The Important "Interactive Process" Can Be Informal

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Recently, the Tenth Circuit held an employer fulfilled its interactive accommodation obligations under the Americans with Disabilities Act ("ADA") through informal discussions. The case of *Norwood v. United Parcel Service, Inc.*, --- F.4th ----, 2023 WL 192786 (10th Cir. Jan. 17, 2023), affirmed summary judgment in favor of the employer, United Parcel Service, Inc.

Here are the key takeaways from this decision:

- The ADA does not require employers to grant the accommodation requested by the employee.
- The "interactive process" does not need to be formal.
- Employees and employers must engage in a reasonably interactive manner once the "interactive process" is triggered.
- Ask your employees questions about their needs to explore accommodations that might be less onerous and burdensome but accomplish the same goals.
- Train your supervisors and managers to either get HR involved immediately or to themselves have productive and substantive discussions with employees who request an accommodation.
- Document your exchanges with your employee throughout the interactive process.

In affirming summary judgment, the Tenth Circuit reasoned that UPS engaged in "substantive and productive" exchanges with the employee when she triggered UPS's duty to engage in the interactive process. UPS's conduct did not conclude the interactive process. Rather, following the exchanges about accommodations, the employee engaged legal counsel to negotiate a severance, and, ultimately, she retired.

The employee argued UPS did not engage with her in good faith because a possible accommodation, notetaking, was not formally offered to her. Both the lower court and the Tenth Circuit disagreed. The employee requested to tape-record meetings and to have an agenda provided to her in advance. The purpose of these requested accommodations was to assist her in recalling what was covered in the meetings. UPS denied the accommodations as requested, but it asked the employee to consider whether having a designated notetaker could accomplish the same result and if there were specific meetings that she attended for which it was important to have an agenda and notetaker. The employee again requested to tape-record and reiterated the same basis for this request. After some additional back and forth, the employee stated she wanted meeting agendas and tape-recording for all

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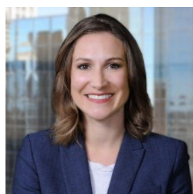
disciplinary meetings and conferences. In evaluating the employee's requested accommodations, UPS concluded that an agenda and tape-recorder for all meetings was not reasonable. Nevertheless, UPS noted internally that it was waiting on the employee to identify meetings for which she was requesting an agenda and note-taking. The employee argued that asking her whether notetaking would accomplish the same result was not the same as offering her notetaking as an accommodation.

The Tenth Circuit reasoned, "[n]othing in the statute or our case law requires that an employer frame possible reasonable accommodations during the interactive process in declarative sentences rather than questions."

GableGotwals' Employment & Labor team provides both basic and advanced management training that equips supervisors and managers on how to work effectively with HR in complying with ADA interactive accommodation obligations. Please contact any member of the team for further assistance.



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