. If the Employee is not currently able to perform all of the functions of his/her job, with or without accommodation, please provide your medical opinion as to the anticipated return to work date for the Employee (i.e., the date when the Employee would be able to perform all of the physical and cognitive functions of his/her job with or without reasonable accommodation). If you are unable to identify a return to work date at this time (i.e., the Employee will be unable to perform all of the essential job functions with or without reasonable accommodation for an indefinite period of time or permanently), so indicate.

Note: A statement that the Employee will not be able to return to work until “at least” a given date is not helpful in the context of this process. Such assessment may be deemed the equivalent of a statement that the Employee will be unable to return to work for an indefinite period.

Response: 

11. If you believe there are any reasonable accommodations (e.g., modifications or changes to the work environment or to how the work is typically done) that would permit the Employee to perform the functions of his/her job listed in the response to Item No. 8 on his/her return to work date, please describe the accommodation(s).

Response: 

12. Is there a significant risk of substantial harm to the health or safety of the Employee or other individuals if the Employee is allowed to perform the duties of his/her position?

_____ Yes _____ No

13. If your response to Item No. 12 is “YES,” please describe the risk of harm.

Response: ____________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

14. Are there any accommodations that would reduce or eliminate the risk (i.e., direct threat) that you have identified in your response to Item 13 above?

Response: ____________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

By signing below, I certify that the answers provided in response to the above questions are based on my personal knowledge of the relevant facts from my own examination of the patient / employee or based upon my own review of the relevant medical documentation, and my answers represent my professional medical opinion.

__________________________________
Signature of Healthcare Provider

__________________________________
Print Name

Date:______________________________
Note: If you would like to observe someone performing the duties of the Employee’s position before you respond to this questionnaire, please contact [Name of Company Contact] to arrange a time for such observation.

[Name of Company Contact]
[Address]
[Telephone Number]
[Email]
{Sample Supplement to Job Description}

{EMPLOYER NAME}

{EMPLOYEE’S JOB TITLE}

**ESSENTIAL PHYSICAL/COGNITIVE JOB FUNCTIONS**

1. Prompt and regular attendance at an assigned work location.

2. Ability to work shifts of at least 8 hours, and occasionally longer, 5 days per week.

3. Ability to stand for prolonged periods.

4. Ability to lift and carry objects weighing up to [____] lbs.

5. Ability to interact with employees and customers in an appropriate manner.

6. Ability to receive and understand direction from supervision and management.

7. Availability on site to confer with staff members with whom the incumbent must interact on a regular basis.

8. Ability to use a personal computer for tasks such as communicating via email and preparing reports and work schedules using [_____________] software.

9. Ability to review and analyze data and information concerning [______________].

10. Ability to plan, prioritize and monitor [______________] activities.

11. Ability to complete [or oversee the completion of] assigned tasks/projects in a timely manner.
Letter Denying Request for Accommodation

No Information Received

[Name of Company Contact]
[Employer Name]
[Address]
[Telephone Number]
[Email]

[Date]

Via Overnight Delivery

[Employee Name]
[Street Address]
[City, State Zip]

RE: Request for Accommodation

Dear Mr./Ms. [Name],

On [Date], I wrote to you requesting that you provide the company with information concerning your medical condition. Enclosed with my letter was a Questionnaire to be completed by your healthcare provider [along with a job description/list of the functions of your job]. As I explained in my letter, the company requested that you provide the information concerning your medical condition as part of the interactive process so that it could determine whether there is a reasonable accommodation that would allow you to perform the essential functions of your job. You did not respond to my letter and you did not provide any of the requested information concerning your condition.

On [Date], I wrote to you again requesting that you provide the company with the requested information concerning your medical condition. In my letter I reminded you that you had an obligation to participate in the interactive process in good faith and to provide all of the information that we requested concerning your condition. I also informed you that, if you failed to provide the requested information, a decision regarding your request for an accommodation would be made utilizing the information on file. I also advised you that, if you had any questions regarding this matter, you could contact me at [telephone number]. You did not respond to my second letter and you have not provided any of the medical information that we requested.

As a result of your failure to participate in the interactive process in good faith, you have failed to engage in the interactive process and, based on the available information, your request for an accommodation has been denied. At this point, inform the employee of the effect of the
This document was drafted, reviewed, and/or approved by Brian Mc Dermott on December 18, 2015, and by Richard Mariani on June 30, 2014, for inclusion in the KM Legal Resource Center. The style, content, or both may not be appropriate in your jurisdiction and/or for use in your particular case or circumstances. It should never be used as work product of the firm without the exercise of an attorney’s independent judgment and discretion, including updating any authority cited and tailoring the document to the particular facts and circumstances. Further, if the subject matter of this document is outside your personal expertise, you should not use this document without speaking first with either the Editor or a subject matter expert.

 denial of his/her request for an accommodation – e.g., must report to work; must work overtime; termination of employment; etc.}

Sincerely,
Note: In situations where an employee’s disability is obvious (e.g., blindness, deafness, missing limbs), the employer may not ask questions to establish if the person’s impairment is a disability. Even when the disability or need for accommodation is not obvious, the ADA prohibits employers from asking disability-based questions of employees unless they are job-related and consistent with business necessity (e.g., questions necessary to establish that the person has a disability and/or needs a reasonable accommodation). For more information, see EEOC Informal Discussion Letter (Feb. 25, 2014).

Reasonable Accommodation/Interactive Process Letter

No Information Received

[Name of Company Contact]
[Employer Name]
[Address]
[Telephone Number]
[Email]

[Date]

Via Overnight Delivery

[Employee Name]
[Street Address]
[City, State Zip]

RE: Request for Accommodation

Dear Mr./Ms.________________,

On [Date], I wrote to you requesting that you provide the company with information concerning your medical condition. Enclosed with my letter was a Questionnaire to be completed by your healthcare provider along with a [job description/list of the functions of your job]. As I explained in my letter, the company requested that you provide the information concerning your medical condition as part of the interactive process so that it may determine whether there is a reasonable accommodation that will allow you to perform the essential functions of your job. To date, we have not received any of the medical information that we requested.

Please contact your healthcare provider and ask him/her to provide specific and complete responses to the matters addressed in the Questionnaire. You must return the completed Questionnaire signed by your healthcare provider no later than [Date].
You should understand that you have an obligation to participate in the interactive process in good faith and to provide all of the information that we requested concerning your condition. Failure to provide the requested information will frustrate the interactive process and a decision regarding your request for an accommodation will be made utilizing the information on file. If you have any questions regarding this matter, please do not hesitate to contact me at [telephone number].

Thank you for your anticipated cooperation in responding to our request.

Sincerely,
Attachment “A”

Guidelines for Reasonable Accommodation Interview with Employee

1. If time allows, prior to a formal meeting to discuss an employee’s reasonable accommodation request, the interviewers should familiarize themselves with the:
   a. Physical and cognitive requirements for performing the essential functions of the job;
   b. Behavioral characteristics essential for job performance;
   c. Marginal functions not essential to job performance; and
   d. Minimum qualification requirements essential for the position

2. If time allows, prior to a formal meeting to discuss an employee’s reasonable accommodation request, send the Model “Reasonable Accommodation Interactive Process Letter” to the employee and obtain the completed questionnaire.

3. The interviewers should begin the interview by explaining the purpose of the interview – to discuss the employee’s request for a workplace accommodation.

4. Among other things, the interviewers should discuss:
   a. The impact the employee’s condition has or will have on his/her job performance;
   b. The essential functions of the job and the impact the condition has on each specific job function (e.g., whether the employee can perform each of the essential functions); and
   c. Potential accommodations if the employee’s impairment affects the ability to perform the essential functions of the job.

5. Conclude the interview by stating that the information will be reviewed and the employer will get back to him/her.

6. Following the meeting, review with HR, and legal counsel, as necessary, to determine:
   a. Whether the employee meets the definition of a disabled individual;
   b. Whether the employee is qualified;
   c. Whether a reasonable accommodation has been requested;
   d. Whether additional information is required from the employee’s medical provider; and
   e. Whether a reasonable accommodation exists that would allow the employee to perform the essential functions of his or her job (also taking into consideration potential other accommodations, such as (1) transfer to or placement in other vacant jobs for which the employee might be qualified; or (2) leave).
7. Come to an agreement or resolution regarding whether a reasonable accommodation will be offered to the employee.

