

>> HI , CAN YOU HEAR ME OKAY?

>> WE SURE CAN.

>> OKAY, I WONDERED IF GRACE AND SHARON COULD FURTHER EXPOUND ON WHAT DOES WITH AND WITHOUT REASONABLE ACCOMMODATION MEAN.

>> GRACE: SHARON?

>> SHARON: WHEN WE ARE TALKING ABOUT WITH OR WITHOUT WE'RE TALKING ABOUT THE ESSENTIAL FUNCTIONS OF THE JOB. SO THE PERSON IS QUALIFIED AND CAN DO THE ESSENTIAL FUNCTIONS OF THE JOB WITH OR WITHOUT ACCOMMODATIONS MEANING THEY HAVE THE PREREQUISITE SKILLS AND ABILITIES TO DO THE JOB. WHAT THEY NEED ARE AROUND THE MARGINAL ASPECTS OF THE JOB. THOSE ARE THE BARRIERS THAT KEEP THEM FROM DOING THE ESSENTIAL FUNCTION OF THE JOB, AND ONCE THESE MARGINAL ISSUES ARE TAKEN CARE OF THROUGH REQUESTS THEN THEY ARE FULLY ABLE TO GET ON WITH AND DO THE ESSENTIAL FUNCTIONS OF THEIR JOB.

>> GRACE: AND WHEN WE TALK ABOUT THOSE MARGINAL AREAS, SANDY, WE'RE TALKING ABOUT THINGS THAT WILL ASSIST THEM IN PERFORMING THE ESSENTIAL FUNCTIONS OF THE JOB, NOT TAKING THE PLACE OF DOING THE ESSENTIAL FUNCTIONS OF THE JOB BUT ACTUALLY BEING ABLE TO PERFORM THESE ESSENTIAL FUNCTIONS. FOR INSTANCE, IF SOMEONE HAS A DISABILITY WHERE THEIR EYESIGHT IS POOR TO THE POINT WHERE THEY NEED A MUCH LARGER MONITOR AND THEY REQUEST THAT MONITOR TO ENABLE THEM TO PERFORM THE FUNCTION OF WHAT WAS IT IS THAT IS IN THEIR JOB, THEN YOU KNOW, THAT'S A REASONABLE REQUEST. A REASONABLE REQUEST FOR PERFORM THE ESSENTIAL FUNCTIONS WOULD ALSO BE: I HAVE A DISABILITY WITH -- THAT'S -- THAT'S, UH -- THAT'S -- THAT'S ON RECORD WHERE I HAVE A PROBLEM WITH MY BACK. SO I NEED THE PROPER CHAIR OR THE PROP SIT/STAND THAT WILL HELP ME PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB. THOSE ARE THE KINDS OF THINGS WE'RE TALKING ABOUT WITH AN ACCOMMODATION BEING ABLE TO DO THE PERFORMANCE OF THE JOB.

>> OKAY, I GUESS IT'S JUST CONFUSING WHEN YOU SAY "WITHOUT" REASONABLE ACCOMMODATION AND WE CAN TAKE THE EXAMPLE OF THE PERSON WITH LOW VISION. IF THEY DON'T GET A BIGGER SCREEN, THEY CAN'T DO THEIR JOB.

>> GRACE: WELL --

>> SO IF WE THEY DON'T HAVE THE ACCOMMODATION, THEY CAN'T DO IT AND I JUST THINK IT'S A REALLY WEIRD PLAY ON WORDS AND I'M NOT SURE THAT EVERYONE UNDERSTAND WHAT WITH OR WITHOUT MEANS. I UNDERSTAND IT MYSELF BUT I'M NOT SURE OF ALL THE AUDIENCE UNDERSTANDS WHAT WITH OR WITHOUT MEAN.

