

Reasonable Accommodations Under the Americans with Disabilities Act (ADA) I.

Overview of the Americans With Disabilities Act

- A. Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship. A)
 - 1. Qualifying Individuals with a Disability – We all are qualified individuals with a disability. But if you are curious the standard for what makes a person a qualified person with a disability it is that that person is substantially limited or unable to engage in one or more major life activities. A few examples are seeing, walking, driving, reading, exercising, breathing, etc.
 - 2. an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."
 - 3. Categories of Job Accommodations:
 - a. Modifications to the job application process
 - b. Modifications to the work environment or to the way the job is customarily performed that allow an individual to perform the **essential job duties** of that position
 - c. Modifications that allow an individual with a disability to enjoy the benefits offered to other employees
 - 4. **It is the responsibility of the individual to inform the employer of his/her need of an accommodation.**
 - 5. Examples of measures of accommodation:
 - a. Making existing facilities accessible
 - b. Job restructuring/restructuring of duties
 - c. Acquiring or modifying equipment
 - d. Changing tests, training materials or policies
 - e. Providing qualified readers or interpreters
 - f. Reassignment/transfer to a vacant position
 - 6. Reasonable = feasible + meets the needs of the individual
- B. Importantly, an employer is not required to lower production standards for an employee as a reasonable accommodation. However it may do so if it wishes.

B. Undue hardship

1. Definition – significant difficulty or expense. Focuses on the cost or difficulty of providing a specific accommodation. Applies not only to accommodations that are costly, but also those that unduly extensive, substantially change the nature of the job position/character of the job, or would disrupt the work place.

C. Process of obtaining a Reasonable Accommodation

- 1. How Do I obtain a reasonable accommodation?

- a. As mentioned above, the individual must make the request for an accommodation in order to initiate the process.
- b. No magic words. Simply ask for what you think will aid you in performing your essential job duties. Link the accommodation to your disability. This will put your employer on notice that they have an obligation to consider and discuss the accommodation with you
- c. Does not need to be in writing
- d. Can be made by a representative of the employee (i.e., Spouse, doctor, Division of Vocational Rehabilitation representative, union official)
- e. Can be made any time during the application process or during an individual's employment
 - i. Practical advice: Make the request as soon as you know that you may have an issue performing a job duty

2. Employer's Duty to Respond

- a. Responsibility to engage in an "interactive process" (discussion about what can be done to accommodate the employee's disability)
- b. What information can the employer ask of you during the accommodation process?
 - i. Nature of the disability (what are the employee's limitations)
 - ii. Can ask for medical documentation of the employee's disability, when the disability is not obvious
 - iii. CANNOT ask for specifics of medical illness or condition, unless the details are necessary for determining what accommodations can be made
- c. Am I entitled to the accommodation I prefer?
 - i. No. Although you are not entitled to the specific accommodation you prefer, an employer must grant you an accommodation that allows you to perform the required job duty(ies), as long as it does not impose an undue burden upon the employer.
 - 1. Example: If your job requires you to read printed documentation and you may accomplish this by using a digital variable magnifier, or by use of a Pearl device, the employer can choose to purchase the digital variable magnifier instead of the Pearl, even though you may prefer using a Pearl device.

3. Reasonable Accommodations Related to Job Performance

- a. Examples:
 - i. Job restructuring: re-assigning certain tasks. The fact that a duty is stated in the job description, does not prevent an employer from modifying job duties by reassigning them to other employees in order to accommodate an employee's disability
 - 1. No obligation of the employer to reassign essential job functions
 - 2. May be required for marginal job functions
 - ii. Altering how a job function/duty is performed
- b. Leave

- i. Can take leave under ADA to address medical issues/treatment
 - ii. Employer cannot hire permanent replacement while you are on leave
 - c. Modified Workplace Policies
 - i. Example: An employer requires each of its employees to fill out a written time cards documenting their employee number, the time they began work and the time they ended work. The employer can be required to offer an alternative to a visually impaired person, such as allowing the employee to fill out an accessible electronic form that documents the same information
 - d. Reassignment to a Vacant Position
 - i. Employee can request and employer may be required to transfer the employee to a vacant position for which he/she is qualified and is better able to perform the essential job duties.
 - e. Often considered the “accommodation of last resort.” If no other options are available, then the employer may be required to make the transfer. However, the employer may still voluntarily transfer an employee at his or her request as a reasonable accommodation, even if there are less dynamic alterations to the work setting that will allow the employee to perform the required work.
- 4. **The requirement to provide reasonable accommodations is an ONGOING duty. If circumstances change, the employer must discuss and consider alternative/additional accommodations.**

II. UNDUE HARDSHIP

- A. An employer does not have to provide an accommodation that would impose an undue hardship.
- B. Defining an “undue hardship”
 - 1. Impose significant difficulty upon employer Imposes significant difficulty on employer
 - 2. Requires significant expense of employer
- C. Factors to consider Regarding extent of burden
 - 1. Cost of accommodation
 - 2. Financial resources of employer/facility
 - 3. Size of employer
 - 4. Type of operation of the employer/
 - 5. Impact of the accommodation on the operation of facility
- D. Employer must consider alternative sources of funding for the accommodation, i.e., state rehabilitation agency (Colorado Division of Vocational Rehabilitation)
- E. In some cases the individual may be asked to shoulder part of the cost
- F. Examples of “undue hardship”
 - 1. Accommodations that would require employer to hire a new employee
 - i. But can ask existing employees to perform additional marginal duties
 - 2. Restructuring business/altering nature of operation