



THE ADAA AND THE INTERACTIVE PROCESS

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THE ADA

- Signed into law on July 26, 1990, by President George H.W. Bush.
- Prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life
 - Employment opportunities,
 - To purchase goods and services, and
 - To participate in State and local government programs and services.

DISABILITY

- A physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

ADAAA (ADA AS AMENDED 2008)

- Congress finds the term "substantially limits" as "significantly restricted" is inconsistent with congressional intent, by expressing too high a standard.

The question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.

ADAAA (ADA AS AMENDED 2008)

- The definition of disability shall be construed in favor of broad coverage of individuals to the maximum extent permitted
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

REASONABLE ACCOMMODATION

- Making existing facilities readily accessible to and usable by individuals with disabilities; and
- Job restructuring:
 - Part-time or modified work schedules;
 - Reassignment to a vacant position;
 - Acquisition or modification 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.

UNDUE HARDSHIP

- An action requiring significant difficulty or expense:
 - The nature and cost of the accommodation needed;
 - The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation;
 - The number of persons employed at such facility;
 - The effect on expenses and resources;
 - The impact otherwise of such accommodation upon the operation of the facility;

UNDUE HARDSHIP CONT.

- The overall financial resources;
- The overall size of the business – the number of its employees;
- The number, type, and location of its facilities;
- The type of operation or operations – including the composition, structure, and functions of the workforce; and
- The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

INFECTIOUS DISEASE

- Any case in which an individual has an infectious or communicable disease that is transmitted to others and which cannot be eliminated by reasonable accommodation
- *Original exception for food handling*

THE ADA

- Requires covered employers to provide:
 - Effective, reasonable accommodations for employees with disabilities
- An ***effective*** accommodation must allow the employee to perform the **essential functions** of the job

EFFECTIVE, REASONABLE ACCOMMODATIONS

- To help determine effective accommodations, the EEOC recommends employers use an “interactive process”

INTERACTIVE PROCESS

- Simply means that employers and employees with disabilities who request accommodations work together to come up with accommodations
- Exception — appropriate accommodation is obvious

RECOGNIZING AN ACCOMMODATION REQUEST

- An individual need not mention the ADA or use the phrase "reasonable accommodation" when requesting an accommodation.
- An employee indicates that he/she is having a problem related to a medical condition:
 - Is the employee making a request for accommodation under the ADA?

TIPS

Err On The Side Of Caution:

- If you are not sure whether an employee has requested an accommodation, ask the employee to clarify what is being requested
- Why

Act Quickly:

- If accommodation request is identified, you should respond immediately
- Delays in an accommodation request can violate the ADA

Assign Responsibility:

- Assign at least one person who is responsible for making sure an accommodation request is processed
- Guarantee that the request is not lost on someone's desk

Conduct Training:

- Train all managers and supervisors to recognize accommodation requests and what to do with a request once it is received

GATHERING INFORMATION

- Gather necessary information
 - May include documentation of the disability and need for accommodation
 - The employer needs to know what limitations are interfering with job performance and what specific work tasks are at issue
- When the need for accommodation is not obvious,
 - The employer can request medical documentation to help
 - Process the accommodation request
 - Determine that the employee has a disability and needs an accommodation

TIPS

Find Out the Limitation and Problem:

- A good place to start is to know the limitation is causing what problem

Get Information From the Employee When Possible:

- Employees with disabilities are familiar with their limitations and often know what accommodations will work best for them

Remember ADA Rules for Medical Inquiries:

- Only ask for what is **absolutely necessary**
 - Asking for all medical records will rarely, if ever, meet this test
- A physician may not determine an effective accommodation - that is the employers decision

EXPLORE ACCOMMODATION OPTIONS

- **Be open to new ideas and new ways of doing things.**
 - This is the time to brainstorm and consider what might work.
- **The employee who requested the accommodation is a good place to start so employers should always invite the employee to suggest accommodations.**
 - If more accommodation ideas are needed, the employer can ask the employee's medical provider for ideas – in some cases medical professionals are able to **suggest** effective accommodations.
 - The medical provider may be able to say whether ideas under consideration will help overcome the employee's limitations.

TIPS

Keep an Open Mind:

- Accommodations are about doing things differently to help overcome disability-related limitations, so keep an open mind when exploring accommodation options.

Invite the Employee to Suggest Accommodations:

- The employee who requested the accommodation may have some good accommodation ideas but may be hesitant to bring them up without being asked to do so.

Ask the Employee's Medical Provider for Ideas:

- Some medical professionals will brainstorm accommodation ideas with employers.
- Remember the actual accommodation is the employer's choice. The medical provider may be recommending an accommodation that causes undue hardship

CHOOSING AN ACCOMMODATION

- **The employer must choose what accommodation to implement.**
 - The employer should consider the preference of the employee. **However, the employer gets to choose among effective options and can choose, for example, the lowest cost accommodation.**
- **You are not locked into an accommodation forever.**
 - You are free to try accommodations and stop them if they do not work.
 - You should have a written agreement with the employee that the accommodation is being tested, how long the test will be, and what will happen if the accommodation does not work.

TIPS

Consider the Employee's Preference:

- Not required by the ADA, when possible employers should choose the accommodation the employee prefers.

Consider A Trial Period:

- Always have an agreement
 - An accommodation will be reviewed for effectiveness
 - When
 - Review alternatives

IMPLEMENTING THE ACCOMMODATION

- **New equipment**
 - Properly installed.
 - Employee trained in its proper use.
- **Schedule change or policy modification**
 - Certain managers or supervisors may need to know of the change to effectively implement it.
- **Outside service**
 - Designated individual needs to guarantee the service is provided promptly and effectively.
- **Reassignment**
 - The employee may need time to acclimate to the new job.

MONITORING THE ACCOMMODATION

- **An accommodation stops being effective**
 - The employee's limitations change
 - Workplace equipment changes
 - The job changes
 - The workplace itself changes
 - The accommodation becomes an undue hardship for the employer
- **The most important way to monitor accommodations is to encourage ongoing communication**
 - Employees who are receiving accommodations need to understand that they should let you know if there are changes or problems with the accommodation.

THE BEST TIP

Use JAN When Needed

- JAN (Job Accommodation Network) is a free, national resource for employers who are seeking help coming up with accommodation ideas.
- No individual names required
- Askjan.net

COVID 19

- Not covered by the ADA, but it may be covered by other regulations:
 - Caregiver
 - Age-related reluctance
 - Normal pregnancy
 - Fear
- Potentially covered by ADAAA:
 - Medical condition identified by CDC
 - Unusual pregnancy
 - Acute Anxiety

QUESTIONS?

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