

ADA ACCOMMODATIONS: GUIDANCE FROM THE EEOC

Presented by
The American Bar Association
Section of Labor and Employment Law,
Commission on Disability Rights
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REASONABLE ACCOMMODATION UNDER THE ADA

The Honorable Chai R. Feldblum
The Honorable Victoria A. Lipnic

Who gets a reasonable accommodation?

- An applicant or employee with a disability under prong one or two of the definition of disability under the ADA.
- Short-term, long-term, part-time, full-time and probationary employees may be entitled to a reasonable accommodation

What is a reasonable accommodation?

- A reasonable accommodation is something that *removes a workplace barrier* for an individual with a disability.
- There needs to be a *barrier*.
- The barrier needs to arise *because of* the individual's disability.

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The barriers may include:

- **physical obstacles**
 - an inaccessible work location
 - inaccessible equipment
- **modes of communication**
 - materials only in written form
 - instructions only in oral form
- **procedures or rules**
 - rules about when and how work is performed

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In general, an accommodation is-

- any change in the work environment OR
 - any change in the way things are customarily done
- that enables an individual with a disability to enjoy equal employment opportunities.

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The Three Basic Elements of Reasonable Accommodation

An employer must consider each **request** for a reasonable accommodation and determine:

- (1) whether the accommodation is *needed*;
- (2) if needed, whether the accommodation will be *effective*, and;
- (3) if effective, whether providing the reasonable accommodation will impose an *undue hardship*.

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The Reasonable Accommodation Request

Generally, an applicant or employee needs to request a reasonable accommodation. Such a request may be made at any point.

Ideally, an individual with a disability should request a reasonable accommodation *at the point that the person realizes that --*

there is a **workplace barrier** that is preventing him or her, **because of a disability**, from –

- effectively competing for a position,
- performing a job,
- or gaining equal access to a benefit of employment.

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The Reasonable Accommodation Request

- To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."
- Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to diabetes, needed to be hospitalized, and thus requires time off. This is a request for reasonable accommodation on behalf of the employee.

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The RA Request (cont.)

- Example B: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office and asks to change his workstation. This is a request for reasonable accommodation.
- Example C: An employee tells his supervisor, "I'm having trouble getting to work at my scheduled starting time because of side effects from one of my medications. Can we work something out?" This is a request for a reasonable accommodation.

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The RA Request (cont.)

- Example D: An employee tells his supervisor, "I need six weeks off to get treatment for cancer." This is a request for a reasonable accommodation.
- Example E: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting a reasonable accommodation. He does not link his need for the new chair with a medical condition.

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The Reasonable Accommodation Interactive Process

- A request for reasonable accommodation is the **first step in an informal, interactive process** between the individual and the employer.
- The interactive process will help determine whether the accommodation is **needed because of a disability** and, if needed, whether the accommodation will be **effective**.
- The nature of the interactive process will vary based on the disability and the requested accommodation.

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The RA Interactive Process (cont.)

- In some instances, both the disability and the type of accommodation required will be obvious, and thus there will be little discussion needed.
- In other situations, the employer may need to ask questions concerning the individual's disability and functional limitations *in order to identify an effective accommodation*.
- When a disability and/or a need for accommodation is not obvious, the employer may ask the individual for **reasonable documentation about his or her disability and functional limitations, and an explanation of the workplace barrier**.
- While the individual with a disability does not have to be able to specify the precise accommodation, she or he does need to *describe the problems posed by the workplace barrier*.

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Some Examples of Possible Reasonable Accommodations

- Making existing facilities accessible
- Acquiring or modifying equipment
- Providing qualified readers or interpreters
- Modifying workplace policies

Note: These may be required in order for an employee to perform a job or to enjoy the benefits and privileges of employment.

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More Examples of Possible Reasonable Accommodations

- Job restructuring
- Modified work schedules or locations
- Leave

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Job Restructuring

- An employer does not have to eliminate an **essential function** -- that is, a fundamental duty of the position.
- This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a **"qualified" individual with a disability**.

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Job Restructuring (cont.)

Job restructuring may include modifications such as:

- reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and
- altering when and/or how a function, essential or marginal, is performed.

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Modified work schedules

- A modified or part-time schedule may be needed as a reasonable accommodation.
- A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, or altering when certain functions are performed.
- Permitting an employee to perform his or her job duties at home, in some instances, may be a reasonable accommodation.

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Standards of the Job

- An employer is not required to lower **production standards** -- qualitative or quantitative -- that are applied uniformly to all employees.
- But an employer may have to provide a reasonable accommodation in order to enable an employee with a disability to *meet* those production standards.
- For example, an employee may be required to review 50 case files/week. But the employer may be required to permit the employee to work from 10 am to 6 pm, rather than 9 am to 5 pm.

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Leave

- Permitting the use of accrued paid leave, or providing unpaid leave, is a form of reasonable accommodation.
- An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:
 - obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis);
 - rehabilitation services;
 - physical or occupational therapy;
 - recuperating from an illness or an episodic manifestation of the disability; or
 - avoiding temporary adverse conditions in the work environment.

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One More Example of a Possible Reasonable Accommodation

Reassignment to a vacant position

- This is the reasonable accommodation of last resort -- provided to an employee who, because of a disability, can no longer perform the essential functions of his or her current position, with or without reasonable accommodation.
- An employee must be "qualified" for the new position.
- Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

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Is the Accommodation Necessary?

- A reasonable accommodation removes a **workplace barrier** that arises because of an **interaction** between an individual's **disability** and a **workplace's physical structure, lack of accessible equipment or communication modes, policies, or job structure or schedule.**

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Will the Accommodation be Effective?

- If a reasonable accommodation is needed to remove a workplace barrier for an individual with a disability, that accommodation must be provided if it will be **effective** and will not impose an **undue hardship.**
- For an accommodation to be effective, it must **enable the individual to meet the job's performance requirements** (hence enabling the person to be "qualified" for the job) or **enable the individual to effectively enjoy the benefits and privileges of employment.**

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Does the Accommodation Pose an Undue Hardship

- If an accommodation is **needed**, and if providing the accommodation will be **effective**, an employer nevertheless is not required to provide that reasonable accommodation if doing so would impose an **undue hardship** on the employer.

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“Significant difficulty or expense”

- Undue hardship encompasses not only accommodations that pose a significant **financial** difficulty, but also accommodations that pose a significant **administrative** difficulty.
- An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause an undue hardship.
- The undue hardship standard focuses on **the resources and circumstances of the particular employer -- in relationship to the cost or difficulty of providing a specific accommodation.**

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For the full low down . . .

- Download the 2002 EEOC Guidance on Reasonable Guidance.
- <http://www.eeoc.gov/policy/docs/accommodation.html>
- Stay tuned for new guidance on specifics.
- From Commissioner Feldblum: follow me @chaifeldblum.