8. If a reasonable accommodation is available, offer the accommodation to the employee.

9. Keep a record of the interview and the offer of the accommodation in a medical file separate from personnel records.

10. Follow-Up (after accommodation implemented)
   a. The HR professional must monitor any accommodation plan that is put into effect and periodically confirm the accommodation is effective.
      i. Talk with the supervisor periodically
      ii. Talk with the employee periodically.
   b. Document the follow-up.

11. Keep all documentation regarding the interactive process in the employee’s separate, confidential medical file.
Reasonable Accommodation/Interactive Process Letter

Insufficient Information Received

[Name of Company Contact]
[Employer Name]
[Address]
[Telephone Number]
[Email]

[Date]

Via Overnight Delivery

[Employee Name]
[Street Address]
[City, State Zip]

RE: Request for Accommodation

Dear Mr./Ms. __________,

On [Date], I wrote to you requesting that you provide the company with information concerning your medical condition. Enclosed with my letter was a Questionnaire to be completed by your healthcare provider along with a [job description/list of the essential functions of your job]. As I explained in my letter, the company requested that you provide the information concerning your medical condition as part of the interactive process so that it may determine whether there is a reasonable accommodation that will allow you to perform the essential functions of your job.

You returned the Questionnaire, but your healthcare provider did not provide all of the requested information. Specifically, your healthcare provider did not provide [any/sufficient information] in response to Questions ____, ____, and ____. Please return the Questionnaire to your healthcare provider and ask him/her to provide specific and complete responses to these questions.

(Note: In situations where an employee’s disability is obvious (e.g., blindness, deafness, missing limbs), the employer may not ask questions to establish if the person’s impairment is a disability. Even when the disability or need for accommodation is not obvious, the ADA prohibits employers from asking disability-based questions of employees unless they are job-related and consistent with business necessity (e.g., questions necessary to establish that the person has a disability and/or needs a reasonable accommodation). For more information, see EEOC Informal Discussion Letter (Feb. 25, 2014).)
Please return the completed Questionnaire no later than [Date] so that a decision can be made regarding a reasonable accommodation. You must understand that you have an obligation to participate in the interactive process in good faith and to provide all of the information that we requested concerning your condition. Failure to provide the requested information will frustrate the interactive process and a decision regarding your request for an accommodation will be made utilizing the information on file. If you have any questions regarding this matter, please do not hesitate to contact me at [telephone number].

Thank you for your anticipated cooperation in responding to our request.

Sincerely,
REASONABLE ACCOMMODATION CHECKLIST
By Candace Walker, Indianapolis

I. Initiating the Process

A. Triggers for a reasonable accommodation analysis

1. The request can be verbal, written, or both.
2. The process can be triggered without any specific request if the need for an accommodation is obvious, e.g., an employee is in a wheelchair.
3. The request does not have to use the words “ADA,” “disability” or “reasonable accommodation.”
4. When an employee links an alleged medical condition to
   a. a complaint about a working condition or
   b. a request or demand for a job modification or special treatment
5. When an employee expresses a desire for assistance based on a disability.

How did the issue of a reasonable accommodation arise?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Describe and document the statements of the employee, supervisor, or medical provider that raised the issue of whether the employer should consider an accommodation under the ADA or state law.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

6. Determining Whether the Employee Has a Disability

B. Definition of Disability (for cases arising on or after January 1, 2009):

________________________________________________________________________

This checklist was prepared based on federal law; however, state law may provide different or additional requirements.
1. A physical or mental impairment that substantially limits a major life activity.

C. Definition of a Disabled Individual

1. One who has a physical or mental impairment that substantially limits one of more of the individual’s major life activities;
   A. One who has a record of such an impairment; or
   B. One who is regarded as having such a disability.

Does she/he have an impairment?

______ Yes ________ No

If yes, what is the impairment? (Request formal diagnosis, where relevant)

________________________________________________________

________________________________________________________

________________________________________________________

Discuss facts relating to the impairment.

________________________________________________________

________________________________________________________

________________________________________________________

Discuss with employee and, if unable to obtain sufficient information to make a determination, contact employee’s medical provider (obtain medical authorization form).

You may request only the documentation needed to establish that a person has a disability and that the disability necessitates a reasonable accommodation. You may only ask disability-related questions and send employee for a medical exam if inquiries are job-related and consistent with business necessity. For more information, see EEOC Informal Discussion Letter (Feb. 25, 2014).

What is the employee’s healthcare provider’s opinion as to causation and, in particular, as to whether the employee’s job or work environment may have caused or contributed to the employee’s impairment?
Describe the nature and severity of the impairment.

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Is a major life activity affected by the impairment?

____ Yes   ______ No

If yes, what is the alleged major life activity? (Check all that apply)

____ Walking   ____ Reaching   ____ Working***
____ Speaking   ____ Bending   ____ Reproduction
____ Breathing   ____ Lifting   ____ Sexual Functions
____ Hearing   ____ Interacting with Others   ____ Eating
____ Seeing   ____ Communicating   ____ Controlling Bowels
____ Thinking   ____ Learning   ____ Reading
____ Sitting   ____ Concentrating   ____ Running
____ Standing   ____ Caring for Oneself   ____ Sleeping
____ Major Bodily Functions (e.g., bladder and brain functions)
____ Performing Manual Tasks (including household chores, bathing, brushing teeth)
____ Other (Describe) ________________________________________________________________

***If the major life activity is “working,” identify the class of jobs or broad range of jobs that the individual cannot perform because of the impairment. Also, identify the jobs that are still available to the individual.

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Does the impairment substantially limit the major life activity?

2 The statute and regulations state that “substantially limited” is to be construed broadly in favor of expansive coverage. An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.”
Discuss what the employee cannot do, as well as what the employee is able to do. Compare the employee’s abilities/limitations to those of the average person. Note that even if the employee takes medications, uses prosthetic devices or has learned behavioral modifications to compensate the impairment, the determination of whether the impairment substantially limited the major life activity must be based upon what the employee’s condition would be like without such medication, mitigating measures, or behavioral modifications (except for ordinary eyeglasses or contact lenses). Similarly, if a condition is episodic or in remission, make the determination based upon the symptoms of the impairment when active, not when absent.

How long is the condition expected to last?

What is the proposed course of treatment?

What is the employee’s healthcare provider’s opinion as to whether the employee’s condition precludes him/her from performing any of the essential functions of his/her job and, if so, the physician’s opinion as to the nature and duration of such limitation(s)?

If the employee did not suggest a particular accommodation when the need for a potential accommodation arose, obtain the employee’s and/or his/her healthcare provider’s input as to potential accommodation(s) that would permit the employee to perform

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3 Note, when determining whether an individual has an (1) actual disability or a (2) record of a disability, the duration of the condition is not outcome determinative. However, in defense to a charge of discrimination by an individual claiming coverage under the “regarded as” prong of the definition of disability, an impairment that is or would be “transitory” (i.e., lasting or expected to last six months or less) and “minor” is not a disability.
the essential functions of his/her job. If it would be helpful in formulating an opinion as to a potential accommodation, the employer should offer to allow the healthcare provider to observe the employee’s job being performed.

Based on the above, does employee have a current disability?

Yes  No

D. Determining Whether Employee is Qualified

1. Definition of Qualified
   a. The employee with a disability has the background required for the job, and he/she can perform the essential functions of the job (either with or without a reasonable accommodation).

2. Definition of Essential Functions
   a. Those aspects of a job that are considered to be central to or fundamental to the job, not those components of a job that are marginal or incidental.

What are the “functions” of the job (as distinguished from the ways of performing those functions)?

What are the “essential” functions of the job?

What evidence/documentation supports this determination that it is an essential function of the employee’s job?

Written job description
____ Employer’s judgment
____ Amount of time spent performing function
____ Consequences of not performing function
____ Special skills needed to perform job
____ Terms of collective bargaining agreement
____ Actual experience of current employees in same or similar position
____ Actual experience of past employees in same or similar position
____ Nature of work operation
____ Organizational structure
____ Other ______________________________________

What are the “marginal” functions of the job?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

What facts/documentation support the determination they are marginal functions of the job?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Can the employee perform the essential functions of the position, either with or without a reasonable accommodation?

______ Yes  ______ No

If no, discuss: ____________________________________________________________

________________________________________________________________________

________________________________________________________________________

Will the employee be able to perform the essential functions of the position, either with or without a reasonable accommodation, if a leave of absence is provided?

