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Job Accommodation Network



REASONABLE ACCOMMODATION AND THE ADA PROCESS

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Preface

The Job Accommodation Network (JAN) has been providing information regarding work-site accommodation ideas since it was established in 1983. In addition, JAN has been answering questions regarding the Americans with Disabilities Act (ADA) since 1992 when the ADA went into effect. JAN consultants provide practical information about accommodations and ADA compliance to employers, individuals with disabilities, rehabilitation specialists, and others. Based on their years of experience, JAN consultants developed a process to guide employers through complicated accommodation issues. The following document, called Reasonable Accommodation and the ADA Process (ADA Process), describes this process.

The ADA is a complex federal civil rights law that requires employers with 15 or more employees to provide reasonable accommodations for employees with disabilities. JAN's ADA Process can help employers understand how to determine whether an employee is entitled to an accommodation and how to implement and maintain effective accommodations once the determination is made. The ADA Process consists of five steps and includes references to Equal Employment Opportunity Commission (EEOC) enforcement guidance and related case law. The five steps include: 1) accommodation request, 2) disability determination, 3) accommodation in the current position, 4) reassignment, and 5) accommodation maintenance.

In addition to guiding employers through complicated accommodation issues, JAN's ADA Process may also help employers document their

efforts to accommodate. Hopefully, most accommodation efforts will be successful. However, if accommodation efforts are unsuccessful and an employee files a complaint against an employer for failure to accommodate, evidence that the employer made a good faith effort may reduce the potential damages against the employer. A formal accommodation process, such as JAN's ADA Process, can help employers document their efforts.

STEP 1: ACCOMMODATION REQUEST

The ADA Process begins with a request for accommodation, which can be made at any time during the application process or during employment. Generally, the employee must inform the employer that an accommodation is needed to participate in the application process, to perform essential job functions, or to receive equal benefits and privileges of employment. An employer is not required to provide an accommodation unless made aware of the need. The following questions discuss issues related to an accommodation request.

Questions to Consider

▼ What constitutes an accommodation request?

Under the ADA, there are no specific forms or terms that an individual must use to request an accommodation. According to the EEOC, an individual is not required to mention the ADA or use the phrase reasonable accommodation in a verbal or written request; the individual only needs to let the employer know that an adjustment or change is needed because of a medical condition. Courts have generally agreed with the EEOC.

▼ What should employers do when an accommodation request is received?

Once an accommodation request is received, the employer should quickly respond to the request. Although the ADA contains no specific method for responding to an accommodation request, EEOC regulations state that when trying to determine the appropriate reasonable accommodation "it may be necessary for the [employer] to initiate an informal, interactive process with the qualified individual with a disability." Many courts have held that the interactive process is a mandatory, rather than an optional, obligation under ADA. Therefore, when processing an accommodation request, employers should consult with and include the employee who made the request.

▼ Should employers have a formal accommodation process?

Employers may want to implement a formal accommodation process, which can include accommodation request forms, written procedures for processing an accommodation request, and timelines for responding to

the request. A formal process can help employees understand what to expect once an accommodation request is made. In addition, a formal process can benefit employers by helping maintain consistency when responding to accommodation requests and by providing documentation of their good faith efforts to accommodate. For an example of a formal accommodation process, visit EEOC Procedures for Providing Reasonable Accommodation for Individuals with Disabilities at http://www.eeoc.gov/policy/docs/accommodation_procedures_eeoc.html.

➤ What other issues should employers consider when responding to an accommodation request?

For employees whose disabilities are not obvious, requesting accommodation may be a first-time disclosure to the employer. Employees may be concerned about disclosing their disabilities because of myths, fears, and stereotypes society has about people with disabilities. Employers may be able to alleviate some of the concerns associated with disclosure by ensuring employees that their requests for accommodation will be considered, discussing the steps the employer will take next, and ensuring that all medical information will be kept confidential.

Once an accommodation request is received, the employer can move to Step 2: Disability Determination.

