Government and the Americans with Disabilities Act of 1990

Reasonable Accommodations



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ADA Definition of Disability

- A physical or mental impairment that substantially limits one or more major life activities or
- A record of such impairment or
- Being regarded as having such impairment



The Americans with Disabilities Act Amendments Act (ADAAA)

- Rejected the Supreme Court's interpretations of the definitions of "disability" and related terms
- Amendments made it easier:
  - to meet the definition of disability
  - to be protected from discrimination
  - to be entitled to reasonable accommodations



ADAAA - Major Life Activities:

- eating
- standing
- bending
- thinking
- communicating
- sleeping
- lifting
- reading
- concentrating
- immune system functions
- other functions:
  - digestive
  - bowel
  - bladder
  - neurological
  - brain
  - respiratory
  - circulatory
  - reproductive

ADAAA – Mitigating Measures

Congress explicitly rejected Supreme Court's holding that mitigating measures must be considered in determining substantial limitation



Title I: Employment

Title I of the ADA requires employers to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to non-disabled persons.

Qualified Individual with a Disability

An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position, and who with or without reasonable accommodation, can perform the essential functions of the position

Title I: Employment

Prohibits discrimination in:

- job application procedures
- hiring and firing
- Promotion or advancement
- employee compensation and training
- Job assignment/classification
- other terms, conditions, or privileges of employment



Reasonable Accommodation

- Employers must provide qualified individuals with disabilities a reasonable accommodation to allow them to benefit from all employment related opportunities.
- Cities are required to have an ADA Coordinator who should process requests

NATIONAL ASSOCIATION OF ADA COORDINATORS

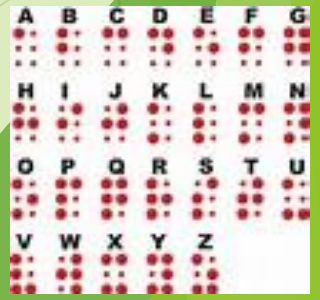
The Request

- Generally, employee must request a reasonable accommodation.
- However, courts have found that when the employer is on notice of a disability, the employer has the obligation to ask the employee if they require an accommodation.
- Employee does not have to use magic words



The Response

- ADA Coordinator should handle each request on a case by case basis.
- Two employees with the same disability may require different accommodations.
- **Engage in the interactive process**
- Communication may need to be provided in a different format if requested



Interactive Process

- Enables employer to obtain information to determine the reasonable accommodation which works best without causing an undue hardship
- Discuss all options to determine what's reasonable
- Employer may request medical documentation directly from the health care provider only with the employee's consent

Granting Leave - Equal Treatment

- Employer's obligation is to provide persons with disabilities access to the leave on the same terms as a person without a disability.
- Employee leave requests related to disability often fall under existing employer leave policies.



Granting Leave as a Reasonable Accommodation

- Employer may be required to provide leave (may be unpaid) as a reasonable accommodation when:
  - Employee has utilized all leave, whether it is FMAA leave, sick leave, personal leave, etc.
  - Employee is not eligible for leave
  - Employee has maxed out leave pursuant to a maximum leave policy

Leave

- Employer may ask for reasonable documentation for the need for leave, the length of the leave, whether the employee may need leave intermittently, and when the need for leave will end.
- Employer may ask for additional information to determine leave but may not ask after leave is granted for a definite term

Personal Devices





Employers are not required to provide personal devices such as wheelchairs; individually prescribed devices (e.g., prescription eyeglasses or hearing aids); or services of a personal nature including assistance in eating, toileting, or dressing.

Other Types of Reasonable Accommodations

- Modifying the job application process
- Making facilities accessible
- Job restructuring part-time or modified work schedules
- Acquiring or modifying of equipment
- Modifying policies
- Providing readers/interpreters/CART
- Reassignment

Reassignment

- Three circuits ruled reassignment to a vacant position without competition is reasonable absent undue hardship or seniority system.
- *EEOC v. United Airlines*, 693 F.3d 760 (7th Cir. 2012); *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (10th Cir. 1999); *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284 (D.C. Cir. 1998)
- Two circuits have ruled that employers can make reassignment competitive.
- *Huber v. Wal-Mart*, 486 F.3d 480 (8th Cir. 2007); *EEOC v. St. Joseph's Hospital, Inc.*, 842 F.3d 1333 (11th Cir. 2016).

Reassignment

- In a case currently on appeal to the Fourth Circuit, the trial court found that the ADA did not require the Sheriff of the City of Richmond to reassign an employee with a disability to an open payroll technician position. See *USA v. Woody*, 220 F. Supp.3d 682 (E.D. Va. 2016)
- The court stated that the ADA does not require "employers to give preferences in hiring to disabled persons, thereby discriminating against persons without a disability."

Defense - Job Relatedness and Business Necessities

- neutral qualification standards
- essential qualifications of job
- ADA mandates employers have a duty to attempt or at least investigate the availability of reasonable accommodations

Job Descriptions

Camp v. Bi-Lo, LLC

- Employee with back impairment worked as stock clerk for 38 years. Employee's doctor restricted him from lifting > 35 pounds. Plaintiff requested a reasonable accommodation after being told job description required that he lift 60 pounds.
- Trial court granted summary judgment to employer indicating that the job description required plaintiff's position to lift 20-60 pounds.
- Sixth Circuit reversed and remanded based on testimony from supervisor and co-workers that plaintiff had been able to do the job for years using a three man team.

Defense - Undue Hardship

A reasonable accommodation may not be provided if such accommodation results in undue hardship on the employer.

- an action requiring significant difficulty or expense (cost vs financial resources)
- an action that is costly, extensive, substantial or disruptive
- an action that will fundamentally alter the nature of employment



Undue Hardship

Searls v. Johns Hopkins Hospital

- Nursing graduate applied for position requiring "highly effective verbal communication and interpersonal skills"
- Hospital offered job contingent on health screen and nurse requested a full-time ASL interpreter as a reasonable accommodation
- Hospital rescinded offer and argued that spending $120,000 to $240,000/yr was an undue hardship
- Court disagreed. Hospital must examine the overall budget and resources available, especially where interpreter would represent only 0.007% of overall budget

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