______ Yes  ______ No
If yes, discuss how leave of absence will allow employee to return to his or her duties: ________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

E. Determining Whether Employee Needs Reasonable Accommodation

1. Definition of and Consideration of Reasonable Accommodation

   a. Any change to the application process, work process or the way work is ordinarily accomplished that enables an otherwise qualified individual with a disability to perform the essential functions of the job, or to otherwise enjoy the benefits of equal employment.

   b. The employer is not required to provide the accommodation preferred by the employee.

   c. If two equally effective accommodations exist, the employer generally may choose the accommodation.

   d. The employer is not obligated to provide the best possible accommodation, so long as the accommodation it chooses allows the employee to perform the essential functions of the job.

   e. If the accommodation, once implemented, does not resolve the situation, the employer’s responsibility to engage in the interactive process continues.

Has the reasonable accommodation process been triggered because the employee has requested a job modification because of a medical condition that could be a disability?

_____ Yes   _____ No

If no, describe: ________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

Has the reasonable accommodation process been triggered because the employer knows the employee has a disability and has reason to know that the employee needs a reasonable accommodation?
_____ Yes  _____ No

If no, describe: ________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

If the reasonable accommodation process has been triggered, send the Model “Reasonable Accommodation Interactive Process Letter and Questionnaire (employee request for accommodation)” interactive process letter to employee, accompanied by a completed “List of Essential Physical / Cognitive Job Functions.”

Did the employee and his/her healthcare provider provide complete information in response to your request?

_____ Yes  _____ No

If no, send the Model Reasonable Accommodation Follow-up Letter (insufficient info), or the Model Reasonable Accommodation Follow-up Letter (no info provided).

If yes, does the employee’s healthcare provider’s believe the employee’s condition precludes him/her from performing any of the essential functions of his/her job?

_____ Yes  _____ No

If yes, what is the healthcare provider’s opinion as to the nature and duration of such limitation(s)?
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

In which aspect of employment is reasonable accommodation needed?

_____ Application process
_____ Performance of job (including leave)
_____ Benefits and privileges of employment

What accommodation (if anything specific) was requested?
___ Acquisition or modification of equipment, machinery or devices
___ Making facility readily accessible to and usable by the employee
___ Readers
___ Interpreters
___ Providing helper or job coach
___ Modification of policy (including Leave Policy)
___ Accessibility
___ Job restructuring, including reallocation of marginal functions
___ Modification to work schedule, including part-time schedule
___ Acquisition or modification of equipment or devices
___ Telecommuting
___ Adjustment/modification of examinations, training materials or policies
___ Shift change
___ Reassignment or transfer to vacant position
___ Leave of absence
___ Other ______________________________

Describe the accommodation requested:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Is the reasonable accommodation needed because of the disability?

______ Yes  __________ No

If no, discuss: ____________________________________________________________
________________________________________________________________________
________________________________________________________________________

How will the accommodation allow the employee to perform the essential functions of the position?
________________________________________________________________________
________________________________________________________________________

9
Did you engage in “interactive process” to identify an effective accommodation?

_____ Yes (Describe with specificity and provide documentation)

_____ No (Discuss. This is a requirement. Must discuss with HR and/or Legal)

Did you discuss accommodation with the employee?

_____ Yes  _____ No

See Attachment A, Guidelines for Reasonable Accommodation Interview with Employee

You must document the discussions (include attachments, if necessary).

Have you or the Company’s medical representative discussed the restrictions and possible accommodations with the employee’s medical provider or requested information in writing from the employee’s medical provider?

_____ Yes  _____ No

If yes, document discussions (include attachments, if necessary).

Has accommodation been provided?

_____ Yes  _____ No

Describe the accommodation.
Did the employee accept the accommodation?

_____ Yes  _____ No

If the employee did not accept the accommodation, why not?

________________________________________________________

________________________________________________________

________________________________________________________

Document whether the employee accepted the accommodation, and if not, why.

________________________________________________________

________________________________________________________

________________________________________________________

If the employee accepted the accommodation, is the accommodation effective (i.e., does it work?)

_____ Yes  _____ No

F. Determining Whether Employee Poses a Direct Threat

1. Definition of Direct Threat
   
   a. The employee with a disability poses a \textit{significant risk of substantial harm} to him/herself or others that is objective, specific, current and non-speculative, and there is not a reasonable accommodation that would lower the risk or harm below that level.

   b. This is a high burden and should be discussed with HR and/or Legal before any final determination is made.
Is the employee being screened out for a position or promotion, reassigned, demoted, disciplined, placed on leave, or terminated for safety-related reasons?

______ Yes  ______  No

If yes:

Is the specific risk identified?

______ Yes  ______  No

Is the risk of harm a risk to the employee or others?

Describe the risk (e.g., contagion, injury, etc.)

Is the risk significant (i.e., highly probable)?

______ Yes  ______  No

What is the duration of the risk?

Describe the harm:

Is the harm substantial (i.e., serious)?
Is the harm imminent?

_____ Yes  _____ No

Can the risk of the harm be reduced by providing a reasonable accommodation?

_____ Yes  _____ No

Did you engage in the “interactive process” to identify an effective accommodation?

_____ Yes  _____ No

Did you discuss accommodation with the employee?

_____ Yes  _____ No

If yes, document discussions (include attachments, if necessary).
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Have you or the Company’s medical representative discussed the possible accommodations with the employee’s medical provider [after obtaining release] or requested information in writing from the employee’s medical provider?

_____ Yes  _____ No

If yes, document discussions/information (include attachments, if necessary)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

If no, is this because, despite the employer’s best efforts, (1) the employee or the employee’s medical representative did not fully respond to the employer’s request for information, or (2) failed to respond at all to the requested information?
If yes, document all efforts to obtain the requested information (include attachments, if necessary), and send the Model Reasonable Accommodation Follow-up Letter (insufficient info), or the Model Reasonable Accommodation Follow-up Letter (no info provided).

If no, is this because, despite the employer’s best efforts, (1) the employee or the employee’s medical representative did not fully respond to the employer’s request for information, or (2) failed to respond at all to the requested information?

If yes, document all efforts to obtain the requested information (include attachments, if necessary), and send the Model Reasonable Accommodation Follow-up Letter (insufficient info), or the Model Reasonable Accommodation Follow-up Letter (no info provided).

Has an accommodation been provided?

_____ Yes  _____ No
If yes, is the accommodation effective (i.e., does it work?)

_____ Yes  _____ No

G. Will the Accommodation Create an Undue Hardship?

1. Definition of an Undue Hardship
   a. Significantly difficult or expensive when considered in light of the overall operational and/or financial resources of the employer.
   
   b. This is a high burden, which should be substantiated with objective evidence and discussed with HR and/or Legal before making any final determination. Cost, alone, might not constitute an Undue Hardship.

Do you believe that providing reasonable accommodation would impose an undue hardship?

_____ Yes  _____ No

If yes:

What objective facts exist to support undue hardship?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Specify the nature and net cost of accommodation. Be sure to consider and discuss the availability of tax credits and deductions, and/or outside funding

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Overall financial resources of facility/facilities, number of employees at facility, and effect on expenses and resources

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
Overall financial resources of covered entity, overall size of business of covered entity with respect to the number of employees and the number, type and location of facility/facilities

Type of operation(s) of covered entity, including composition, structure, and functions of the workforce of covered entity, and geographical separateness and administrative or fiscal relationship of facility/facilities in question to the covered entity

Impact of the accommodation on the operation of the facility, including impact on other employees’ ability to perform duties and facility’s ability to conduct business

Terms of a collective bargaining agreement *(discuss how the accommodation would affect the rights of other employees, and whether you tried to negotiate a change to CBA)*

Describe and document evidence supporting basis for undue hardship:
Animals in the Workplace Guidelines
(Service/Assistive Animals and Comfort Animals)
By Lauren Zeldin, Atlanta

Background:
In certain situations under the ADA, an employer may be required to allow employees or applicants with a disability to bring service dogs, comfort animals, or other assistive animals (for purposes of these Guidelines, collectively referred to as “assistive animals”) to the workplace as a form of reasonable accommodation. Requests by employees to bring an assistive animal to the workplace should be considered and implemented just as with any other request for reasonable accommodation.

Assistive Animals

Under federal and applicable state law, assistive animals can include:

- a guide dog trained to guide a blind or visually impaired person or signal dog trained to alert a deaf or hearing impaired person to certain sounds
- a service dog that is individually trained to the requirements of a person with a disability
- a “support” dog or other animal that provides emotional support to a person with a disability, including, but not limited to, traumatic brain injuries or mental disabilities such as major depression

An assistive animal need not be a dog. Unlike the federal rules for service animals in public accommodations, assistive animals are not limited to dogs or miniature horses. It is possible that an employee will request a different kind of animal to accompany the employee to work, but keep in mind the animal must still be “trained” and must be “necessary as a reasonable accommodation for a person with a disability.” All requests for any kind of assistive animal should be evaluated in the same manner.

