



Reasonable Accommodation Under the ADA

What is Reasonable Accommodation?

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation for qualified individuals with disabilities who are employees or applicants for employment. Potential reasonable accommodations include making existing facilities accessible, job-restructuring, part-time or modified work schedules, assistive technology, providing aides or qualified interpreters, changing tests or policies, and reassignment to a vacant position. The reasonable accommodation obligation also extends to the benefits and privileges of employment, such as employer-sponsored training, services, and social functions. Generally, the individual with a disability must inform the employer that an accommodation is needed, and an employer is not required to provide accommodation for any disability of which it is not aware.

Employers are required to provide reasonable accommodation only to individuals with a disability who are qualified. Under the ADA, an individual with a disability is qualified if s/he satisfies the job-related requirements of the position held or desired and can perform the “essential functions” of such position, with or without reasonable accommodation. The employer identifies the job’s essential functions; job descriptions prepared before an individual is interviewed or selected for a position are considered evidence of a job’s essential functions.

If the individual cannot perform an essential function, even with accommodation, the individual is not considered “a qualified individual with a disability” under the law.

The employer should confer with the employee regarding the type of accommodation that will enable the employee to perform the essential functions of the position. Together, they should evaluate the nature of the employee’s physical or mental limitations in order to determine one or more effective potential accommodations.

Employers need not provide accommodations that pose an “undue hardship” (defined as significantly difficult or expensive). In determining whether an accommodation poses an undue hardship, employers should examine the nature and net cost of the accommodation, the overall financial resources of the facility and the larger business entity, and the impact of the accommodation on the operation of the business. Accommodations of a personal nature that are used both on and off the job (such as a guide dog for a visually-impaired employee or a wheelchair) would not be the employer’s responsibility.

The ADA neither requires employers to create a new job for the person with the disability, nor to reallocate essential functions to another worker. An employer may be required to restructure a job, however, by reallocating non-essential, marginal job functions. For example, the Postal Service refused to promote a hearing-impaired secretary because she could not answer the telephone. The court ordered the Postal Service to promote the individual, noting that several other secretaries were available to answer the telephone, and that simply because telephone answering was considered a low status assignment did not make it an essential function of the secretary’s job.

Some courts and the EEOC have taken the position that the location where the work is performed is another policy that may have to be modified as a reasonable accommodation for certain jobs, so long as the accommodation is effective and does not pose an undue hardship. The EEOC has noted that certain jobs such as a food server or cashier can only be performed at a work site, while other jobs such as a telemarketer or proofreader could be done at home. The EEOC has stated that certain considerations are relevant to the determination of whether a job can be performed at home, including supervision and the need to work with equipment that cannot be replicated at home. The courts that have rejected working at home as a reasonable accommodation focus upon evidence that personal contact, interaction and coordination are needed for the position at issue.

Employers who fear that accommodating a worker with a disability will lower the morale of coworkers will not find this a helpful defense to an ADA charge. Nor will the concern that coworkers or customers will not wish to associate with an individual with a disability be an appropriate reason to deny such an individual employment. Regarding the financial burden of accommodating an employee or applicant with a disability, a study beginning in 2004 revealed that 56% of accommodations cost nothing to implement, while most of the remaining accommodations involved a one-time cost of approximately \$600. Moreover, tax credits help alleviate the cost of implementing accommodations such as the removal of architectural barriers, the targeting of jobs for individuals with disabilities, or the provision of assistive technology or interpreters to workers with disabilities.

Accommodating a Worker with a Disability

The accommodation process begins before the disabled worker is hired (or identified, if it is a current employee who becomes disabled after being hired). Written job descriptions prepared before advertising or interviewing applicants are evidence of whether particular job functions are essential, but other evidence, such as what previous or current holders of the job actually do, is also relevant. Job descriptions should be reviewed to ensure that they include the essential functions of each job, particularly with regard to physical requirements. Statements such as “all incumbents must perform all functions of the position,” or “there is no light duty in this department” are not determinative of whether a reasonable accommodation must be provided.

Recruiters or interviewers must be trained regarding what inquiries are permissible under the ADA. At the pre-offer stage, employers may ask about an applicant’s ability to perform specific job-related functions, but generally may not ask an applicant whether s/he needs a reasonable accommodation for the job. An exception exists, however, if the employer knows that an applicant has a disability -- either because it is obvious or because the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation to perform specific job functions. In this circumstance, if the applicant replies that that an accommodation is needed, the employer may inquire as to what type of accommodation is required. An employer may require non-medical examinations and may, of course, ask other questions that are not disability-related.

After the employer extends a conditional offer of employment, it now may require a medical

examination or make disability-related inquiries if all entering employees are subject to the same exam or inquiry. An employer also may inquire whether applicants will need reasonable accommodation related to anything connected to the job, including access to benefits and privileges of employment, as long as all entering employees in the same job category are asked this question. The employer may, of course, make any inquiry at this stage of the hiring process that would be allowed in the pre-offer stage (i.e., an inquiry regarding whether an applicant requires accommodation with respect to a disability of which the employer is aware).

Finally, during the employment stage, employers may conduct medical examinations and make disability-related inquiries of employees provided that those investigations are job-related and consistent with business necessity. Whenever an examination is used, whether during the post-offer stage or the employment stage, the exclusionary criterion also must be job-related and consistent with business necessity. If the employer either fails to hire or fires an individual due to the results of an examination, it must show that the skill being tested is an essential job function that the individual cannot perform without reasonable accommodation.

