

# **The ADA: Understanding the Reasonable Accommodation Obligation**

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# Key to Understanding/Complying with ADA

- Individualized Decision-making
- Get and use facts about applicant/employee and do not rely on assumptions or generalizations about the disability, the job, and the ability to perform the job

# Reasonable accommodation

- Defined:
  - A reasonable accommodation is a change in the workplace, or in the ways things are usually done, that provides equal employment opportunities for individuals with disabilities
  - General rule: An employer provides a reasonable accommodation to a qualified individual with a disability if requested and if doing so does not pose an undue hardship

# 3 Areas Where Employers May Have To Provide Reasonable Accommodations

- Application Process
- Accommodations that enable an employee to perform her job or to gain access to the workplace (includes, e.g., bathrooms, cafeterias)
- Benefits and Privileges of Employment
  - Mandatory or voluntary training/staff meetings
  - Employer-sponsored parties: Even if off-site and outside business hours
  - Employer-sponsored programs/special events

# Interactive Process !!!!!!!!

- Process usually starts with a request from an applicant/employee
  - No “magic words” needed
  - Individual must tell employer that she needs something from the employer because of her medical condition
  - Need not be in writing
  - May come from someone other than the individual needing the accommodation (doctor’s note)
  - Employer may obtain information to determine if the individual’s medical condition constitutes a disability and/or to verify the need for accommodation
  - **Cooperative Process!**

# Reasonable accommodation

- Almost unlimited possibilities
- May include:
  - Sign language interpreters
  - Modifications to existing equipment or purchase/lease of new equipment that is accessible to individual with a disability
  - Modifying workplace policies
  - Changes in the working environment (e.g., flashing warning lights for evacuations)
  - Reassignment (last resort)

# Reasonable accommodation

- Actions **not** required:
  - Removing an essential function (i.e., fundamental/critical job duty)
  - Lowering production standards (quantitative and qualitative)
  - Excusing misconduct/performance deficiencies
  - Providing personal use items, such as hearing aids, service animals

# Employees Entitled to Effective Accommodation

- Employer must provide an accommodation that meets the employee's needs and removes a workplace barrier
- But, employee is NOT entitled to accommodation of her choice
- If 2 or more accommodations would be effective, employer may choose between them
  - This means you can make counter-offers!
  - Listen with open mind to any objections (individual may be right that your suggestion has problems).
  - If possible to provide the accommodation that was requested, that may be best in many situations.
- Critical that employer understand exact nature of problem to determine all possible, effective accommodations, then assess whether any/all possibilities constitute “undue hardship”



# Consider Testing A Possible Accommodation During a Trial Period

- Good option where employer (or employee) has doubts/concerns whether a proposed accommodation will work as proposed
- Do not use a trial period where clear an accommodation will or will not work (for example, do not need to test whether a sign language interpreter works)
- Accommodations where a trial period may be helpful: telework, modifying work schedules
- Generally, a trial period should last 1 to 6 weeks
  - Long enough to really test whether accommodation works or not
  - May need to tweak the accommodation, rather than revoking it, if minor issues/problems arise
  - If clear that accommodation not working, may cut short a trial period

# Undue Hardship

- **Significant** difficulty or expense
- Focus here is on resources and circumstances of agency as a whole, including impact on operations
- Undue hardship refers to denial of a specific accommodation
- Consider financial difficulty **as well as** reasonable accommodations that are extensive, substantial, or disruptive

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EEOC Enforcement Guidance on  
Reasonable and Accommodation and  
Undue Hardship

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