



The Six-Step Guide to Handling ADA Accommodation Requests

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Today's Presenter



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Disclaimer

- The contents of this presentation are for informational purpose only and are not intended as legal advice or to replace consultation with local counsel.
- This presentation is intended as an overview of key compliance issues with respect to the accommodation process in accordance with regulations and best practices set forth by the EEOC and the DOL.
- Employment laws are subject to change and can vary from state to state. Consult with local employment counsel with any questions specific to your organization.

The Americans with Disabilities Act

Employers with 15 or more employees may not discriminate against qualified individuals with disabilities in:

- Job application procedures
- Hiring, firing, advancement
- Compensation, job training
- Other terms, conditions, and privileges of employment
- Failure to make reasonable accommodations to qualified individuals with disabilities may be discrimination under the ADA



Disability Defined by ADA

- A physical or mental “impairment” that substantially limits one or more major life activity.
 - Substantial limitation by comparison to an average person in the general population
 - Major life activities include bending, breathing, caring for self, concentrating, hearing, interacting with others, learning, lifting, seeing, speaking, standing, thinking, walking, etc.
- Having a record of such impairment; or
- Being regarded as having such an impairment.

Eligibility

A ***qualified person*** with a disability has the skills, experience, education, and other requirements of the job the individual holds or desires and can perform the essential functions of the position with or without reasonable accommodation.



All employees are eligible from the first day of employment and all job candidates from the start of the application process.

Examples of ADA Disabilities

- Cancer
- Diabetes
- Post-traumatic stress disorder (PTSD)
- Asthma
- Migraines
- Autism
- Hearing, speech, or sight impairments
- Orthopedic impairments

Substantially limits

- The difficulty, effort, or time it takes to perform a major life activity,
- The pain experienced when engaging in the activity, and
- The way the impairment affects how a major bodily function operates.

Step 1: Recognizing an Accommodation Request

Any time an employee indicates that they are having a problem related to a medical condition, the employer should consider whether the employee is making a request for an accommodation under the ADA.

Not sure if it's an accommodation request? *Ask.*

“How can I help?”

“I want to clarify what you're asking for and why it's needed, so I can find out what we can do to help.”

Accommodation Request Process

The employee's need for an accommodation is known

Medical documentation should only be necessary when the disability or need for an accommodation is not obvious.

The employer must initiate the interactive process when there is good reason to believe an accommodation is needed.

The Interactive Process

Is the ongoing interactive conversation between the employer and an employee with a disability and the exchange of information in connection with the effort to reasonably accommodate the employee.

Both parties must participate in good faith and in a timely manner. The entire process, including interactions with the employee, must be documented.



Employer Responsibilities

1

Be thorough

If there is any doubt as to whether an employee has requested an accommodation, the employer should ask the employee to clarify what is requested and why.

2

Respond quickly

When an accommodation request is made, the employer should respond immediately. Unnecessary delays can violate the ADA.

3

Delegate responsibility

The employer should ensure that someone is tasked with evaluating and responding to the accommodation request so that it is handled in a timely manner.

4

Provide training

Supervisors and managers should generally recognize a request for an accommodation and the procedure to follow once a request is received.

Step 2: Gathering Information



Schedule a meeting with the employee to discuss the request



Follow ADA medical inquiry rules



Gather the information necessary to process the accommodation request



Limit inquiries to only what is *necessary* to provide the accommodation

Supporting Medical Documentation



Sufficient

- Nature, severity, and duration of the impairment.
- Activities that the impairment limits.
- How the employee's ability is limited to perform these activities.
- Substantiates why the accommodation request is needed.



Insufficient

- Does not specify the existence of an ADA disability and explain the need for reasonable accommodation.
- Does not specify the functional limitations due to the disability.
- HCP does not have the expertise to give an opinion about the medical condition or the limitations imposed by it.

Considering Essential Functions

Job descriptions that were written before a job was posted

Employer's judgement about which functions are essential

The amount of time spent performing the function

Physical skills required to perform the job

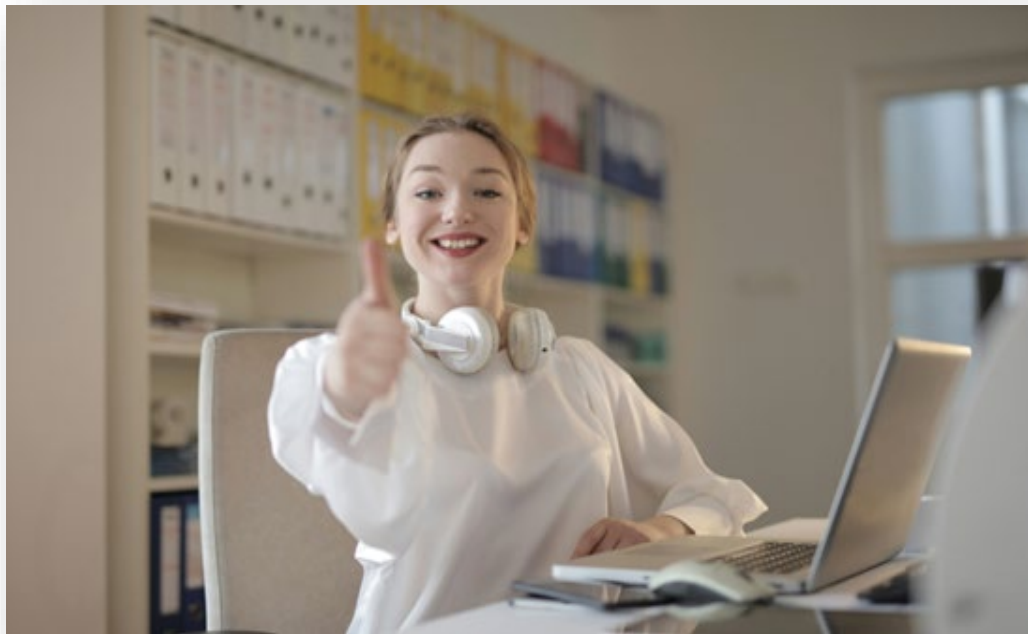
The consequences of not requiring the person to perform the function

