



The ADA: Reasonable Accommodations for Employee Medical Conditions

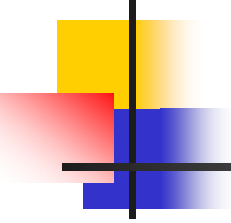
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Americans with Disabilities Act (ADA)

- Prohibits discrimination and retaliation against disabled applicants and employees
- Requires employers to provide employees with a certain amount of assistance in performing their jobs – “reasonable accommodation”



Questions to determine whether the employer is required to provide an accommodation:

- Is the employee disabled or does she have a history of disability?
- Is the employee a “qualified individual”?
- Does the employee’s disability interfere with her ability to perform the essential functions of her job?
- Has the employee asked for help in performing job duties because of a medical condition that may qualify as a disability?
- Is there an accommodation that you can provide to help the employee perform the job’s essential functions without causing you an undue hardship?



The meaning of “disability”

- A physical or mental impairment that substantially limits one or more major life activities (“actual disability”),
- A record of such an impairment (“history of disability”), or
- Being regarded as having such an impairment (“regarded as being disabled”)



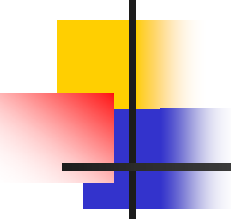
Physical or mental impairment (slide 1 of 2)

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or



Physical or mental impairment (slide 2 of 2)

- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.



Physical or mental impairments are *not*:

- Eye color, hair color, weight, height, muscular tone (as long as within range of “normal”);
- Personality traits (such as temper or poor judgment, if not otherwise connected to a mental disorder);
- Predisposition to illness or disease;
- Advanced age;
- Environmental, cultural, or economic disadvantage;
- Sexual behavior disorders, compulsive gambling, kleptomania, or pyromania; or
- Current illegal drug use.



Examples of major life activities (not an exclusive list)

- Caring for oneself, performing manual tasks;
- Walking, seeing, hearing, speaking, breathing, eating, sleeping, reading, learning, thinking, concentrating, communicating, working (but not “working overtime”);
- Sitting, standing, lifting, reaching, bending;
- Major bodily functions, including immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions



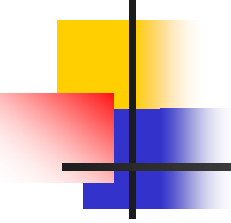
Definition of “qualified”

- A “qualified individual” is a person who can perform the essential functions of the job he holds or desires, with or without a reasonable accommodation.
- Key questions:
 - What are the essential job functions?
 - What accommodations are reasonable?



Essential job functions

- The “essential functions” of a job are those duties that are fundamental to the position that an employee holds or an applicant desires.
- Essential functions do not include marginal tasks that may be incidental to the position.



Factors in determining whether a function is essential or not (slide 1 of 2)

- The *employer's judgment* as to which functions are essential;
- *Written job descriptions* prepared before advertising or interviewing applicants for the job;
- The amount of *time spent* performing the function;



Factors in determining whether a function is essential or not (slide 2 of 2)

- The *consequences* of not requiring the incumbent to perform the function;
- The terms of a *collective bargaining agreement*;
- The work *experience of past incumbents* in the job; and
- The work *experience of current incumbents* in the job.



Direct threat (slide 1 of 2)

- A person will not be considered a “qualified individual” if he is a direct threat to himself or others.
- A direct threat is a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
- The assessment of a direct threat should not include assumptions, fears, or rumors about the nature of the threat.



Direct threat (slide 2 of 2)

- Factors to consider in evaluating the nature of the threat include:
 - The duration of the risk;
 - The nature and severity of the potential harm;
 - The likelihood that the potential harm will occur; and
 - The imminence of the potential harm.



How to know if an accommodation is needed

- No magic words are necessary. Either:
 - Employee requests an accommodation,
 - Employee's disability is obvious, or
 - Employee's disability is already known to the employer.

In either the second or the third situation listed above, the employer may need to initiate the interactive process if the employee is experiencing problems that are the result of the known disability.



The interactive process

- The ADA requires and anticipates that employers and employees will work together in determining what type of accommodation is needed and whether it is reasonable.
- Both parties must proceed in good faith in a reasonably interactive manner.



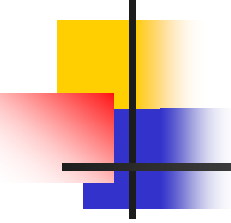
Examples of what a reasonable accommodation is (slide 1 of 5)

- *Reasonable modifications to a job*, such as work environment or circumstances under which the job is performed, that will allow the disabled individual to perform its essential functions. For example, if an employee has a hearing problem and has difficulty comprehending verbal instructions, providing the instructions in writing would be a reasonable accommodation.



Examples of what a reasonable accommodation is (slide 2 of 5)

- Accommodations that allow disabled employees to *enjoy equal benefits and privileges of employment that nondisabled employees have*. For example, if the doorway to an employee break room is not wide enough for an employee's wheelchair to fit through, the employer will need to modify the entryway to ensure equal access for the disabled employee.



Examples of what a reasonable accommodation is (slide 3 of 5)

- Allowing a disabled employee to take *paid leaves of absence* – such as sick leave or vacation leave – or unpaid leave if no paid leave is available.
- Providing reserved parking spaces or modifications to other employee areas in order to allow disabled employees *easier access to the office.*



Examples of what a reasonable accommodation is (slide 4 of 5)

- Occasionally provide a *personal assistant* to assist a disabled employee in performing specific tasks or on business trips.
- Allowing a blind employee to bring a *guide dog* to work.



