

EMPLOYER TOOLKIT



Disability is Not Lack of Ability

ACKNOWLEDGMENT

The U.S. Department of Labor's Office of Disability Employment Policy is the source of this toolkit's content. For additional information, please visit the department's Web site at: **<http://www.dol.gov/odep>**.

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FOREWORD

Texans with disabilities have made numerous contributions to Texas throughout history. Consider Erastus “Deaf” Smith who destroyed a vital bridge that helped Texas win its independence; or, Matthew Duncan Ector who returned from the Civil War as an amputee and served on the Texas Court of Appeals. Most recently, the late Barbara Jordan lived with multiple sclerosis while serving in the U.S. House of Representatives.

A 2005 report on people with disabilities in Texas revealed that 10.9 percent of the population ages 18-64 have disabilities. However, only 39.3 percent of those with a disability are employed as compared to 72.1 percent of the general population. Persons with disabilities represent an untapped resource for business challenged by workforce shortages. Employers who hire the disabled have described them as conscientious, dependable and efficient workers.

A recent study by the Center for Social Development reports “overwhelmingly positive attitudes among consumers .. toward those that hire individuals with disabilities.” The report said that 92 percent of consumers surveyed felt more favorable toward companies that hire individuals with disabilities and 87 percent said they would prefer to give their business to such companies. Additionally, the study found that “98 percent of those who have been served by a disabled worker were very satisfied or satisfied with the services they received.”

Workforce Solutions invites you to review the materials in this Employer Tool Kit and learn about additional employer benefits associated with hiring persons with disabilities. We think you will find that it makes good business sense to consider the population of potential workers when making your next hiring decision.

DISABILITY IS NOT LACK OF ABILITY

One fact should be easy to grasp for almost any conscientious employer: A person's ability to do a job effectively and meaningfully cannot be assessed solely by the person's physical state. For nearly 40 years, employers have had clear guidelines about the importance of equal opportunity in the workplace, along with well-defined laws prohibiting discrimination based on the race, gender or sexual preference of job applicants. Likewise, laws against discrimination against disabled workers exist and must be observed. Ensuring equal opportunity for all employable citizens is certainly a priority for employers, and there are notable basic benefits related to equal opportunity employment practices — such as tax incentives.

A FEW FACTS ABOUT TAX INCENTIVES

There are three tax incentives available to help employers cover accommodation costs for employees and/or customers with disabilities to make a business environment accessible for these individuals. The three tax incentives are 1) Architectural/Transportation Tax Deduction; 2) Small Business Tax Credit and 3) Work Opportunity Tax Credit (WOTC).

1) ARCHITECTURAL/TRANSPORTATION TAX DEDUCTION

IR Code Section 190, Barrier Removal

What is it? Businesses may take an annual deduction for expenses incurred to remove physical, structural and transportation barriers for persons with disabilities.

Who is eligible? All businesses are eligible.

What expenses are covered? The architectural/transportation deduction is available each year to businesses with qualified expenses. It can be used for a variety of costs to make a facility or public transportation vehicle, owned or leased for use in the business, more accessible to and usable by persons with disabilities.

Examples of deductions include:

- Providing accessible parking spaces, ramps and curb cuts
- Providing telephones, water fountains and restrooms that are accessible to persons using wheelchairs
- Making walkways at least 48 inches wide
- Providing accessible entrances to buildings, including stairs and floors

What expenses are NOT covered? The deduction may not be used for expenses incurred for new construction, completion of renovation at a facility or on a public transportation vehicle, or for normal replacement of depreciable property.

What is the amount of tax deduction? The Internal Revenue Service (IRS) allows a deduction of up to \$15,000 per year for qualified architectural and transportation barrier removal expenses.

How can this expenditure be deducted? Businesses seeking to take a deduction for expenditures made for architectural and transportation modifications should follow the instructions found in IRS Publication 907 and IRS Publication 535, entitled: Business Expenses. It is important to note that businesses may not take a deduction and a tax credit on the same expenditure.

2) SMALL BUSINESS TAX CREDIT

IR Code Section 44, Disabled Access Credit

What is it? Small businesses may take an annual tax credit for making their businesses accessible to persons with disabilities. The total disabled access tax credits taken in 1996 on corporate income tax returns by all industries totaled \$11,865,000 (IRS 1996 Statistics of Income Report, 1999).