The work experience of others who have had, or currently hold the same or similar positions.

Terms of a collective bargaining agreement

What is a Reasonable Accommodation?

A modification or adjustment to a job, the work environment, or the way things usually are done that provides a qualified individual with a disability an equal employment opportunity.



The ADA requires reasonable accommodations in three aspects of employment:

1. To ensure equal opportunity in the application process.
2. To enable a qualified individual with a disability to perform the essential functions of a job.
3. To enable an employee with a disability to enjoy equal benefits and privileges of employment.

Employee Responsibilities

- Make the ask that raises the need for ADA Accommodation
- Provide sufficient medical documentation
- Stay engaged throughout Interactive Process
- Respond to follow-ups by management



Practical Guidance for IP Discussions

Focus on the accommodation, not the disability and how that accommodation would enable the person to complete the essential functions without an undue hardship on business operations.



Ask appropriate and purposeful questions that clarify the essential functions, tasks, or responsibilities affected by the medical condition.

- 1) Discuss how the employee's job duties are negatively impacting their disability.
- 2) Discuss what accommodations are being requested.
- 3) Discuss how the required accommodations will allow the employee to perform the essential functions of their job.
- 4) Discuss the considerations for reasonableness vs. undue hardship.

Step 3: Exploring Accommodation Options

1

Keep an open
mind

2

Invite
suggestions
from the
employee

3

May ask
medical
provider for
ideas

4

Use JAN – a
national free
resource for
employers

Benefits of Providing an Accommodation

Promotes a positive and solution-focused environment

- Retain a valued employee
- Increase productivity
- Improve attendance
- Eliminate the cost of training a new employee
- Increase diversity of the company



Medical LOA as an Accommodation

Employer should consider providing unpaid leave as a reasonable accommodation in any of the following situations:

- Employee is not eligible for or has exhausted leave under the employer's policy.
- There is no effective accommodation available.
- Employer is unable to accommodate the return-to-work restrictions.
- If leave does not create an undue hardship for the employer.
- An employee who is granted leave as a reasonable accommodation is entitled to return to their same position unless the employer demonstrates that holding the position imposes undue hardship.
- A LOA is considered a reasonable accommodation when there is a return-to-work date; indefinite LOAs are not reasonable.

Determining an Undue Hardship

The cost of the accommodation



The number of persons employed at the facility

The effect on expenses and resources of the facility

The nature and structure of the operation; including the structure and functions of the workforce

Step 4: Choosing an Accommodation

- Employer chooses and implements accommodation
- Consider a trial period



Examples of Reasonable Accommodations



- Making existing facilities accessible
- Job restructuring
- Providing a flexible work schedule
- Acquiring or modifying equipment
- Changing tests, training materials, or policies
- Interpreters, readers, or other personal assistance
- Temporary work transfer



- Reallocate essential job functions
- Create new jobs
- Provide personal need items such as eyeglasses, mobility aids, or personal attendants.
- Results in an undue hardship

Nothing prohibits employers from providing these types of accommodations; though they are not required under ADA.

Step 5: Implementing an Accommodation

- Act promptly to implement accommodations.
- Communicate with essential personnel about accommodations.
- May not share medical information with coworkers, including the fact that someone requested or is receiving accommodation
- Help manage co-worker's reactions to accommodation

Step 6: Monitoring Accommodations



- Monitor accommodations for effectiveness
- Periodic employee check-ins
- Adjust/explore alternatives when accommodations aren't working
- Maintain accommodations (i.e., equipment, software)
- Document findings and any modifications

Documentation to Retain for Accommodations

- The employee's accommodation request form
- Medical certification attesting to the need
- Notes from meetings with the employees
- Notes on the complete analysis of undue hardship
- A copy of the final determination notice
- Proof such final determination was delivered
- Reasons for alternative accommodations rather than what was requested
- Record of any subsequent check-ins or follow-up medical documentation



ADA Resources

Visit: gtm.com/business/ada-resources

EEOC

- Requesting Reasonable Accommodation
- Disability-related Inquiries and Medical Examinations of Employees

JAN (Job Accommodation Network)

- A to Z: Interactive Process
- Recognizing an Accommodation Request under the ADA
- Mother, May I? Must I? Should I?
- How Can I Help?
- Workplace Flexibility, the ADA, and Requesting Medical Information
- A to Z: Medical Exams and Inquiries



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QUESTIONS

Continue the Conversation...



Questions about ADA accommodations

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