

March 2007 - Article Published in Lifestyles Magazine

## **Communication Breakdowns under the Americans With Disabilities Act**

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If an employee is injured or suffers serious illness, numerous federal and state laws may be implicated. The Americans With Disabilities Act (ADA), applies where an employee suffers from a permanent disability as a result of an injury or illness. An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities. A qualified employee with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. A reasonable accommodation may include, but is not limited to making existing facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, modifying work schedules or reassignment to a vacant position.

The ADA requires that employer and employee engage in an interactive process to determine a reasonable accommodation. If a disabled employee shows that her disability was not reasonably accommodated, the employer will be liable if it bears responsibility for the breakdown of the interactive process. In one federal court case, the employee suffered from the disability of depression and requested the reasonable accommodation of a transfer. The court found that the employer failed to engage in the inactive process by responding and then terminated her position under the pretext that she abandoned her position. In addition to holding employers to their obligation to fully participate in the interactive process, the law also demonstrates that if the employee has requested an appropriate accommodation, the employer may not simply reject it without offering other suggestions or at least expressing a willingness to continue discussing possible accommodations. This reflects the give-and-take aspect of the interactive process. An employer cannot sit behind a closed door and reject the employee's requests for accommodation without explaining why the requests have been rejected or offering alternatives. As such, the court concluded that the employer "flunked its obligations under the ADA" when, in the face of the employee's repeated pleas for a shift transfer, it refused the request and then did nothing to engage with the employee in determining if any alternative accommodations would be appropriate. For further information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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