

ADAAA: The Art of the Interactive Dialogue



Presented by:
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NH Public Risk Management Exchange



Part of the Art

- Opportunities to Engage
- Words of Wisdom
- Suggestions & Tips
- Pitfalls
- Resources



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Opportunities to Engage

It is common for us to consult with employers regarding the ADA interactive process when:

- An employee is out on FMLA, and may not be able to return to work after 12 weeks
- An employee is not eligible for FMLA, but has illness/injury
- A performance issue is being discussed, and the employee indicates they have a disability



Words of Wisdom:

- There are no clear bright lines in the ADA interactive process
- The ADA interactive is different in every single situation
- Clearly document your conciliatory, interactive processes (emails, discussions, letters, etc.)



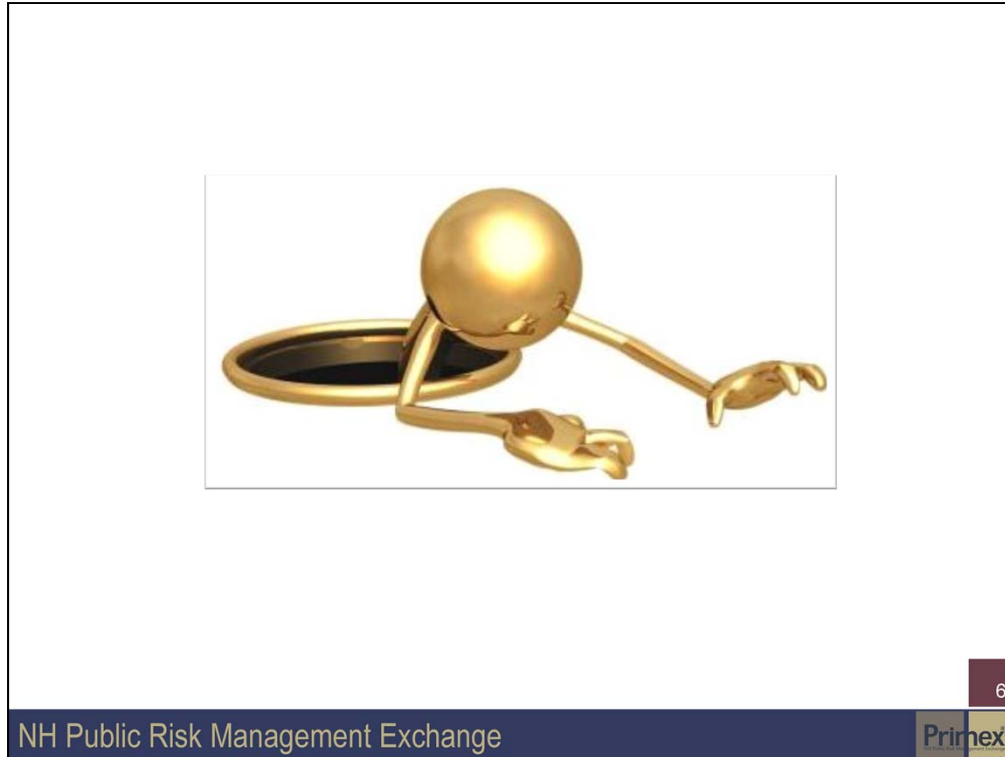
Suggestions & Tips

- Keep it informal when possible
- Via Conversation, Email, Letter, Etc.
- Mutual Dialogue in Good Faith – Conciliatory
- A Continual Conversation - don't be the first to stop the interaction
- Back and Forth, Give and Take

Tips for the Interactive Process:

- A** Acknowledge
- D** Disability
- A** And
- A** Attempt to
- A** Accommodate

(modified from Blackburn, Cherie & Hughes Cherry, Molly, Nexsen Pruet, ADA: What does it mean for employers? 2011)



Common Pitfalls

- Not recognizing when an accommodation request is made
- Not engaging in the interactive process
- Failing to document the process
- Asking for too much medical information
- Denying an accommodation request too soon
- Ending the interactive dialogue because you can't find a reasonable accommodation
- Invoking the “we've never done this before” defense
- Stretching the ‘undue hardship’ parameters



Resources:

www.eeoc.gov

<https://www.eeoc.gov/policy/docs/guidance-inquiries.html> - (Enforcement guidance: Disability-related inquiries and medical examinations of employees under the ADA)

<https://www.eeoc.gov/policy/docs/accommodation.html#general> – (Reasonable Accommodation)

<https://www.eeoc.gov/eeoc/publications/ada-leave.cfm> – (Employer Provided Leave and the ADA)

Job Accommodation Network - <http://askjan.org/index.html>

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