>> GRACE: OKAY, SO SANDY, WHAT THAT ACTUALLY MEANS IS -- AND IT'S NOT REALLY A PLAY ON WORDS. IT MEANS THAT YOU NEED TO BE ABLE TO PERFORM THE JOB WITH ACCOMMODATION AT THE REQUEST OF THAT INDIVIDUAL OR WITHOUT AN ACCOMMODATION, WHICH MEANS YOU'RE NOT A QUALIFIED INDIVIDUAL WITH A DISABILITY. IT MEANS THAT YOU ARE AN INDIVIDUAL WHO MAY HAVE TROUBLE, BUT YOU DON'T NECESSARILY HAVE A DISABILITY THAT REACHES THE THRESHOLD TO BE A QUALIFIED INDIVIDUAL WITH A DISABILITY. SO WITH OR WITHOUT, THAT AREA BEING DEFINED, IS JUST TERMINOLOGY FOR HOW THEY DEFINE A REASONABLE ACCOMMODATION.

>> LEON: DID WE ANSWER YOUR QUESTION, SANDY?

>> YEAH, THANKS SURE.

>> LEON: NEXT WE HAVE DAN FROM RAWLINGS. DAN, ARE YOU ON THE LINE?

>> YES, SIR.

>> HOW ARE YOU DOING TODAY.

>> FINE.

>> GREAT.

>> NOW, MY QUESTION IS I HAD APPLIED FOR A REASONABLE ACCOMMODATION REQUEST BASED ON SOME MEDICAL SITUATIONS I HAVE. I HAD SUBMITTED THREE DIFFERENT DOCTOR REQUESTS FOR ME TO GO TO A LOWER ELEVATION. CURRENTLY I'M AT ABOUT 7,000 FEET ELEVATION AND THEY WANT ME TO BE BELOW A 3,000 FEET FOR A BREATHING SITUATION OXYGEN DEFICIENCY YOU HAVE. AT THE POINT TO BE BELOW 3,000 FEET FOR A BREATHING SITUATION, OXYGEN DEFICIENCY PROBLEM I HAVE. I SUBMITTED THIS TO THE STATE OFFICE AND STATE OFFICE SAID WELL, THE ACCOMMODATION OF RELOCATING YOU TO A LOWER ELEVATION IS NOT GOING TO BE ALLOWED. YOU'RE BEING DENIED BECAUSE YOU CAN STILL PERFORM AN ESSENTIAL FUNCTION AT YOUR CURRENT LOCATION, AND SO THEIR ANSWER WAS TO DEFINE "ESSENTIAL FUNCTION" AS AN ABILITY TO DO SOME WORK IN MY JOB DESCRIPTION AND NOT ALLOW ME TO GO OUT IN THE FIELD TO DO FIELDWORK WHICH IS A PART OF MY JOB DESCRIPTION. AND SO THEY TAKE SOME OF THE FUNCTIONS OF YOUR JOB AND SAY THESE CERTAIN THINGS WE WILL NOT ALLOW TO YOU DO EVEN THOUGH I DIDN'T REQUEST IT, AND THEREFORE YOU'RE BEING ACCOMMODATED. AND I APPEALED THAT THROUGH THE ASSOCIATE STATE DIRECTOR AND TO THE STATE DIRECTOR AND GOT TURNED DOWN, EVEN WITH ADDITIONAL MEDICAL INFORMATION, THE THREE PHYSICIANS I MENTIONED BEFORE. AND SO WHAT'S MY RESOURCE OTHER THAN TO GO EEO COMPLAINT?

YOU KNOW I HAVE HAD SOME ADVICE FROM LEGAL ADVISORS AND THEY DON'T UNDERSTAND WHY THE WYOMING STATE OFFICE IS DOING THIS.

>> GRACE: WELL, DAN, WITHOUT HAVING MORE INFORMATION ON WHAT IS GOING ON AND NOT REALLY WANTING TO SHARE MORE INFORMATION OF YOUR PERSONAL INFORMATION ON THE BROADCAST, I WOULD SAY THAT YOU HAVE BEEN GIVEN, YOU KNOW, THE OPTIONS THAT YOU HAVE, WHICH IS YOU DO HAVE THE RIGHT TO FILE AN EEO COMPLAINT. AND YOU MENTIONED THAT YOU HAVE HAD SOME LEGAL ADVICE. I WOULD SUGGEST YOU TALK TO YOUR LEGAL ADVISOR SINCE YOU HAVE ONE AND THAT YOU FOLLOW THE PROCEDURES THAT HAVE BEEN PROVIDED FOR YOU.

