

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Accommodation and Compliance Series

# Employees' Practical Guide to Requesting and Negotiating Reasonable Accommodations Under the Americans with Disabilities Act

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A service of the U.S. Department of Labor's Office of Disability Employment Policy

## Preface

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# EMPLOYEES' PRACTICAL GUIDE TO REQUESTING AND NEGOTIATING REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT

## Introduction

The Job Accommodation Network (JAN) is a free service of the U.S. Department of Labor's Office of Disability Employment Policy. JAN consultants have been providing job accommodation information since 1983 when JAN was founded. In addition, JAN consultants have been providing information about the Americans with Disabilities Act (ADA) since 1992 when the ADA went into effect. Over the years, JAN consultants have developed practical ideas to help employees understand the ADA and request and negotiate reasonable accommodations in the workplace. The *Employees' Practical Guide to Requesting and Negotiating Reasonable Accommodations under the Americans with Disabilities Act* is a summary of some of the most frequent issues that employees have regarding accommodations and the ADA and JAN's practical ideas for resolving them. As new information is available or new issues develop, the *Guide* will be updated to reflect the changes. If you have an issue that is not addressed in the *Guide* or if you want to discuss an issue in more detail, please call JAN.

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## **I. ADA BASICS**

### **What is the ADA?**

The ADA is a federal civil rights law that was passed in 1990 and went into effect beginning in 1992. Its purpose is to protect people with disabilities from discrimination in employment (Title I), in the programs and activities offered by state and local governments (Title II), and in accessing the goods and services offered in places like stores, hotels, restaurants, football stadiums, doctors' offices, beauty parlors, and so on (Title III). The focus of this guide is Title I of the ADA, which prohibits discrimination in employment and requires employers to provide reasonable accommodations for employees with disabilities.

### **Does my employer have to comply with Title I of the ADA?**

Only "covered entities" must comply with Title I of the ADA. The term covered entities includes private employers with 15 or more employees, employment agencies, labor organizations, and joint labor-management committees. State and local government employers must also comply with the ADA. Federal executive agencies are exempt from the ADA, but they have to comply with the Rehabilitation Act of 1973, which is almost identical to the ADA.

### **How do I know if I have rights under Title I of the ADA?**

Sometimes it is difficult to determine whether you have rights under Title I of the ADA, but understanding some of the terms used in the ADA may help you make that determination. In general, Title I protects "qualified" "employees" with "disabilities."

The term "qualified" means that you satisfy the skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential job functions of the position, with or without reasonable accommodation.

For additional information about the definition of "qualified," see <http://askjan.org/links/ADAatam1.html#II>.

The term "employee" means, "an individual employed by an employer." The question of whether an employer-employee relationship exists depends on whether the employer controls the means and manner of the worker's work performance.

For additional information about the definition of "employee," see <http://www.eeoc.gov/policy/docs/threshold.html#2-III-A-1>.

The term "disability" is defined in general terms rather than with a list of medical conditions. The definition of disability includes: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities, (2) a person

with a record of a physical or mental impairment that substantially limits one or more major life activities, and (3) a person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

Therefore, to determine whether you have a disability, you must first determine two things:

1. Whether you have an impairment, and
2. Whether your impairment substantially limits one or more major life activities.

In addition, you can meet the ADA's definition of disability by having a record of or being regarded as having an impairment.

For additional information about the definition of disability, visit *How to Determine Whether a Person has a Disability under the Americans with Disabilities Act (ADA)* at <http://askjan.org/corner/vol02iss04.htm>.

The term “essential job functions” means the fundamental job duties of the employment position that the individual with a disability holds or desires. The term essential functions does not include marginal functions of the position.

For additional information about essential functions, visit the EEOC's *Title I Technical Assistance Manual* at <http://askjan.org/links/ADAtam1.html>, section 2.3(a).

### **Where can I get more information about the ADA?**

The federal agencies that enforce the various titles of the ADA provide publications that help explain the requirements of all the titles. JAN has an ADA page on its Web site that includes many of these publications. The JAN ADA page is located at <http://askjan.org/links/adalinks.htm>.

The enforcing agency for Title I is the Equal Employment Opportunity Commission (EEOC), which can be reached at 800-669-4000 or on the Web at <http://www.eeoc.gov>. The EEOC provides numerous publications, including:

The ADA: Your Employment Rights as an Individual with a Disability at <http://www.eeoc.gov/facts/ada18.html>

Disability Related Inquiries and Medical Exams of Employees (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>

## II. REQUESTING AN ACCOMMODATION

### How do I know when to request an accommodation?

You can request an accommodation at any time during the application process or while you are employed. You can request an accommodation even if you did not ask for one when applying for a job or after receiving a job offer. In general, you should request an accommodation when you know that there is a workplace barrier that is preventing you, due to a disability, from competing for a job, performing a job, or gaining equal access to a benefit of employment like an employee lunch room or employee parking. As a practical matter, it is better to request an accommodation before your job performance suffers or conduct problems occur because employers do not have to rescind discipline that occurred before they knew about your disability.

From *Reasonable Accommodation and Undue Hardship* (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

### How do I request an accommodation?

According to the EEOC, you only have to let your employer know that you need an adjustment or change at work for a reason related to a medical condition. You can use "plain English" to make your request and you do not have to mention the ADA or use the phrase "reasonable accommodation."