Basic Legal Requirements

Like other requests for reasonable accommodation, the request to be accompanied at work by an assistive animal should be granted if it is reasonable and will effectively allow the employee with a disability to perform the job’s essential functions and or provide the employee with equal opportunity to a job benefit.

Like other requests for reasonable accommodation, it may be denied only if granting the request would create an undue hardship or endanger the health or safety of the individual with a disability or of others in the workplace.

Like other requests for reasonable accommodation, Employer may require reasonable medical documentation from a health care provider to confirm the existence of a disability and the need for reasonable accommodation to perform the essential functions of the job.
Documentation may not be sought when the disability and need for accommodation is obvious (for example, a blind person needing a guide dog).

Employer and the employee must engage in the interactive process regardless of what action is taken on any particular request for accommodation. If a particular request is denied, including a request for an assistive animal in the workplace, Employer will need to consider other accommodations that would permit the employee to perform the essential functions of the job.

**Minimum Standards for All Animals**

Employer has the right to ensure minimum standards for animals in the workplace, including requiring that:

- the animal be free from offensive odors
- the animal display habits appropriate for the work environment, including the ability to eliminate feces and urine in an appropriate location designated for this purpose
- animal not engage in behavior that endangers the health or safety of the individual with the disability or others in the workplace
- the employee maintain control of and supervise the animal at all times and not expect or require other employees (including management or Human Resources employees) to take control of or supervise the animal
- maintain the animal on a leash, harness or other restraint at all times, except when performing a task for the employee that requires release from any such restraint
- the employee clean up after the animal
- the employee follow reasonable directions for ensuring that the animal does not interfere with the performance of work or disturb, distract, offend or intimidate other employees who may have allergies or reasonable fears of the assistive animal

**Considerations**

As with reasonable accommodation requests, Employer will need to consider the employee’s need for the assistive animal to perform the essential job functions for this particular job, as well as issues related to the company or department that might have some bearing on the feasibility of having an animal in the workplace. Issues to consider include:

- Are there general health or safety concerns?
  - For example, does this employee need to be in a sterile area of the hospital or other area where health codes might prohibit the presence of animals?
- Are there health or safety concerns related to others?
  - For example, has the Employer taken a survey of other coworkers to ensure that no undue burden is created – such as employees with allergies to this animal, or extreme (and reasonable) fear of this animal – and, if so, are there mitigating measures that could be undertaken to accommodate both the
employee needing the assistive animal and the employee(s) who may have some difficulty working in proximity of the animal?
  o Assess what type of impact the presence of the animal may have on patients in a hospital setting, given the age of patients and degree of illness.
✓ Is the employee willing to agree to the minimum standards stated above regarding cleanliness, behavior and habits?
  o Put an agreement in writing indicating the employee agrees to these conditions
✓ Are there other documents the Employer should seek?
  o Proof that the animal is licensed (by county)
  o Proof that the animal is properly vaccinated
✓ What is the expectation in terms of oversight of the animal?
  o Does the employee agree to have the animal with him/her at all times (the employee will refrain from asking other coworkers to watch his/her animal)?
✓ Remember that issues related to the feasibility of this accommodation are ongoing
  o Keep a calendar to make sure all documents (vaccination records, licensing records) are up to date
  o Keep a reminder calendar to check in with employee and/or coworkers and/or supervisor to ensure the accommodation continues to be reasonable and effective, and does not impose an undue burden
ACKNOWLEDGMENT OF MINIMUM STANDARDS REQUIRED FOR ASSISTIVE ANIMALS IN THE WORKPLACE

I, ______________________ (“Employee”), acknowledge and agree by signing below that I have been permitted to bring my assistive animal to the workplace as a reasonable accommodation to my disability.

I acknowledge, and agree to abide by, the following minimum standards that must be maintained if the assistive animal is to be allowed in the workplace:

1. Employee must provide reasonable proof of the licensure of the animal with municipal authorities, including licensing authority and number and proof of up-to-date shots and vaccinations.
2. Employee must certify in writing that to his/her knowledge the animal does not present a risk of biting or other injury to other individuals in the workplace.
3. The animal will be kept clean and free from offensive odors.
4. The animal will display at all times habits appropriate for the work environment.
5. The animal will be trained and display the ability to eliminate feces and urine only in an appropriate location designated for this purpose.
6. The animal must not engage in behavior that endangers the health or safety of the individual with the disability or others in the workplace.
7. The employee will maintain control of and supervise the animal at all times and will not expect or require any other employees to take control of or supervise the animal.
8. The employee will maintain the animal on a leash, harness or other restraint at all times, except when performing a task for the employee that requires release from any such restraint.
9. The employee will clean up after the animal and cause any repairs to the workplace, including any unexpected messes that the animal may make or damage to the property of the company or its employees or guests.
10. The employee must follow reasonable directions for ensuring that the animal does not interfere with the performance of work or disturb, distract, offend or intimidate other employees who may have allergies or reasonable fears of the assistive animal.

I understand that both the company and I have the right to review this grant of reasonable accommodation from time to time to ensure that it is effective for my needs and that it does not create an undue hardship for the company or endanger my health or safety or that of others.

I understand and agree to follow each of these rules and standards.

________________________________________
Employee’s Signature
Printed Name

---------------------------------------------
Date
PROCESS FOR EVALUATING AN EMPLOYEE REQUEST FOR AN ASSISTIVE ANIMAL IN THE WORKPLACE

In cases where an Employee has completed an ADA Accommodation Request Form requesting an assistive animal in the workplace as a reasonable accommodation, Human Resources should use the following steps for evaluating the request:

I. **Step One: Does the Employee have a Disability?**

   A. Does the employee have a disability defined as a physical or mental impairment which substantially limits one or more major life activity?

      Examples include but are not limited to: blindness, deafness, diabetes, cancer, PTSD, and major depressive disorder.

   B. Has the condition been medically diagnosed?

      If the disability is not obvious (examples of “obvious” conditions may include blindness and paralysis), the employee may be required to provide medical documentation establishing the existence of disability. If the disability is obvious, no medical documentation should be requested.

   C. HR should review the information to confirm the existence of a disability.

      If the employee does not have a disability or does not submit supporting medical documentation in appropriate cases, the Employer is not required to grant the employee’s request for an assistive animal in the workplace.

II. **Step Two: Identify the Essential Functions of the Employee’s Job & Engage in the Interactive Process**

   A. Essential Functions: HR should determine and document the essential functions of the employee’s job in consultation with the employee’s manager.

      1. The term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires.

      2. Consider written job description, amount of time spent performing a specific job function, experience of other employees in the same position, and any collective bargaining agreement.

      3. A job function may be considered essential for any of several reasons, including but not limited to the following: (1) because the reason the position exists is to perform that function; (2) because of the limited number of employees who can perform that job function; and/or (3) because the function is highly specialized.
B. Interactive Process: HR should review the employee’s proposed accommodation and the essential functions of the job and meet with the employee to discuss.

1. Document all discussions with the employee. These notes should be kept in a confidential medical file separate from the employee’s general personnel file.

2. Employee should explain how the assistive animal will enable him or her to perform the essential functions of the job. (Employee may be required to provide medical documentation demonstrating how the assistive animal will enable him or her to perform the essential functions of the job, unless the reason for the request is obvious).

3. Assessment should be made as to whether the employee can perform the essential functions of the job without the requested assistive animal. If this is the case, the accommodation does not need to be granted.

III. Step Three: Assess Whether Allowing the Assistive Animal in the Workplace would Create an Undue Hardship on the

A. Conduct A Fact Intensive Inquiry.

Assuming the employee can satisfactorily establish that the assistive animal is necessary and will enable him or her to perform the essential functions of the job, Employer should assess whether allowing the assistive animal will result in undue hardship to Employer. An assistive animal will create an undue hardship if:

- The animal disrupts business or other employees’ ability to work;
- Allowing the animal involves significant expense to the ;
- Allowing the animal requires the Employer to change the basic nature of its business, or
- The animal creates a safety hazard.

Considerations include:

- Are there general health or safety concerns?
  - For example, does this employee need to work in a sterile area of the hospital or other areas of the hospital where health codes might prohibit the presence of animals?
- Are there health or safety concerns related to others?
  - For example, has the Employer taken a survey of other coworkers to ensure that no undue burden is created – such as employees with severe allergies to this animal, or extreme (and reasonable) fear of this animal – and, if so, are there mitigating measures that could be undertaken to accommodate both the employee needing the assistive animal and the employee(s) who may have some difficulty working in proximity of the animal?
Assess what type of negative impact the presence of the animal may have on patients in a restaurant setting. If so, can mitigating measures be undertaken, or will the essence of Employer’s mission be compromised or undermined if the animal is allowed?

