



Work Accommodations

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Background

In the United States, approximately 43 million people have physical or mental disabilities or impairments that substantially limit major life activities. In an effort to avoid [DISCRIMINATION](#) against disabled people in the workplace, Congress enacted in July of 1990 the Americans with Disabilities Act (ADA). One way that the ADA seeks to improve employment opportunities for disabled people is by requiring employers under certain circumstances to alter the workplace to accommodate disabilities. These alterations are known as workplace accommodations.

Rationale

Just like individuals of different races, colors, religions, gender, or national origin, individuals with physical or mental disabilities historically have faced discrimination. Disabled people have been excluded from mainstream society, segregated, provided with inferior or unequal services, and denied benefits that non-disabled people enjoy. What is different about the discrimination of disabled people as compared to other types of discrimination is that there is often a rational basis for treating disabled people differently from able-bodied people. Whereas there is usually no rational basis for treating, for example, a woman from South Africa differently from a woman from the United States, there may be a rational basis for treating a woman who is blind differently from a woman with good vision. The visually impaired woman may require the use of Braille, for example.

Another difference in [DISABILITY](#) discrimination is its intent. Many types of discrimination, such as racial discrimination, are rooted in hostility or hatred toward people who are different. But discrimination against disabled individuals more often is rooted in ignorance or apathy. Some people view disabilities with pity or discomfort, leading to behavior that may patronize people with disabilities. Other people simply fail to consider or understand the needs of disabled people, leading to benign neglect or misguided efforts to assist.

The U. S. Constitution does little to protect those with mental or physical disabilities from discrimination. Courts historically have not applied the Constitution's **EQUAL PROTECTION** Clause to discrimination of **DISABLED PERSONS** with the same level of scrutiny as discrimination of such protected classes as race, religion, and gender. People with disabilities, therefore, had little or no recourse when their disabilities unfairly prevented them from getting suitable jobs. Only two-thirds of employable disabled persons in the United States were employed in the late 1980s, and many of those employed were not working to their full

capacity to earn given their disabilities. By 1990, more than 8 million disabled individuals were unemployed and forced to live on welfare and other forms of government assistance. Congress began enacting federal laws in the 1960s designed to protect disabled people, but these laws did not outlaw disability discrimination by employers. Such protections did not enter the workplace until the 1990 passage of the ADA.

The ADA prohibits private and state and local government employers, as well as employment agencies and labor unions, from discriminating on the basis of disability. It does not apply to private employers with fewer than 15 employees. The ADA prohibits several specific forms of disability discrimination. One example of an ADA violation occurs when an employer fails to make reasonable accommodations to allow disabled workers to work.

Reasonable Accommodations

The ADA requires employers to make reasonable accommodations to qualified persons with disabilities unless such accommodations would cause an undue hardship to the employer. A disabled person under the ADA is someone who is substantially limited in the ability to perform a major life activity or who has a record of such an impairment or who is regarded as having such an impairment. To be qualified as a disabled person under the ADA, an individual must show an ability to perform all of the essential job functions either with or without a reasonable accommodation. Courts look at mitigating measures in determining whether an individual is disabled. For example, persons who need eyeglasses may be substantially limited in the ability to read, which is a major life activity, unless they wear eyeglasses. Because eyeglasses mitigate their bad vision and allow them to read normally, they are not considered to be disabled under the ADA.

There are three general types of reasonable accommodations. The first type modifies the job application process to enable qualified job applicants with a disability to be considered for the job they want. The second type modifies the work environment or the manner in which the job is performed to allow disabled individuals to perform the job's essential functions. The third type modifies the workplace to allow disabled employees equal benefits and privileges as similarly situated employees without disabilities.

More specific types of reasonable accommodations may include making an office wheelchair accessible; restructuring jobs; providing part-time or modified work schedules; modifying or purchasing special furniture or equipment; changing employment policies; providing readers or interpreters; and reassigning disabled individuals to vacant positions. An employer is not required to eliminate an essential job function or fundamental duty of the job to accommodate a disabled person. An employer is not required to lower production quotas or standards that apply to all employees, although an employer is required to provide reasonable accommodations to help a disabled individual meet production quotas or standards. An employer is not required to provide disabled employees with personal use items that are necessary both on and off the job, for example, hearing aids.

The ADA does not require that reasonable accommodations be made when the accommodations would cause employers an undue hardship. Undue hardship means significant difficulty or expense when compared with the employer's resources and circumstances. The employer's financial capabilities are one factor in defining undue hardship, but undue hardship also occurs when the reasonable accommodation would be unduly extensive or disruptive or would fundamentally alter the nature or operation of the business. Courts determine on a case-by-case basis whether a reasonable accommodation would be an undue hardship for the employer.

Procedure

Individuals who want a reasonable accommodation must request it but need not mention the ADA or the phrase "reasonable accommodation." It is sufficient if employees simply ask for an accommodation for a medical reason. Once a request is made, employers are obligated to investigate the request and determine if the requesting employee is qualified as a disabled individual under the ADA. If that determination is positive, then the employer must begin an interactive process with that employee, determining that individual's needs and identifying the accommodation that should be made. Sometimes this is an easy process with both sides agreeing on the reasonable accommodation. Other times, the interactive process can be complicated and contentious.

