

The ADA and the Interactive Process

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Objectives

- Interactive Process
 - 5 practical tips for success
 - 6-step process
- Complex Accommodation Case Studies
- Questions



Interactive Process

Why have a process?

- Consistency
- Successful Accommodations
- Good Faith Effort



ADA Basics: Interactive Process

- Recommended
- Shows Good Faith Effort

Five Practical Tips

Tip 1. Develop Written Policies and Procedures

Why?

- Awareness
- Consistency
- Documentation

Five Practical Tips

Tip 2. Train All Managers and Supervisors How to Recognize and Respond to an Accommodation Request

Why?

- ADA Compliance
- Effective Use of Policies and Procedures

How?

- Guidance documents
- Free resources (JAN, EARN, ADA Technical Assistance Centers)

Five Practical Tips

Tip 3. Have a Process for Determining Effective Accommodations

Where to begin?

- Employee
- Employee's Medical Provider
- Other Resources

Five Practical Tips

Tip 4. Monitor and Update Accommodations

Remember to:

- Monitor the Effectiveness of the Accommodation
- Update Periodically if Needed
- Keep the Lines of Communication Open
- Document Efforts



Five Practical Tips

Tip 5. Train New Employees

Remember to:

- Train New Managers and Supervisors
- Train New Employees



Interactive Process

Step 1: Recognizing an Accommodation Request

Step 2: Gathering Information

Step 3: Exploring Accommodation Options

Step 4: Choosing an Accommodation

Step 5: Implementing the Accommodation

Step 6: Monitoring the Accommodation

SUCCESSFUL ACCOMMODATION

Interactive Process

Step 1: Recognizing an Accommodation Request

TIPS

- Err on the side of caution
- Act quickly
- Assign responsibility
- Conduct training



Interactive Process

A newly-hired government employee told her manager that she was having difficulty writing documents due to dyslexia and cerebral palsy.

Did she make an accommodation request?



Interactive Process

Did she make an accommodation request?

Yes.

- Workplace accommodations are needed
- Because of a medical condition



Interactive Process

Step 2: Gathering Information

TIPS

- Find out the limitation and problem
- Get information from the employee when possible
- Remember ADA rules for medical inquiries



Interactive Process

Medical Documentation:

- Employee requests accommodation and the disability and/or need for accommodation is not known or obvious
- Definition of disability: an impairment that substantially limits one or more major life activities
- Verify need for accommodation
- ADA confidentiality rules



Interactive Process



Accommodation and Compliance Series

Medical Inquiry in Response to an Accommodation Request

Job Accommodation Network
PO Box 6080
Morgantown, WV 26506-6080
(800)526-7234 (V)
(877)781-9403 (TTY)
jan@askjan.org
askjan.org



A service of the U.S. Department of Labor's Office of Disability Employment Policy



Effective Accommodation Practices (EAP) Series

PRACTICAL GUIDANCE FOR MEDICAL PROFESSIONALS: HELPING PATIENTS WRITE EFFECTIVE ACCOMMODATION REQUEST LETTERS

Job Accommodation Network
PO Box 6080
Morgantown, WV 26506-6080
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Interactive Process

A newly-hired custodian with a seizure disorder used a service animal to alert her that a seizure was coming on. She did not disclose during the phone interview and thought it would be ok to tell her supervisor on her first day of work. The employer had a “no animal” policy.

Do we have all the information we need?



Interactive Process

Did we provide all the information?

No.

- Did not provide problem
- Did not provide justification



Interactive Process

Step 3: Exploring Accommodation Options

TIPS

- Keep an open mind
- Invite the individual to suggest accommodations
- Consult with other service providers
- Use JAN when needed

Interactive Process

A social worker with carpal tunnel syndrome requested a work-related aid to do all her keyboarding for case notes.

How can we figure out what else might work?



Interactive Process

How can we figure out what else might work?