STEP 2: DISABILITY DETERMINATION

After an accommodation request is received, the next step is to determine whether the employee is entitled to an accommodation. Because the ADA only requires employers to accommodate individuals who have disabilities, many employers request medical documentation to help determine whether the individual requesting accommodation has a disability as defined by the ADA. The following questions provide information related to determining whether an individual has a disability. Alternatively, some employers prefer to try to accommodate employees without making a formal disability determination. These employers can skip to Step 3: Accommodation in the Current Position.

Questions to Consider

➤ What is the ADA's definition of disability?

The ADA contains a three-prong definition of disability. An individual has a disability under the ADA if he or she 1) has a physical or mental impairment that substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment. For a detailed discussion about how to determine whether an individual meets the definition of disability, visit [How to Determine Whether a Person has a Disability under the Americans with Disabilities Act \(ADA\)](http://www.jan.wvu.edu/corner/vol02iss04.htm) at <http://www.jan.wvu.edu/corner/vol02iss04.htm>.

▼ What medical documentation can employers request to help determine whether an individual meets the definition of disability?

When the disability is not obvious, employers may request limited medical documentation to determine whether an individual requesting accommodation has a disability. According to the EEOC, an employer may ask the individual for "reasonable documentation about his/her disability and functional limitations. The employer is entitled to know that an individual has a covered disability for which s/he needs a reasonable accommodation." Employers may also request information to document the need for accommodation and to help determine appropriate accommodations. In most cases, employers cannot request complete medical records because such records may reveal information that is not relevant to determining whether the employee has a disability or needs an accommodation.

According to the EEOC, documentation will be sufficient for the purpose of establishing ADA coverage if it "describes the nature, severity, and duration of the employee's impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits the employee's ability to perform the activity or activities." Employers can require that medical documentation come from an appropriate healthcare provider or rehabilitation professional.

For more information and a sample medical inquiry form, visit Medical Inquiry in Response to an Accommodation Request at <http://www.jan.wvu.edu/media/medical.htm>.

▼ Which prong of the definition of disability must an individual meet to be entitled to an accommodation?

According to the EEOC, individuals who meet either the first or second prong of the definition are entitled to accommodation under the ADA. Examples of accommodations for employees who meet the second prong (record of a disability) include leave time for follow up treatment for an employee with cancer that is in remission, flexible scheduling to attend AA meetings for a recovering alcoholic, and rest breaks for an employee with mental illness whose medication causes fatigue.

▼ What are the ADA's confidentiality requirements?

Under the ADA, medical information must be kept apart from general personnel files as a separate, confidential medical record. Access to medical information is limited to the following:

- ▶ Supervisors and managers may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations.
- ▶ First aid and safety personnel may be informed, when appropriate, if the disability might require emergency

treatment or if any specific procedures are needed in the case of fire or other evacuations.

▶ Government officials investigating compliance with the ADA and other Federal and state laws prohibiting discrimination on the basis of disability or handicap should be provided relevant information on request.

▶ Relevant information may be provided to state workers' compensation offices or "second injury" funds, in accordance with state workers' compensation laws.

▶ Relevant information may be provided to insurance companies where the company requires a medical examination to provide health or life insurance for employees.

Once it is determined that an employee meets the definition of disability, the employer can move to Step 3: Accommodation in the Current Position. If the employer determines that the employee does not meet the definition, the employer should notify the employee.

STEP 3: ACCOMMODATION IN THE CURRENT POSITION

Once an employer determines that an employee is entitled to an accommodation, the next step is to try to determine effective accommodation options. An accommodation is an adjustment to a job, the work environment, or the way things are usually done that allows a qualified individual with a disability to complete the application process, perform essential job functions, or enjoy equal access to benefits and privileges of employment. The following questions provide information related to determining accommodations in the employee's current position and discuss some complicated accommodation issues.

Questions to Consider

▼ Do accommodations have to be made in the employee's current position?

