



Webinar 3 – March 25, 2026

## Engaging in a Dialogue for Accommodation

### WEBINAR OUTLINE

#### INTRO/SETTING THE STAGE

- Key Definitions

#### THE AMERICANS WITH DISABILITIES ACT

- What is the Americans with Disabilities Act?
- Defining a Disability under the ADA

#### OBLIGATIONS OF EMPLOYERS

- How are Essential Functions Determined?
- What Are an Employer's Obligations to Provide Reasonable Accommodations?

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## INTRO/SETTING THE STAGE

### Key Definitions

#### 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 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.

#### 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.

### **What is the Interactive Process?**

A flexible, informal process to determine if an employee's disability is affecting their ability to perform their job and what, if any, reasonable accommodation might be

effective. It typically involves the employee and employer communicating to identify the problem and potential solutions.

## A CASE STUDY

Myrna has worked for Widgets R Us as a widget maker for 5 years. In February of 2025, Myrna injured her back while paragliding. Because she works in the factory and cannot work remotely, she went out on New York Disability leave and FMLA leave for a total of 16 weeks.

Myrna returned to work but then announced she was pregnant and would be taking leave in January 2026. In October, Myrna called out sick. She then told her supervisor she could no longer use the widget maker machine due to a pregnancy related condition. Widgets R Us needs someone to work in her position to adequately fulfill their widget demand.

What should the employer do?

### Step 1: Recognize the request

The process begins when an employee with a disability informs the employer, either verbally or in writing, that they need an adjustment at work due to a medical condition. The employee does not need to mention the ADA or use specific language.

Note: Training supervisors to recognize an accommodation request, even if it is not formally stated. If an employer is unsure, they should ask the employee for clarification.

### Step 2: Documentation

Provide accommodation forms to the employee to complete.

### Step 3: Gather necessary information

Accommodation forms, medical letters

If the disability and need for accommodation are not obvious, the employer may ask for additional information.

- Employers should assess the specific job, its essential functions, and how the employee's impairment interferes with those tasks. If needed, the employer can request limited medical documentation from the employee's health care provider to understand the work-related limitations.

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.

- Employees should clearly communicate how the disability impacts their job performance. The employee should cooperate in providing appropriate medical documentation when requested.

#### Step 4: Analyze Accommodation Request and Engage in Dialogue

Explore accommodation options and select and implement the accommodation  
After exploring options, the employer chooses and puts into place the most appropriate accommodation.

#### Step 5: Document and Communicate the Result

Maintain clear, confidential documentation of each step of the accommodation process.

## COMMON MISTAKES EMPLOYERS MAKE

### **Failing to Recognize an Informal ADA Accommodation Request**

Employees do not need to use terms like “reasonable accommodation” or “ADA” to trigger employer obligations. Even vague comments about difficulty performing job duties due to a medical condition should prompt an interactive process.

An accommodation request can be informal and may come from statements such as:

- “I’m having trouble getting to work on time because of my medical condition.”
- “My injury makes it hard to stand for long periods.”
- “I need some flexibility because of my treatment schedule.”

Once an employer is on notice that a medical condition may be affecting an employee’s ability to perform their job, the duty to engage in the interactive process is triggered.

### **Delaying or Ignoring the Interactive Process**

Employers often expose themselves to liability not by denying accommodation, but by doing nothing. Delays, silence, or informal “we’ll get back to you” responses can be interpreted as a failure to engage in the interactive process in good faith. The ADA requires a timely, ongoing dialogue between the employer and employee to explore possible reasonable accommodations.

### **Requiring Excessive or Improper Medical Documentation**

Overly broad medical inquiries can violate ADA confidentiality rules. Employers may request medical documentation when the disability or need for accommodation is not obvious. However, asking for diagnoses, complete medical records, or information unrelated to job functions frequently leads to legal disputes.

### **Treating All Job Description Tasks as Essential**

Employers sometimes assume that if a task appears in a job description, it must be essential and cannot be modified. Courts and the EEOC look to the actual duties performed and whether marginal tasks can be reassigned.

### **Rejecting an Accommodation Without Exploring Alternatives**

Denying a request without exploring alternatives is a common error. Employers are not required to provide the employee's preferred accommodation; rather, they must meaningfully consider other *reasonable* options.

### **Failing to Document the Process**

Lack of documentation is a silent liability driver. The EEOC and courts often cite poor documentation as evidence of bad faith or discriminatory intent. Common employer gaps include failing to document the interactive dialogue, alternative accommodations considered, and/or the rationale for a denied accommodation request.

### **Inconsistent Treatment of Similar Requests**

Applying different standards to similar accommodation requests without a clear, documented reason can lead to discrimination or retaliation claims.

**Source:** <https://www.jdsupra.com/legalnews/mistakes-employers-make-during-the-ada-5731571/>



- Train supervisors to escalate any mention of a medical condition affecting work to HR promptly. While not every condition constitutes a “disability” under federal or state law, it is imperative that HR is aware of medical issues that impact attendance and/or work performance.
- Acknowledge requests quickly, document communications, and keep the process moving – even if additional medical information is needed.
- Request only information necessary to confirm the existence of a covered disability and understand functional limitations relevant to essential job functions.
- If a requested accommodation is not feasible, explain why and propose other options. Document the discussion.
- Apply consistent standards, while recognizing that ADA determinations are individualized and fact-specific.