>> OKAY. THAT'S FINE, THAT'S WHAT I WILL DO.

>> GRACE: ALL RIGHT, DAN.

>> LEON: THANKS, DAN. WE HAD A FAX COME IN AND THE QUESTION IS: IF AN EMPLOYEE HAS NOTIFIED A SUPERVISOR THAT HE OR SHE SUFFERS FROM DEPRESSION AND IS HAVING PROBLEMS SLEEPING, SHOULD THE SUPERVISOR ASK FOR MEDICAL DOCUMENTATION TO DETERMINE IF THE EMPLOYEE IS COVERED BY THE ACT? AND THIS FAX -- IS FROM KATHY ROMERO FROM THE NEW MEXICO STATE OFFICE.

>> SHARON: SO THE EMPLOYEE REQUESTS THROUGH FAX -- MAYBE YOU HAVE TO REPEAT THE QUESTION.

>> WE HAD A QUESTION COME IN FROM KATHY ROMERO, OVER FAX.

>> SHARON: UH-HUH, OH, OKAY.

>> LEON: THERE ARE TWO QUESTIONS BUT THE FIRST IS IF AN EMPLOYEE HAS

NOTIFIED A SUPERVISOR HE OR SHE SUFFERS FROM DEPRESSION AND IS HAVING PROBLEMS SLEEPING, SHOULD THE SUPERVISOR ASK FOR MEDICAL DOCUMENTATION TO DETERMINE IF THE EMPLOYEE IS COVERED BY THE ACT?

>> SHARON: WELL, CERTAINLY THERE ARE A FEW DISABILITIES THAT ARE OBVIOUS. OTHER DISABILITIES ARE NOT OBVIOUS AND FOR THAT REASON THE SUPERVISOR CERTAINLY HAS A RIGHT TO ASK FOR ADDITIONAL MEDICAL DOCUMENTATION FROM THE HEALTHCARE PROVIDER SO THAT THE SUPERVISOR CAN HAVE A CLEARER PICTURE OF WHAT THE PROVIDER BELIEVES IS GOING ON WITH THAT PARTICULAR EMPLOYEE AND WHAT THE LIMITATIONS ARE OF THAT INDIVIDUAL.

>> GRACE: IN THIS PARTICULAR INSTANCE, THOUGH, NOTIFYING YOUR SUPERVISOR THAT YOU HAVE DEPRESSION -- I'M NOT SURE WHAT THE REQUEST IS. IS THE REQUEST THAT THEY WANT TO CHANGE THEIR HOURS BECAUSE THEY ARE NOT ABLE TO SLEEP AT NIGHT?

OR IS THE REQUEST THAT THEY WANT TO EXTEND THE DAY FOR THEM TO A LONGER PERIOD OF TIME BECAUSE WITHOUT KNOWING WHAT THE REQUEST IS, YOU KNOW, DEPRESSION MAY OR MAY NOT BE, YOU KNOW, AN ADA-QUALIFIED DISABILITY BECAUSE THAT DEPENDS ON THE DEGREE I BELIEVE OF THE DEPRESSION AND WHAT LIMITATIONS THE DEPRESSION HAS ON THE PERSON'S ABILITY TO PERFORM.

>> SHARON: THIS IS WHERE -- THIS IS WHERE THE SUPERVISOR -- THIS IS WHERE THAT EARLY ENGAGEMENT, THAT CONVERSATION COMES IN WHERE THE SUPERVISOR AND THE EMPLOYEE SIT DOWN AND THE SUPERVISOR BEGINS TO ELICIT INFORMATION.

WHAT IS IT YOU NEED TO DO YOUR JOB?

WHAT ARE YOU ASKING ME TO HELP YOU WITH?

