

# About Reasonable Accommodation

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**National Network**  
*Information, Guidance and Training on the  
Americans with Disabilities Act*



# Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.



# Five titles of the ADA



## Title 1. Employment

Prohibits disability discrimination in all employment processes

## Title 2. Accessibility in public entities

Physical and program accessibility in state/local govt. entities

## Title 3. Accessibility in businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

## Title 4. Telecommunications

Telephone and communications systems for the public

## Title 5. Miscellaneous

Protection from retaliation

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# Equal Opportunity



The ADA is listed in the Federal Register under Title 42 – The Public Health and Welfare as Chapter 126 – Equal Opportunity for Individuals with Disabilities

# The heart of the matter



The ADA is an Anti-Discrimination Law

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# 2019 EEOC Charge Data

2011 -

Total Charges – 72,765

Retaliation All – 39,110; 53.8%

Retaliation VII – 30,117; 41.4%

Disability – 24,238; 33.4%

Race – 23,976; 33.0%

Sex – 23,532; 32.4%

Age – 15,573; 21.4%

National Origin – 7,009; 9.6%

Color, Religion, Equal Pay Act,  
and GINA all less than 5%

Oklahoma

Total Charges – 753

Retaliation All – 452; 60%

Retaliation VII – 358; 47.5%

Sex – 278; 36.9%

Race – 252; 33.5%

Disability – 250; 33.2%

Age – 196; 26%

Nat'l Origin & Color – 55; 7.3%

Religion, Equal Pay Act, and  
GINA all less than 5%

## **Disability charges through the years**

From 2008, the year before the ADA Amendments Act took effect, to the current year, the percentage of disability charges received by the EEOC rose from 20.4% to 33.4% of all charges received.

From 2010, the first year specific data was available, to the current year, the percentage of reasonable accommodation charges rose from 33.4% to 45.9% of all disability charges received.

# Definition of disability



## What is a “disability?”

*...A physical or mental impairment that substantially limits one or more major life activities\**

### Applies to people who:

- Have a disability
- Record of having a disability
- Regarded as having a disability

(Also applies to those who have an association with a person with a disability)

\*[www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)

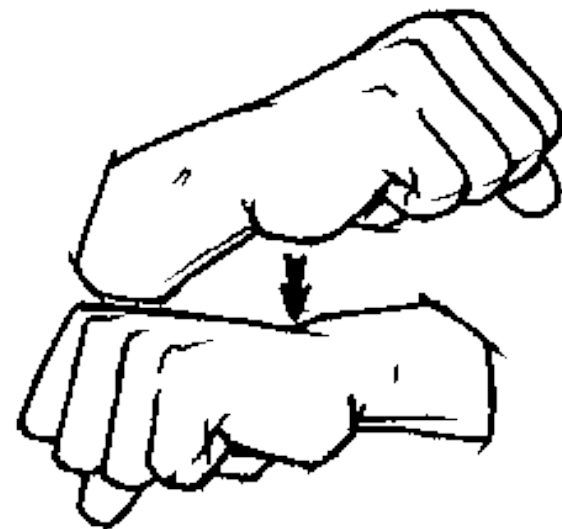




# What is a reasonable accommodation?

*...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\**

1. Application process
2. Work environment, facilities or processes/practices
3. Any other employment benefits



ASL sign for "work"

\*Equal Employment Opportunity Commission (EEOC). [www.eeoc.gov/policy/docs/accommodation.html#general](http://www.eeoc.gov/policy/docs/accommodation.html#general)



# How is the accommodation process triggered?

Process starts when a worker says, “I am having trouble performing my job because of a medical condition or disability”

(This can also come from a third party on individual’s behalf)

- Employee can make the request in plain language
- Employer can have a formal accommodation process that the employee must follow
- Employer must respond to an accommodation request in a timely manner.



# Next steps after a request

“How can I help you?”

Is there existing policy covering the specific type of request?

Does the request involve the employer providing personal use items?

Is the employee returning from FMLA medical leave?

Is the employee’s disability and need for accommodation obvious?



# Determining disability



## Primary factors

- Is there an impairment?
- Does the impairment limit a major life activity?
- Is the impairment substantially limiting?

## Other factors

- How long is the impairment expected to last?
- Is the disability and need for accommodation obvious?

# Substantially limiting considerations

- The difficulty, effort, or time required
- The pain experienced
- The length of time activity can be performed
- The way an impairment affects a major bodily function
- The negative side effects of prescribed medication
- The burdens associated with treatment regimen

# Essential functions

Review and analyze the essential and marginal job functions of the position.

Seven non-exclusive factors for determination

- Employer's judgment
- Written job descriptions
- Consequences of not requiring performance of the function
- Collective bargaining agreements
- Experience of past incumbents
- Current experiences of incumbents in similar jobs

Marginal functions can be reassigned as an accommodation but essential functions should not be reassigned.

Temporary adjustments for job functions?

# How is an accommodation decided upon?

The interactive process

The person him/herself is the best source of information, but employer ultimately decides

Most expensive accommodation is not always the best

Consider:

- The impairment(s),
- The job, and
- The environment where the job occurs



Consider the Job Accommodation Network at <http://askjan.org>



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# Higher-risk individuals may request accommodations

In its guidance, the EEOC confirms that employees may request reasonable accommodations if the U.S. Centers for Disease Control and Prevention (CDC) deems them “higher risk” for severe illness from COVID-19.

Employees in these categories may request an accommodation related to their underlying medical condition.



