

What you should know about aging workers

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The Record

Q. I own a company with aging employees, some of whom have health issues. What are my responsibilities as an employer?

The New Jersey Law Against Discrimination (NJLAD) and Americans With Disabilities Act (ADA) generally require that reasonable accommodations be made available to qualified senior workers with disabilities to allow them to remain employed.

The NJLAD and ADA provide employment protections to workers who become disabled through the normal process of aging. One of the key protections is the right of qualified individuals with disabilities to reasonable accommodations.

Under the NJLAD and ADA, a reasonable accommodation may be a change to the employee's work environment or job task and can also include a reasonable reassignment within the company. A reassignment accommodation is generally reasonable when: (1) the requested reassignment position is vacant and available; (2) the reassignment doesn't conflict with any non-discriminatory company policy; and (3) the employee is qualified for the reassigned position.

If an employer fails to accommodate an employee with an age-related or other disability, the employee may have a "failure to accommodate" disability discrimination claim.

Generally, four elements must be established to prevail under a failure-to-accommodate claim:

1. The employee was disabled and the employer knew about it.
2. The employee had requested an accommodation or assistance.
3. The employer didn't make a good faith effort to accommodate a request that would enable the employee to perform a job.
4. A reasonable accommodation existed for the disabled employee.

Employers also are prohibited from taking adverse action against a disabled employee because of a disability and shouldn't make assumptions about an employee's ability simply because of that person's age. Such actions may lead to disability discrimination claims.

Employers should consult with an attorney to determine their obligations to elderly employees.

Lauren Manduke is an associate of the employment law department of Cole, Schotz, Meisel, Forman & Leonard PA, the largest law firm in Bergen County. She can be reached at 201-525-6358 or [lmanduke@coleschotz.com](mailto:lmanduke@coleschotz.com). This information is not intended as legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client. Do you have a business question for a lawyer? E-mail [businessnews@northjersey.com](mailto:businessnews@northjersey.com).

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