



City of Miami Gardens

Americans with Disabilities Act

Employment Guide to Reasonable Accommodation

Why do I need to know about Reasonable Accommodations?

The Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (Section 504) require that an employer must reasonably accommodate a known disability of a qualified individual with a disability (satisfies the requisite skill, experience, education, and other job-related requirements of the position, and can perform the essential functions with or without a reasonable accommodation) unless the accommodations would result in undue hardship to the employer.

What is a Reasonable Accommodation?

The term reasonable accommodation means:

- (i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

- (ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

- (iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Examples of reasonable accommodations may include, but are not limited to:

- (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

- (ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified

readers or interpreters; and other similar accommodations for individuals with disabilities.

When is an employer required to begin the process of providing a reasonable accommodation?

An employer must accommodate the known limitations of an otherwise qualified person with a disability.

ADA: Generally, the qualified individual with a disability must tell the employer about his or her disability and the need for an accommodation. Also, an employer will have 'knowledge' of a disability requiring an accommodation if such information is relayed to the employer by a third party. In order to request an accommodation, the qualified individual with a disability may use 'plain English' and is not required to mention the ADA, 'disability', or use the phrase 'reasonable accommodation;' the request need not be in writing. Equal Employment Opportunity Commission (EEOC) guidance requires the qualified individual with a disability to tell the employer that he or she needs an adjustment or change at work for reasons related to a medical condition.

What is required of an employer when it has knowledge (based on the above criterion) of the known limitations of an individual?

The ADA indicates that once an employer has knowledge or notice of the limitations of an otherwise qualified individual, or an employer recognizes that the otherwise qualified individual needs an accommodation but cannot request it because of a disability, the employer and such individual will enter into an "interactive process" where they cooperate to identify the limitations resulting from the disability and what accommodations may be reasonably made. The interactive process should include:

- Direct communication between the employer and employee to explore in good faith the possible accommodations
- Consideration of the employee's request.
- Offering and accommodation that is reasonable and effective.

The employer is entitled to know whether the individual needs an accommodation because of the disability. Accordingly, during the interactive process, if the need for an accommodation is not obvious, the employer may ask for reasonable medical documentation about the individual's disability and functional limitations.⁷

What documentation may an employer require from an employee who requests a reasonable accommodation?

An employer may require an employee to provide documentation that is sufficient to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested, but cannot ask for unrelated documentation. Although the employer may require documentation, "in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation."

In cases where a disability is not obvious, documentation is sufficient if it: (1) describes the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities; and, (2) substantiates why the requested reasonable accommodation is needed. An individual may also be asked to sign a limited release allowing the employer to submit a list of specific questions to the individual's health care or vocational professional.

May an employer require an employee to go to a health care professional of the employer's (rather than the employee's) choice when the employee requests a reasonable accommodation?

The ADA does not prevent an employer from requiring an employee to go to an appropriate health care professional of the employer's choice if the employee provides insufficient documentation from his/her treating physician (or other health care professional) to substantiate that s/he has an ADA disability and needs a reasonable accommodation. However, if an employee provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the employee an opportunity to provide the missing information in a timely manner. The employer also should consider consulting with the employee's doctor (with the employee's consent) before requiring the employee to go to a health care professional of its choice.

Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation. Documentation also might be insufficient where, for example: (1) the health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it; (2) the information does not specify the functional limitations due to the disability; or, (3) other factors indicate that the information provided is not credible or is fraudulent. If an employee provides insufficient documentation, an employer does not have to provide reasonable accommodation until sufficient documentation is provided.

Any medical examination conducted by the employer's health care professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation. If an employer requires an employee to go to a health care professional of the employer's choice, the employer must pay all costs associated with the visit(s).

What is "reasonable?"

ADA: In 2002, the United States Supreme Court held that employers are entitled to a rebuttable presumption that an accommodation requested by a disabled employee under the ADA is unreasonable if it conflicts with seniority rules for job assignments. The Court decided that the proposed accommodation was not reasonable because it did not seem 'reasonable on its face, i.e., ordinarily or in the run of cases.'