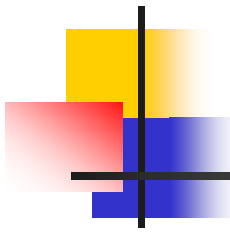
Examples of what a reasonable accommodation is (slide 5 of 5)

- *Restructuring* the job to move nonessential functions to another position.
- Reassigning an employee to a *vacant position*.



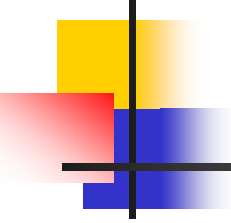
What a reasonable accommodation isn't

- The ADA doesn't require employers to provide the best possible accommodation, or even an accommodation that is the employee's first choice.
- The ADA requires only that the accommodation chosen by the employer is reasonable, and that it assists the employee in performing the essential functions of the job.



What is an undue hardship? (slide 1 of 3)

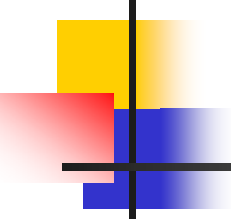
- The ADA defines an undue hardship as “a significant difficulty or expense incurred by the employer,” taking into consideration the following factors:
 - What the employer does;
 - The employer’s financial resources, and the effect of the accommodation on expenses and resources;



What is an undue hardship? (slide 2 of 3)

- The impact on the facility and other employees;
- The nature and net cost of the accommodation;
- Indirect costs to the employer (for example, accommodations that change the essential nature of the job, violate seniority requirements, or call for reassignment of essential functions to other employees)

What is an undue hardship? (slide 3 of 3)

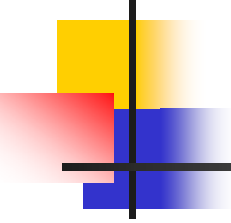


- Violation of employer policies (but be careful -- if the employer has allowed exceptions to a policy in some circumstances, that may be evidence that making an exception for the disabled employee would not be an undue hardship)
- Public interactions, if employee's job requires such interactions and no reasonable accommodation would enable the employee to perform those interactions successfully (but cannot refuse to accommodate a disabled employee because customers are distressed by the individual's disability)



Handling the interactive process – initiating the discussion (slide 1 of 3)

- Employee makes a request, even if he doesn't specifically mention the ADA (for example, asks for help doing his job)
- Employee's family member, friend, or health care professional puts employer on notice that help is needed



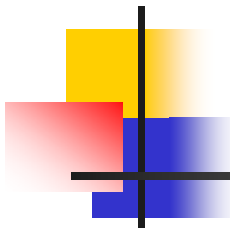
Handling the interactive process – initiating the discussion (slide 2 of 3)

- If you don't know whether an employee's problems are related to a disability, just ask him if there is anything you can do to assist him in performing his job
 - Do not mention the ADA or the possibility that the employee is disabled
 - Do not offer to "accommodate" him or use any other legal term of art



Handling the interactive process – initiating the discussion (slide 3 of 3)

- Just say (for example): “I’ve noticed you’re having trouble getting your lesson plans done on time. Is there something I can do to help you meet your planning deadlines?”
- If the employee attributes his difficulties to a health condition, you can move on to examining your obligations under the ADA.



Handling the interactive process – the first stages (slide 1 of 2)

- Respond quickly. Ask the employee for ideas about what types of accommodations would help.
- If the employee's disability is not obvious, you can request medical confirmation that the employee is disabled.
- If the information provided by the employee's doctor is not clear enough, you can send the employee to a physician of your choosing, at your expense.



Handling the interactive process – the first stages (slide 2 of 2)

- In seeking information from a doctor:
 - Include a medical release signed by the employee;
 - Ask what restrictions the employee will have, and for how long;
 - Include a copy of the employee's job description listing the essential job functions; and
 - Ask the doctor about what accommodations (if any) would allow the employee to perform the essential job functions.

Handling the interactive process – evaluating accommodations (slide 1 of 2)

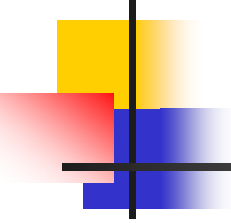


- The ADA regulations require employers to follow these steps if the proper accommodation is not obvious:
 - Analyze the particular job and determine its purpose and essential functions;
 - Consult with the employee to ascertain the precise job-related limitations imposed by the disability and how those limitations could be overcome with a reasonable accommodation;

Handling the interactive process – evaluating accommodations (slide 2 of 2)

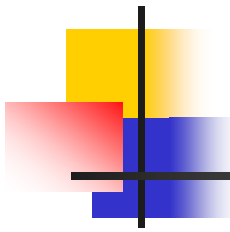


- Identify potential accommodations and assess the effectiveness each would have in enabling the employee to perform the essential functions of the position; and
- Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.



Documenting the interactive process (slide 1 of 2)

- Keep copies of all documents sent to, and/or received from, the employee and his or her medical providers regarding the employee's medical condition
- Put your offers to accommodate the employee in writing, but avoid calling such offers an accommodation, or referring to the ADA or a disability. Instead, simply state that you are offering to let the employee sit on a stool, for example, because of her arthritis.



Documenting the interactive process (slide 2 of 2)

- If the employee rejects an accommodation or requests a different one, document that as well.
- If the employee declines your offered accommodation, he may render himself unqualified to perform the job. Your careful documentation provides evidence of your efforts to accommodate the employee.



ADA Considerations May Arise in Other Contexts -

- Workers Compensation Claims
- Family and Medical Leave Act Requests
- Requests for Section 504 Benefits or Accommodations
- Sick Leave/Sick Leave Bank/Leave of Absence Requests



Questions?

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