✓ Has the animal exhibited any type of aggressive behavior that would pose a safety risk? (This assessment may be ongoing even if the accommodation is granted).

✓ Is the employee willing to agree to the minimum standards stated above regarding cleanliness, behavior and habits?
  o Put an agreement in writing indicating the employee agrees to these conditions

✓ Are there other documents the Employer should seek?
  o Proof that the animal is licensed (by county)
  o Proof that the animal is properly vaccinated

✓ What is the expectation in terms of oversight of the animal?
  o Does the employee agree to have the animal with him/her at all times (the employee will refrain from asking other coworkers to watch his/her animal)?

✓ Remember that issues related to the feasibility of this accommodation are ongoing
  o Keep a calendar to make sure all documents (vaccination records, licensing records) are up to date
  o Keep a reminder calendar to check in with employee and/or coworkers and/or supervisor to ensure the accommodation continues to be reasonable and effective, and does not impose an undue burden

Note that, in most cases, complaints from other employees, as well as allergies suffered by other employees are generally not sufficient reasons to deny a request for accommodation for an assistive animal. This is particularly the case where the Employer is able to separate the employee with an allergy from the service animal without impeding the basic nature of the Employer’s business.

**Note Regarding Pets/Other Resident Animals:** If the Employer allows dogs or other animals in the workplace for other reasons (such as allowing employees to bring pets to work, or if there is an animal in residence at the workplace, or animals such as therapy animals come to visit), it will be more difficult for the Employer to demonstrate that the presence of an assistive animal as a reasonable accommodation for a disabled employee would constitute an undue hardship for the Employer.

**B. Consider Alternative Accommodations**

If Employer cannot accommodate the employee’s request for an assistive animal, Employer should consider other possible accommodations that would enable the employee with a disability to perform the essential functions of his or her job.
EVALUATING EMPLOYEE REQUESTS FOR ASSISTIVE ANIMALS AS A REASONABLE ACCOMMODATION IN THE WORKPLACE

Does the employee have a disability as defined under applicable law?

- **NO**
  - Request for Assistive Animal may be denied

- **YES**
  - Will allowing the Assistive Animal create an undue hardship on the employer?
    - **NO**
      - Assistive Animal must be allowed (ongoing assessment allowed)
    - **YES**
      - Request for Assistive Animal may be denied; consider alternative accommodations
WORKPLACE VIOLENCE TOOLKIT

1. Preventing workplace violence in 5 steps

An effective workplace violence prevention program starts with employee screening and ends with publicizing a tough anti-violence policy, according to Dennis A. Davis, a former SWAT team liaison who now directs client training for the employment law firm Ogletree Deakins.

Davis says tough economic times might be the catalyst for violence for those with the propensity to do so—and they might do so at work. There’s never been a better time to implement a violence prevention plan with these five elements:

1. **Screen applicants**

   “Your best chance to avoid workplace violence is to avoid letting in a violent person in the first place,” Davis says.

   Ask all applicants for personal as well as professional references. Insist on a face-to-face interview so managers can gauge an applicant’s temperament. Ask everyone who comes in contact with the applicant about their impressions.

   Then trust your gut. Does this person seem stable?

2. **Craft a tough anti-violence policy**

   You need a policy that stands on its own—not part of some other general policy on professional behavior or misuse of office equipment. That sends the signal that you’re serious about preventing workplace violence.

   “Most people will go along with your expectations if you’re clear about them,” Davis says. Having a written policy does that.

   Make sure it states you have zero tolerance for any kind of violence—and threats of violence. You can even expand it to cover off-duty threats that might spill back into the workplace later. Prohibit weapons on your premises. Require employees to read the policy and sign a receipt. Ask your vendors to read and enforce the policy when their employees are on your premises or work site.

3. **Establish a crisis management team**

   A crisis management team consists of six to eight people who function as coaches before violence erupts and incident managers if it does. Include staffers from the HR, legal and security functions. There should be a representative from senior management and your employee assistance program if you have one.

   The team should track complaints of violent or intimidating employee behavior. That can help identify potentially violent employees before they become physically dangerous.
The crisis management team also functions as your liaison to the police if an incident occurs.

4. Train front-line supervisors and greeters

“These people are your eyes and ears, your early warning system,” says Davis. They’ll probably know if someone is about to become violent long before anyone else does.

Instruct supervisors to report every incident. Train receptionists and security how to read aggressive body language and how to use verbal skills to defuse dangerous situations.

Tell everyone to call 911 if they are in danger or believe a situation is about to become violent.

5. Publicize your anti-violence program

Use meetings, newsletters, e-mail and the intranet to get the word out that your organization has a zero-tolerance policy on workplace violence. Be sure everyone knows how to contact the crisis management team and when to call 911.

8 warning signs of violent employee behavior

When violence occurs at work, employees may say their violent co-worker “just snapped.” But, the truth is, people usually don’t snap. They display warning signs long before they actually act out. The key is to talk to employees early in this “pre-violence” stage to offer assistance and/or let them know their behaviors are unacceptable.

Be on the lookout for workers who display any of these eight warning signs of violent behavior, according to Davis:

1. Fascination with weapons. That’s different than ownership of weapons. (Think Robert De Niro in Taxi Driver.)

2. Substance abuse. Research shows a big correlation between substance abuse and violence.

3. Severe stress. Stress is a function of modern society but people with a propensity toward violence allow that stress to become an excuse for violence.

4. Violent history. “Once people cross that moral, ethical or professional barrier into violence,” Davis says, “it’s a lot easier for them to do it the next time.”

5. Decreased or inconsistent productivity. Employees with a tendency toward violence have a harder time keeping a consistent level of productivity.

6. Social isolation and poor peer relationships. Loners are more likely to act violently because they don’t have asocial network to work out problems.

7. Poor personal hygiene. These people have moved into the dangerous “I don’t care” phase.
8. Drastic changes in personality. It’s a myth that you need to watch out for ultra-shy or ultra-outgoing employees. Davis says, “You need to pay attention to the person who flip-flops between the two.”

3 keys to managing the aftermath of workplace violence

by Dennis A. Davis, Ph.D., Ogletree Deakins

Increasingly, companies have to deal with violence and tragedy in the workplace. In today’s work environment, employees are experiencing trauma at alarming rates. These incidents of trauma are most widely known as critical incidents.

Since people experience trauma in many different ways, critical incidents can be tricky to define. Generally, a critical incident is any violent or traumatic event that is far out of the norm for an individual or organization and that is beyond usual occurrence on the job, such as death threats, arson, suicide, rape, assault with a deadly weapon, or murder. Critical incidents overwhelm the normal coping resources of the employees.
Most companies believe “It will never happen to us,” but it can and—unfortunately—it does.

A critical incident can have far reaching ramifications for any organization. Some critical incidents cause major injuries or even death to those involved. Often, employees who were not around when the incident occurred experience just as much trauma as those who were present. Some incidents also attract unwanted media attention and scrutiny to the impacted organization.

Critical incidents can vary in intensity and severity. They can involve one person or many. Most critical incidents occurring in the workplace, however, have several resulting elements in common:

- An increase in absenteeism
- An increase in employee turnover
- Loss of productivity
- Business interruptions
- Increased workers’ compensation claims
- Increased insurance premium rates.

### Checklist: If violence erupts

Follow this checklist of basic steps to help manage the aftermath of a traumatic situation:

- Remove all employees, customers and clients from further harm.
- Contact local law enforcement.
- Arrange for emergency medical care.
- Schedule CISDs as soon as the threat is removed.
- Refer employees to EAP/insurance programs.
- Renew commitment to established security measures.
- Have management agree on what information is appropriate for general release.
- Present spokesperson as contact to local media.
- Touch base with personnel several days after debriefing to communicate concern.
However, those results can be influenced. With proper crisis management methods and post-incident intervention, an organization can recover from and decrease the negative fallout from an incident.

The following is a basic step-by-step crisis management guide to help you and your organization get back on track after a critical incident.

**Security: Out of harm’s way**

First and foremost, be certain that all employees, customers, clients, and visitors have been removed from harm’s way. Make sure that local law enforcement has been informed of the incident. Provide emergency medical care for any injured parties.

If a threat remains, keep all personnel away from the site until it has been cleared by security or police.