Employers must try to accommodate employees with disabilities in the positions held when the accommodation is requested, unless the employee requests to be reassigned. According to the EEOC, "[r]eassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship. However, if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee. "

▼ How do employers determine effective accommodation options?

When trying to determine effective accommodation options, the best

place to start is with the employee who requested the accommodation. Often s/he will know exactly what accommodation is needed. If the employee cannot recommend an effective accommodation, the employer can use JAN's accommodation process to develop accommodation ideas. In addition, the employer may need to contact outside resources such as JAN for ideas. For more information regarding the accommodation process, visit JAN's Job Accommodation Process at: <http://www.jan.wvu.edu/media/JobAccommodationProcess.html>

▼ If more than one accommodation is available, who decides which accommodation will be provided?

According to the EEOC, employers can choose among reasonable accommodations as long as the chosen accommodation is effective. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective. In this situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. The EEOC recommends that if more than one accommodation is effective, the preference of the employee with a disability should be given primary consideration. However, the employer has the ultimate discretion to choose between effective accommodations.

▼ Is part-time work required as an accommodation?

According to the EEOC, an "employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees." However, employers do not have to permanently change a fulltime job to part-time because the ADA does not require employers to create new jobs or to reduce productivity standards.

▼ Do employers have to provide parking as an accommodation?

Parking is considered a benefit of employment. If an employer provides parking for employees in general, the employer must provide accommodations so employees with disabilities have equal access to the parking. Examples of accommodations employers might need to consider include a reserved parking space in the employee parking lot, a wheelchair accessible parking space, an office close to an exit, or work from home where parking needs cannot be met. Employers do not have to allow employees to park in parking lots the employee is otherwise not entitled to park in, such as a visitor parking lot or a parking lot reserved for upper management.

▼ Do employers have to provide personal attendant care as an accommodation?

According to informal guidance from the EEOC, employers generally do

not have to provide personal attendant care for employees with disabilities, because personal attendant care is considered a personal need. However, employers are responsible for paying any added costs for personal attendant care for job-related travel.

▶ How far are employers required to go when making a good faith effort to accommodate in the employee's current position?

The ADA requires employers to make a good faith effort to accommodate an employee with a disability up to the point of undue hardship. In general terms, undue hardship is defined as any action that would result in significant difficulty or expense. However, there is no formula for determining when a good faith effort becomes an undue hardship. According to the EEOC, undue hardship claims must be made on a case-by-case basis. If an employer tries to find an effective accommodation, but is unsuccessful, the employer should document its efforts and consult with the employee one last time to determine whether the employee has any ideas that have not been considered.

▶ How should an employer explain accommodations to other employees?

Employers have an obligation to protect the confidentiality of employees' medical information, including disclosure that an employee is receiving an accommodation. However, coworkers are often curious about why one employee is receiving something that other employees do not receive. To address this problem, the EEOC suggests that an employer "explain that it is acting for legitimate business reasons or in compliance with federal law." In addition, employers may want to conduct disability and ADA awareness training so employees have more knowledge about accommodations in general.

If accommodations can be made in the current position, the employer should implement the accommodation(s) and move to Step 5: Accommodation Maintenance.

If the employee cannot be reasonably accommodated in the original position, the employer should move to Step 4: Reassignment.

STEP 4: REASSIGNMENT

If an employer is unable to accommodate in the current position or if an employee with a disability specifically requests to be reassigned as an accommodation, the employer should try to place the employee in a vacant position. The following questions provide information related to reassignment as an accommodation under the ADA.

Questions to Consider

▶ When reassigning an employee with a disability, do employers have

to create new positions or bump other employees from their jobs?

The ADA does not require employers to create new positions or bump other employees when reassigning an employee with a disability. However, employers are free to create new positions or ask other employees to change positions with an employee with a disability if they so choose; employers will not be penalized for going beyond the requirements of the ADA.

➤ Can an employer make an employee compete for a position?