Who is eligible? Small businesses that in the previous year earned \$1 million or less in gross receipts or had 30 or fewer full-time employees are eligible for the Small Business Tax Credit.

What expenses are covered? The tax credit is available every year and can be used for a variety of costs such as:

- Sign language interpreters for employees/customers who have hearing impairments
- Readers for employees/customers who have visual impairments
- The purchase of adaptive equipment or the modification of equipment
- Printed materials in alternate formats (e.g., braille, audiotape, large print);
- The removal of architectural barriers in buildings or vehicles; and
- Other similar services (i.e., use of a job coach or a co-worker to provide support to an employee with a disability).

What expenses are NOT covered? The tax credit does not apply to the costs of new construction, and a building being modified must have been placed in service before November 6, 1990.

What is the amount of the tax credit? The credit is 50 percent of expenditures over \$250, but not to exceed \$10,250, for a maximum benefit of \$5,000.

How can this credit be claimed? Businesses can claim the Disabled Access Credit on IRS Form 8826.

3) WORK OPPORTUNITY TAX CREDIT (WOTC)

Hiring an individual from targeted groups who have a particularly high unemployment rate or other special employment needs may qualify you for a Work Opportunity Tax Credit (WOTC). This tax credit reduces your federal income tax liability when you hire someone from any of the following backgrounds:

- Qualified recipient receiving temporary assistance for needy families (TANF)
- Qualified veteran
- Qualified ex-felon
- High-risk youth
- Vocational rehabilitation referral
- Qualified summer youth employee
- Qualified food stamp recipient
- Qualified SSI recipient

How does it apply to persons with disabilities? An employer who hires an employee receiving Supplemental Security Income (SSI) or who is a certified vocational rehabilitation (VR) participant may claim the WOTC after certification is received from the State Employment Security Agency (SESA).

What is the amount? An employer may take a tax credit of up to 40 percent of the first \$6,000 in first-year wages per qualifying employee. The maximum per employee credit is \$2,400 in a given tax year. This credit applies only to employees who work at least 400 hours during the tax year. With respect to qualified summer youth employees, the maximum credit for each is \$1,200 (40 percent of the first \$3,000 of first-year wages).

What are the minimum employment requirements? A partial credit of 25 percent for certified employees who worked at least 120 hours, but less than 400 hours, may be claimed by the employer during a one-year period. No credit is available for employees who work less than 120 hours.

How do I claim the credit? Complete and submit IRS Form 8850, Pre-screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits, to your local SESA. Do not submit this form to the IRS.

How does it work? The following steps should be followed:

- The employer determines likely eligibility by including the WOTC pre-screening notice as part of the application process
- On or before the day employment is offered, the pre-screening notice must be signed by the employer and employee and mailed to the SESA within 21 days after the employee begins work
- The employer documents eligibility (based on information received from the employee) and submits documentation to the SESA.

SESA certifies which individuals are eligible for WOTC, and notifies the employer in writing for purposes of filing the tax credit.

But before an employer can enjoy the practical rewards of equal opportunity employment practices, certain facts must replace long-held myths about the effect of disabled workers in the workplace.

MYTHS AND FACTS ABOUT WORKERS WITH DISABILITIES

Myth 1: Hiring employees with disabilities increases workers compensation insurance rates.

Fact: Insurance rates are based solely on the relative hazards of the operation and the organization's accident experience, not on whether workers have disabilities.

Myth 2: Employees with disabilities have a higher absentee rate than employees without disabilities.

Fact: Studies by firms such as DuPont show that employees with disabilities are not absent any more than employees without disabilities.

Myth 3: Persons with disabilities are unable to meet performance standards, thus making them a bad employment risk.

Fact: In 1990, DuPont conducted a survey of 811 employees with disabilities and found 90 percent rated average or better in job performance compared to 95 percent for employees without disabilities.

Myth 4: Considerable expense is necessary to accommodate workers with disabilities.

Fact: Most workers with disabilities require no special accommodations and the cost for those who do is minimal or much lower than many employers believe. Studies by the Office of Disability Employment Policy's Job Accommodation Network have shown that 15 percent of accommodations cost nothing; 51 percent cost between \$1 and \$500; 12 percent cost between \$501 and \$1,000; and 22 percent cost more than \$1,000.