Here are some examples:

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

Requests for reasonable accommodation do not have to be in writing so you can request accommodations in a face-to-face conversation or using any other method of communication. Your employer may choose to write a memo or letter confirming your request or may ask you to fill out a form or submit the request in written form, but the

employer cannot ignore your initial request. However, you may want to put your request in writing even if your employer does not require it. Sometimes it is useful to have a paper trail in case there is a dispute about whether or when you requested accommodation.

From *Reasonable Accommodation and Undue Hardship* (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

For more information regarding how to make a written accommodation request, visit *Accommodation Request Letter* at <http://askjan.org/media/accommrequestltr.html>.

### **Do I have to tell my employer that I have a disability?**

Under the ADA, employers are only required to provide accommodations for employees who are experiencing workplace problems because of a disability. Therefore, unless you let your employer know that you have a disability, the employer is not obligated to consider accommodations under the ADA.

### **How much medical information do I have to provide to my employer?**

Some employees do not want to give their employers a lot of details about their disability. If you prefer not to give a lot of information, you may want to limit the medical information you initially give to your employer when you request an accommodation. For example, you may want to tell your employer what you are having trouble doing, that the problem is related to a disability, and what your accommodation ideas are. Some employers will not ask for more information. However, employers have the right to request additional medical information when an employee requests an accommodation and if you do not provide it, the employer can deny your accommodation request. When an employee requests an accommodation and the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability and needs the requested accommodation.

For more information, visit *Medical Inquiry in Response to an Accommodation Request* at <http://askjan.org/media/medical.htm>.

### **What accommodations can I request?**

In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Under the ADA, employers are required to provide “reasonable” accommodations for employees with disabilities. Therefore, you can request any accommodation that is considered “reasonable.”

Here are some examples of reasonable accommodations from the EEOC:



- making existing facilities accessible
- job restructuring
- part-time or modified work schedules
- acquiring or modifying equipment
- changing tests, training materials, or policies
- providing qualified readers or interpreters
- reassignment to a vacant position
- medical leave
- work at home

The following are not considered forms of reasonable accommodation and therefore not required under the ADA:

- removing or eliminating an essential function from a job
- lowering production standards
- providing personal use items such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job

Note: While employers are not required to eliminate an essential function, lower a production standard, or provide personal use items, they can do so if they wish.

The only limitation on an employer's obligation to provide reasonable accommodations is that no such change or modification is required if it would cause "undue hardship" to the employer. "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.

From *Reasonable Accommodation and Undue Hardship* (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>.

### **How long does my employer have to respond to my accommodation request?**

According to the EEOC, there is no specific amount of time that employers have to respond to an accommodation request, but they should respond as quickly as possible. Unnecessary delays in responding or implementing an accommodation can result in a violation of the ADA. The EEOC provides the following examples:

Example A: An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second

request to the supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the ADA.

Example B: An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no ADA violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.

From *Reasonable Accommodation and Undue Hardship* (EEOC Guidance) at <http://www.eeoc.gov/policy/docs/accommodation.html>, see question 10.

### **III. NEGOTIATING AN ACCOMMODATION**

#### **How do I know if I am entitled to the accommodation I want?**

In general, to be entitled to an accommodation under the ADA, you must work for an employer with 15 or more employees (or a state or local government), you must be a person with a disability as defined in the ADA, and you must need the accommodation because of your disability. In addition, if there are other accommodations that will meet your needs, besides the one you want, your employer is free to choose among effective accommodation options. Finally, your employer can deny your accommodation if providing it would cause the employer an undue hardship.

#### **What if I am not sure what accommodation I need?**

Even if you are not sure what accommodation you need, you can go ahead and let your employer know that you need an adjustment or change at work because of a medical condition. Then, you and your employer can explore accommodation options together.

If you want to research accommodation options yourself, you can call JAN to get accommodation ideas or look at JAN's on-line accommodation publications at <http://askjan.org/media/atoz.htm>.

#### **What if my employer denies my accommodation request?**

If your employer denies your request, try to find out why so you know what to do next. For example, if your employer denied your request because your medical information did not show that you have a disability, you can provide additional information. Or, if your employer decided that the accommodation you requested would pose an undue hardship, you may want to suggest other options.

If you do not think your employer had a valid reason to deny your request, or the employer will not tell you why the request was denied, you can appeal the decision by going up the chain of command, filing a grievance with your union if you have one, or filing a complaint with the EEOC or your state enforcing agency.

For information regarding the complaint process, visit <http://www.eeoc.gov/charge/index.html>.

For a list of state enforcing agencies, visit <http://askjan.org/links/enforcement.htm>.

#### **What if I need another accommodation in the future?**

The duty to provide reasonable accommodation is an ongoing one so you can ask for more than one accommodation if needed. An employer must consider each request for reasonable accommodation on a case by case basis.

#### **What if my employer retaliates against me for requesting an accommodation?**

According to the EEOC, individuals who oppose unlawful employment discrimination, participate in employment discrimination proceedings, or otherwise assert their rights under the laws enforced by the EEOC are protected against retaliation. Therefore, if your employer retaliates against you for requesting an accommodation, you should report the retaliation to someone higher up in the company or agency or contact the EEOC immediately.

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