THE SUPERVISOR NEEDS TO LEARN AND FIND OUT WHAT ARE THE LIMITATIONS AND WHAT WOULD HELP OVERCOME THOSE LIMITATIONS THAT THE SUPERVISOR CAN PROVIDE OR IS BEING ASKED TO PROVIDE. THAT'S WHERE THAT REASONABLE ACCOMMODATION PIECE COMES IN. AND SO THE SUPERVISOR NEEDS TO KNOW MORE, AND CERTAINLY THAT POINT THE SUPERVISOR IS PROBABLY -- ONCE THEY GET A LITTLE BIT FURTHER DOWN THE ROAD OF FINDING OUT WHAT'S GOING ON AND WHAT THE REQUEST IS THAT THEY MAY NEED TO HAVE ADDITIONAL DOCUMENTATION AND THAT'S WHERE THE MEDICAL PIECE COMES IN.

>> GRACE: I HOPE THAT ANSWERS KATHY'S QUESTION.

>> LEON: SHE ACTUALLY HAD A SECOND QUESTION AS WELL. DOES THE AGENCY HAVE A MEDICAL PROVIDER TO ASK THEM TO REVIEW MEDICAL DOCUMENTATION?

>> GRACE: YES, WE DO. WE HAVE A MEDICAL PROVIDER. BLM HAS A MEDICAL PROVIDER THAT WILL REVIEW MEDICAL DOCUMENTATION AT THE AGENCY'S REQUEST.

>> LEON: OKAY. WE ACTUALLY HAVE ONE LAST QUESTION HERE -- I'M NOT SURE IF IT'S THE LAST QUESTION BUT IT'S THE LAST QUESTION I HAVE IN FRONT OF ME AT LEAST. THIS ONE COMES FROM NTC.

>> GRACE: OKAY.

>> LEON: DIFFERENT TYPES OF LIGHTING CAN GENERATE HEADACHES SUCH AS MIGRAINES FOR CERTAIN INDIVIDUALS. WOULD ADAPTIVE WORKPLACE LIGHTING BE CONSIDERED A REASONABLE ACCOMMODATION FOR THESE EMPLOYEES IF THEY CAN DOCUMENT THE CORRELATION BETWEEN ONSET OF HEADACHES AND LIGHTING CONDITIONS IN THE WORKPLACE?

>> SHARON: IT COULD BE. IT COULD BE THAT ADJUSTING LIGHTING -- MAKE A CHANGE IN THE WORK ENVIRONMENT, THAT WOULD ENABLE TO PERSON TO DO THE JOB IF OTHERWISE THEY WOULD BE HAVING DIFFICULTIES PERFORMING THE JOB.

>> GRACE: THAT SOUNDS REASONABLE, LEON, BECAUSE WE TALKED ABOUT THAT LITTLE EARLIER ON IN THE BROADCAST WHERE AN ADJUSTMENT INTO THE WORK ENVIRONMENT, YOU KNOW, CHAIRS OR FURNITURE, AND THINGS SUCH AS LIGHTING, THE LOCATION AND THE WAY THAT THE OFFICE IS SET UP -- ALL OF THAT MAY HAVE A FACTOR AND IF THE EMPLOYEE RECOGNIZING THAT PERHAPS THE LIGHTS ARE NOT TOO BRIGHT OR CAUSE SUCH A GLARE THAT IT CREATES THESE HEADACHES AND THEY ARE ABLE TO PROVIDE THE DOCUMENTATION THAT SHOWS THAT, CERTAINLY THAT COULD PROBABLY BE VIEWED AS A REASONABLE ACCOMMODATION REQUEST.

>> LEON: OKAY. WE HAVE ANOTHER QUESTION THAT WAS FAXED IN FROM LILLIAN FROM THE ARIZONA/NEW MEXICO EEO OFFICE. SHOULD THE DISABILITY PROGRAM MANAGER TYPICALLY BE AN H. R. REPRESENTATIVE OR AN EEO REPRESENTATIVE?

