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Americans with Disabilities Act

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Cost Savings Built in Los Angeles: An Effective ADA Disability Compliance Program

Between 2013 and 2016, the Los Angeles County Metropolitan Transportation Authority (Metro) incurred \$6 million in losses due to disability discrimination litigation. The program was protecting neither disabled employees nor Metro's bottom line. Moreover, plaintiff attorneys had singled out the agency as a target, leveraging a misaligned system. Losses were continuing to mount, and change was due. An opportunity arose with a transition in leadership in the organization's Human Capital & Development department.

In 2016, Metro, which operates the second-largest public transportation system in the United States, made the decision to completely revamp how disability compliance was performed at the agency.

from the ground up. In beginning the work, Metro realized that though it had the talent needed to manage a complex and compliant program, it needed assistance building a program that was realistic for the agency to employ and based on industry best practices. Metro partnered with **Shaw HR Consulting, Inc.**, a California-based disability compliance consulting firm, to create and implement this program.

Nearly three years later, the program has seen great success. Since implementation in 2017, Metro has not lost one Americans with Disabilities Act (ADA) case, and only one ADA lawsuit has been filed against the agency. Equally important to the near elimination of costly litigation stemming from ADA accommodation failings, the program has gained the trust and support of its internal stakeholders and union partners.



"Unclear work restrictions by healthcare providers create confusion and are a poor basis for decision-making. Clarifying work restrictions provides a better environment for agreement, understanding, and acceptance."

With the support of Los Angeles County Board of Supervisors, Los Angeles County Counsel (Metro's legal counsel), and the leadership of CEO Phillip A. Washington, the talent management team set out to rebuild its disability compliance program

Identifying Issues within Metro's Disability Compliance Program

After an initial audit of the program, three key components of Metro's disability interactive process were identified as creating most of the risk and employee and union strife:

1. Poor data guiding decision-making

2. Lack of interaction with employees and their representatives of choice
3. Decentralized program

Building a Program Grounded in Data-Based Decisions

In the past, significant litigation had occurred over Metro determining it could not reasonably accommodate work restrictions such as “heavy lifting.” As litigation showed, what might be “heavy” for one individual may not be “heavy” for another. The agency decided it would no longer make employment decisions based on using words such as repetitive, forceful, heavy, and prolonged. Creating a program centered on data-driven decision-making became the most important factor.

A series of workshops took place with the disability compliance team, the executive team that leads the workers’ compensation function (and

employing a supplemental medical questionnaire to clarify work restrictions before decisions were made. The questionnaire is now sent to a health-care provider to detail exactly what work restrictions mean.

In obtaining clear data, Metro found that a decision that might have been questioned previously was now either agreed to or understood by all parties. For example, in obtaining clarification, Metro learns that “heavy lifting” means for a specific employee “no lifting over 10 pounds with the right arm, 10 pounds with the left arm, and 20 pounds using both arms.”

With this level of clarity, Metro can easily communicate why an accommodation is not reasonable for a bus operator who would need to lift up to 35 pounds to manually deploy the wheelchair ramp or lift up the bike ramp. Instead of arguing or negotiating

cation increases the time it takes on the front end of the process, Metro has found it is key to saving the organization millions of dollars in litigation and in helping to build and preserve its relationships with employees and other internal stakeholders.

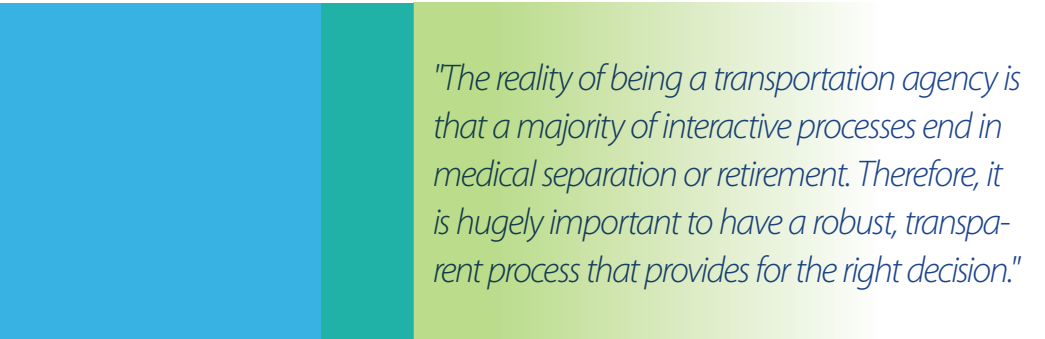
Making the Process Interactive and Demonstrating Good Faith

The ADA requires a good faith interactive process. In 2016, Metro, with approximately 11,000 employees, was managing a heavy volume of cases — more than 500 active ADA cases. As a result, there was less talking with employees and more telling employees about decisions being made. In 2017, Metro stopped having informal discussions in which an employee was told if the agency could accommodate them. Instead, Metro began scheduling face-to-face meetings with employees.