The employer must keep any medical information obtained confidential. This means that the employer must collect and maintain the information on separate forms and keep it in separate medical files. The employer may disclose the information only to persons and entities specified in the ADA.

Employers may use tests to determine job qualifications. However, qualification standards, tests or other selection criteria that screen out an individual with a disability or a class of individuals with disabilities will violate the ADA unless shown to be job-related

and consistent with business necessity. Even if this showing can be made, an employer must consider whether the criteria can be met or job performance accomplished with the provision of reasonable accommodation. In addition, tests must be administered to an applicant or employee with a disability in a way that ensures that the test results accurately reflect the skills, aptitude, or whatever other factor is being tested, rather than reflecting the impaired sensory, manual or speaking skills of the person, unless these skills are what is being tested.

Reasonable Accommodation and Safety

Some employers are concerned that a worker with a disability could be a safety hazard, either to herself or to co-workers or customers. The law takes this concern into account, but only if it is founded upon current medical or other evidence that the individual is a “direct threat” to herself or others because of the nature of the job and the specific characteristics of that individual’s disability.

In determining whether an individual with a disability poses a direct threat, including an individual with a contagious disease, the factors to be considered include:

1. the duration of the risk;
2. the nature and severity of the potential harm;
3. the likelihood that the potential harm will occur; and
4. the imminence of the potential harm.

Even if the person is found to pose a significant risk of substantial harm, part of the reasonable accommodation determination is an analysis of whether the individual can be accommodated in a way that either eliminates the threat or reduces it to an acceptable level.

For example, in a case involving an epileptic shoe salesman, a court noted that, even if the salesman posed a danger because of the risk of epileptic seizures, reasonable accommodations such as the removal of stock from high shelves so that the salesman would not have to climb ladders would eliminate that threat.

In general, blanket exclusions of particular conditions are difficult to justify, especially if the employer does not perform an individualized assessment of the individual being excluded. Instead, the employer should obtain individualized medical information about the limitations posed by the worker’s disability and the probable harm that the individual’s specific physical or psychological problems will pose with respect to the position in question. For example, a court concluded that a diabetic police recruit did pose a direct threat because he had suffered two episodes on duty in which he became dysfunctional and disoriented, but in cases where employers excluded all diabetics from law enforcement jobs or driving jobs on the ground that any case of diabetes posed a direct threat, that blanket exclusion was overly broad.

Reasonable Accommodation and Worker Misconduct

The ADA protects individuals with mental as well as physical disabilities, and the reasonable accommodation requirement applies in the same way for both kinds of disabilities. However, employers may hold individuals with disabilities to the same performance and conduct standards as other workers. If a worker engages in misconduct that warrants discipline under the employer’s policy, even if the conduct is related to the individual’s disability, the employer may discipline that worker.

The timing of employee misconduct with respect to any accommodation request is important. If an employee requests accommodation prior to engaging in misconduct, e.g., leave to attend therapy sessions, the employer should allow reasonable accommodation that does not impose an undue hardship. On the other hand, if the employee engages in misconduct prior to requesting the accommodation, the employer may impose the appropriate discipline. This may include discharge, depending on the employer's disciplinary policy and the nature of the misconduct involved. If the employer has a policy of progressive discipline, the employer may impose discipline short of discharge and then provide an accommodation that would enable the employee to meet the conduct standards.

Off-duty misconduct may also be grounds for discharge or discipline, even if the worker asserts that the disability "caused" the misconduct. In most cases that have reached the courts, the misconduct was related to alcohol or drug abuse, and the employer was able to demonstrate that retaining the individual would impose an undue hardship because the job itself requires the individual to demonstrate good judgment or to be law-abiding (such as in the case of a police officer or an FBI agent).

Employees whose excessive absences or tardiness create problems for the employer are not necessarily protected even if the attendance problems are related to the disability. However, the employer must consider whether a reasonable accommodation (such as a different work schedule, additional paid or unpaid time off, or working at home) is possible and whether such an accommodation would constitute an undue hardship.

Employers should train their staff about the general requirements of the ADA, with particular emphasis on defining the essential functions of each position and the accommodation requirement. Learning to assess the individual first, and the disability second, working with the individual and his or her counselor, medical professional, or other knowledgeable persons in fashioning the appropriate accommodation, and responding to requests to review the effectiveness of the accommodation will very likely satisfy the demands of the ADA, the practical needs of the individual with a disability, and the employer's need for a productive and committed workforce.

Resources

ADA Regional Disability and Business Technical Assistance Center Hotline,
(800) 949-4232 (voice/TDD).

Job Accommodation Network,
PO Box 6080,
Morgantown, WV 26506-6080,
(800) 526-7234 (voice/) or (877) 781-9403 (TTY).

U.S. Equal Employment Opportunity Commission, 131 M Street, NE,
Washington, DC 20507, (800) 669-4000 (voice),
(800) 669-6820.
For publications: (800) 669-3362 (V) or (800)
800-3302 (TTY).

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The U.S. Equal Employment Opportunity Commission has reviewed it for accuracy. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Commission or the publisher. EEOC interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and Enforcement Guidance.

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The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at:
<http://www.eeoc.gov>

About this Brochure

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, Director, Employment and Disability Institute, Cornell University ILR School.

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The full text of this brochure, and others in this series, can be found at www.hrtips.org.

More information on accessibility and accommodation is available from the ADA National Network at 800.949.4232 (voice/ TTY), www.adata.org.

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