

Reasonable Accommodation and the Interactive Process

The Americans with Disabilities Act (ADA) requires covered employers to provide effective, reasonable accommodations for employees with disabilities or medical conditions that limit them from performing core work duties. To help determine effective accommodations, employers are required to engage in an “interactive process”.

An employer handling an accommodation request and engaging in the interactive process has several responsibilities. To ensure these responsibilities are met, we put together this guide to assist you in understanding the requirements:

1. **Recognize the accommodation request:** Employees may not explicitly request an accommodation. However, it is still your (the employer’s) responsibility to recognize if an accommodation is being requested. If the employee mentions anything to you about a medical condition, disability, or even an injury, the employer should consider whether the employee is making a request for accommodation under the ADA.
 - a. **Examples:**
 - An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation. Although the employee did not explicitly ask for an accommodation, an employer can safely assume that the employee will need an accommodation because they are experiencing limitations at work due to a medical condition that requires treatment.
 - An employee tells their supervisor that they hurt their arm playing baseball outside of work. The supervisor should understand that an accommodation may need to be provided for the employee to ensure they can perform their normal work duties, even though they did not explicitly ask for one.
 - An employee casually mentions that they have a medical condition. Example: “I can’t work overtime on Thursday, I have a chemotherapy appointment.”
 - b. **Reasonable Accommodations vs. Worker’s Compensation Claims:** An employee’s rights under the ADA are separate from their entitlements under workers’ compensation. If an employee is injured on the job or otherwise informs you of an illness that may have been caused by the job (this includes mental health conditions), be sure to contact your workers’ compensation carrier immediately to report the injury and get information in regard to next steps.
2. **Display compassion and empathy:** Requesting an accommodation can be intimidating for employees. If they approach you for an accommodation, remember to show empathy and compassion for their circumstances. The #1 goal should be to support the employee.
3. **Confirm the need for an accommodation:** If an employee does not explicitly state that they need an accommodation under the ADA, it is the employer’s responsibility to ask. If you ask verbally, be sure to follow up in writing.
 - a. Example: “Hi John, I heard you mention that you are unable to work overtime on Thursday due to a chemotherapy appointment. So sorry to hear you are ill, and I just want to touch base to see if there is anything we can do to accommodate you.”
4. **Gather information:** Once an accommodation request has been received, an employer must gather all necessary and relevant information to begin the process.
 - a. Collect information from employee regarding the type of accommodation they are requesting.
 - b. Request medical documentation to support the accommodation request. A note from the medical provider must outline the nature of the accommodations and/or restrictions being requested, as well as the duration of the requested accommodation(s). Details about an employee’s disability and/or medical condition are not required to be provided, nor should they be requested.

5. **Begin exploring accommodation options:** When considering accommodations, employers should:
 - a. Make a list of the employee's essential and non-essential tasks
 - b. Invite the employee to suggest accommodations
 - c. Keep an open mind when exploring accommodation options

6. **Choose an accommodation:**
 - a. Employers are encouraged to choose the accommodation the employee prefers.
 - b. Meet with the employee to explain the accommodation and how it will assist them in performing the tasks they are limited in doing.

7. **Examples of Accommodations:** The following list includes examples of possible accommodations an employer can provide. The list is not exhaustive and all accommodations should be considered on a case-by-case basis.
 - a. **Work equipment accommodations:** standing desks, desks that can easily have the height adjusted, desk chairs or work stations that are more comfortable for an employee.
 - b. **Schedule modifications:** Modifying an employee's schedule to allow them to keep up with medical treatment and doctor's appointments.
 - c. **Modified work duties:** Altering when and/or how an essential function of a job is performed or reallocating marginal job functions that an employee is unable to perform because of a disability. If part of the job is not necessary, it can be removed entirely.
 - d. **Improving accessibility at the work site:** Providing a ramp or providing accessible parking spots for employees with a disability.
 - e. **Providing assistive technology or devices:** Providing computer screen readers for employees with visual impairments or a specific telephone that is compatible with an employee's hearing aid.

8. **Implement the accommodation:**
 - a. If any equipment is needed, ensure that the equipment is properly installed before employee begins work.
 - b. If schedule modifications are needed, inform supervisors and/or managers to allow them to effectively manage the accommodation.
 - c. If the employee has changed positions, allow them time to acclimate to their new responsibilities and environment.

9. **Follow up with the employee:**
 - a. Continue to follow up with the employee to ensure that the accommodation is successfully implemented.
 - b. Check the effectiveness of the accommodation. Perform maintenance on any equipment that may have been provided.
 - c. Encourage feedback! Allow the employee to communicate any issues with the accommodation.

10. **Make sure all conversations are documented:**
 - a. Document employer statements and employee statements
 - b. Document the accommodation that was agreed upon
 - c. Document any employee requests for accommodation changes and the employer response
 - d. Ensure all documentation regarding the accommodation is documented in the employee's confidential medical file.

11. **When can an employer refuse an accommodation?**
 - a. An employer can refuse an accommodation **only** if they are able to prove that providing an accommodation would create an "**undue hardship**" for the business.

- What can be considered an “undue hardship”?
 - An *undue hardship* is defined as an “action requiring significant difficulty or expense” when considered in light of a number of factors.
 - Undue hardship is determined on a case-by-case basis. Things like employer size and resources are taken into account when determining whether or not an employer would truly be faced with an undue hardship when making the requested accommodation.
 - Proving undue hardship requires that an employer shows the cost or disturbance that surrounds implementing an accommodation. Objective details must be available, rather than hypothetical or possible. This requires more than just a cost benefit analysis.
- b. If the accommodation is ultimately denied on the basis of undue hardship, the employer should provide the employee with a notice regarding the determination and details for denying the request.
- c. Our recommendation is to do everything possible to identify alternative accommodations that will not impose an undue hardship on the business.
- d. Contact us to discuss the undue hardship before you inform the employee that you are unable to accommodate them.
- e. Note that simply claiming a “financial hardship” is not enough. You must be able to prove that the accommodation would cause a significant hardship to your operating budget. This will vary from employer to employer.

IMPORTANT NOTE: Please remember that the interactive process must be accomplished in good faith and in a timely manner. Every step of the interactive process must be clearly documented, including any and all conversations with the employee regarding accommodations. If you are claiming an undue hardship, you must have clearly documented data to back up your claim.

Retaliation, harassment, or discrimination of an employee requesting a reasonable accommodation is strictly prohibited.

If you are in doubt or have any questions regarding reasonable accommodations or your obligations as they relate to the interactive process, please feel free to contact any one of us on the People Person team:

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