



Unsupported Assumption About Accommodating Epilepsy Costs Hospital \$215,000

Insights

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Periodically, I blog on the need to avoid knee jerk decisions about whether employees with a disability can perform the essential functions of the job. The employee may or may not be able to perform the essential functions of the job, but if the employer fails to engage in their individualized analysis and document their consideration of accommodation options, how will they defend their decision if challenged? According to the EEOC's Complaint, the hospital terminated the physician because she requested as an accommodation, reducing her 12 hour shift to eight hours because fatigue contributed to her epileptic seizures. Apparently, the EEOC was able to establish that the physician could perform her essential functions within an eight hour work period. As further proof of her good faith, the EEOC noted that the employee had adjusted her medication, but her personal physician stated that medication modification would not alone allow her to perform her work.

The physician was involved in a "Gamma Knife Program," an out-patient program that treats brain conditions without incision or physical entry into the brain. While the case focused on whether the employer could accommodate the request for 8 instead of 12 hour shifts, many of you are thinking that you would be reluctant to employ a physician, even one who is not involved in surgery, who has a seizure disorder. Depending on the facts, you might be correct. But again, such a decision can only be made after a defensible individualized analysis. Do not automatically assume that a seizure disorder does in fact render an employee unable to perform the essential functions of the job, with or without reasonable accommodation.

Finally, the employer failed to show that an undue hardship was created by the accommodation of allowing the physician to work 8 instead of 12 hours. Perhaps the employer simply put on a weak case, but it is possible that the employer claimed the requirement to be an essential function without really determining if the statement was accurate.

If you're interested, below is an excerpt from [EEOC Guidance on Epilepsy](#):

ACCOMMODATING EMPLOYEES WITH EPILEPSY

The ADA requires employers to provide adjustments or modifications -- called reasonable accommodations -- to enable applicants and employees with disabilities to enjoy equal employment opportunities unless doing so would be an undue hardship (that is, a significant difficulty or

expense). Accommodations vary depending on the needs of the individual with a disability. Not all employees with epilepsy will need an accommodation or require the same accommodations, and most of the accommodations a person with epilepsy might need will involve little or no cost. An employer must provide a reasonable accommodation that is needed because of the epilepsy itself, the effects of medication, or both. For example, an employer may have to accommodate an employee who is unable to work while undergoing diagnostic tests to determine the reason for her seizures or because of the side effects of medication. An employer, however, has no obligation to monitor an employee's medical treatment or to make sure she is getting enough rest or taking medication as prescribed.

10. What other types of reasonable accommodations may employees with epilepsy need?

Some employees may need one or more of the following accommodations:

- breaks to take medication
- leave to seek or recuperate from treatment or adjust to medication²¹
- a private area to rest after having a seizure
- a rubber mat or carpet to cushion a fall
- adjustments to a work schedule

Example 7: A library schedules employees to work eight-hour shifts starting as early as 8:00 a.m. and as late as 1:00 p.m. A librarian with epilepsy, who experiences nocturnal seizures that leave her tired in the early morning, requests that her shifts start in the late morning or early afternoon. The employer determines that because there is sufficient staff available between 8:00 a.m. and 10:00 a.m. to respond to requests from the public for assistance, the accommodation can be granted without undue hardship.

- a consistent start time or a schedule change (for example, from the night shift to the day shift)
- Example 8: A home nurse rotated from working the 7:00 a.m. to 3:00 p.m. shift to the midnight to 8:00 a.m. shift. His doctor wrote a note to the employment agency indicating that interferences in the nurse's sleep were making it difficult for him to get enough rest and, as a result, he was beginning to have more frequent seizures. If eliminating the nurse's midnight rotation would not cause an undue hardship, this would be a reasonable accommodation.
- a checklist to assist in remembering tasks

Example 9: A box packer frequently had absence seizures²² while packing boxes and forgot what he was doing. The supervisor created a checklist for each step of the job. Now, when the box packer has a seizure, he simply looks at the checklist to see what steps he has completed.

- permission to bring a service animal to work²³
- someone to drive to meetings and other work-related events

- permission to work at home
- reassignment to a vacant position if the employee is no longer able to perform her current job

Example 10: A telephone repair technician submits a note from his doctor stating that he recently was diagnosed with epilepsy and must avoid climbing and working at heights above ground level, an essential function of his job. Because there is no reasonable accommodation that would allow the repair technician to do his current job, the employer should determine whether there is another vacant position for which he is qualified that would meet his restrictions. Although the employer does not have to "bump" another employee to create a vacancy, it should determine whether the technician is qualified for another position and whether it would be an undue hardship to reassign him. The vacant position must be equivalent in terms of pay and status to the original job, or as close as possible if no equivalent position exists. The position need not be a promotion, although the employee should be able to compete for any promotion for which he is eligible.

Although these are some examples of the types of accommodations commonly requested by employees with epilepsy, other employees may need different changes or adjustments. Employers should ask the particular employee requesting an accommodation what she needs that will help her do her job. There also are extensive public and private resources to help employers identify reasonable accommodations. For example, the website for the Job Accommodation Network (JAN) ([www. askjan.org/media/epilepsy.html](http://www.askjan.org/media/epilepsy.html)) provides information about many types of accommodations for employees with epilepsy.

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