**Requesting a Reasonable Accommodation- Frequently Asked Questions**

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**What is disability?**

Under current law, ADA/Rehabilitation Act of 1973, a disability is defined as a physical or mental impairment that substantially limits a major life activity.

**What does it mean to be a “qualified individual with a disability”?**

A “qualified individual with a disability” is 1) an individual who has a physical or mental impairment that substantially limits a major life activity, 2) an individual has all the necessary skills and abilities to required to perform their job, and 3) an individual who can perform the essential functions of their position with or without an accommodation.

**What are essential job functions?**

A job function may be considered essential for the following reasons: 1) the reasons the position exists is to perform that function; and (2) there is a limited number of employees available to which the job function can be distributed. Evidence of whether a particular job function is essential may include (1) the employer’s judgment as to which functions are essential; (2) the written job descriptions prepared before advertising or interviewing applicants for the job; (3) the amount of time spent on the job performing the function; (4) the consequences of not requiring the incumbent to perform the function; and (5) the terms of a collective bargaining agreement.

**Must a request for reasonable accommodation be in writing?**

No. A request for reasonable accommodation does not have to be in writing, but can be verbal or another mode of communication. However, a supervisor can ask the employee to follow-up a verbal request in writing. In addition, a request for reasonable accommodation need only indicate the need for an adjustment or work modification due to a medical condition. The request does not to specifically mention the ADA/Rehabilitation Act or the phrase “reasonable accommodation.”

**Does a request for reasonable accommodation have to come specifically from the employee?**

No. A request for reasonable accommodation may come from a family member, friend, health professional, or other representative.

**Must a manager withhold discipline for an employee who is disabled or has raised the issue of disability to management?**

No. An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity.

**Does a manager have to provide a reasonable accommodation to an employee with a disability who violated a conduct rule that is job-related and consistent with business necessity?**

An employer must make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such as conduct standard in the future barring undue hardship, except where the punishment for the violation is termination. Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual’s disability.

**How are determinations for eligibility to receive a reasonable accommodation made?**

In cases where the disability is obvious the Agency focuses on the nexus between the employee’s condition and the specific accommodation being requested to make sure that the accommodation requested would “effectively” meet the employee’s needs. In cases where the disability is not obvious, a determination must be made as to whether the employee (1) disabled, (2) a qualified individual with a disability, and (3) what accommodation would effectively meet the employee’s needs.

**Is a medical certificate from the Department of Social Security Administration stating that an individual is disabled enough to prove a disability for purposes of receiving a reasonable accommodation from the Agency?**

The fact that an individual has a record of being a disabled veteran, or a disability retirement, or is classified as disabled for other purposes does not guarantee that the individual will satisfy the definition of “disability.” Other statutes, regulations and programs may have a definition of “disability” that is not the same as the definition set forth in the ADA/Rehabilitation Act. Accordingly, in order for an individual who has been classified in a record as “disabled” for some other purpose to be considered disabled for the purposes of receiving a reasonable accommodation, the impairment indicated in the record must be a physical or mental impairment that substantially limits one or major life activities.

**Why does the Agency need additional medical documentation, if an employee has submitted a medical certificate from his/her physician stating a diagnosis?**

The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairment may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairments disabling or any number of other factors. An impairment that prevents an individual from performing a major life activity substantially limits that major life activity. Alternatively, an impairment is substantially limiting if it significantly restricts the duration, manner, or condition under which an individual can perform a particular major life activity.

**What are major life activities?**

They are basic activities that most people in the general population can perform with little or no difficulty. The ADAAA provides a non-exhaustive list of examples of major life activities. Many are drawn from the 1991 ADA regulation and subsequent EEOC guidance’s, or from ADA and Rehabilitation Act court cases. Examples of major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Three of these examples – sitting, reaching, and interacting with others – are not specifically included in the ADAAA’s non-exhaustive list of major life activities, but are included in the regulation.

The ADAAA also states that major life activities include the operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, and reproductive functions. The proposed ADA regulation adds several other examples -- hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular. The purpose of adding major bodily functions to the list of major life activities is to make it easier to find that individuals with certain types of impairments have a disability. For example, cancer affects the major bodily function of normal cell growth and diabetes affects the major bodily function of the endocrine system.