The EEOC has stated that an employer has a duty to provide an accommodation that is effective (remove the work place barriers to allow the employee to perform the essential functions), not necessarily the accommodation the individual most wants or may be the "best" accommodation.

Also, an employee may choose not to accept the accommodation; however, if he or she cannot perform the job without it, he or she will not be considered qualified pursuant to the ADA.

How long does an employer have to respond to a reasonable accommodation request?

The EEOC has stated that the employer's response to a reasonable accommodation request should be "expeditious." The amount of time it reasonably takes depends on issues such as whether the employer has complete control over possible modifications or whether the employer must order equipment from a third party.

Does an employer have to provide 'unpaid leave' as a reasonable accommodation?

The ADA provides that leave may be a possible accommodation. Whether or not the timing or

length of the leave is reasonable depends on multiple factual issues such as job duties, the nature of the job, and the disability. Each situation must be assessed on a case-by-case basis to determine the whether or not leave is reasonable and what amount is reasonable. The EEOC has explained that “leave” may be reasonably accommodation for reasons included, but not limited to:

- Obtaining medical treatment (e.g. surgery, psychotherapy, substance abuse treatment or dialysis); rehabilitation services; or physical or occupational therapy;
- Recuperating from an illness or an episodic manifestation of the disability;
- Obtaining repairs on a wheelchair, accessible van, or prosthetic device;
- Avoiding temporary or adverse conditions in the work environment (e.g. air conditioning breaking down causing unusually warm temperatures that could seriously harm an employee with multiple sclerosis);
- Training a service animal;
- Receiving training in the use of Braille or to learn sign language.

Note: An employer is **NOT** required to grant leave when an alternative, effective accommodation is available.

Interaction with Family Medical Leave Act (FMLA): The FMLA requires covered employers to provide up to 12 weeks unpaid leave to eligible employees who need time off in certain circumstances, including to deal with their own serious medical condition. The ADA does not require an employer to grant leave as a reasonable accommodation; rather, as noted above, it’s decided on a case-by-case basis. However, if an employee has requested leave and is eligible under the FMLA, the employer **MUST** grant the employee’s request even though other forms of effective reasonable accommodations may be available.

Does an employer have to provide ‘unpaid leave’ as a reasonable accommodation if the employee cannot provide a fixed return date?

The EEOC has taken the following position on this issue:

Providing leave to an employee who is unable to provide a fixed date of return is a form of reasonable accommodation. However, if an employer is able to show that the lack of a fixed return date causes an undue hardship, then it can deny the leave. For example, disruption to the operations of the entity that occurs because the employer cannot plan for the employee’s return or permanently fill the position may cause undue hardship.

If an employer determines that it can grant leave without a fixed date of return, the employer has the right to require, as part of the interactive process, that the employee provide periodic updates on his/her condition and possible date of return. After receiving these updates, employers may reevaluate whether continued leave constitutes an undue hardship.

Does an employer have to keep an employee’s job open when ‘leave’ is a reasonable accommodation?

The ADA does not offer specific guidance on this issue; however the EEOC has taken the position that an employer may be required to hold an employee’s job open for the duration of his/her leave unless doing so would constitute an undue hardship. If holding the employee’s position open for the duration of his/her leave would constitute an undue hardship, the employer must determine whether it has an open position (that the individual is qualified for) that it can place the individual into for the duration of the leave. At the conclusion of the leave, the employee must be returned to the same or an equivalent position for which he/she is qualified absent undue hardship.

What is undue hardship?

An employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:

- The nature and cost of the accommodation needed;
- The overall financial resources of the facility making the reasonable accommodation;
- The number of persons employed at this facility; the effect on expenses and resources of the facility;
- The overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- The impact of the accommodation on the operation of the facility.

If the cost of a reasonable accommodation would impose an undue hardship, and there are no other financial resources available, the individual with a disability must be given the option of providing the accommodation, or paying that portion of the cost which would constitute an undue hardship.

If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices toward the individual's disability. Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees.