>> GRACE: WELL, LET ME SAY THAT THERE IS A LOT OF DISCUSSION ABOUT THAT AMONG THE FEDERAL AGENCIES AND EVEN IN THE PRIVATE SECTOR. I'VE HAD A LENGTHY DISCUSSION WITH THE EEOC WHO MAKES KIND OF OUR DECISIONS AND DIRECTIVES FOR US AND THEY ARE OF THE MIND THAT IT'S WHAT THE AGENCY DECIDES, WHAT THE BUREAU DECIDES, BECAUSE FOR THEM, IT CAN BE AN HR PERSON OR IT CAN BE AN EEO PERSON. NOW, WITHIN THE BUREAU OF LAND MANAGEMENT WE HAVE RECOMMENDED AND HAVE PLACED A POLICY THAT IT IS WITHIN THE EEO OFFICE. AND WE BELIEVE THAT IT SHOULD BE IN THE EEO OFFICE BECAUSE WE ARE THE ONES WHO ARE HELD ACCOUNTABLE FOR THE DISABILITY PROGRAM AND THE REASONABLE ACCOMMODATION REQUESTS. EEOC LOOKS TO EEO TO ENSURE THAT REASONABLE ACCOMMODATION AND THE DISABILITY PROGRAM ARE ADHERED TO ACCORDING TO THEIR DIRECTIVES.

>> LEON: THANK YOU. WE HAVE ANOTHER QUESTION. WHAT ABOUT ACCOMMODATIONS RELATED TO WORKPLACE ERGONOMICS SUCH AS CHAIRS AND COMPUTER WORKSTATIONS TO ACCOMMODATE EMPLOYEES WHO ARE VERY TALL OR VERY SHORT OF STATURE BUT ARE REALLY NOT CONSIDERED DISABLED OR HAVING A SPECIFIC MEDICAL CONDITION?

>> GRACE: WELL, THAT'S -- THAT'S KIND OF A TOUGH QUESTION, BECAUSE YOU DON'T WANT TO BE PLACED IN A SITUATION WHERE YOU'RE CALLING THIS A REASONABLE ACCOMMODATION REQUEST BECAUSE THAT IS BASED -- THAT IS BASED ON A DISABILITY. BUT YOU CAN HAVE ADJUSTMENT MODIFICATIONS IN THE OFFICE WITHOUT CALLING THEM A "REASONABLE ACCOMMODATION." AND CERTAINLY I BELIEVE ANY MANAGER OR SUPERVISOR THAT WANTS TO ASSURE THAT THEIR EMPLOYEES ARE DOING THE BEST THEY CAN AND THAT THEY CAN GET THE BEST PERFORMANCE FROM THEIR EMPLOYEE WOULD MAKE A BUSINESS-CASE REASON THAT MODIFICATION ADJUSTMENT WOULD BE APPROPRIATE FOR THAT INDIVIDUAL, BECAUSE YOU WANT TO KEEP IN MIND THAT WHILE AN EMPLOYEE MAY BE TALL OR SHORT OR DOESN'T MEET THE NEED OF A QUALIFIED DISABLED INDIVIDUAL YOU STILL WANT THEM TO BE SUCCESSFUL IN THE JOB. YOU STILL WANT TO MAKE SURE YOU'RE DOING EVERYTHING YOU CAN TO MAKE THEM SUCCESSFUL OR HELP THEM BE SUCCESS ENVELOPE THE JOB. AND THERE'S A GOOD BUSINESS-CASE REASON FOR MAKING THAT MODIFICATION ADJUSTMENT.

>> SHARON: I THINK THERE IS NO HARM IN A LITTLE BIT OF FLEXIBILITY. WE HAVE ERGONOMIC KEYBOARDS AND YOU DON'T HAVE TO HAVE CARPAL TUNNEL TO HAVE AN ERGONOMIC KEYBOARD. THIS IS CERTAINLY SOMETHING WE'VE BEEN ACCUSTOMED TO PROVIDING FOR INDIVIDUALS. YOU DON'T HAVE TO HAVE A DISABLING CONDITION TO HAVE AN ERGONOMIC CHAIR, BUT ALL OF THESE THINGS ARE BROUGHT INTO THE WORKPLACE TO MAKE THE WORKPLACE MORE COMFORTABLE, MORE ERGONOMI CALLY FRIENDLY. AND SO JUST AS AN EXTENSION OF THAT IS HOW YOU WOULD LOOK AT IT, ALSO.

>> LEON: THANKS, GRACE AND SHARON. I DON'T HAVE ANY MORE QUESTIONS IN

FRONT OF ME.