Stand Fast, Employers: What You Need To Know About Standing Desks

Insights
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As the old adage goes, the grass is always greener on the other side. Many employees who are required to stand all day for their jobs would like the option to sit. But in recent years, many employees who traditionally sit behind a desk all day want the option to stand while doing work.

With articles flooding the news about the health benefits of standing desks, the traditional office setting has seen a trend of employee requests for standing desks or variable workstations that would allow the worker to sit or stand at their leisure throughout the day. How should you respond to such inquiries? Should you always provide employees with standing desks upon request? Are you ever required to provide an employee with a variable desk? Could failure to provide a variable workstation become a safety and health hazard?

As with nearly every legal question, the answer to all of these questions is: it depends. When responding to such requests you must be cognizant of the Americans with Disabilities Act (ADA), the Occupational Safety and Health Act (OSH Act), and even possible claims of disparate or unfair treatment. But let's first address the question of whether standing desks do anything to improve health.

To Stand, Or Not To Stand

A standing desk may be necessary for specific health reasons, but experts aren't yet convinced that they are any healthier in general than traditional sitting desks. According to an NPR report, while too much sitting increases the risk for heart failure and other disabilities and may even shorten life expectancy, studies have found that "there's little evidence that workplace interventions like the sit-stand desk, or even the flashier pedaling or treadmill desks, will help you burn lots more calories or prevent or reverse the harm of sitting for hours on end." The story references a 2016 study from the Cochrane Database of Systemic Reviews entitled "Workplace Interventions For Reducing Sitting Time At Work." Dr. Jos Verbeek of the Finnish Institute of Occupational Health sums up the conclusion: "What we actually found is that most of it is, very much, just fashionable, and not proven good for your health."

It's important to note that the findings of the study did not conclude that standing desks provide no benefits for your health, but rather that there was inadequate validated proof of their benefits. The practical takeaway: employers and employees should consider their reasons for using such desks

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before committing to a new practice. If it's simply a fad or a personal preference, the request should be approached differently than an individual whose back or other medical issues necessitate such an accommodation.

ADA Considerations

Take, for example, a case where one of your office employees requests a standing desk, claiming that they want to burn as many calories as possible while at work, but does not claim a disability or physical impairment. Do you have an obligation to provide a variable workstation in this situation? Under the circumstances, probably not.

But what if that same employee wants to burn additional calories because they have a heart condition? The answer changes to "maybe." You should engage in an interactive process to determine whether the employee has a disability under the ADA and whether their inquiry constitutes a reasonable accommodation request.

What if an employee comes to the human resources department with a physician's note for diagnosed back issues? The healthcare provider recommends that the employee sit for only four hours per day, but the typical workday lasts eight hours. Would you be required to provide a standing desk or variable workstation in this scenario? Assuming the standing desk is a reasonable accommodation and would not cause you undue hardship, then the answer is probably "yes." If you refuse, you may be exposed to ADA liability.

Workplace Safety And Health Considerations

While the Occupational Safety and Health Administration (OSHA) has been known to occasionally focus on workplace ergonomic issues in specific workplaces, there is no current OSHA standard that addresses standing desks. Nevertheless, you should consider whether standing desks are necessary to provide a safe and healthy work environment for your employees.

The General Duty Clause of the OSH Act requires each employer to "furnish to each of his employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." OSHA has used the General Duty Clause to cite employers for ergonomic hazards, including situations where repetitive lifting or uncomfortable positioning at a visual display terminal (VDT) was alleged to have caused musculoskeletal or similar injuries. It's not clear whether a standing desk might present or prevent ergonomic hazards to a similar degree, but you should consider these issues when making decisions about providing standing desks.

Other Considerations

What if an employer provides one employee with a standing desk as an accommodation while another employee's request is denied? In at least one case, a plaintiff argued that his employer's refusal to grant his request for a standing desk after a diagnosis of osteoporosis was evidence of disparate treatment and age discrimination. He pointed out that the employer had granted the same request from a younger employee due to her back problems (*Ulrich v. Moody's Corp.*).

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Although a New York federal court rejected the argument and dismissed the case (which was affirmed by the 2nd Circuit Court of Appeals in January 2018), the plaintiff certainly raised a fair question and the case illustrates how employees may claim unfair treatment if their request is denied. To the extent that you consider an employee's request for a standing desk or variable workstation, you should aim for consistency in your decision-making to avoid unfounded claims of discrimination.

Conclusion: Time To Stand Down

The bottom line is that you are generally not required to provide a standing desk simply because the employee wants one. However, you should take such requests seriously and evaluate whether you have a legal obligation before simply denying an employee's request.

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