

ADA Interactive Process

Navigating Through the ADA Interactive Process

The purpose of this document is to guide employers through the ADA Interactive Process. There are nine intricate steps employers should follow to ultimately access disabilities and provide the appropriate accommodations. This process requires participation from the employer, employee, and medical providers, but ultimately the employer is responsible for the successful completion of the ADA Interactive Process.

Step 1: Determine Whether the Employer Is Covered by the ADA

All employers, including state and local government employers, with 15 or more employees are covered employers under the ADA. Federal government employers are covered by the Rehabilitation Act of 1973 instead of the ADA, although the protections are very similar.

Step 2: Ensure a Policy and Procedure Exist for Handling Accommodation Requests

Organizations should implement and/or review their policies and procedures for handling requests for disability accommodations.

Existing job descriptions should also be reviewed to confirm they include all aspects of the job and list all essential functions, including any physical requirements such as standing or sitting for long periods of time or lifting requirements.

Step 3: Determine Whether the Employee with a Disability Is "Qualified"

The term "qualified" with respect to an individual with a disability means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.

Employers should determine if the employee has a disability under the ADA. (See Step 5 for more information and the assessment process.)

Step 4: Initiate the Interactive Process

Upon learning of the possible need for a reasonable accommodation under the ADA, organizations should engage in a process in which the employee, health care provider and employer each share information about the nature of the disability and the limitations that may affect the employee's ability to perform the essential job duties. This process is referred to as the interactive process and involves a good-faith effort by the employer and the employee to discuss the limitations or performance issues the employee's disability may pose. The purpose of this discussion is to determine what (if any) accommodations may be needed.

The interactive process involves a review of the accommodation request (see attached) from the employee or a health care provider. Although the ADA does not require the request to be put in writing, having documentation of the request is a good practice.

The employee should be asked to provide appropriate documentation from a health care provider regarding the nature of any impairment(s), severity, duration, activities limited by the impairment(s) and the extent to which the impairment(s) limits the employee's ability to perform the job's essential

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duties/functions. See Accommodation Medical Certification (attached).

In the event the employer needs to consult with the employee's health care provider, the employer must obtain a written medical release or permission from the employee. The employee's health care provider may not disclose information or answer questions about the employee's disability without the employee's permission.

Step 5: Assess if the Employee Has a Disability Under the ADA

Organizations should use the definition of a "disability" and a "qualified individual with a disability" under provisions of the ADA, along with information from the employee's health care provider, to help make this determination.

- The ADA defines a disability as one of the following: a) a physical or mental impairment that substantially limits a major life activity; b) a record of a physical or mental impairment that substantially limited a major life activity; or c) being regarded as having such an impairment.
- The ADA Amendments Act (ADAAA) identifies medical conditions that would virtually always be considered a disability within the meaning of the law. They include deafness, blindness, intellectual disability, completely or partially missing limbs, mobility impairments that require the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis and muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.
- The definition of major life activities includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major bodily functions include functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- The definition of a disability also includes situations in which an employer takes an action prohibited by the ADA based on an actual or perceived impairment—for example, removing from customer contact a bank teller who has severe facial scars because customers may feel uncomfortable working with this employee or may perceive the employee as having an impairment when, in fact, the employee does not.
- The ADAAA directs that if a "mitigating measure," such as medication, medical equipment, devices, prosthetic limbs or low vision devices eliminates or reduces the symptoms or impact of the impairment, that fact cannot be used in determining if a person meets the definition of having a disability. Instead, the determination of disability should focus on whether the individual would be substantially limited in performing a major life activity without the mitigating measure. This rule, however, does not apply to people who wear ordinary eyeglasses or contact lenses.

Employers must consider whether the impairment substantially limits a person's ability to work or meet certain job-related requirements, even though the impairment may not impose substantial limitations outside the workplace. For example, the employee may still be able to operate a personal motor vehicle but may have limitations in performing the essential job duty of operating and driving a commercial truck, which is regulated by the U.S. Department of Transportation. In this case, the ADA recognizes this employee as having a disability.

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Employers may feel uncertain about whether an employee has a disability. However, employers are cautioned against trying to prove an employee does not have a disability; employers should instead focus on whether an employee's request for accommodation under the ADA is reasonable. Frequently, this is a judgment call unless observable impairments affect the employee's ability to perform the essential functions of the job or the employee's health care provider submits reliable information. When

the disability is not apparent or observable, the employer may ask the individual about the disability and functional limitations in light of the employee's request for accommodation. This discussion is usually a part of the interactive process outlined in Step 4.

Employers should review all factors to determine if there is a disability that needs to be accommodated.

Step 6: Determine Accommodations

The ADA does not require employers to have a particular policy and procedure in place for determining or granting reasonable accommodations, but it does recommend that employers develop their own policy meaningful to employees and the organization.

An accommodation can be a change or modification to the workplace, allowing the employee with a disability to perform his or her essential job duties or enjoy the benefits and privileges of employment. Examples include job restructuring, reassignment or transfer to a vacant position, making existing facilities more readily accessible, modifying or using alternative work schedules, acquiring or changing equipment or devices, and adjusting training materials or using interpreters for people with hearing or visual impairments.

Reasonable accommodations can vary in price and scope. Some are free or low-cost, such as a change in work schedule, granting extended unpaid leave or telecommuting. Others may be costlier, such as installing an elevator or modifying restrooms.

