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Disabilities - EEOC Guidance

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U.S. Equal Employment Opportunity Commission

NEWS

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EEOC RELEASES ADA POLICY GUIDANCE ON JOB ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

WASHINGTON -- The U.S. Equal Employment Opportunity Commission (EEOC) today released a comprehensive policy guidance entitled *Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (ADA)*. The guidance addresses the duty of employers to provide "reasonable accommodations" to applicants and employees with disabilities under Title I of the ADA. The Commission also released a shorter version of the guidance entitled *Small Employers and Reasonable Accommodation*.

"This area of the law has been subject to numerous interpretations and/or applications. We believe that the guidance we have issued will help employers and people with disabilities alike to better understand their rights and responsibilities," said EEOC Chairwoman Ida L. Castro. "It will help to remove barriers so that people with disabilities can earn a paycheck and employers can have productive workers."

The obligation to provide reasonable accommodation is one of the fundamental requirements of the ADA, which prohibits discrimination against persons with disabilities by both private sector and state and local government employers with 15 or more employees. Reasonable accommodations remove obstacles to employment that prevent persons with disabilities from applying for and performing jobs. These barriers may be physical impediments, such as inaccessible facilities or equipment, or inflexible rules, such as when or how a job is performed.

EEOC Commissioner Paul Steven Miller hailed the guidance, stating "This document is an extremely useful tool for both the business and disability communities, and those working to ensure the rights of the disabled."

"This guidance provides clear answers to the most frequently-asked questions concerning what reasonable accommodations are, when they must be provided, and when employers may refuse to provide them," Chairwoman Castro said.

The following ADA issues are addressed in the guidance:

- The responsibility of individuals with disabilities to request reasonable accommodation and the way an employer should respond to a request;
- The circumstances under which employers may ask for documentation showing the need for reasonable accommodation;

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- Reasonable accommodations for job applicants;
- Reasonable accommodations to provide access to employer-sponsored training programs, services (such as the office cafeteria), and social functions;
- New information on many types of reasonable accommodations, including job restructuring, unpaid leave, part-time schedules, modified workplace policies, and reassignment;
- The relationship between the obligation to provide leave as a reasonable accommodation under the ADA and the requirements of the Family and Medical Leave Act (FMLA);
- Changes that employers are not required to make to a job, such as lowering production standards or removing a primary job duty; and
- Those instances in which employers may deny a request for a reasonable accommodation because it imposes an "undue hardship" (for example, when an accommodation would disrupt or prevent other employees from doing their jobs).

"Effective accommodation can easily be provided when the employer and the person with a disability have an open discussion," noted Chairwoman Castro. The question-and-answer format of the guidance, together with the use of examples, provides practical advice to enable employers and individuals with disabilities to identify effective accommodations that remove workplace barriers. The guidance also provides a list of resources to help employers and people with disabilities identify reasonable accommodations.

The guidance represents the Commission's most complete discussion of "undue hardship" to date. Undue hardship is a limitation on an employer's obligation to make reasonable accommodation. "As this guidance points out, providing a reasonable accommodation does not mean excusing poor performance or hiring unqualified people," Ms. Castro stated. The guidance makes it clear that an employer does not have to spend exorbitant sums of money or disrupt its operations to provide a reasonable accommodation.

"This guidance will not only help investigators to handle ADA charges more efficiently, but will also provide useful guidance to courts in deciding novel or complex reasonable accommodation issues," Chairwoman Castro said. "Perhaps most importantly, it will enable employers and individuals with disabilities to resolve reasonable accommodation issues in a practical, common sense way -- before they become the subject of an EEOC charge or lawsuit."

The free guidance may be obtained through the EEOC's Publications Distribution Center's toll free telephone number (800-669-3362 or TTY 800-800-3302), or writing to EEOC's Office of Communications and Legislative Affairs, 1801 L Street, N.W., Washington, D.C. 20507. The text of the document will also be available on EEOC's web site (www.eeoc.gov).

In addition to enforcing Title I of the ADA, EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal government; and sections of the Civil Rights Act of 1991.

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SMALL EMPLOYERS AND REASONABLE ACCOMMODATION

INTRODUCTION

The Americans with Disabilities Act (ADA) requires an employer to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of "reasonable accommodations":

- (i) changes to a *job application process*
- (ii) changes to the *work environment*, or to the *way a job is usually done*
- (iii) changes that enable an employee with a disability to enjoy *equal benefits and privileges of employment* (such as access to training).

Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, workplace barriers may keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

This guide answers some of the key questions facing small businesses in connection with reasonable accommodations. It explains the obligations of both employers and individuals with disabilities, and reviews the limits on how far employers must go in providing reasonable accommodations.