If the incident involves a threat of bodily harm, increase the visibility of security. If your organization has a security department, increase the number of “rounds” or “walk-throughs.” If your company does not have a security department, consider bringing in an outside security firm. Very few things can decrease employee productivity and customer confidence as much as the perception of being unsafe. Contrary to popular belief, increased security helps employees and customers feel safe.

Finally, make sure that your security director or a designee maintains contact with local law enforcement in cases where there is criminal prosecution. Knowing where a suspect or perpetrator is in the justice system can serve to dissipate fear.

After an incident occurs, it is imperative to reinforce security precautions with all personnel. Frequently, an organization has adequate physical/site security, but the measures have been disregarded or disabled by employees—usually as a corner-cutting convenience. Some examples: The locked security door that is propped open with a chair while an employee goes to smoke a cigarette, and the receptionist who buzzes in an employee even though he doesn’t have his identification, because he looks familiar.

With the heightened awareness following a critical incident, your personnel will be more likely to hear and heed your warnings against these types of security breaches.

**Human resources: Critical incident response debriefings**

As soon after the removal of the threat as possible, your HR director should schedule Critical Incident Stress Debriefings (CISD). CISDs are extremely important to the recovery of an organization following a critical incident.

They are not therapy sessions, but rather “psycho-educational” meetings. The intent is to educate employees on what to expect as a result of the trauma. There are three main phases of a CISD:

1. **Information.** This is where the employees are given as much information about the incident as possible. This helps to decrease the number of rumors and myths that follow many traumatic incidents.

2. **Venting and validation.** During this phase of the CISD, the participants are encouraged to share their fears, concerns and other feelings. Once these emotions are
expressed, they are validated. This serves to reduce anxiety in an organization and minimize the need to talk about the incident when employees should be working.

3. Prediction and preparation. During this final of the CISD phase, the facilitator helps the employees understand what to expect next. Example: Who will be questioned during the police investigation?

Research has suggested that a CISD following a critical/traumatic incident can drastically reduce the negative impact on employees.

Make sure attendance at the debriefings is voluntary, but encourage all employees to attend. It is generally a good idea to have separate debriefings for management and nonmanagement staff, especially if the critical incident in any way involved an issue between management and the workforce.

During the management debriefing, be sure to make it clear to all managers exactly what information is to be released to the workforce.

It has been found that the most successful CISDs are those, which take place within 72 hours of an incident. This is partly because this short period does not allow inappropriate coping strategies to set in permanently. If no one in your organization is qualified to conduct a debriefing, your local mental health association can refer a facilitator to you.

After the debriefing, be ready to discuss your company’s employee assistance program (EAP), as well as insurance benefits that may cover counseling. CISDs are meant to fill an employee’s need for immediate, short-term counseling; however, some of your personnel may have a more difficult time dealing with the incident and may feel uncomfortable in the CISD setting. In these instances, additional, outside counseling may be required.

Allow only a limited amount of venting with you directly. Once you become the support system to the employee, it is hard to change roles. Politely remind them of the counseling services available through your EAP or insurance program. If your company does not have an EAP or your insurance carrier does not include a therapy allowance, make sure you are familiar with counseling centers and social service agencies in your area. Be prepared to refer to these agencies and have the agency names and numbers available.

Have your HR director touch base with your employees about two to three days after the debriefing. An increased presence lets the employees know that the company cares, and this is a big concern for many.

Public relations: Manage the message

One of the most difficult invasions for most people is to have a microphone thrust in their face and asked to be instantly prophetic (coherent, intelligible, informed, etc.) following a critical incident. Don’t allow any of your employees to be put in this situation.

If there is ever an incident in your organization that is of such magnitude that it generates media interest, it is essential that a company spokesperson be designated. If you have not already designated this person, do so immediately, before an incident can occur.

Make sure this designee is accessible to the media and well informed. It helps if he or she has already established credibility with your local media. Remember, a proactive
Implementing a workplace violence and weapons policy

Often it is an employee or ex-employee who turns violent. The Society for Human Resource Management reports that 57% of all workplace violence is directed against fellow employees by a co-worker, and 17% is an employee against a supervisor. Six percent of the attackers are customers; 4% are boyfriends or girlfriends of employees; 3% are spouses of employees. In many cases, at least some co-workers knew that the person might turn violent.

Still, you can’t predict the behavior of your employees, clients and all their friends and relatives. You can’t anticipate or plan for every possible danger. But the law dictates that you, as the employer, have a “duty of care” to keep all individuals in your workplace safe from dangers you can reasonably anticipate, both from inside and outside forces. To do that, you need to evaluate potential dangers and formulate an appropriate action plan.

Weapons in the workplace present an obvious potential for violence. Aside from allowing designated, trained security personnel to carry them, you should explicitly ban weapons from the premises. Even in the case of security staff, carefully weigh the risks posed by the mere presence of their weapons against the potential for them to protect others from harm. Some organizations leave no room for doubt by listing categories of prohibited weapons.

2. Policy considerations

To reduce the chance of workplace violence—or your liability if it does happen—establish a program that covers the following:

- **Ban weapons**, and have a zero-tolerance policy regarding threats in the workplace.
- **Screen carefully** by checking references and doing criminal background checks.
- **Train supervisors** to recognize personality changes and warning signs.
- **Defuse disputes**. Establish a mediation program to resolve employee disputes rather than letting them simmer.
- **Evaluate your security system** at least once a year. Consider whether you might need silent alarms, ID keys, cameras or even an armed guard.
- **Make it a policy** that any restraining orders involving employees must be reported to management, and include this in your employee handbook.

**By the numbers**

One in six violent crimes occurs at work:

- 7% of all rapes
- 8% of all robberies
- 16% of all assaults

Sources: Department of Justice, Bureau of Justice Statistics, Bureau of Labor Statistics, Centers for Disease Control
• **Train front-line employees.** Receptionists and front-desk clerks should be on the lookout for unusual or unsettling encounters, and have clear instructions on how to handle and report them to minimize risk to themselves and others. Every employee should be instructed as to when and how to contact the police.

• **Establish procedures** for employees to report threats or other violent behavior. Offer several avenues for reporting: supervisors, security personnel, human resources, or if there’s imminent danger, everyone nearby.

• **Document any threats** and your response to them. Your zero-tolerance policy should dictate dismissal of an employee who makes a threat. If it’s a worker’s relative or friend who’s being disruptive and dangerous, you are within your legal rights to terminate the employee, provided you give him adequate warning.

  *Caution:* When an ADA-related disability is involved, you must generally tolerate a certain level of disability-caused conduct, but you do not have to tolerate direct, violent threats to the health or safety of others in your workplace.

• **Assess** how your company handles stress-inducing events. For example, what is your procedure when a law enforcement officer or process server comes to see an employee? Confrontations shouldn’t occur in view of other employees. You could instruct your receptionist to direct the officer to a private part of the office near an outside door, and then quietly ask the employee involved to report to that area.

• **Terminate with care.** Have someone along as a witness if you have to terminate a violent employee; consider engaging backup security. Treat the worker with dignity, and allow a way for the person to depart quietly. Afterward, change the locks.

3. **Have a game plan**

   You should have a plan for what to do in case violence does erupt, starting with protecting yourself, calling police and warning those in the vicinity. The plan should include the following steps after the assailant leaves:

   • Seek assistance from co-workers and attend to those who are injured.
   • If the assailant is an employee, pull his personnel file.
   • Designate someone to notify the victims’ families. Be sure all employees have a current emergency contact on file. Update that information annually.
   • Inform a designated media spokesperson.
   • Notify your in-house counsel.
   • Provide counselors trained in handling post-traumatic stress to talk with all the employees affected by the incident.
   • Ask law enforcement for approval to clean up the site. You don’t want to damage the integrity of the evidence, but you do want to restore the site as soon as possible.
   • Beware of looters, who might try to take advantage of your situation.
   • Begin documentation of the event as soon as possible.
4. Sample policy #1: Violence and weapons


Please feel free to edit this policy to suit your organization’s purposes.

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**Purpose**

All employees have the right to work in an environment free from physical violence, threats, and intimidation. The Company’s position is that violence is a form of serious misconduct that undermines the integrity of the employment relationship. No employee should be subject to unsolicited and physical violence, threats, or intimidation. Such behavior may result in disciplinary action, up to and including dismissal.

**Policy**

The Company has a strong commitment to its employees to provide a safe, healthy, and secure work environment. The Company also expects its employees to maintain a high level of productivity and efficiency. The presence of weapons and the occurrence of violence in the workplace during working hours or otherwise are inconsistent with these objectives. While the Company has no intention of intruding into the private lives of its present or potential employees, it expects all employees to report on the work site without possessing weapons and to perform their job without violence toward any other individual.