Myth 5: Employees with disabilities are more likely to have accidents on the job than employees without disabilities.

Fact: In the 1990 DuPont study, the safety records of both groups were identical.

Myth 6: It is impossible to determine a fair salary range for workers with disabilities.

Fact: Actually, determining this salary is simple. Employees with disabilities should receive prevailing wages and benefits based on productivity and job performance.

Myth 7: There is nothing I can do if an individual with disabilities is not the right fit or doesn't work out in my organization.

Fact: This is the statement everyone is afraid to articulate. They are really trying to say, "I can't fire a worker with disabilities if he doesn't work out." The ADA's intent is to ensure that individuals with disabilities are given the same opportunities and treatment as everybody else. Employers are not expected or encouraged to go easy on workers with disabilities. They should meet the same performance expectations and be subject to the same disciplinary actions as any other employee. If they are not doing the job or are falling short of the workplace's criteria, they should be coached, counseled, disciplined and, if necessary, terminated based upon established policies. Just as individuals with disabilities deserve equal consideration in the employment arena, they must be held accountable to the standards and expectations of their employment.

EMPLOYERS AND THE ADA: MYTHS AND FACTS

The Americans with Disabilities Act (ADA) is a landmark federal law that protects the rights of people with disabilities by eliminating barriers to their participation in many aspects of living and working in America. In particular, the ADA prohibits covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement, to pay and benefits.

The foundation for the ADA is America's promise of equal access to opportunity for all citizens. Being inclusive of people with disabilities—in recruitment, retention, promotion, and in providing an accessible environment—gives businesses a competitive edge. Below are some of the common myths about how the ADA affects employers and research and facts that negate them.

Myth: The ADA forces employers to hire unqualified individuals with disabilities.

Fact: Applicants who are unqualified for a job cannot claim discrimination under the ADA. Under the ADA, to be protected from discrimination in hiring, an individual with a disability must be qualified, which means he or she must meet all requirements for a job and be able to perform its essential functions with or without reasonable accommodations.

Myth: When there are several qualified applicants for a job and one has a disability, the ADA requires the employer to hire that person.

Fact: An employer is always free to hire the applicant of its choosing as long as the decision is not based on disability. If two people apply for a data entry position for which both speed and accuracy are required, the employer may hire the person with the higher speed and level of accuracy, because he or she is the most qualified.

Myth: The ADA gives job applicants with disabilities advantages over job applicants without disabilities.

Fact: The ADA does not give hiring preference to persons with disabilities.

Myth: Under the ADA, employers must give people with disabilities special privileges, known as accommodations.

Fact: Reasonable accommodations are intended to ensure that qualified individuals with disabilities have rights in employment equal—not superior—to those of individuals without disabilities. A reasonable accommodation is a modification to a job, work environment or the way work is performed that allows an individual with a disability to apply for a job, perform the essential functions of the job, and enjoy equal access to benefits available to other individuals in the workplace.

Myth: Providing accommodations for people with disabilities is expensive.

Fact: The majority of workers with disabilities do not need accommodations to perform their jobs, and for those who do, the cost is usually minimal. According to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, two-thirds of accommodations cost less than \$500, with many costing nothing at all. Moreover, tax incentives are available to help employers cover the costs of accommodations, as well as modifications required to make their businesses accessible to persons with disabilities.

Myth: The ADA places a financial burden on small businesses that cannot afford to make accommodations for individuals with disabilities.

Fact: Businesses with fewer than 15 employees are not covered by the employment provisions of the ADA. Moreover, a covered employer does not have to provide a reasonable accommodation that would cause an “undue hardship.” Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an organization’s size, financial resources and the nature and structure of its operation.

Myth: ADA lawsuits are flooding the courts.

Fact: The majority of ADA employment-related disputes are resolved through informal negotiation or mediation. The Equal Employment Opportunity Commission (EEOC), which enforces the ADA’s employment provisions, carefully investigates the merits of each case and offers many alternatives to litigation as a way to resolve any potential problem. The number of ADA employment-related cases, whether filed privately or by the EEOC, represents a tiny percentage of the millions of employers in the U.S.

Myth: The ADA is frequently misused by people with vague complaints or diagnoses.

Fact: If an individual files a complaint of discriminatory treatment, denial of accommodation or harassment under the ADA and does not have a condition that meets its definition of disability, the complaint is dismissed. While claims by people with false or minor conditions may get considerable media attention, the reality is that these complaints are usually dismissed.