This guide is adapted from the Equal Employment Opportunity Commission's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA. Small employers wishing to learn more about reasonable accommodation and undue hardship should call **1-800-669-3362** to request a free copy of the Enforcement Guidance, or review it at EEOC's website, www.eeoc.gov.

REQUESTING REASONABLE ACCOMMODATION

1. *How must an individual request a reasonable accommodation?*

The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

2. *What must an employer do after receiving a request for reasonable accommodation?*

When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations.

The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

There are extensive public and private resources to help employers and individuals with disabilities who are not familiar with possible accommodations. (See the Appendix to this guide for a resource directory to help identify reasonable accommodations.)

3. *Must an employer provide the reasonable accommodation that the individual wants?*

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

4. *How quickly must an employer respond to a request for reasonable accommodation?*

An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the

employer should act promptly to provide the reasonable accommodation.

TYPES OF REASONABLE ACCOMMODATIONS

There are many different kinds of reasonable accommodations. Below is information on some of them.

5. Is *restructuring a job* a reasonable accommodation?

Yes. This includes: (1) shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability; and (2) altering when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place.

6. Is providing *leave necessitated by an employee's disability* a form of reasonable accommodation?¹

Yes, absent undue hardship, providing *unpaid leave* is a form of reasonable accommodation. However, *an employer does not have to provide more paid leave* than it provides to other employees.

7. May an employer apply a "*no-fault*" leave policy, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs additional leave?

If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must provide the employee with the additional leave even if it has a "no-fault" policy. An employer, however, does not need to provide leave if: (1) it can provide an effective accommodation that allows the person to keep working, or (2) it can show that granting additional leave would cause an undue hardship.

8. When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that *requires him/her to remain on the job instead*?

Yes, if the employer's proposed reasonable accommodation would be effective and

¹ Employers who are covered by the Family and Medical Leave Act (FMLA) may have obligations under that law, as well as the ADA. For more information on how these two laws apply to leave and modified schedules, employers may consult the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA and the EEOC's Fact Sheet on the FMLA and the ADA.

eliminate the need for leave. Accordingly, an employer may reallocate minor job tasks or provide a temporary transfer instead of leave, so long as the employee can still address his/her medical needs.

9. Is a *modified or part-time schedule* a reasonable accommodation?

Yes, absent undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.

10. Is it a reasonable accommodation to *modify a workplace policy* because of an employee's disability?

Yes. For example, granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. However, reasonable accommodation only requires that the employer modify the policy for an employee with a disability. The employer may continue to apply the policy to all other employees.

11. Does an employer have to *reassign to a vacant position* an employee who can no longer perform his/her job because of a disability?

Yes, unless the employer can show that it would be an undue hardship. The following criteria apply to reassignment:

- An employee must be "*qualified*" for the new position. This means that s/he: (1) satisfies the skill, experience, education, and other job-related requirements of the position, and (2) can perform the primary job tasks of the new position, with or without reasonable accommodation. The employer does not have to assist the employee to become qualified.
- An employer does not have to bump other employees or create a position. Nor does an employer have to promote the employee.
- Reassignment should be to a position that is *equal in pay and status* to the position that the employee held, or to one that is as close as possible in terms of pay and status if an equivalent position is not vacant.

12. Does a reasonable accommodation include *changing a person's supervisor*?

No. The ADA may, however, require that supervisory methods, such as the method of communicating assignments, be altered as a form of reasonable accommodation.

OTHER REASONABLE ACCOMMODATION ISSUES

13. Are there certain things that are not considered reasonable accommodations and are therefore not required?

- An employer does not have to eliminate a primary job responsibility.
- An employer is not required to lower production standards that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.
- An employer does not have to provide personal use items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.
- An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

14. May an employer tell other employees that someone is receiving a reasonable accommodation?

No, because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.

An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons. Employers might also find it helpful to provide all employees with information about various laws that require employers to meet certain employee needs (e.g., the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees.

other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

17. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

In some situations, an employee may be able to provide only an approximate

date of return because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date

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15. **May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?**

If an employer knows that an employee has a disability, it may ask whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.

**UNDUE HARDSHIP:
LIMITS ON PROVIDING REASONABLE ACCOMMODATIONS**

An employer never has to provide any reasonable accommodation that causes *undue hardship*, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Every request for reasonable accommodation should be evaluated separately to determine if it would impose an undue hardship, taking into account:

- the nature and cost of the accommodation needed;
- the overall financial resources of the business; the number of persons employed by the business; and the effect on expenses and resources of the business;
- the impact of the accommodation on the business.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be *unduly disruptive to other employees' ability to work*.

16. **Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?**

No. If modifying one employee's work hours (or granting leave) would prevent

other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

17. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

In some situations, an employee may be able to provide only an *approximate date of return* because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. Undue hardship could result if the employer can neither plan for the employee's return nor permanently fill the position. In other situations, an employer may be able to be flexible.