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## INTERACTION BETWEEN THE AMERICANS WITH DISABILITIES ACT AND THE PENNSYLVANIA WORKERS' COMPENSATION ACT

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Pennsylvania employers may encounter a variety of employment related issues when managing workers' compensation claims. One such issue is the interaction between the Americans with Disabilities Act ("ADA") and the Pennsylvania Workers' Compensation Act ("Act").

The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities, and applies to employers with 15 or more employees. In addition to the ADA, employees with disabilities also may be covered by state law. For example, the Pennsylvania Human Relations Act ("PHRA") prohibits discrimination against people with disabilities under nearly the same terms as the ADA.

The ADA ensures equal opportunity in selecting, testing, and hiring qualified applicants with disabilities; job accommodation for applicants and workers with disabilities when such accommodations would not impose "undue hardship;" and equal opportunity in promotion and benefits. A qualified applicant is an individual whom satisfies the skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential functions of the position, with or without accommodation.

A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done, that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy equal benefits and privileges of employment, as are available to an average similarly-situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment:

- 1) to ensure equal opportunity in the application process,
- 2) to enable a qualified individual with a disability to perform the essential functions of a job, and
- 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

Examples of reasonable accommodations include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.

Situations may arise in a workers' compensation claim where ADA analysis should be considered. For example, if an employee has a permanent physical restriction, an employer may be in a position that requires it to make an effort to offer reasonable accommodation to an injured or disabled employee. Prior to enactment of the ADA, if an employee received a permanent 50 pound lifting restriction, as a result of a work-related injury, the employer could have legitimately terminated that employee if they were unable to do the job. However, since the enactment of the ADA, the employer may now be required to offer that employee reasonable accommodations and retain that individual as an employee. As that employee continues to work, however, the company faces a continuing obligation/exposure if that employee should sustain another work place injury aggravating or accelerating that pre-existing condition. It must be stressed; however, this analysis is subject the employer's policies and procedures and is based upon the individual circumstances.

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An employer need not create a light-duty position for a non-occupationally injured employee with a disability as a reasonable accommodation. The principle that the ADA does not require employers to create positions as a form of reasonable accommodation, applies equally to the creation of light-duty positions. However, an employer must provide other forms of reasonable accommodation required under the ADA. For example, subject to undue hardship, an employer must:

- (1) restructure a position by redistributing marginal functions that an individual cannot perform because of a disability,
- (2) provide modified scheduling (including part time work), or
- (3) reassign a non-occupationally injured employee with a disability to an equivalent existing vacancy for which he/she is qualified.

Accordingly, an employer may not avoid its obligation to accommodate an individual with a disability simply by asserting that the disability did not derive from an occupational injury.

If an employer reserves light-duty positions for employees with occupational injuries (does not create new light-duty jobs when needed), the ADA requires it to consider reassigning an employee with a disability who is not occupationally injured, to such positions as a reasonable accommodation. This is because reassignment to a vacant position and appropriate modification of an employer's policy are forms of reasonable accommodation required by the ADA, absent undue hardship. An employer cannot establish that the reassignment to a vacant reserved light-duty position imposes an undue hardship simply by showing that it would have no other vacant light-duty positions available, if an employee became injured on the job and needed light-duty. It is important to note; however, that an employer is free to determine that a light duty position will be temporary rather than permanent.

Unlike the Family & Medical Leave Act, there is no specific amount of leave time required under the ADA. Instead, leave time is approached like any other accommodation request: the employer must provide the amount of leave needed by the employee unless doing so poses an undue hardship.

Violation of the ADA may result in the filing of a complaint alleging discrimination based on disability with the Equal Employment Opportunity Commission, Pennsylvania Human Relations Commission and/or the local Human Relations Commission.

Employers should have clearly defined policies and procedures addressing ADA issues to ensure consistent administration and application of the policies, a complete understanding by employees and consistent decision making regarding reasonable accommodation.

--Robert J. Baker