If an employee cannot provide a fixed date of return, can an employer deny a request for leave as a reasonable accommodation citing undue hardship?

An employer cannot claim undue hardship solely because an employee can provide only an approximate date of return. In certain situations, an employee may be able to provide only an approximate date of return based on medical uncertainties. In these situations, or in situations in which a return date must be postponed because of unforeseen medical developments, employees should stay in regular communication with their employers to inform them of their progress and discuss, if necessary, the need for continued leave beyond what might have been granted originally.

Can job restructuring be a reasonable accommodation?

Yes, the ADA indicates that job restructuring as a reasonable accommodation includes modifications such as:

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

Although job restructuring may be an effective reasonable accommodation, an employer is never required to hire or have another employee perform the essential functions of an employee's job; however the employer is required to provide a qualified reader, interpreter, or other assistant so that the employee can perform his or her job. Accordingly, an employer is not required to create a job for an employee. An employer's duty to accommodate an employee through job restructuring is limited to those steps necessary to enable the employee to have an equal opportunity to perform the essential functions of his or her job, or an equal opportunity to enjoy the same terms, benefits or conditions of employment.

Does an employer need to assign an employee an alternate supervisor as a reasonable accommodation?

No. Federal courts have held that pursuant to the ADA, an employer is not required to provide a new supervisor as a reasonable accommodation. However, the ADA may require that supervisory methods be altered as a form of reasonable accommodation. Also, an employee with a disability is protected from disability-based discrimination by a supervisor; including disability-based harassment.

Can reassignment constitute an accommodation?

Yes. EEOC guidance on the ADA indicate that reassignment can be a reasonable accommodation. Reassignment is considered when the employee cannot be accommodated in his/her current job, or if both the employer and the employee agree that reassignment is desired.

The employer has an obligation to affirmatively assist the employee to find a vacant position that is equivalent in terms of pay and status in which he/she is qualified (satisfies the requisite skill, experience, education, and other job-related requirements of the position, and can perform the essential functions with or without a reasonable accommodation). Also, the employee does not need to be the best qualified individual for the position in order to obtain it as reassignment. If reassignment to an equivalent position is unavailable, an employer must consider reassigning the employee to a vacant position at a lower-paying level. If such a position does not exist or the employee is not qualified for the position, reassignment is not required.

Although the employer is required to assist the qualified employee in finding a vacant position as a reasonable accommodation, the employer does not need to assign the qualified employee to a position that is already occupied, create a new position, alter the fundamental nature of the job, or eliminate or reassign essential job functions. The duty to inform a qualified individual of other jobs is limited to existing, vacant positions that are not promotions and for which the employee is qualified.

Must an employee compete for a new 'reassigned' position?

No. EEOC guidance indicates that an employee must get the vacant position if he/she is qualified for it. If not, then reassignment would be of little value as a reasonable accommodation and would not support the intent of Congress regarding the ADA.

Do seniority policies need to be modified as a reasonable accommodation?

Generally, an employer would not be required to reassign an employee with a disability if doing so would violate the established rules of a seniority system that is consistently adhered to and uniformly applied. This applies to both collectively bargained for seniority systems as well as those unilaterally imposed by management.

Can telecommuting be a reasonable accommodation?

EEOC have suggested that in some instances, telecommuting might constitute a reasonable accommodation.

Modified or part-time work schedule as a reasonable accommodation?

Yes. An employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees.

Can an employer hold the employee to the same conduct standards as other employees?

Yes. The EEOC has indicated that a reasonable accommodation does not include rescinding discipline for violating an established conduct standard that is job related, consistent with business necessity and uniformly applied, even if the conduct resulting in the discipline was the result of a disability. An employer may discipline an employee with a disability for engaging in misconduct if it would impose the same discipline on an employee without a disability. However, once the employer is on notice of the relationship between the employee's disability and the employee's difficulty complying with the conduct standard, the employer is obligated to engage in the interactive process to determine whether a reasonable accommodation might enable the employee to comply with the standard in the future (it's important to note that this only applies if the employee is still an employee after the misconduct).