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Accommodating Fragrance Sensitivity In The Workplace

(Published April 19, 2010)

This article was published in our free e-mail newsletter, Employment Law Today.

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Severe allergies may be considered disabilities under the Americans with Disabilities Act (ADA), particularly since the definition of disability has been significantly expanded under the ADA Amendments Act. Employers have a legal duty to reasonably accommodate affected employees who request accommodation.

The city of Detroit found this out the hard way when a city employee with multiple chemical sensitivity sued the city under the ADA for refusing to accommodate her disability.

A co-worker who wore heavy perfume and used a plug-in room deodorizer had transferred into the department in close proximity to the employee, causing the employee to become ill. The employee asked the co-worker to refrain from using these fragrances; the co-worker stopped using the room deodorizer but continued wearing the perfume.

The employee complained to her supervisor, and although the possibility of relocating either the employee's or the co-worker's workstation was discussed, no steps were ever taken to remedy the situation. The employee took multiple sick days and leave under the Family and Medical Leave Act (FMLA), and finally sued the city.

To settle the lawsuit, the city adopted a policy for city employees, requesting (though not requiring) that everyone in three city buildings refrain from wearing heavily scented products (e.g., colognes, after-shave lotions, perfumes, deodorants, body/face lotions, hairspray), as well as using heavily scented products (e.g., scented candles, air fresheners, room deodorizers) in the workplace. The employee was also awarded \$100,000 as part of the settlement.

Rolling Out A Fragrance Policy In Your Workplace

If an employee approaches you with an accommodation request due to their adverse reaction to strong fragrances, immediately start working with them to come up with reasonable solutions. Consider adopting a fragrance policy like the one the city of Detroit eventually did, advising employees that mild scents may be worn in moderation, but strong or offensive scents that become detrimental to the work unit are not welcome. You could incorporate it into your existing dress code policy, or create a stand-alone fragrance policy.

When announcing the new policy to your workforce, explain the general reason behind the policy, but be sure to respect the disabled employee's privacy and keep their medical information confidential. If other employees complain that their rights are being infringed upon, explain to them that wearing a personal fragrance is not a need or a protected right, while accommodating an employee with a disability is both a legal necessity and the right thing to do.

If, after the policy is implemented, an employee comes into work scented too strongly, discreetly pull them aside, gently point out that their fragrance is too strong for the workplace, and ask them to refrain from scenting themselves that way in the future. If they continue to ignore the fragrance restriction, treat it as an issue of insubordination and

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discipline them accordingly.

Reasonable Accommodation Ideas

In addition to or in lieu of a fragrance policy, here are some alternative accommodation ideas you could adopt:

- Install an air purification system in the facility.
- Get a small air purifier for the employee to keep in their workspace.
- Move the employee's workstation to an area where they'd have less exposure to fragrances.
- Designate certain areas of the workplace (e.g., meeting areas) as fragrance-free.
- Reduce the employee's face-to-face contact with co-workers or clients by permitting them to conduct business via e-mail, phone, instant messaging, etc.

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