The types of accommodations needed and provided will depend on the limitations of the disability and the individual employee's ability to perform the essential job duties of the position. One standardized type of accommodation may not meet the needs of employees who have similar disabilities but different impairments/limitations when performing their essential job functions. Accommodations are designed to meet the specific circumstances of the individual.

The Job Accommodation Network is an organization that can assist employers in the accommodation process with information and accommodation ideas. Its consultative services are free to employers. Employers should next review the accommodation request from the employee or health care provider to determine whether the requested accommodation would create an undue hardship to the employer (see Step 7, below). Alternatives to the requested accommodations can be suggested if the initial request creates an undue burden but there is another cost-effective way to provide the needed accommodation.

Organizations must continue the interactive process until they find the accommodation(s) that meets the needs of the employee and does not create an undue hardship on the employer.

They must also obtain verification from the employee and his or her health care provider that the agreed-on accommodation will not worsen the employee's disability or cause other problems.

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Step 7: Determine if the Accommodation Is "Reasonable" or Creates an "Undue Hardship"

Employers should be careful when using the undue hardship defense as a rationale to not accommodate an ADA/ADAAA request.

- The EEOC, when determining if the employee request creates an undue hardship to the employer, looks not only at the cost of the particular accommodation but also at the financial stability of a company. If the company is making significant profits or has a sizable net worth, the employer may not be able to prove that the requested accommodation would have a significant financial impact, therefore creating an undue hardship. For example, it may be an undue hardship for a nonprofit organization with limited funds to provide a special chair that costs \$1,000 as an accommodation to an employee. However, the same request by an employee working in a for-profit organization that made sizable profits may not be seen as an undue hardship for that employer.
- Accommodations that could result in an undue hardship include modifications that are "unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the job or business," according to the EEOC. For example, small employers that require their employees to be able to perform a number of different jobs and tasks may not find it feasible or cost-effective to provide job restructuring as a "reasonable accommodation," whereas in larger organizations, this may be a free or low-cost option.
- The EEOC does not see impact on employee morale as a reasonable undue hardship defense.

Organizations should seek input from the employee's supervisor, who has knowledge about the duties of the position and the worksite, to help determine the feasibility and what may be a "reasonable" accommodation.

Massive modifications/restructuring to the essential job duties so that the position no longer resembles its purpose are also not considered reasonable—for instance, removing driving duties from a truck driver position.

After the type of accommodation has been determined, the employer should document specific accommodations that will be made.

Step 8: Notify the Employee

The next step is for HR to notify the employee in writing that his or her requested accommodation has been approved or denied. Details of the accommodation and the anticipated start date should be included.

HR must maintain all copies of accommodation requests, supporting medical information and documentation, including denials, in a file separate from the employee personnel file, consistent with the confidentiality requirements of the ADA.

Step 9: Review and Modify

The accommodation process is not set in stone and may need to be reviewed, especially if an employee's disability changes or the needs of the business change.

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Example 1

An employee with more than five years of data entry experience has been working with the company for six months. Upon hire, she stated she could perform all the essential job duties as outlined in the

company job description. Lately, she has been complaining about wrist pain. Her doctor diagnoses her with carpal tunnel syndrome due to the repetitive nature of the job. The doctor recommends that the employee cut back her work hours to prevent her medical condition from worsening. The doctor provides the employee with a note for her employer.

The employee approaches her supervisor and asks to work a reduced schedule. Based on the company policy and procedure (Steps 1 and 2), the supervisor starts the interactive process (Step 4) by reviewing the employee request and determining if her accommodation request is "reasonable" (Steps 6 and 7).

The supervisor recommends approval of the request because there is currently an available part-time position the employee can be reassigned to. The employee's written accommodation request is forwarded to HR for final approval. HR reviews the employee request, the doctor's note and ADA definitions along with the supervisory recommendation (Steps 2, 3, 5, 6 and 7).

HR informs the employee that her request has been approved (Step 8). According to the company's ADA policy and procedure, the employee is given a memo documenting the request and approved accommodation. HR files all this information and related documentation in a separate ADA file that is kept apart from the employee's personnel file.

Example 2

An employee who is morbidly obese and has knee problems recently returned to work after taking Family and Medical Leave Act leave. She has been released to work without restrictions. Her manager reports performance problems. The employee attributes her performance problems to medication she is taking to walk (Steps 3 and 5). In addition, she is taking muscle relaxants and has been unable to sleep more than two hours a night.

The employee is asked to provide documentation from her doctor to support her statements that her disability and its related medications are affecting her at work and to indicate any potential reasonable accommodations. The employee provides a note from her doctor with a recommendation that she be permitted to work from home, allowing her to limit driving and walking. The doctor also asks that the employee's hours be adjusted (Steps 4 and 6).

Even though the employee was initially returned without restrictions, further questions uncovered that an accommodation would be necessary. After reviewing the essential job duties, gap analysis and the accommodation suggestions, the manager and HR agree to allow the employee to work from home and to adjust her work hours. To be consistent with the company telecommuting policy, the employee's performance will be reviewed within 30 days, and if her performance does not improve, her telecommuting privileges may be revoked.

According to the company's ADA policy and procedure, the employee is given a memo documenting the request and approved accommodation. HR files all this information and related documentation in a separate ADA file that is kept apart from the employee's personnel file (Step 8).