

Equal Employment Opportunity Commission

The ADA:

Basic Requirements

Understanding Reasonable Accommodation



Key to Understanding/Complying with ADA

- Individualized Decision-making
- Get and use facts about applicant/employee and do not rely on assumptions or generalizations about the disability, the job, and the ability to perform the job

Reasonable accommodation

- Defined:
 - A reasonable accommodation is a change in the workplace, or in the ways things are usually done, that provides equal employment opportunities for individuals with disabilities
 - General rule: An employer provides a reasonable accommodation to a qualified individual with a disability if requested and if doing so does not pose an undue hardship

3 Areas Where Employers May Have To Provide Reasonable Accommodations

- Application Process
- Accommodations that enable an employee to perform her job or to gain access to the workplace (includes, e.g., bathrooms, cafeterias)
- Benefits and Privileges of Employment
 - Mandatory or voluntary training/staff meetings
 - Employer-sponsored parties: Even if off-site and outside business hours
 - Employer-sponsored programs/special events

Interactive Process !!!!!!!!

- Process usually starts with a request from an applicant/employee
 - No “magic words” needed
 - Individual must tell employer that she needs something from the employer because of her medical condition
 - Need not be in writing
 - May come from someone other than the individual needing the accommodation (doctor’s note)
 - Employer may obtain information to determine if the individual’s medical condition constitutes a disability and/or to verify the need for accommodation
 - **Cooperative Process!**

Reasonable accommodation

- Almost unlimited possibilities
- May include:
 - Sign language interpreters
 - Modifications to existing equipment or purchase/lease of new equipment that is accessible to individual with a disability
 - Modifying workplace policies
 - Changes in the working environment (e.g., flashing warning lights for evacuations)
 - Reassignment (last resort)

Reasonable accommodation

- Actions **not** required:
 - Removing an essential function (i.e., fundamental/critical job duty)
 - Lowering production standards (quantitative and qualitative)
 - Excusing misconduct/performance deficiencies
 - Providing personal use items, such as hearing aids, service animals

Employees Entitled to Effective Accommodation

- Employer must provide an accommodation that meets the employee's needs and removes a workplace barrier
- But, employee is NOT entitled to accommodation of her choice
- If 2 or more accommodations would be effective, employer may choose between them
 - This means you can make counter-offers!
 - Listen with open mind to any objections (individual may be right that your suggestion has problems).
 - If possible to provide the accommodation that was requested, that may be best in many situations.
- Critical that employer understand exact nature of problem to determine all possible, effective accommodations, then assess whether any/all possibilities constitute “undue hardship”

Undue Hardship

- **Significant** difficulty or expense
- Focus here is on resources and circumstances of agency as a whole, including impact on operations
- Undue hardship refers to denial of a specific accommodation
- Consider financial difficulty **as well as** reasonable accommodations that are extensive, substantial, or disruptive

Trial Period

- Great option if you have concerns/doubts about providing a certain reasonable accommodation but no undue hardship and no definitive, objective reason to support outright denial of the accommodation
- Especially good tool where the accommodation is one requested by the employee (i.e., not your suggestion) but employer has doubts (although nothing specific enough to meet undue hardship standard)

Process Not Over Simply Because You Provided the Accommodation

- Importance of monitoring to ensure the accommodation is solving the problem!
- Length of monitoring depends on various factors, but do not assume that the accommodation is working --- ASK!
- Not time-consuming but this is a critical final step in the reasonable accommodation process
- Only may not be the final step: on-going process in some cases

Reasonable Accommodation and Performance/Conduct Issues

- Role of reasonable accommodation in addressing disability-related performance or conduct problems is to assist employee to meet performance goals and avoid conduct problems, not to excuse or tolerate problem

Employee asks for reas. accomm. in response to performance/conduct problem

- Proceed with discussion of performance or conduct problem and any warranted disciplinary action
- But also begin “interactive process” in response to request for accommodation
- Cannot refuse to consider or to provide reasonable accommodation because there is a performance problem (can’t use denial of accommodation as a punishment)