



Webinar 21 – November 13, 2024

Understanding Reasonable Accommodations in the Workplace

WEBINAR OUTLINE

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- Defining a Disability under the ADA

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INTRO/SETTING THE STAGE

Key Definitions

What is a reasonable accommodation?

- A reasonable accommodation is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities.
- Accommodations are considered “reasonable” if they do not create an undue hardship or a direct threat.

Who is an “individual with a disability?”

- An individual meets the Americans with Disabilities with Act definition act of “disability” that would qualify them for reasonable accommodations if they have “a physical or mental impairment that substantially limits one or more major life activities.
- If a disability is not obvious to an employer, they can ask for medical documentation from a health care provider to confirm the need for an accommodation.

What are “essential functions?”

In order to be qualified for a position, an applicant or employee must be able to perform essential job functions. Essential functions are job duties that are fundamental to the position, they are the reason the job exists. Some of the factors for determining essential functions of a job include:

- Whether the position exists specifically to perform these essential functions.
- The number of other employees who are available to perform the same job duties.
- The expertise or skills required to perform the essential functions.

AMERICANS WITH DISABILITIES ACT

What is the Americans with Disabilities Act (“ADA”)?

- The ADA prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government’ programs and services.
- The ADA covers employers with 15 or more employees, including state and local governments.

Defining a Disability under the ADA

The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities. When job applicants or employees have a mental health condition that meets this criteria, they have workplace rights under the ADA.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business.

OBLIGATIONS OF EMPLOYERS

How Are Essential Functions Determined?

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.

Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function,
- the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- the degree of expertise or skill required to perform the function.

Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC will consider include:

- the actual work experience of present or past employees in the job,
- the time spent performing a function,
- the consequences of not requiring that an employee perform a function, and
- the terms of a collective bargaining agreement.

What Are an Employer's Obligations to Provide Reasonable Accommodations?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

For example, reasonable accommodation may include:

- acquiring or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those available to other employees.

It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense.

Note:

Reasonable accommodations come in many forms.

In order to determine what is reasonable, an employer must look at the request made by the applicant or employee with a disability. Whether or not an accommodation is reasonable will vary according to the position the employee holds, the way their disability affects their ability to do their job, and the environment that they work in.

What types of accommodations are generally considered reasonable?

- Change job tasks.
- Provide reserved parking.
- Improve accessibility in a work area.
- Change the presentation of tests and training materials.
- Provide or adjust a product, equipment, or software.
- Allow a flexible work schedule.
- Provide an aid or a service to increase access.
- Reassign to a vacant position.

What are some examples of reasonable accommodation?

- **Provide Alternative Formats:** A supervisor gives feedback in writing, rather than verbally, for an employee who communicates better through written materials.
- **Accessible Parking:** An employer changes its practice of only offering parking to upper management to allow an employee who is unable to walk long distances access to a reserved parking spot close to the building.
- **Service Animals:** An employer reasonably changes their office’s “no animals” policy, in order to welcome an employee’s service animal.
- **Equipment Change:** An employer purchases software that magnifies the computer screen to allow an employee with low vision to correctly enter and read information on the computer.
- **Reorganization of the Job:** The employer provides a checklist to ensure task completion for an employee who has an intellectual disability.
- **Reassignment:** Reassignment is the reasonable accommodation in some situations. An employer may reassign an employee to an open position if the employee can no longer perform the essential functions of their current job.
 - The employer does not have to create a new position, no other employees need be transferred or terminated in order to make a position vacant for the purpose of reassignment, and the individual with a disability should be qualified for the new position.

REASONABLE ACCOMMODATION PROCESS

An openness and willingness to address employee mental health concerns is critical. For an employee who may have an entitlement to accommodation, it is vital to engage in an effective interactive process and be proactive in identifying reasonable accommodations that will enable that employee to succeed at work without imposing an undue burden on the employer.

Step 1: Determine Whether the Employer Is Covered by the ADA

Note:

All employers, including state and local government employers, with 15 or more employees are covered employers under the ADA.