**Coverage**

All applicants considered for employment [and all current employees] will be required to sign an acknowledgment that they have received this Policy and understand its contents and intent . . . Any applicant or employee who refuses to sign the acknowledgment will be subject to termination, up to and including discharge.

**5. Definitions**

**Crime of Violence or Violence:** Includes any degree of murder, voluntary manslaughter, aggravated rape, rape, mayhem, especially aggravated robbery, robbery, burglary, aggravated assault, assault, physical or verbal threats and battery.

**Weapon:** Includes an explosive or an explosive weapon, a device principally designed, made or adapted for delivering or shooting an explosive weapon, a machine gun, a short-barrel rifle or shotgun, a handgun, a firearm silencer, a switchblade knife or any other type of knife, or knuckles, or any other implement for infliction of bodily injury, serious bodily injury or death that has no common lawful purpose.

**On the Work Site:** Includes all property owned or occupied by the Company (including Company job sites) or in a Company vehicle.
**Possession:** Includes, but is not limited to, the presence of a weapon on the employee, in his/her motor vehicle, lunch box, locker, tool kit, bag, purse, cabinets, office, etc.

**Policy implementation**

It is the responsibility of the Plant Manager to ensure that all employees are informed of and aware of this Policy and legal guidelines. Employees who are victims of or witnesses to violent incidents should immediately report such conduct to their supervisors or the Human Resources Manager.

**Prohibited activities**

The Company specifically prohibits the following and will routinely discipline an employee, up to and including discharge for any of the following:

- Use, possession, or sale of any weapon as described above.
- Storing any weapon in a locker, desk, vehicles, lunch box, tool kit, bag, purse, or other repository on the work site or other Company premises.
- Illegal possession, use, or sale of a weapon off Company property that adversely affects his/her own or other’s safety at work, or indicates a propensity for same.
- Refusing to submit to an inspection for the presence of a weapon that is requested by the Company.
- Conviction under any criminal statute for the illegal possession of a weapon or for committing a violent act against the person or property of another.
- Refusing to sign a statement to comply with the Company’s Policy on Workplace Violence.
- Refusing to participate in an investigation pertaining to allegations or suspicion that violence has or is likely to occur, or an investigation pertaining to the carrying of a weapon by the employee or a co-employee.
- Verbal or physical threats, threatening gestures or statements.
- Fighting.

The Company, in its discretion, may from time to time modify this policy. In the event the Workplace Violence Policy is revised, a copy of the revised policy will be provided to each employee, and to the extent that the employee acknowledgment of the Policy may need to be updated or revised, each employee will be required to sign an updated version.

**Reporting**

An employee who witnesses an incident of violence or threatening language or conduct must report the incident to his or her supervisor or Human Resources promptly. No employee who reports an incident of violence or threatening conduct or participates in an investigation of such an incident shall be subject to retaliation.
**Discipline**

An employee who violates this Policy by engaging in violent conduct or bringing a weapon into the workplace is subject to discipline, up to and including immediate termination.

An employee who violates this Policy by bringing onto the work site a weapon and whose employment is not terminated by the Company will be subject to searches from time to time, for an indefinite period not to exceed one (1) year from the date of the violation.

An employee’s consent to submit to a search is required as a condition of employment and the employee’s refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

**Miscellaneous**

The Company has the right to search any areas on Company premises for weapons, including, but not limited to, lockers, furniture, containers, drawers, equipment or other facilities, lunch boxes, briefcases, personal bags, personal toolboxes or tool kits, parking lots, Company vehicles and personal vehicles parked on Company premises.

If an employee is injured while participating in a fight or after instigating a fight, then entitlement to workers’ compensation benefits may be denied.

No part of this Policy or any procedure therein, is intended to affect the Company’s right to manage or control its workforce, or be construed as a guarantee or contract of employment or continued employment.

**Nonretaliation**

This policy also prohibits retaliation against employees who report incidents of threats, physical violence, intimidating conduct, or weapons possession. Any employee bringing a harassment complaint or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment, nor discriminated against or discharged because of the complaint.

**Modification and revision**

This policy is subject to modification or revision in part or in its entirety to reflect changes in conditions subsequent to the effective date of this policy.
Sample policy #2: Violence and weapons

The following sample policy was developed by Dennis A. Davis, director of client training for the employment law firm Ogletree Deakins. Used by permission.

1. Prohibited behavior in the workplace

To ensure both safe and efficient operations, XYZ expects and requires all of its employees, visitors, consultants/contractors and temporary workers to display common courtesy and engage in safe and appropriate behavior on its premises at all times. The Company has zero tolerance for any behavior that is considered violent, intimidating, dangerous, and/or threatening. All acts of violence and threats of violence will be taken seriously. This includes fighting, aggressive horseplay and other behavior that would cause a reasonable person to be seriously alarmed, upset or frightened. Such prohibited conduct includes behavior in person, by telephone, mail, e-mail or any other form of communication.

2. Prohibited weapons

All nonwork-related weapons are prohibited. Weapons of any kind, including, but not limited to guns, knives, mace, explosives, hazardous devices or substances are prohibited from Company premises, Company-sponsored events and may not be carried while on Company business.

3. Nonwork disputes

The Company encourages employees to manage their nonwork-related disputes in a respectful manner, outside of work, and off company premises. However, the Company recognizes that off-duty events can have an impact on the workplace. Therefore, employees are encouraged to notify Human Resources when such events have the potential to create a disruption in the workplace. In addition, should these disagreements reach the workplace, the Company may initiate mitigating actions as warranted, such as contacting local law enforcement, obtaining restraining orders or any other necessary means to alleviate the situation.

4. Reporting a violation

Employees should never take any action that might jeopardize their own safety. Any perceived threat or other knowledge of a violation of this policy should be reported immediately to Human Resources, Security or your supervisor. In addition, any suspicious individuals or activities in the workplace should be reported immediately to Human Resources, Security or your supervisor. If any employees should feel they are in imminent danger at any time, they are instructed to call 911 for assistance. The identity of anyone reporting a suspicious incident will be maintained in confidence, as much as is possible.
5. Discipline

Human Resources will promptly investigate any reports of physical or verbal altercations, threats of violence or other conduct by employees that threatens the health or safety of other employees or the public. Human Resources will also investigate any reports of violations of this policy. All incidents of physical altercations are treated as gross misconduct and may result in disciplinary action or termination of employment. In some cases, depending on the severity of the behavior, local law enforcement may be contacted. Pending the results of its investigation, XYZ may suspend employees who are involved in physical altercations that result in injuries, create a significant risk of injury, or have a significant adverse impact on productivity, safety or morale.

6. Employee assistance program

Employees are reminded about the availability of the Employee Assistance Program (EAP). The EAP is available to employees and members of their household who may need assistance in resolving both work related and non-work related issues.
**Memo to Managers:**

How your management style can stop workplace violence

*Use this “Memo to Managers” article to educate your supervisors. Paste the content into an e-mail, company newsletter or other communication. Edit as desired.*

Workplace violence has gone far beyond the stereotype of the disgruntled postal worker. No workplace is immune. In fact, each week, an average of 20 employees are killed and about 18,000 are assaulted on the job, according to government statistics.

What triggers on-the-job violence? The top reasons: personality conflicts, work-related stress, family or marital problems, mental illness, firings and drug and alcohol abuse. An American Management Association survey found that the most violent incidents occurring on the job involve (in order):

1. Employee and employee
2. Employee and supervisor
3. Customer and employee
4. Employee and spouse/significant other.

Also, lawsuits surrounding workplace violence are rising. Legal action often centers on negligent-hiring and negligent-supervision issues.

So, what can you do? If you tolerate negative behaviors among the employees you supervise, or display those behaviors yourself, you can contribute to an unsafe work environment. That’s why it’s best to:

1. **Address misconduct right away.** Allowing aggressive or inappropriate conduct without taking action can foster a workplace in which employees feel harassed or intimidated. Notify HR with concerns about discipline or potentially explosive situations.

2. **Provide clear rationale for decisions.** Making employee-related decisions without employee input or explanation can lead to frustrated employees who don’t feel valued as anything but "worker bees."

3. **Treat employees fairly and equitably,** and apply rules consistently. If you are inconsistent or unpredictable, your employees will be unsure of your expectations and become frustrated. Communicate clear standards of performance and behaviors, then set a good example yourself.