# Covid-19 Higher Risk Groups

Higher-risk groups include:

- Older adults (Risk for Severe Illness Increases with Age)
- People of any age with the following conditions are at increased risk of severe illness from COVID-19:
  - Cancer
  - Chronic kidney disease
  - COPD (Chronic Obstructive Pulmonary Disease)
  - Immunocompromised state from solid organ transplant;
  - Obesity (body mass index [BMI] of 30 or higher);
  - Serious heart conditions;
  - Sickle cell disease; and
  - Type 2 diabetes mellitus

## Examples of accommodations

Examples of accommodations that could eliminate or sufficiently reduce the direct threat that exists for higher-risk employees at work. Such accommodations could include:

- providing protective gear;
- taking protective measures such as creating additional space or installing barriers;
- removing discrete, non-essential functions of employees' jobs;
- modifying work schedules to decrease contact with coworkers and/or the public; or
- rearranging workspaces or “moving the location where one performs work . . . if that provides more social distancing.”

# Can medical documentation be collected?

Employer only has the right to documentation about the disclosed disability.

Documentation must be job related and consistent with business necessity

All medical information must be kept confidential and separate from the employee's work file.

Remember FMLA! Is there already medical information on file for the employee?



# Questions about disability

- You can (and often need to) ask carefully-developed questions designed to understand the problem and how a particular accommodation would address it
- The risk of asking questions that are too general is that the individual and the health care provider will not understand what you are trying to learn



# Questions related to whether a disability exists or why the accommodation is needed

- Example: What limitations does the individual have as a result of the medical condition?
  - Are you asking about major life activities in order to determine if condition is a disability?
  - Or, are you asking about limitations that necessitate any reasonable accommodation?
  - Or, are you asking about limitations that necessitate a specific form of reasonable accommodation that is being requested?
  - Or asking about all of the above, some of the above, or something else entirely

## **Questions related to whether the accommodation will permit the performance of essential function(s)**

- If a reasonable accommodation is required to perform an essential function, it is important to focus on how/whether the requested accommodation (or an alternative) achieves this objective
- It is possible for a reasonable accommodation to address medical limitations (e.g., need to telework, need for a different work schedule) but perhaps not permit the performance of an essential function

# Hypothetical situation 1

A doctor's note for 6 months teleworking:

“[Employee] suffers from major depression and anxiety disorder. This condition is long term and is exacerbated by stressful conditions within the work environment which is creating other medical issues. [Employee] would benefit from full time telework as an accommodation for the next six months while starting a new medication therapy. [Employee] can accomplish her tasks from her home office which will limit an increase in her stress and anxiety levels. She has no physical limitations and is able to perform the duties of her position from home.”



## Hypothetical situation 2

After undergoing knee surgery, an employee was released by her doctor, without restrictions, to return to work.

Due to continued knee pain, the layout of the working environment, and the physical nature of the work, the employee asks her supervisor for a reasonable accommodation but the supervisor immediately denies the request because the doctor's note specified "no restrictions" which meant she no longer had a disability and therefore no need for a reasonable accommodation.

**Be prepared!**

**[Video on YouTube](#)**



# Can accommodation requests be denied?

## Undue hardship

- No set dollar amount
- Relative to the overall funds of the organization
- Disruption of operations—must be significant, legitimate and concrete

## Safety reasons?

- About direct threat

Employee has an obligation to participate in the interactive process. Failing to provide permissible, requested documentation or to accept the accommodation selected by the employer is insupportable.



# Who else can be told?

All medical information must be kept confidential

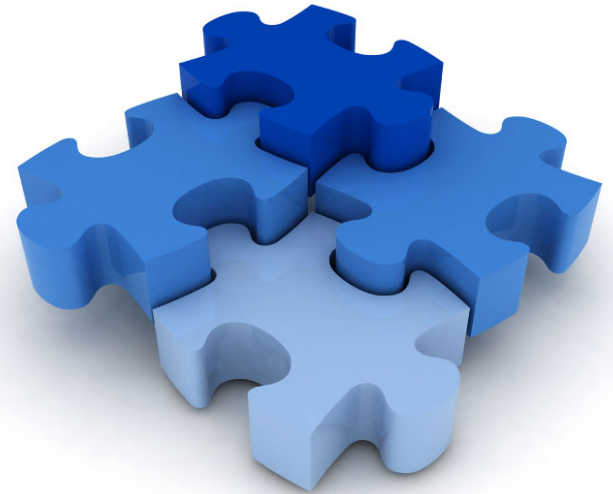
Only co-workers directly impacted by the accommodation can be told that there will be a change, but not why

Communicate that the accommodation is provided according to law – without saying which law – as it would be for any qualified employee and that the company has a strict privacy policy and values the privacy of all its employees.



# How can we make it work?

- Good faith effort to find an accommodation that works
- Centralized accommodation function
- Anyone who could get an accommodation request needs to know what to do
- Not all accommodations are equal: Leave and re-assignment are last resorts
- Trusting environment in the workplace



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# JAN workplace accommodation toolkit



## Conclusion

Your thoughts,  
concerns and  
questions!



# Resources

Job Accommodation Network

[www.askjan.org](http://www.askjan.org)

EEOC Guidance for Reasonable Accommodations

[www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html)

EEOC – Employer-Provided Leave and the Americans with Disabilities Act

<https://www.eeoc.gov/eeoc/publications/upload/ada-leave.pdf>

National Employment Law Institute Publications

<https://www.neli.org/publications.asp>

ADA National Network

<https://adata.org/>

Mid-Atlantic ADA Center

<https://adainfo.org>

Oklahoma ABLETech

<https://www.ok.gov/abletech/>



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