Step 2: Ensure a Policy and Procedure Exist for Handling Accommodation Requests

Note:

Organizations should implement and/or review their policies and procedures for handling requests for disability accommodations. Existing job descriptions should also be reviewed to confirm they include all aspects of the job and list all essential functions, including any physical requirements such as standing or sitting for long periods of time or lifting requirements.

Step 3: Determine Whether the Employee with a Disability Is "Qualified"

Note:

The term "qualified" with respect to an individual with a disability means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.

Step 4: Initiate the Interactive Process

Note:

Upon learning of the possible need for a reasonable accommodation under the ADA, organizations should engage in a process in which the employee, health care provider and employer each share information about the nature of the disability and the limitations that may affect the employee's ability to perform the essential job duties.

This process is referred to as the interactive process and involves a good-faith effort by the employer and the employee to discuss the limitations or performance issues the employee's disability may pose. The purpose of this discussion is to determine what (if any) accommodations may be needed.

The interactive process involves a review of the [accommodation request](#) from the employee or a health care provider. Although the ADA does not require the request to be put in writing, having documentation of the request is a good practice.

The employee should be asked to provide appropriate documentation from a health care provider regarding the nature of any impairment(s), severity, duration, activities limited by the impairment(s) and the extent to which the impairment(s) limits the employee's ability to perform the job's essential duties/functions.

In the event the employer needs to consult with the employee's health care provider, the employer must obtain a written medical release or permission from the employee. The employee's health care provider may not disclose information or answer questions about the employee's disability without the employee's permission.

Step 5: Assess if the Employee Has a Disability Under the ADA

Note:

Organizations should use the definition of a "disability" and a "qualified individual with a disability" under provisions of the ADA, along with information from the employee's health care provider, to help make this determination.

- The ADA defines a disability as one of the following: a) a physical or mental impairment that substantially limits a major life activity; b) a record of a physical or mental impairment that substantially limited a major life activity; or c) being regarded as having such an impairment.
- The ADA Amendments Act (ADAAA) identifies medical conditions that would virtually always be considered a disability within the meaning of the law. They include deafness, blindness, intellectual disability, completely or partially missing limbs, mobility impairments that require the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis and muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.
- The definition of major life activities includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major bodily functions includes functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- The ADAAA directs that if a "mitigating measure," such as medication, medical equipment, devices, prosthetic limbs or low vision devices eliminates or reduces the symptoms or impact of the impairment, that fact cannot be used in determining if a person meets the definition of having a disability. Instead, the determination of disability should focus on whether the individual would be substantially limited in performing a major life activity without the mitigating measure. This rule, however, does not apply to people who wear ordinary eye glasses or contact lenses.

Employers must consider whether the impairment substantially limits a person's ability to work or meet certain job-related requirements, even though the impairment may not impose substantial limitations outside the workplace. For example, the employee may still be able to operate a personal motor vehicle but may have limitations in performing the essential job duty of operating and driving a commercial truck, which is regulated by the U.S. Department of Transportation. In this case, the ADA recognizes this employee as having a disability.

Step 6: Determine Accommodations

Note:

The ADA does not require employers to have a particular policy and procedure in place for determining or granting reasonable accommodations, but it does recommend that employers develop their own policy meaningful to employees and the organization.

An accommodation can be a change or modification to the workplace, allowing the employee with a disability to perform his or her essential job duties or enjoy the benefits and privileges of employment.

Reasonable accommodations can vary in price and scope. Some are free or low-cost, such as a change in work schedule, granting extended unpaid leave or telecommuting. Others may be costlier, such as installing an elevator or modifying restrooms.

The types of accommodations needed and provided will depend on the limitations of the disability and the individual employee's ability to perform the essential job duties of the position. One standardized type of accommodation may not meet the needs of employees who have similar disabilities but different impairments/limitations when performing their essential job functions. Accommodations are designed to meet the specific circumstances of the individual.

They must also obtain verification from the employee and his or her health care provider that the agreed-on accommodation will not worsen the employee's disability or cause other problems.