Myth: The ADA protects employees who have difficult or rude personalities or are troublemakers.

Fact: Improper behavior in and of itself does not constitute a disability, and having a disability does not excuse employees from performing essential job tasks and following the same conduct standards required of all employees. The courts have consistently ruled that “common sense” conduct standards, such as getting along with co-workers and listening to supervisors, are legitimate job requirements that employers can enforce equally among all employees.

Myth: Under the ADA, an employer cannot fire an employee who has a disability.

Fact: Employers can fire workers with disabilities under three conditions:

- The termination is unrelated to the disability or
- The employee does not meet legitimate requirements for the job, such as performance or production standards, with or without a reasonable accommodation or
- Because of the employee’s disability, he or she poses a direct threat to health or safety in the workplace.

The Job Accommodation Network (JAN) is a key resource available to assist employers in understanding their responsibilities under the ADA: Call 1-800-526-7234 (V/TTY) for more information. We will next look at how avoiding myths about employees with disabilities will save the employer a lot of time and error when interviewing and hiring.

ARE YOU DISABILITY-FRIENDLY DURING THE HIRING PROCESS?

Let's Have a Look ...

Take this simple assessment to find out if you offer an environment that is attractive to workers with disabilities. Each line you check represents a characteristic likely to attract qualified workers with a disability.

On Recruitment ...

- a) We clearly state on our job announcements that we are an Equal Employment Opportunity employer.
- b) Our job descriptions clearly identify the essential and marginal functions of all positions
- c) Applicants are encouraged to request accommodations that provide them equal access to all phases of the recruitment process
- d) We are familiar with organizations and agencies that assist job seekers with disabilities.

On Hiring, Retention, Evaluation and Promotion ...

My company provides all new hires and job candidates with the following information addressing issues of particular interest to workers with disabilities.

- a) Workplace accommodations
- b) Flexible benefits
- c) Alternative Work Schedules

We periodically review our organizational policies and practices as they relate to workers with disabilities:

- a) Recruitment
- b) Hiring
- c) Training
- d) Evaluation
- e) Promotion
- f) Termination

We conduct “accessibility audits” of our organization to help identify possible barriers to:

- a) Physical access to facilities
- b) Equal employment opportunity
- c) Promotional opportunities
- d) Training for Workers with Disabilities

We educate managers, supervisors and interviewers on:

- a) Americans with Disabilities Act
- b) Wisconsin Fair Labor Standards
- c) Workplace Accommodations
- d) Disability Management/Return to Work
- e) Benefits of Hiring Workers with a Disability
- f) Disability Stereotypes

On Employee Training ...

My company provides flexible training opportunities, including:

- a) mentoring
- b) job rotation
- c) on-the-job coaching
- d) peer training
- e) internships

We provide equal access to company-sponsored training and social activities for all employees, including workers with disabilities:

- a) newsletters/notices
- b) breakrooms/lounge
- c) career advancement training
- d) specific skill training

On Accommodations ...

We talk about assessing and re-designing jobs for workers with disabilities with:

- a) managers
- b) supervisors
- c) lead workers

We provide the following accommodations to assist employees in performing their jobs:

- a) ergonomic workstations/keyboards
- b) flexible workstations
- c) other _____

On Compensation and Benefits ...

We offer alternatives to full-time employment:

- a) part-time employment
- b) job sharing
- c) flex-time

The following pro-active return to work policies and practices are in place:

- a) early intervention
- b) case management
- c) alternate duty assignments
- d) supervisor training

In addition, we offer similar or pro-rated benefits for part-time employees. (yes) (no)

Disability-Friendly Survey Gauge

If your total was:

- 1–12, you will have trouble attracting workers with disabilities
- 13–25, you are somewhat friendly to workers with disabilities
- 26–37, you are mostly workers-with-disabilities friendly
- 38–47, you are workers-with-disabilities friendly

- 1–12 Needs Improvement
- 13–25 Somewhat Friendly
- 26–37 Mostly Friendly
- 38–47 Disabled-Worker Friendly

To learn more about workers with disabilities and how you can become a more Workers with Disabilities-Friendly organization, contact Employer Services.

Question: Do you actively reach out and recruit potential employees with disabilities, or do you wait on the possibility of persons with disabilities coming to you?

