

TEN EASY STEPS TO UNDERSTANDING ADA REASONABLE ACCOMMODATION

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STEP ONE: Who gets a reasonable accommodation?

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- An applicant or employee with a disability under prong one or two of the definition of disability under the ADA
- Short-term, long-term, part-time, full-time and probationary employees may be entitled to a reasonable accommodation.



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STEP TWO: What is a reasonable accommodation?

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- A reasonable accommodation is something that removes a workplace barrier for an individual with a disability.
- There needs to be a barrier.
- The barrier needs to arise because of the individual's disability.



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The barriers may include:

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- **physical obstacles**
 - an inaccessible work location
 - inaccessible equipment
- **modes of communication**
 - materials only in written form
 - instructions only in oral form
- **procedures or rules**
 - rules about when and how work is performed



In general, an accommodation is—

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- any change in the work environment

OR

- any change in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.



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STEP THREE: The Four Basic Aspects of the Reasonable Accommodation Analysis

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An employer must consider each request for a reasonable accommodation and determine:

- (1) whether the accommodation is needed;
- (2) if needed, whether the accommodation will be **effective**, and;
- (3) if effective, whether providing the reasonable accommodation will impose an **undue hardship**.



STEP FOUR: The Reasonable Accommodation Request

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Generally, an applicant or employee needs to request a reasonable accommodation. Such a request may be made at any point.

Ideally, an individual with a disability should request a reasonable accommodation at the point that the person realizes that –

there is a **workplace barrier** that is preventing him or her, **because of a disability**, from –

- ▣ effectively competing for a position,
- ▣ performing a job,
- ▣ or gaining equal access to a benefit of employment.



The Request

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- To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."
- **Example A:** An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to diabetes, needed to be hospitalized, and thus requires time off. This is a request for a reasonable accommodation on behalf of the employee.



The Request

- **Example B:** A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office and asks to change her workstation. This is a request for a reasonable accommodation.
- **Example C:** An employee tells his supervisor, “I’m having trouble getting to work at my scheduled starting time because of side effects from one of my medications. Can we work something out?” This is a request for a reasonable accommodation.



The Request (cont.)

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- **Example D:** An employee tells his supervisor, "I need six weeks off to get treatment for cancer." This is a request for a reasonable accommodation.
- **Example E:** An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting a reasonable accommodation. He does not link his need for the new chair with a medical condition.



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STEP FIVE: The Interactive Process

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- A request for a reasonable accommodation is the **first step** in an **informal, interactive process** between the individual and the employer.
- The interactive process will help determine whether the accommodation is **needed because of a disability** and, if needed, whether the accommodation will be **effective**.
- The nature of the interactive process will vary based on the disability and the requested accommodation.



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The Interactive Process (cont.)

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- In some instances, both the disability and the type of accommodation required will be obvious, and thus there will be little discussion needed.
- In other situations, the employer may need to ask questions concerning the individual's disability and functional limitations ***in order to identify an effective accommodation.***
- When a disability and/or a need for accommodation is not obvious, the employer may ask the individual for **reasonable documentation about his or her disability and functional limitations and an explanation of the workplace barrier.**
- While the individual with a disability does not have to be able to specify the precise accommodation, she or he does need to ***describe the problems posed by the workplace barrier.***



STEP SIX: Some Examples of Possible Reasonable Accommodations

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- Making existing facilities accessible
- Acquiring or modifying equipment
- Providing qualified readers or interpreters
- Modifying workplace policies

Note: These may be required in order for an employee to perform a job or to enjoy the benefits and privileges of employment.



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More Examples of Possible Reasonable Accommodations

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- Job restructuring
- Modified work schedules or locations
- Leave



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Job Restructuring

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- An employer does not have to eliminate an **essential function** -- that is, a fundamental duty of the position.
- This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation, is not a "**qualified individual with a disability**."



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Job Restructuring (cont.)

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Job restructuring may include modifications such as:

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



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Modified Work Schedules

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- A modified or part-time schedule may be needed as a reasonable accommodation.
- A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, or altering when certain functions are performed.
- Permitting an employee to perform his or her job duties at home, in some instances, may be a reasonable accommodation.



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Standards of the Job

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- An employer is not required to lower **production standards** -- qualitative or quantitative -- that are applied uniformly to all employees.
- But an employer may have to provide a reasonable accommodation in order to enable an employee with a disability to **meet** those production standards.
- For example, an employee may be required to review 50 case files/week. But the employer may be required to permit the employee to work from 10 am to 6 pm, rather than 9 am to 5 pm.



Leave

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- Permitting the use of accrued paid leave, or providing unpaid leave, is a form of reasonable accommodation.

- An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:
 - obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis);
 - rehabilitation services;
 - physical or occupational therapy;
 - recuperating from an illness or an episodic manifestation of the disability; or
 - avoiding temporary adverse conditions in the work environment.



One More Example of a Possible Reasonable Accommodation

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Reassignment to a vacant position

- This is the reasonable accommodation of last resort -- provided to an employee who, because of a disability, can no longer perform the essential functions of his or her current position, with or without reasonable accommodation.
- An employee must be "qualified" for the new position.
- Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.



Remember STEP THREE: The Four Basic Aspects of the Reasonable Accommodation Analysis

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An employer must consider each **request** for a reasonable accommodation and determine:

- (1) whether the accommodation is **needed**;
- (2) if needed, whether the accommodation will be **effective**, and;
- (3) if effective, whether providing the reasonable accommodation will impose an **undue hardship**.



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STEP SEVEN: Is the Accommodation Necessary?

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- A reasonable accommodation removes a workplace barrier that arises because of an interaction between an individual's disability and a workplace's physical structure, lack of accessible equipment or communication modes, policies, or job structure or schedule.
- A request for a reasonable accommodation must therefore be needed because of that interaction between the workplace barrier and the disability.



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STEP EIGHT: Will the Accommodation be Effective?

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- If a reasonable accommodation is needed to remove a workplace barrier for an individual with a disability, that accommodation must be provided if it will be **effective** and will not impose an **undue hardship**.
- For an accommodation to be effective, **it must enable the individual to meet the job's performance requirements** (hence enabling the person to be “**qualified**” for the job) or **enable the individual to effectively enjoy the benefits and privileges of employment**.



STEP NINE: Undue Hardship

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- If an accommodation is **needed**, and if providing the accommodation will be **effective**, an employer nevertheless is not required to provide that reasonable accommodation if doing so would impose an **undue hardship** on the employer.
- An undue hardship is defined as a “significant difficulty or expense.”



“Significant difficulty or expense”

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- Undue hardship encompasses not only accommodations that pose a significant **financial** expense, but also accommodations that pose a significant **administrative** difficulty.
- An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause an undue hardship.
- The undue hardship standard focuses on **the resources and circumstances of the particular employer -- in relationship to the cost or difficulty of providing a specific accommodation.**



Factors to Consider:

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- In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
 - (i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

Factors to Consider (cont.)

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- (ii) 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, and the effect on expenses and resources;
- (iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;
- (iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and,



Factors to Consider (cont.)

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- (v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.



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STEP TEN: For the full low down...

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- Download the 2002 EEOC Guidance on Reasonable Guidance.
- <http://www.eeoc.gov/policy/docs/accommodation.html>
- And stay tuned for new guidance on specifics.



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