According to the EEOC, if reassigning an employee as an accommodation under the ADA, the employer should not require the employee to compete for the position. EEOC enforcement guidance states that "[r]eassignment means that the employee gets the vacant position if s/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as Congress intended."

➤ Can an employer demote an employee when reassigning under the ADA?

According to the EEOC, an "employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned. Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion."

➤ If the only available position is one that pays less or provides fewer benefits than the current position, can the employer reduce the employee's pay and benefits?

According to the EEOC, employers can reduce the pay and benefits of an employee who is reassigned as an accommodation unless the employer transfers employees without disabilities to lower level positions and maintains their original salaries and benefits.

If reassignment is the effective accommodation solution, identify an appropriate position, transfer the employee, and provide accommodations if needed to perform the new position. If no accommodations are needed to perform the new position, move to Step 5: Accommodation Maintenance.

STEP 5: ACCOMMODATION MAINTENANCE

Once an accommodation has been implemented, it may be necessary to monitor the accommodation to ensure its effectiveness or to determine whether any change has occurred that would alter current accommodation needs. Employers should discuss accommodation maintenance with the employee receiving the accommodation so the employee will know to report any changes in accommodation needs and will know that the employer will be checking on the employee's accommodation to make sure it is working. The following questions provide information related to maintaining an accommodation.

Questions to Consider

➤ Who is responsible for maintaining accommodations?

Employers are responsible for making sure that effective accommodations are provided and maintained. Therefore, employers may want to assign someone to be responsible for monitoring the effectiveness of accommodations, such as the employee's supervisor, a manager, or a human resource professional.

➤ How often should the accommodation be monitored?

Employers should monitor accommodations as often as necessary to ensure that they are effective. The timeframe may vary depending on the situation and the type of accommodation provided. For example, if an employee's medical condition is not expected to change and the accommodation is working, the accommodation may need to be monitored infrequently. On the other hand, if an employee's condition changes frequently or it is unclear whether the accommodation is effective, the accommodation should be monitored more often. Employers may want to discuss accommodation maintenance with the employee who is receiving an accommodation and determine how often the accommodation should be monitored.

➤ Does the ADA restriction on medical inquiries apply to accommodation maintenance?

Employers cannot make medical inquiries unless "job-related and consistent with business necessity." This restriction on medical inquiries applies to all aspects of the accommodation process, including accommodation maintenance. Therefore, when monitoring accommodations, employers should not make medical inquiries or require updated medical documentation unless justified.

➤ Once an accommodation is implemented, can an employer modify it or stop providing it entirely?

According to the EEOC, an employee is not guaranteed a specific

accommodation forever.

Employers can modify or stop providing an accommodation for various reasons, such as changes in the employee's disability that make the accommodation unnecessary or factors in the work environment that cause the accommodation to become an undue hardship on the employer.

Resources

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Toll Free: (800)526-7234

TTY: (877)781-9403

Fax: (304)293-5407

jan@jan.wvu.edu

<http://www.jan.wvu.edu>

➤ JAN's Americans with Disabilities Act Links

<http://www.jan.wvu.edu/links/adalinks.htm>

➤ JAN's Consultants' Corner is your resource for helpful hints, techie tips, and innovative ideas regarding job accommodations and the Americans with Disabilities Act. <http://www.jan.wvu.edu/corner/>

➤ JAN's Searchable Online Accommodation Resource (SOAR) is designed to let users explore various accommodation options for persons with disabilities in the work setting. <http://www.jan.wvu.edu/soar/>

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U.S. Equal Employment Opportunity Commission (EEOC)

1801 L Street, N.W.

Washington, D.C. 20507

800-669-4000

800-669-6820 (TTY)

<http://www.eeoc.gov/>

Disability and Business Technical Assistance Centers (DBTACs)

10 Regional Centers

800-949-4232 (V/TTY)

<http://www.adata.org/dbtac.html>

If you have a question about accommodations and/or the employment provisions of the Americans with Disabilities Act (ADA), click here:



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