Let's take a closer look at why this question matters.

HOW TO ATTRACT AND RETAIN WORKERS WITH DISABILITIES

1. Create non-traditional recruiting strategies
2. Consider options and flexibility
3. Consider “outside the box” approaches
4. Promote opportunities for workers with disabilities to update their skills
5. Combat negative stereotypes
6. Look at the person’s job skills — not the disability

1. Create non-traditional recruiting strategies by:

- Motivating current employees to recruit applicants with disabilities for existing employment opportunities.
- Posting job announcements on your Web site and consider including pictures of employees with disabilities.
- Remembering to identify your company as an “Equal Opportunity Employer” and add “Our Company Values Diversity.”
- Listing job openings in publications and on Web sites that target applicants with disabilities.
- Attending local job fairs for job seekers with disabilities to gain a better understanding of the skills and abilities they bring to the workforce.
- Establishing a positive working relationship with local agencies/organizations, such as the Wisconsin Division of Vocational Rehabilitation, that provide employment assistance for job seekers with disabilities.

2. Consider options and flexibility by:

- Possibly providing internships/work experience placements for individuals with disabilities as a means of increasing the “comfort level” of staff and the potential applicant.
- Accessing information on reasonable accommodations and related tax incentives through local rehabilitation agencies/organizations.
- Considering telecommuting, job sharing and other alternative employment options.
- Explore accommodations (i.e., interpreters, readers, large print) when interviewing and testing applicants with disabilities.

3. Consider “outside the box” approaches, such as:

- Exploring modifications to existing workstations/procedures to reduce injuries, enhance productivity and accommodate workers with disabilities.
- Considering mentoring partnerships as a way to make workers with disabilities feel at home.
- Considering greater use of “cafeteria” style benefit packages to facilitate the hiring of persons with disabilities in flexible work arrangements.

4. Promote opportunities for workers with disabilities to update their skills, such as:

- Ensuring that workers with disabilities receive the same access to employer-provided training as their co-workers.
- Encouraging workers with disabilities to stay competitive via training in the increasingly technology-based economy.
- Reviewing company programs to address multiple learning styles. Avoid one-size-fits-all approaches.

5. Combat negative stereotypes by:

- Offering management level training and employee workshops to eliminate disability-related bias in the workplace.
- Ensuring that disability bias plays no part in hiring, training or retention decisions.

6. Look at the person's job skills — not the person's disability:

Simply display the same objectivity required when interviewing a job applicant whose race, gender or sexual orientation differs from that of most or all of your present employees.

The process of attracting and retaining workers with disabilities does not have to be overwhelming. There are federal guidelines available to any employer.

DISABILITY EMPLOYMENT 101

The Disability Employment Guide, published by the U.S. Department of Education, is a comprehensive analysis of hiring employees with disabilities that includes information about how to find qualified workers with disabilities, how to put disability and employment research into practice and how to model what other businesses have done to successfully integrate individuals with disabilities into the workforce.

Among other things, the guide provides information regarding Department-funded vocational rehabilitation agencies, Disability and Business Technical Assistance Centers (DBTACs) and Centers for Independent Living (CILs). It also includes checklists and various other resources to aid employers as they prepare to employ people with disabilities.

You may also wish to peruse the Disability Employment 101's companion brochure, Disability Employment 101 For Your Business. Visit www.ed.gov. Hiring a person with a disability may require a few workplace adjustments, but these are relatively simple, as we shall see next.

REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

The Americans with Disabilities Act (ADA) requires an employer with 15 or more employees to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodations:

- i changes to a job application process
- ii changes to the work environment, or to the way a job is usually done
- iii changes that enable an employee with a disability to enjoy equal benefits and privileges of employment (such as access to training).

Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, workplace barriers may keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or

rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

This guide answers some of the key questions facing small businesses in connection with reasonable accommodations. It explains the obligations of both employers and individuals with disabilities, and reviews the limits on how far employers must go in providing reasonable accommodations.

This guide is adapted from the Equal Employment Opportunity Commission's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA. Small employers wishing to learn more about reasonable accommodation and undue hardship should call 1-800-669-3362 to request a free copy of the Enforcement Guidance, or review it at EEOC's Web site, www.eeoc.gov.

