



E-Flash Update

EEOC Issues Guidance on Applying Performance and Conduct Standards to Employees With Disabilities

On September 3, 2008, the Equal Employment Opportunity Commission released a publication entitled "The Americans With Disabilities Act: Applying Performance and Conduct Standards to Employees With Disabilities." The publication is intended to provide guidance to employers in administering their performance and conduct requirements, while at the same time maintaining compliance with the ADA's myriad statutory and regulatory provisions. The publication discusses relevant ADA requirements, provides practical guidance for employers and offers examples to demonstrate the responsibilities of both employees and employers when performance and conduct issues arise. The full text of the document may be accessed at www.eeoc.gov/facts/performance-conduct.html In the publication, the EEOC has addressed directly numerous issues that employers frequently find difficult to manage, including the following:

- Whether an employer may apply to a disabled employee the same quantitative and qualitative requirements it applies to non-disabled employees;
- Whether an employer may evaluate disabled employees using the same criteria it uses to evaluate non-disabled employees;
- Issues regarding the timing of an employee's request for a reasonable accommodation and whether an employer may ask if the employee requires a reasonable accommodation;
- How to handle an employee's request for a reasonable accommodation raised in response to a poor performance rating or disciplinary counseling;
- Whether an employer may discipline an employee for violation of a workplace conduct rule when the conduct was caused by a disability;
- The circumstances under which an employer may require an employee with performance or conduct problems to provide medical information or undergo a medical examination; and
- The circumstances under which and the extent to which an employer is obliged to reasonably accommodate an employee with attendance problems.

The publication constitutes an easily understood statement of the EEOC's position on many day-to-day problems employers face in the disability context. Employers would be well-advised to consult the publication in advance of, or in connection with, their next disability issue.

If you have any questions or comments about this E-Flash, please contact Post & Schell, P.C. Labor and Employment Attorney Robert Toy. Bob can be reached at 215-587-1091 or at rtoy@postschell.com.

Disclaimer: this E-flash does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this E-flash without first seeking the advice of counsel.

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