In every meeting, the “Metro accommodations team” is invited, which consists of a person from each of the following groups: the employee, the employee’s union representative, talent management/disability compliance, employee and labor relations, county counsel, workers’ compensation (if industrial), and the department or division. All meetings are scheduled at least 14 days in advance.

In the meeting, the parties talk to each other, review gathered data, and share and explore. Notes are taken, and all parties sign the notes before they leave the room. These meetings not only help Metro to make the right decision, but they also show employees the respect they deserve. These meetings take time, often two hours or more, but contribute greatly to achieving the agency’s nearly non-existent litigation and grievance rates.

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"The reality of being a transportation agency is that a majority of interactive processes end in medical separation or retirement. Therefore, it is hugely important to have a robust, transparent process that provides for the right decision."

manages its claims as an in-house function), and County Counsel. The workshops discussed the different and symbiotic needs of the two separate processes.

In the end, the group redefined how and what medical information would be obtained, agreed on which medical information would be used to process compensability versus return-to-work discussions, and established protocols to ensure each group did not get ahead of the other’s processes for the greater good of the organization and the employee.

Beginning in 2017, Metro began

what a term means, the parties can now read the data and apply it to the knowledge of the job.

Unclear work restrictions by healthcare providers create confusion and are a poor basis for decision-making. This new step to clarify work restrictions provides a better environment for agreement, understanding, and acceptance. If an employee does not agree with the provider’s restrictions, the employee is allotted some time to talk with the provider to see if an adjustment can be made before a decision is finalized.

While this additional step of clarifi-

processes end in medical separation or retirement. Therefore, it is hugely important to have a robust, transparent process that provides for the right decision to be made using good data and that allows an employee to hear and understand a difficult decision. An employee who understands a decision, even if they do not like it, is more likely to accept it and move forward without litigation or grievance.

Centralizing the Function of Disability Compliance Management

Simply put, a compliance program works best when centralized. This is because disability compliance requires consistent application of a process in which data guides decision-making. Personal relationships, experiences, and personalities too often create risk for organizations as managers and supervisors who work side-by-side with employees can mix data with emotion.

Compliance means even difficult employees must be accommodated if a reasonable accommodation is available. Compliance means a most valued and beloved colleague may be too disabled to perform the essential functions of their job and must be supported to transition to another job or to retirement. Ultimately, compliance in the form of difficult decisions is too much to ask of someone who is responsible for the day-to-day work group. When this is allowed, the organization often pays the price.

Metro was in an excellent position to centralize its disability compliance program as a geographically compact organization, supporting in-person meetings with all players, including HR staff with technical expertise. Geographically dispersed organizations can still create and operate a centralized program, but will likely conduct telephonic or video conference interac-

The advertisement is split into two vertical panels. The left panel shows a man and a young child sitting on a wooden pier or beach, looking out at the ocean. The right panel shows a man sitting in an office chair at a desk, working on a laptop. A desk lamp is visible on the desk. The Unum logo is in the top left corner. Text on the right side reads: "A BETTER LEAVE EXPERIENCE FOR ALL YOUR EMPLOYEES". Below this, it says: "As a leader in leave management, Unum can design a policy to help your employees return to work ready to contribute. Plus compliance with all state and federal leave laws." A large downward-pointing arrow is below this text. At the bottom right, it says: "Learn more at unum.com/fmla". At the bottom left, in small print, it says: "© 2018 Unum Group. All rights reserved. Unum is a registered trademark and marketing brand of Unum Group and its insuring subsidiaries. ADR1986-2018".

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tive process meetings.

Metro developed a team of analysts and administrative professionals who are trained to navigate disability compliance and support the organization. The team gathers the data needed, engages with employees in a respectful and open manner, and ultimately guides the hiring authority to make the right decision — even when it is a difficult decision and a different outcome is preferred. The program protects disabled employees, ensures Metro's customers have employees that can do their jobs fully and safely, and ultimately, strengthens Metro's relationships with employees and internal stakeholders such as department leads and union partners.

Resounding Results

At the onset, it was unclear if a public transportation agency as large as Metro and in California could truly stem the litigation tide. Results, however, have been unequivocally positive. No longer "low hanging fruit" to plaintiff's attorneys, Metro stopped a regular onslaught of lawsuits and built a reputa-

tion for having a strong, well-documented interactive process.

Today, Metro has approximately 110 open ADA cases at any given time. Since 2017, it has seen a significant reduction in litigation payouts that were previously averaging \$2 million a year. Moreover, Metro has held more than 500 interactive process meetings with injured or disabled employees. In these meetings, approximately 45% of the employees were returned to work with or without reasonable accommodations; 40% ended in medical separation, voluntary retirement, or voluntary resignation; and 6% returned to an alternative position. The other 9% of cases were also closed, the great majority in this group being transferred into other programs that were more appropriate. Notably, fewer than 0.2% of all closed files have resulted in litigation.