

I. Overview of the ADA

The ADA prohibits employers from discriminating against qualified individuals with disabilities in terms of employment on the basis of disability. Terms of employment include hiring and selection, discipline, benefits, leave, and other conditions of employment. A person with a disability is defined as a person who has 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such impairment; or 3) is regarded as having such impairment.

A major life activity includes, but is not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;”⁶ but also major bodily functions, such as “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

II. Reasonable Accommodation

The ADA requires employers to provide reasonable accommodations to employees with disabilities which enable employees to perform the essential functions of their jobs, unless doing so would cause an undue hardship. Reasonable accommodations may include making facilities used by employees with disabilities readily accessible and usable, job restructuring, modified work schedules, provision of auxiliary aids and services such as a qualified reader or a sign language interpreter, and adjustments or modifications to examinations, training, or policies.

Reasonable accommodations must also be provided to job applicants to ensure equal access to employment opportunities. This can include assistance with the application process, provision of a sign language interpreter (at the agency’s expense), or a modified job demonstration or examination process.

As mentioned above, employers must provide a reasonable accommodation unless doing so would cause an undue hardship. “Undue hardship” is defined as significant difficulty or significant financial burden in light of the following factors:

- 1) The nature and cost of the accommodation needed.
- 2) The overall financial resources of the facility or facilities involved in providing accommodation, the number of persons employed at such facility, the effect on expenses or resources, or the impact otherwise of such accommodation upon the operation of the facility.
- 3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number and type, and location of its facilities.
- 4) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity and the geographic

separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The following subsections detail various ways in which the subject states ensure that requests for reasonable accommodations are handled appropriately.

A. Reasonable Accommodation Procedures

One way that an employer can promote compliance with this obligation is to have in place procedures that clearly define the responsibilities of everyone involved in the reasonable accommodation process and that enable tracking and prompt resolution of accommodation requests. There are different models for agencies to consider when implementing a reasonable accommodation procedure, ranging from **Empowering supervisors** to provide the accommodation requested or one that is equally effective (but requiring them to refer the request to the human resources department if they believe the requested accommodation would change the nature of the employment) to **Centralized Processing and Control of Accommodation Decisions** where the designated person/office works with the employee to determine what accommodation is needed, and works with management to implement any accommodation granted.

When designing a reasonable accommodation procedure, the agency should consider the following tips:

- Clearly define the responsibilities of everyone involved in the reasonable accommodation process;
- Consider flexibility when developing procedure;
- Eliminate unnecessary levels of review where possible;
- Encourage discussion between the individual requesting an accommodation and the employer decision maker (***the interactive approach***);
- Evaluate cases and circumstances on an individualized, case-by-case basis;
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B. Key Elements of an Effective Reasonable Accommodation Procedure

Regardless of the type of procedure the agency ultimately adopts, it should include the following key elements:

1. Document and Track Requests for Reasonable Accommodation

- Documenting and tracking information about reasonable accommodation requests can help employers evaluate their performance in responding to

them and implement measures to improve performance where necessary. Among other things, documenting and tracking may enable a state agency to determine how long it takes to respond to requests for different types of reasonable accommodations; whether there are particular types of reasonable accommodations that the employer has been unable to provide; whether there are agency components that have not granted requests for reasonable accommodations; and the reasons for denials. Where, for example, there have been repeated delays in the processing of reasonable accommodation requests, an agency can investigate the reasons for the problem and take steps necessary to correct it.