Step 7: Determine if the Accommodation Is "Reasonable" or Creates an "Undue Hardship"

- The EEOC, when determining if the employee request creates an undue hardship to the employer, looks not only at the cost of the particular accommodation but also at the financial stability of a company.
- Accommodations that could result in an undue hardship include modifications that are "unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the job or business," according to the EEOC. For example, small employers that require their employees to be able to perform a number of different jobs and tasks may not

find it feasible or cost-effective to provide job restructuring as a "reasonable accommodation," whereas in larger organizations, this may be a free or low-cost option.

- The EEOC does not see impact on employee morale as a reasonable undue hardship defense.

Organizations should seek input from the employee's supervisor, who has knowledge about the duties of the position and the worksite, to help determine the feasibility and what may be a "reasonable" accommodation.

After the type of accommodation has been determined, the employer should document specific accommodations that will be made.

Step 8: Notify the Employee

Note:

The next step is for HR to notify the employee in writing that his or her requested accommodation has been approved or denied. Details of the accommodation and the anticipated start date should be included.

HR must maintain all copies of accommodation requests, supporting medical information and documentation, including denials, in a file separate from the employee personnel file, consistent with the confidentiality requirements of the ADA.

COMMON QUESTIONS

Can an employer ask for proof of a disability?

In cases where the disability isn't apparent, the employer can request medical documentation of the impairment to confirm the diagnosis as well as basic information about the nature, duration, and severity of the disability, including the extent to which it limits the employee's ability to perform essential work functions.

However, the employer violates the ADA if they demand more documentation than necessary to prove the disability.

Where a disability is obvious, employees don't need to provide proof of disability as part of the workplace accommodations request.

What is an undue hardship under the ADA?

While reasonable accommodations often benefit many employees – for example, as with ergonomic workstations – and typically present limited impact to employer budgets and work environments, certain accommodation requests may pose undue hardship to employers.

An unreasonable accommodation presents an undue hardship when it is not only cost-prohibitive but untenably elaborate, with potential disruptions to areas of a business such as size, resources, and operations, with potential impacts to areas such as workplace safety and efficiencies, employee rights and benefits, and legal compliance. In this vein, examples of unreasonable accommodation include:

- Eliminating primary job responsibilities
- Lowering production standards
- Granting greater paid leave to one employee over others
- Keeping a position open indefinitely
- Reducing employee hours

How long does an employer have to respond to a reasonable accommodation request?

While the process of requesting a workplace accommodation is interactive and ongoing, the employer should nonetheless still decide upon the accommodation request within a reasonable time frame, as unnecessary delays violate the ADA.

While the ADA doesn't specify a time limit, the Equal Employment Opportunity Commission (EEOC) provides guidance in the form of various examples. For instance, if an employee who uses a wheelchair makes a request for more accessible parking and two months after the initial request nothing has been done, the employer – even if they never explicitly denied the request – has violated the ADA.



TRENDS



INSIGHTS



PRACTICAL
GUIDANCE



STRATEGIES

- **Understand who the law protects.** The law protects applicants and employees with disabilities. This includes people who have disabilities that do not affect them all the time, such as epilepsy, multiple sclerosis, bipolar disorder, schizophrenia or post-traumatic stress disorder (PTSD). People who have disabilities and people who had disabilities in the past may be entitled to reasonable accommodations, if needed.
- **Recognize requests for disability accommodation(s).** An applicant or employee may indicate that he needs an adjustment or change in the application process or at work for a reason related to a medical condition. The request does not have to be in writing, and does not have to include the terms "reasonable accommodation," "Americans with Disabilities Act," or "disability."
- **Consider the request.** Don't automatically refuse an accommodation request or have an inflexible policy that doesn't allow for exceptions.
 - Review each request individually. There is no one-size-fits-all accommodation. Accommodations may differ based on the employee's medical condition, medical treatment and job duties.
 - Discuss the request with the applicant or employee, if needed. Ask for additional information if needed to help you determine what type(s) of accommodations might be effective for both the individual and your business. For example, if an employee who is partially blind requests special computer software, you may want to discuss what types of software would meet her needs.
 - **Consider alternative accommodations.** If it is not possible to provide the requested accommodation, determine whether other accommodations would be effective for the applicant or employee and for your business.

- **Consider additional requests.** An employee may need another accommodation or a different accommodation later due to changes in his job responsibilities, his medical condition or his medical treatment.