Sometimes, employers do not know about or understand the disability enough to determine a reasonable accommodation. In these cases, employers are entitled to obtain documentation, such as medical records or a letter from a doctor, to learn about the disability, its functional limitations, and the sort of accommodation that needs to be made. Alternatively, employers may simply ask the requesting employee about the disability and limitations. Unless the disability is obvious, that employee must provide the employer with sufficient information about the disability to help the employer determine a reasonable accommodation.

As long as the reasonable accommodation is effective in allowing the disabled individuals to perform their job functions and receive the same benefits as other, non-disabled individuals, then employers have the right to choose among reasonable accommodation options. Employers may choose options that are cheaper or easier to provide, for example. If employers offer disabled employees reasonable accommodations that employees do not want, the employers may not force the employees to accept the accommodations. If, however, the employee's refusal of the reasonable accommodation results in the individual's inability to perform the essential functions of the job, the employee may be deemed unqualified for the job. The employer may then be justified in terminating the employee.

During the hiring process, employers are not permitted to ask whether job applicants require a reasonable accommodation unless an applicant's disability is obvious, such as an applicant who uses a wheelchair, or unless the applicant voluntarily informs the employer about the disability. If the employer offers the applicant a job, it is with the condition that the applicant is able to perform the essential job functions either with or without a reasonable accommodation. Once the applicant receives the job offer, the employer may inquire about the necessity of reasonable accommodations.

The ADA also mandates that employees with disabilities be permitted to enjoy the same benefits and privileges of employment as non-disabled employees enjoy. Therefore, employers must provide reasonable accommodations to allow the disabled worker to gain access to such privileges as workplace cafeterias or lounges, gyms or health clubs, training programs, credit unions, transportation, or any other perk offered to non-disabled employees. A blind employee, for example, would not be able to read employment related notices placed on bulletin boards. In that case, the employer would have to provide a reasonable accommodation, such as sending that employee telephone messages.

Types of Reasonable Accommodations

An employer may restructure or modify a job as a reasonable accommodation for an employee with a disability. Job restructuring may include reallocating job functions or trading certain job functions that are difficult or impossible for the disabled worker with other job functions of a non-disabled worker. A disabled secretary who cannot climb stairs, for example, may be able to fulfill the essential functions of the job but cannot easily retrieve files from the upstairs storage room. In this case, an appropriate accommodation would

be to assign the disabled worker additional filing duties and require an able-bodied co-worker to actually retrieve the files.

A disabled worker may be entitled to a paid or unpaid leave of absence from the job as a reasonable accommodation for such reasons as the worker's need for surgery or other medical treatment, the worker's recovery from illness related to the disability, or the worker's education or training related to the disability. An employer does not have to pay the disabled worker during a disability-related leave of absence beyond the employer's own policy regarding sick pay or vacation pay. The employer is required to hold open the disabled worker's job during the leave of absence, but the employer may demonstrate that holding open the position for an extended period would constitute an undue hardship. In the event of undue hardship, the employer can fill the disabled worker's position with another employee but then must try to identify an equivalent position for the disabled worker when the leave of absence ends.

Unless doing so would cause an undue hardship to the employer, the employer must allow a disabled worker the option of a modified or part-time work schedule if required by the disability. This may be necessary for individuals who need medical treatment periodically. Another type of job modification involves workplace policies. An employer who prohibits workers from eating or drinking at their workstations may amend that policy for a worker with a disability that requires this worker to eat or drink at specific times of the day. An employer who requires employees to work at the employer's office rather than at home may alter the policy if a disabled worker can perform the essential job functions from home but cannot perform them at the office.

An employer may claim that undue hardship prevents the provision of reasonable accommodations, but undue hardship is not easy to prove. The employer must demonstrate that the specific reasonable accommodation being considered would cause significant difficulty or expense. The determination of undue hardship is made on a case-by-case basis, and courts consider such factors as the type and cost of the accommodation, the financial resources of the employer, the number of employees, and the overall impact of the accommodation on the employer's operation. An employer cannot claim undue hardship resulting from fears or prejudices about an individual's disability or fears that an accommodation would result in a morale problem with co-workers. An employer may, however, demonstrate undue hardship if an accommodation would unduly disrupt the work of other employees.

Additional Resources

West's Encyclopedia of American Law. West Group, 1998.

Organizations

ADA Disability and Business Technical Assistance Centers USA Toll-Free: 800-949-4232

Job Accommodation Network (JAN)

PO Box 6080

Morgantown, WV 26506-6080 USA Phone: 800-232-9675

URL: <http://janweb.icdi.wvu.edu/>

U. S. Equal Employment Opportunity Commission

1801 L Street, NW

Encyclopedia of Everyday Law: Work Accommodations

Washington, DC 20507 USA Phone: 800-669-3362

URL: www.eeoc.gov

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