- It may be helpful to document the request for accommodation and the steps taken in response to the request.
- Although requests for reasonable accommodation do not have to be made in writing, use forms to ensure accuracy in handling a request and prominently include the toll-free phone and TTY number for the Job Accommodation Network (JAN), <http://www.jan.wvu.edu> (800-526-7234), and require managers to indicate whether they contacted JAN. This reminds managers of important resources available to help with the accommodation process.
- Keep logs of every approval of an accommodation request as well as copies of all denial letters. This information is reported to the Director of the HR. In addition, ADA Coordinators are trained to track accommodation request information by preparing the following, based in part on documents they receive during their training: (1) a letter to the requestor if it is determined he or she is not an individual with a disability; (2) a memorandum to the requestor's manager if it is determined that even though the requestor is not an individual with a disability some action should be taken; (3) a memorandum to the requestor's manager if it is determined that the requestor is an individual with a disability necessitating accommodation; and (4) a letter to the requestor if it is determined that no accommodation is possible within his or her current position, or no vacant position exists for which he or she is qualified with respect to reassignment.
- Track annual statistical information regarding the provision of reasonable accommodations to state government applicants and employees

2. Ensure the Confidentiality of Medical Information

The ADA requires that all medical information obtained from an applicant or employee be kept separate from personnel files and treated as a confidential medical record. Disclosures of confidential medical information are permitted only in very limited circumstances, including to supervisors and managers in connection with work restrictions or necessary accommodations.

The effectiveness of an employer's reasonable accommodation procedures depend to a great extent on the ability to ensure individuals with disabilities that confidentiality of their medical information will be maintained. Applicants or employees (particularly those with hidden disabilities) may be more likely to ask for an accommodation if they

know that information they disclose to support their requests will not be shared with co-workers or with other individuals who do not need the information.

- Develop a warning notice that is included on various documents subject to the ADA confidentiality provision, such as memoranda from the ADA Coordinator to a supervisor advising that an accommodation has been granted and should be provided. The notice states: "This memorandum must not be placed in a personnel file or co-mingled with personnel records. It is subject to the protections articulated in the Americans with Disabilities Act"
- Implement rules that the agency shall maintain a separate file from the personnel file if the agency obtains any confidential employee medical information, including "all written and orally obtained information pertaining to medical issues, including Family and Medical Leave Act forms, medical and dental enrollment forms which contain health-related information, health statements, applications for additional life insurance, fitness for duty evaluations, drug testing results and any other medical information." Employees who violate these confidentiality requirements are subject to state disciplinary procedures.

3. Establish Timelines that Ensure Prompt Resolution of Reasonable Accommodation Requests

The ADA does not prescribe a specific time frame within which reasonable accommodations must be provided; however, accommodations must be provided without undue delay. The amount of time necessary to provide an accommodation may depend on factors such as the nature of the accommodation, the complexity of the decision-making process (e.g., whether a disability is obvious or must be determined by reviewing medical documentation), and the difficulty of providing the accommodation (e.g., whether it involves a simple modification of a policy or the acquisition of equipment).

Despite the various factors that may affect the length of time needed to provide an accommodation, the use of timelines in reasonable accommodation procedures emphasizes the importance of prompt processing of accommodation requests, promotes accountability of those involved in the accommodation process (including the requester), and serves as a guide for assessing, and where necessary, revising procedures.

Denial of Reasonable Accommodation:

Not every requested accommodation can or should be granted. However, an employer can minimize the chance that an accommodation will be inappropriately denied by: (1) establishing procedures that ensure the denial has been properly reviewed and can be justified; and/or (2) providing employees with an opportunity to have an initial denial reviewed.

C. Innovative Accommodation Solutions

1. Accommodation Solutions Related to Assistive Technology

- Identify resources where the agency can borrow equipment on behalf of individuals with disabilities to try out the equipment before purchasing, for use during the time equipment is in repair, or for other short-term needs.
- Establish a central pool of assistive technology. Agencies and institutions may borrow equipment from the pool. To reserve equipment, such as assistive listening systems for people with hearing impairments, agencies simply call at least a week prior to the event.

2. Centralized Funding for the Cost of Reasonable Accommodations

The ADA does not require a centralized source for funding reasonable accommodations. However, a centralized funding source may promote the hiring of people with disabilities by removing disincentives that result from concerns that the cost of reasonable accommodations will be charged against the budgets of individual offices, departments, or agencies. Such a funding scheme makes sense, moreover, because the ADA would likely require assessment of whether the cost of a particular accommodation would pose an undue hardship in light of the resources available to an entire state agency or potentially to the state as a whole.