Requesting Reasonable Accommodation

1. How must an individual request a reasonable accommodation?

The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

2. What must an employer do after receiving a request for reasonable accommodation?

When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed. There are extensive public and private resources to help employers and individuals with disabilities who are not familiar with possible accommodations. (See the Appendix to this guide for a resource directory to help identify reasonable accommodations.)

3. Must an employer provide the reasonable accommodation that the individual wants?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

4. How quickly must an employer respond to a request for reasonable accommodation?

An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation.

Types Of Reasonable Accommodations

There are many different kinds of reasonable accommodations. Below is information on some of them.

5. Is restructuring a job a reasonable accommodation?

Yes. This includes: (1) shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability; and (2) altering when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place.

6. Is providing leave necessitated by an employee's disability a form of reasonable accommodation?

Yes, absent undue hardship, providing unpaid leave is a form of reasonable accommodation. However, an employer does not have to provide more paid leave than it provides to other employees.

7. May an employer apply a "no-fault" leave policy, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs additional leave?

If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must provide the employee with the additional leave even if it has a "no-fault" policy. An employer, however, does not need to provide leave if: (1) it can provide an effective accommodation that allows the person to keep working, or (2) it can show that granting additional leave would cause an undue hardship.

8. When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that requires him/her to remain on the job instead?

Yes, if the employer's proposed reasonable accommodation would be effective and eliminate the need for leave. Accordingly, an employer may reallocate minor job tasks or provide a temporary transfer instead of leave, so long as the employee can still address his/her medical needs.

9. Is a modified or part-time schedule a reasonable accommodation?

Yes, absent undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.

10. Is it a reasonable accommodation to modify a workplace policy because of an employee's disability?

Yes. For example, granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. However, reasonable accommodation only requires that the employer modify the policy for an employee with a disability. The employer may continue to apply the policy to all other employees.

11. Does an employer have to reassign to a vacant position an employee who can no longer perform his/her job because of a disability?

Yes, unless the employer can show that it would be an undue hardship. The following criteria apply to reassignment: An employee must be “qualified” for the new position. This means that s/he: (1) satisfies the skill, experience, education, and other job-related requirements of the position, and (2) can perform the primary job tasks of the new position, with or without reasonable accommodation. The employer does not have to assist the employee to become qualified.

An employer does not have to bump other employees or create a position. Nor does an employer have to promote the employee. Reassignment should be to a position that is equal in pay and status to the position that the employee held, or to one that is as close as possible in terms of pay and status if an equivalent position is not vacant.

12. Does a reasonable accommodation include changing a person’s supervisor?

No. The ADA may, however, require that supervisory methods, such as the method of communicating assignments, be altered as a form of reasonable accommodation.

Other Reasonable Accommodation Issues

13. Are there certain things that are not considered reasonable accommodations and are therefore not required?

- An employer does not have to eliminate a primary job responsibility.
- An employer is not required to lower production standards that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.
- An employer does not have to provide personal use items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.
- An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

14. May an employer tell other employees that someone is receiving a reasonable accommodation?

No, because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers. An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as “different” or “special” treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may 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. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons. Employers might also find it helpful to provide all employees with information about various laws that require employers to meet certain employee needs (e.g., the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees.

15. May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?

If an employer knows that an employee has a disability, it may ask whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.

Undue Hardship: Limits On Providing Reasonable Accommodations

An employer never has to provide any reasonable accommodation that causes undue hardship, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Every request for reasonable accommodation should be evaluated separately to determine if it would impose an undue hardship, taking into account:

- the nature and cost of the accommodation needed;
- the overall financial resources of the business; the number of persons employed by the business; and the effect on expenses and resources of the business;
- the impact of the accommodation on the business.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference. An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be unduly disruptive to other employees' ability to work.

16. Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?

No. If modifying one employee's work hours (or granting leave) would prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

17. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

In some situations, an employee may be able to provide only an approximate date of return because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. Undue hardship could result if the employer can neither plan for the employee's return nor permanently fill the position. In other situations, an employer may be able to be flexible.

AFTERWORD

Employers are urged to carefully review this toolkit and employ it as reference material. Following the guidelines set in this document will make your workplace not only more progressive, but also more productive and efficient.

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Workforce Solutions

Workforce Solutions and other Workforce Board projects are administered by the Houston-Galveston Area Council's Workforce staff.

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