

Working With Employees Experiencing Cognitive Decline

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What should you do if your CAA has an employee who is showing signs of cognitive decline at work? An [article](#) from the law firm Littler Mendelson discusses some of the issues employers should consider.

The key takeaways for employers include:

- Focus on the employee's performance and observable behaviors. Do not assume or jump to conclusions regarding the cause of such behaviors.
- Be consistent in how you address the employee's performance issues and follow your CAA's personnel policies, including conducting regular performance evaluations and documenting performance issues.
- Be careful about seeking information from the employee about any of his/her medical conditions. Generally, the Americans with Disabilities Act (ADA) prohibits employers from asking employees about their medical conditions. However, disability-related inquiries are permitted if they are job related and consistent with business necessity. Specifically, an employer may require an employee who is having performance or conduct problems to provide medical information or to undergo a medical examination if it has objective evidence suggesting that a medical reason is a likely cause of the problem. Behavior that the federal Equal Employment Opportunity Commission (EEOC) has found to provide such evidence includes a sudden, marked change in performance and conduct, when taken together with nonsensical responses to a supervisor's questions and belligerent behavior. However, simply because an employee's behavior is annoying, inefficient, or otherwise unacceptable does not justify an employer making medical inquiries, as other reasons unrelated to any medical condition could be the cause of such conduct (such as insufficient knowledge, conflict with a supervisor or coworker, lack of motivation or skills, a poor attitude, or personal problems).
 - » The EEOC has issued guidance on [making disability-related inquiries](#) as well as on [obtaining specific information from such inquiries](#).



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- Be prepared to engage in the interactive process with the employee. If the employee tells your CAA about his/her medical condition, this will likely be construed under the ADA as a request for a reasonable accommodation and your CAA will need to engage in the interactive process with him/her to see if a reasonable accommodation can be identified.
 - » The EEOC offers the following [guidance](#) on reasonable accommodations and the interactive process. As is discussed in the EEOC guidance, the ADA requires that employees be able to perform the essential functions of their job with or without reasonable accommodation. Significant modifications and/or restructuring of essential job duties so that the position no longer resembles its purpose is generally not considered reasonable.
 - » The [Job Accommodation Network \(JAN\)](#), which is connected with the U.S. Department of Labor's Office of Disability Employment Policy, offers helpful resources on the interactive process and accommodating employees with disabilities. Examples of guidance offered on JAN are [Interactive Process, Accommodation and Compliance Series: Employees with Alzheimer's Disease](#) and [Accommodation and Compliance Series: Employees who are Aging](#).
- Note that other leave laws may also come into play if the employee discloses a medical condition. For example, the employee may ask for Family and Medical Leave Act (FMLA) leave and/or other leave may be available to him/her under your state's leave laws.

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