4. **Provide feedback** throughout the year. Saving up all your critiques for performance reviews can intensify anger and spark violence.

5. **Get to know your employees,** but keep it professional. Remember that engaging in relationships with employees that are too personal or too informal may lead to misunderstandings, as well as to other employees feeling alienated.
Workplace violence prevention resources

Federal Bureau of Investigation
- Best-practices workplace violence prevention strategies.

National Institute for Occupational Safety & Health
- Downloadable video presentations on preventing violence on the job.
  www.cdc.gov/niosh/docs/video/violence.html
- “Workplace Violence Prevention Strategies and Research Needs”
  www.cdc.gov/niosh/docs/2006-144/

National Institute for the Prevention of Workplace Violence
- Tools and resources for preventing workplace violence.
  www.workplaceviolence911.com

Occupational Safety & Health Administration
- Links to violence-prevention strategies for various kinds of workplaces.
  www.osha.gov/SLTC/workplaceviolence/solutions.html
- Resources to help recognize potential workplace violence threats.
  www.osha.gov/SLTC/workplaceviolence/recognition.html

Society for Human Resource Management
- Links to violence prevention articles and resources.
  www.shrm.org/hrdisciplines/safetysecurity/pages/violence.aspx
Background check isn’t enough; tight supervision keeps liability at bay

Your organization can be held liable for “negligent hiring” if an employee commits a crime and you could have (or should have) prevented it. That’s why it’s crucial to run background checks to screen out risky applicants, particularly those who would have contact with customers (especially minors).

But don’t think your duty ends after you receive a clean background check. A background check may save you from negligent-hiring liability, but if supervisors allow employees to run wild, you could still face liability for negligent supervision, as in the case below.

That’s why it’s vital to train employees continually, remind them of the complaint process and follow up immediately on complaints. That won’t prevent all employee misdeeds, but it will give you a solid defense against negligent supervision claims.

**Recent case:** A mental-health facility placed one of its employees, Sam Craft, on leave after he allegedly sexually assaulted a female patient. The patient sued the facility, alleging negligent hiring and negligent supervision.

The court tossed out the negligent hiring claim.

**Reason:** The facility proved it ran a background check on Craft that came back clean. However, the court did allow the patient’s negligent supervision claim to go to trial, saying a jury must decide whether the facility failed to supervise its staff. *(VellaFane v. Foundations Behavioral Health, No. 03-1019, ED Pa, 2005)*

**Final note:** Several national employers have recently lost cases involving negligent hiring. One retail giant began running criminal record checks on all applicants after being found responsible for sexual assaults committed by employees.

Specify some offenses as dischargeable, and follow through

Employers have a legal obligation to provide a safe working environment, and that includes taking reasonable measures to ensure that violence stays outside the workplace gate. That’s one reason no employer should tolerate violence or threats against the company or its employees.

Your employee handbook should include “no violence” and “no threats” clauses, explaining that verified violence or threats mean immediate dismissal. Designate
someone in HR to handle such incidents consistently and swiftly.

As the following appeals court case shows, you don’t have to worry that a court will second-guess your decision if you can show you treat all employees who threaten or commit violence exactly the same.

Recent case: Albert Robinson, who is black, was fired when HR learned he had threatened to kill a co-worker. Robinson sued, alleging race discrimination. But the 11th Circuit Court of Appeals tossed out his case. It reasoned that making death threats is a legitimate reason for discharge and can’t be the basis for a race discrimination case unless there’s proof that someone not belonging to the same protected class got a “get out of jail free” pass for the same conduct. Robinson had no such proof. (*Robinson v. Adventist Health Systems*, No. 06-13828, 11th Cir. 2007)

Final note: Concerned about workplace violence? You have good reason for that concern since about 10% of workplace deaths are directly attributable to violence. OSHA has extensive information on how to make your workplace safe, including specific information for industries that typically experience more violence than others, including health care and food service.

It’s your right! Prohibit guns in parking lot

As the economy falters, there are reports that attendance at gun shows is way up. In fact, the gun industry is one of very few experiencing robust growth.

What does it mean? Well, chances are now greater that one of your employees will bring a gun to work—and that could be a threat to employee safety.

But there is good news. A recent Sixth Circuit Court of Appeals decision has specifically upheld the right of Ohio employers to ban guns in locked cars on company property. You can and should have a clear policy prohibiting guns at work and in the parking lot. You can discipline employees who violate that rule.

Recent case: Gary Plona, a UPS employee in Cleveland, parked his car in the company parking lot and locked it. Plona had signed a company policy that clearly stated guns were not allowed on any company property, including in locked cars in the parking lot.

When police became aware of suspicious activity in the parking lot—activity unrelated to Plona—they asked for permission to search Plona’s car. He consented, and police found a loaded gun under the front seat.

UPS fired Plona, and he sued the company, claiming that Ohio public policy allowed him the right to carry a firearm. The Sixth Circuit Court of Appeals disagreed and upheld the discharge. (*Plona v. UPS*, No. 08-3512, 6th Cir. 2009)

Final note: Gun laws differ across the country. Another federal appeals court recently upheld the right of an employee in Colorado to keep his gun in his locked car at work. That case was based on a specific state law allowing people to store guns in their locked cars—even at work.
Does your violence policy address concealed-carry laws? It should

With the recent addition of Ohio, 46 states now have laws allowing competent adults to carry concealed weapons.

**The good news:** In most states, that right typically doesn’t apply if a private employer notifies employees and visitors (before they enter the premises) that it bans weapons on its property. And some states, such as Ohio, grant legal immunity to employers who are sued after a concealed gun is discharged on their premises.

**The bad news:** Employment attorneys say nuances in state laws can affect how far your “no weapons” policy goes. And employers often fail to take advantage of language they can use.

The most common employer response to these growing laws has been to issue a blanket policy banning all weapons, concealed or not, from the workplace. But the differing laws make it necessary to determine whether you can legally prohibit weapons in common areas, such as parking lots and company vehicles.

What’s your best policy? Take these three steps:

1. **Add a no-concealed-weapons ban** to your employee handbook. Ask applicants and employees who have concealed-weapons permits to disclose that fact on applications and other company forms.

2. **Consider additional language** prohibiting employees from taking weapons to customers’ sites.

3. **Notify visitors, contractors and vendors** that your premises is a gun-free zone. Signs at entrances do the trick, but so does “no weapons” language on sign-in sheets and visitor cards.

**Threats at work: You can punish, even if weapon turns out to be a toy**

You probably have workplace rules that ban weapons in the workplace and don’t allow employees to come from the parking lot into the building with guns or knives. And that rule probably spells out that you will terminate an employee who threatens or displays a weapon at work.

But what if the “weapon” turns out to be a toy? Should you punish the employee on the basis of what the weapon looked like? That’s the dilemma that one employer faced recently.

**Recent case:** Odis Tabor, who identifies himself as biracial, had a history of getting into confrontations at work with other employees. In fact, he had been disciplined at least once for getting into a screaming match with another employee, an argument that involved name-calling based on Tabor’s mixed racial heritage.

The final straw came during a meeting in which several employees claimed they saw
Tabor brandish a knife. Tabor was fired for violating a no-weapons policy. He sued, alleging racial bias and also argued that the alleged weapon was merely a plastic toy that belonged to his son.

The court didn’t buy that as an excuse. It pointed out that a bank robber who uses a toy gun would still terrify the tellers and would still face armed robbery charges. It saw no difference between that and the toy knife in this case. (Tabor v. Freightliner, No. 1:08-CV-34, MD NC, 2009)

**Echoes of Virginia Tech:**
‘Copycat comments’ lead to firings around U.S.

“If I get one more write-up, if you think they had a problem in Virginia, it’ll be worse here.”

When an employee of Suffolk County (N.Y.) Community College spewed that reference to the 2007 Virginia Tech massacre during an argument with his supervisor, the supervisor quickly called police. Police charged the man with harassment and criminal possession of a weapon after he admitted owning a bolt-action shotgun. And the man was fired.

That wasn’t an isolated incident. In the weeks following the tragic shooting at Virginia Tech, employers tried to figure out how to deal with “copycat comments” from employees.

*Example:* A SeaWorld employee in Florida told co-workers he idolized the Virginia Tech shooter and that he wanted to “do what happened at Virginia Tech here at SeaWorld.” His employer promptly fired him and called police. The 20-year-old employee later said he was joking.

**Advice:** In today’s environment, you can’t shrug off threats like that as “jokes.” It pays to take such comments seriously. Encourage employees to come forward with concerns about comments made by employees. And respond decisively when employees make threatening comments or when they act erratically.