- Perform an ergonomic assessment
- Purchase speech recognition software
- Provide alternative keyboard and mouse
- Call JAN or other resources



Interactive Process

Step 4: Choosing an Accommodation

TIPS

- Consider the employee's preference
- Consider a trial period



Interactive Process

A customer service representative with diabetes had a strong body odor that he could not reduce until he got his diabetes under control. His employer was considering putting up cubicle walls and an air-purifier in his work area. His job could be done from home but the employer was concerned about isolating the employee.

How can the employer decide which accommodation to choose?

Interactive Process

How can we help the employer decide which accommodation to choose?

Talk with the employee!

- Employee preferred to work at home so not forced isolation
- Employee was more concerned about the cubicle/air-purifier drawing attention
- Employee expressed his preference and concerns to employer

Interactive Process

Step 5: Implementing the Accommodation

TIPS

- Make sure all necessary steps are taken to implement the accommodation
- Communicate with essential personnel about the accommodation

Interactive Process

A secretary with a shoulder injury and 10 pound lifting restriction had to get bulk items weighing more than 10 pounds from the storage closet. Her employer purchased her a small lifting device for office settings.

Is that it?



Interactive Process

Is that it?

No.

- May need to be assembled
- Employee may need instruction in use
- Route of travel may need to be established



Interactive Process

Step 6: Monitoring the Accommodation

TIPS

- Check on effectiveness
- Maintain the accommodation
- Encourage ongoing communication

Interactive Process

An auditor with computer eye strain started using screen reading software a year ago. Recently the employer purchased new database software only to find out that the employee's screen reading software would not work with the new database.

Could the employer have avoided this problem?



Interactive Process

Could the employer have avoided this problem?

YES!

When purchasing new products and equipment:

- Remember to consider accessibility issues
- Do not forget about existing accommodations



Complex Accommodation Case Studies

Interactive Process

1. Has an accommodation been requested?
2. Do we have all the necessary information?
 - If not, what more is needed and why?
3. What types of accommodations can be considered?
4. Which accommodation is selected?
 - Justification if not what employee requested?
5. What needs to be done to implement the accommodation?
 - Are other resources or departments needed at this stage?
6. What do we need to do to follow-up?

Case Study 1: Choosing Accommodations

Example:

A customer service representative with multiple sclerosis asked her supervisor for a modified workstation. The employee provided documentation indicating only that she had MS. A separate document was provided that outlined general office equipment that would help make a workstation ergonomic. The employee stated that she needed to have a sit/stand desk, new chair, different keyboard & mouse, and to sit closer to the restrooms.

Choosing Accommodations

- Employer may choose the less expensive or burdensome accommodation as long as it is *effective*
- If more than one is effective, preference of individual should be given primary consideration
- Employer has ultimate discretion to choose among effective accommodations

CubeShield – Low cost solution
that meets needs of the employee



Case Study 2: Changing a supervisor

Example:

A state employee with PTSD was having difficulty working with a particular supervisor. He requested for this supervisor to be reassigned as a reasonable accommodation and provided documentation from his mental health counselor supporting the PTSD diagnosis.



Changing a supervisor

An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so.

The employer was able to reassign the employee to a new facility with a new supervisor instead. By doing this the employer was able to retain a hardworking employee and the employee was pleased with the new work situation and supervisor.

Changing a Supervisor as an Accommodation under the ADA at <http://askjan.org/ENews/2013/Enews-V11-I2.htm#1>

Changing supervisory methods

- Supervisory methods may be altered as a reasonable accommodation
- Provide positive praise and reinforcement
- Provide day-to-day guidance and feedback
- Provide written job instructions via e-mail
- Develop clear expectations of responsibilities and the consequences of not meeting performance standards
- Schedule consistent meetings with employees to set goals and review progress

Changing supervisory methods

- Allow for open and honest communication
- Establish written long-term and short-term goals
- Develop strategies to deal with conflict
- Develop procedures to evaluate the effectiveness of accommodations
- Educate all employees on their right to accommodations
- Provide sensitivity training to co-workers and supervisors
- Do not mandate that employees attend work related social functions

Case Study 3: New supervisors

Example:

An employee with Parkinson's disease has been working at home three days a week for two years. A new supervisor comes in and decides that no one is going to work at home more than one day a week. The employee tells the supervisor that they need to continue the accommodation. The supervisor says no and after a short time, the employee's productivity starts to suffer due to absences.

