

# Reasonable Accommodation

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## What is a Reasonable Accommodation?

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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.

Equal employment opportunity: opportunity to attain same level of performance or to enjoy equal benefits and privileges of employment

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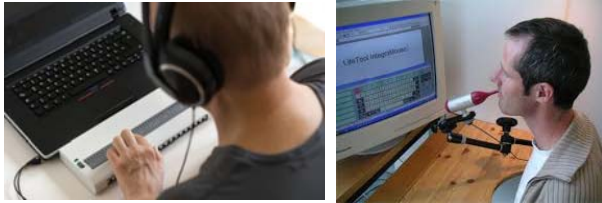
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**Types of Reasonable Accommodation**

Assistive Technology/Software



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**Types of Reasonable Accommodation**

Adaptive/Modified Equipment



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**Types of Reasonable Accommodation**

Physical Access to the Workplace



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**Types of Reasonable Accommodation**

Changes in the Work Schedule/Telecommuting



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**Types of Reasonable Accommodation**

Changes in Supervisory/Work Procedures



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**Types of Reasonable Accommodation**

Effective Communication



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### Accommodation Facts

Estimates that over 70% of employees with disabilities never request an accommodation

Cost effectiveness: 58% of employers reporting cost data paid nothing\*

7% of employers report that accommodations are very or extremely effective\*

\*Job Accommodation Network (Original 2005, Updated 2007, Updated 2009, Updated 2010, Updated 2011, Updated 2012, Updated 2013, Updated 2014, Updated 2015). *Workplace accommodations: Low cost, high impact.* Retrieved April 2016, from <http://AskJAN.org/media/lowcosthighimpact.html>

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### Who May Request Reasonable Accommodations?

**Individuals who meet the definition of a disability.**

- May request accommodations for the application process.
- May request accommodations at any time during employment.

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### Things to Know

- The decision to provide a requested accommodation is made on a case-by-case basis.
- There is no exhaustive list of accommodations.
- Accommodations are unique to the needs of each individual and job requirements.

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**Criteria for Determining if an Accommodation is "Reasonable".**

**Accommodations are considered "reasonable" if they do not cause:**

- An undue financial hardship
- An undue administrative burden
- A direct threat to health and safety.
- A change to the fundamental nature of the job or business.

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**Items Not Considered Accommodations.**

- Personal devices such as wheelchairs or hearing aids.
- Exemption from conduct standards.
- Lowered performance standards.
- Eliminate essential job functions.
- Change in supervisors.

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**Scenario:**

An employee with down's syndrome was having a difficult time remembering how to do all of the tasks of his stocking job at a local hospital. He requested a job coach to support him in establishing a routine. This service was to be provided by the state vocational rehabilitation agency at no cost to the employer.

Reasonable or not?

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Scenario:

Rodney is a clerk for a service agency. He has a seizure disorder. His morning meds cause him to be sluggish and drowsy so he takes advantage of the employer's flex time policy. One day, his supervisor informs him he can no longer "be late" and suggests the doctor change his medication regimen. Rodney is eventually suspended without pay. He formally requests an accommodation, allowing him to arrive before 11 am as long as he works his required 35 hours per week. The request is denied without any conversation with Rodney.

Reasonable request or no?

Horizontal lines for notes.

The Interactive Process of Reasonable Accommodation

Horizontal lines for notes.

First steps...

Disclosure

- Plain language
No mention of law or specific medical condition necessary
Great stopping point for managers

Horizontal lines for notes.

Employers are expected to engage in the interactive process of reasonable accommodation once an accommodation request is made.

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Employers' can be out of compliance with Title I regulations is they fail to engage in this process—

even if the accommodation request itself meets the criteria of "unreasonable" under the ADA

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### Starting the Process

**EMPLOYEE**

Responsibility to make initial request.

RA can be requested at any time during employment.

Previous disclosure of a disability should not be required.

**EMPLOYER**

Must engage in process to determine if an RA may be provided.

Can request in-house forms to be submitted.

No "official" government form that must be filed.

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### Documentation

EMPLOYEE

EMPLOYER

You may need to provide medical documentation of the nature of disability & how it effects major life activities or functioning.

Do not require an employee to "prove" a disability if the disability is obvious. (blindness)

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### Documentation

Describe why documentation is needed (i.e., to verify existence of disability and need for accommodation)

Identify the types of professional who can provide documentation

Describe the type of information needed in the documentation

- ▶Has a covered disability
- ▶Functional limitations that the person experiences because of the disability
- ▶Suggested accommodations in the workplace

If the information provided does not clarify, employer may send to professional of their choice

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### Confidentiality

EMPLOYEE

EMPLOYER

Information you provide should be kept confidential.

Medical and related information should be filed separately from personnel information.

The amount of information coworkers have about disability & accommodations is up to employee.

Information should only be made available as needed to to personnel with supervisory functions.

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### The Interactive Process: Questions to Cover

- What are the specific essential functions the employee is unable to perform?
- What ideas does the employee have for accommodations?
- What documentation do you need to verify the need for accommodation?
- What accommodation will be effective?

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### The Interactive Process: Outcomes

Facilitate a negotiation resulting in mutual agreement.