To meet one of the first two definitions of “disability,” an individual must either have an impairment that substantially limits performance of one major life activity or have a record of impairment that substantially limited one major life activity. It does not matter if the major life activity is from the first list (such as hearing or lifting) or the new list of major bodily functions. It is possible in many situations that an individual will be substantially limited (or have a record of such a limitation) in more than one major life

**What is meant by sufficient medical documentation?**

Medical documentation is sufficient if it: (1) describes the nature, severity, and duration of the employee’s impairment, the activity or activities that the impairment limits, and the extent to which the impairments limits the employee’s ability to perform the activity or activities; and, (2) substantiates why the requested reasonable accommodation is needed. Documentation is insufficient if it does specify the existence of an ADA disability and explain the need for reasonable accommodation. Documentation also might be insufficient where, for example: (1) the health care professional does not have the expertise to give an opinion about the employee’s medical condition and the limitations imposed by it; (2) the information does not specify the functional limitations due to the disability; or (3) other factors indicated that the information provided is not credible or is fraudulent. If an employee provides insufficient documentation, an employer does not have to provide reasonable accommodation until sufficient documentation is provided.

**Under the Reasonable Accommodation Process, is the disabled employee entitled to anything that he/she wants?**

No. The employee is only entitled to an “effective” accommodation and not the accommodation of choice. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, the “preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations.”

**Is the information regarding an accommodation request allowed to be disclosed to coworkers?**

No. The employer may not disclose that an individual is receiving a reasonable accommodation. The ADA/Rehabilitation Act specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworker. An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as “special” or “different” treatment by emphasizing “I am complying with the laws, regulations and the Department’s policy to provide assistance to any employee who encounters difficulties in the workplace. The employer may also find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer’s policy to respect employee privacy. Finally as long as there is no coercion by an employer, an employee with a disability may voluntarily choose to disclose to coworkers his/her disability and/or the fact that s/he is receiving a reasonable accommodation.

**Can an employee receive a new supervisor as a reasonable accommodation?**

The ADA/Rehabilitation Act does not require the Agency to change an employee’s supervisor as a reasonable accommodation.

**When can a request for a reasonable accommodation be denied?**

A request for reasonable accommodation can be denied if the individual requesting the accommodation is not “qualified individual with a disability” or if providing the requested accommodation would cause an undue hardship to the Agency or a Direct Threat.

**How does one determine an undue hardship?**

An undue hardship is based on several factors that include: 1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility making the reasonable accommodation; (3) the number of persons employed in the facility; (4) the effect on expenses and resources of the facility; (5) the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a lager entity); 6) the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer’s (7) the impact of the accommodation on the operation of the facility and (8) the impact of the Department’s mission.

**Can a request for an accommodation be denied because of coworker’s reaction?**

An employer cannot claim undue hardship based on employees (or customers) fears or prejudices toward the individual’s disability. Nor can undue hardship be based on the fact that provision of reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provision of reasonable accommodation would be unduly disruptive to other employee’s ability to work.

**What do I do if I feel like I have been discriminated against or if I disagree with the Agency’s determination of my eligibility to receive a reasonable accommodation?**

The notice of denial to the requestor shall include specific reasons for the denial, such as the reason a requested accommodation would not be effective or why it would result in undue hardship. Other reasons for denial may include: inadequacy of medical documentation to establish that the requestor is a “qualified individual with a disability;” the requested accommodation requiring the removal of an essential function; or the requested accommodation requiring the lowering of a performance or production standard.

If the deciding official has denied a specific requested accommodation, but offered an alternative which the requestor rejected, the denial notice must explain both the reasons for the denial of the requested accommodation and the reasons that the deciding official believes that the alternative accommodation would be effective. The denial notice must also inform the individual that he/she has the right to seek redress in an appropriate forum, which depending on the nature of the action, may include Equal Employment Opportunity (EEO) process, Merit System Protection Board process, or a negotiated grievance procedure.

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