New supervisors

- Not a violation of the ADA for a new supervisor to change policies
- Is a potential violation if not considering existing accommodations
- Should enter into a new interactive process
- Always check on existing accommodations before a new policy is implemented
- Maintain effective accommodations by training new managers and supervisors

Case Study 4: Modifying a policy

Example:

An applicant for a weigh station attendant job with the state Department of Transportation had a medical marijuana card and documentation to support the presence of degenerative disc disease. He was given, and failed, a pre-employment drug test (positive for THC). When notified, he asked HR if they would consider his medical marijuana prescription and continue to process his application for employment.

Modifying a policy

According to the ADA, employers can uphold policies restricting use of illegal drugs, including medical marijuana, as determined by the federal government. While drug addiction can meet the definition of disability under the ADA, individuals who are currently illegally using drugs are not covered.

Consider:

- Making applicants aware of pre-employment policies that follow federal regulations

Case Study 5: Service animals as RA

Example:

An office worker at a small legal firm arrived to work one day with her emotional support dog. When the employer approached her about having the animal at work, the employee told the employer she could not ask for documentation regarding the need for the animal and insisted that she be allowed to have the dog with her at all times.



Service animals in the workplace

According to the EEOC, title I does not require employers to automatically allow employees to bring their service animals to work. Allowing a service animal into the workplace is a form of reasonable accommodation.

- No specific definition of service animal under title I
- Right to request reasonable documentation that an accommodation is needed
- Right to know that the animal is actually trained and what the animal does for the employee

JAN's Service Animals in the Workplace at
<http://askjan.org/media/servanim.html>

Case Study 6: Service animals & allergies

Example:

A newly hired federal employee requested to bring her service dog into the workplace. The new employee provided documentation verifying the disability and need for the dog. After starting, a co-worker informed the employer of a severe allergy to animals.



Service animals in the workplace

An employer has an obligation to provide an effective accommodation for an employee with a service animal, but also has a responsibility to co-workers who are allergic to the service animal.

In this case, the employer moved one employee's workstation, provided an air purifier for the employee with the allergy, established separate routes of travel, maintained a regular cleaning schedule, and allowed the employees to communicate in alternative ways in place of face-to-face communication.

Case Study 7: Telework & Leave

Example:

A newly hired HR manager requested telework or leave for various issues related to a bladder condition. The employee was not yet FMLA eligible and her job involved duties that the direct supervisor believed could not be done from home (i.e. answering and routing incoming phone calls). The employee provided a note from the doctor on a prescription pad and said that she could have calls forwarded to her home office. She said the telework would be needed 1-2 days/week and leave 1-2 days/month.

Leave

When to consider leave as an accommodation:

- obtaining medical treatment
- recuperating from an illness or an episodic manifestation of the disability
- obtaining repairs on a wheelchair, accessible van, or prosthetic device
- avoiding temporary adverse conditions in the work environment
- training a service animal, or
- receiving training in the use of braille or to learn sign language

Leave

In lieu of providing leave, an employer may provide a reasonable accommodation that requires an employee to remain on the job (e.g., reallocation of marginal functions or temporary transfer) as long as it does not interfere with the employee's ability to address his/her medical needs.

Consider:

- How much leave has to be provided?
- Does the leave have to be paid?
- When does providing leave become an undue hardship?
- What about the interplay of ADA and the Family and Medical Leave Act (FMLA)?

Questions?