Explain what accommodation the employer is able and willing to provide.

Inform the employee about the employer's inability to provide a reasonable accommodation due to undue hardship.

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### RA Implementation

- Should not be held up by overly burdensome documentation process.
- Provide training on the provided accommodation, if necessary.
- Monitor implementation of the accommodation at regular intervals.
  - Explore options if first accommodation is unsuccessful.
- Document RA implementation process.
- Keep in mind that RA responsibilities are ongoing.

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### Basic Roles & Responsibilities

EMPLOYEES

- Request/disclose
- Provide documentation
- Participate in the process

EMPLOYERS

- Verify need
- Maintain confidentiality
- Participate in the process

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### Providing Accommodations

Streamline the process-Should be provided in a timely manner.

Clarify sources of funding.

Clarify who has a role in the process.

Maintain confidentiality.

Coordinate communication between employee and employer.

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### Scenario:

Terry was recently hired as a warehouse assistant in a distribution center for a large pharmaceutical retailer. After working for one week, Terry told her supervisor that she had diabetes and would need an accommodation of one extra 10 minute break during the day to monitor her condition. Terry's supervisor now wants to fire Terry because "she lied during the interview" by not telling about her accommodation need.

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**Scenario:**

Eric, who has a mild intellectual disability, works in the produce department of a large grocery store chain. When Eric started the job two years ago, a job coach designed a system to ensure that Eric stocked the produce correctly. Since then, Eric has been performing well. Two weeks ago, a new store manager came onboard. This new manager has now told Eric that she is standardizing job processes and policies and that Eric's accommodation can't be used in the new system. She has told Eric that he must learn the new system or find another job.

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**Scenario:**

Joan is a cashier at a major big box retail store. The store policy states that all cashiers must stand at the cash register during shifts. Joan begins to experience severe fatigue and pain in her knees. She is diagnosed with rheumatoid arthritis and requests to use a stool for a portion of her shift. The request is granted. Other employees start to grumble about the preferential treatment that Joan is receiving.

**How should the cashier supervisor handle the situation?**

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**Coworker Resentment**

When asked about accommodations:

- ▶Acting for legitimate business reasons
- ▶Acting in compliance with federal law
- ▶Tries to support the needs of all employees

Clearly communicate to coworkers that accommodation is not preferential treatment.

When possible, extend certain accommodations to all employees.

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# Common Barriers to Accommodation

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## Barrier 1

### Making assumptions about a diagnosis

- Listen to the employee about his/her functional limitations
- Avoid detailed and lengthy discussion of diagnosis
- Be effective in dealing with both obvious and hidden disabilities
- Reserve your personal judgments and opinions about the condition

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## Barrier 2

Focusing too quickly on leave or reassignment before other accommodations are considered

When possible, focus on accommodations that keep the person engaged in work

- Flex time
- Telecommuting
- Job sharing

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### Barrier 3

Stopping the interactive process because you believe no RA would enable the employee to perform the essential functions

Options:

- Working part time
- Reassignment
- Leave of absence

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### Barrier 4

Assuming a job function is essential simply because the supervisor says it is

Factors to consider:

- Job description
- Frequency & importance of the task
- Are others available to perform the task?
- Do other employees in the same position perform the task?

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### Barrier 5

Accommodation isn't properly deployed

- Consider what time, training, and adjustments might be needed to implement RA effectively
- Discuss next steps and expectations
- Monitor effectiveness of accommodation

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### Other Barriers

- Sharing with line managers all the specifics about an employee’s impairment.
- Dismissing an RA request because on its face it appears unreasonable.
- Inconsistency in enforcing policies and standards.
- Not creating an atmosphere of trust/ignoring the human element of disability in the workplace.

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### Other Barriers

- Eliminating accommodations because “things have changed and we can’t do it anymore”
- Considering performance in deciding whether a request is reasonable.
- Failing to engage in the interactive process because the employee request doesn’t include specific ideas
- Defining undue hardship too broadly

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#### Expect:

To have someone listen to your needs for an accommodation and ideas about what may work best.

#### What Shouldn’t Happen

Employer already has plan in place for “types of disabilities”

**Remember:** Accommodation requests are ALWAYS decided on a case-by-case basis.

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<b>Expect:</b> Focus on accommodations to do the job and what is involved in the job—not the disability.	<b>What Shouldn't Happen</b> Focus on details of disability and diagnosis.
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<b>Expect:</b> Visible and invisible disabilities treated the same.	<b>What Shouldn't Happen</b> Accommodation request taken less seriously or accommodation provided less quickly for invisible disability.
<b>Expect:</b> No personal judgements, comments or biases.	

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<b>Expect:</b> Discuss what will be needed to make the accommodation effective.	<b>What Shouldn't Happen</b> Employers to consider what time, training or adjustments might be needed to ensure that the accommodation is effective
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**Expect:**

To know next steps and expectations;

How effectiveness of accommodation will be tracked.

**What Shouldn't Happen**

No clarity on what, how, and why.

Accommodation effectiveness tied into performance evaluation.

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# Questions?

Great Plains ADA Center Technical Assistance

1-800-949-4232

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