

How to Accommodate Disabilities under ADA

Here's a method to assure you're following ADA rules.

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What should you do when someone with a disability applies for a job? How can you be sure that you've made every effort to accommodate the applicant—and that you're complying with the rules set down by the Americans with Disabilities Act (ADA)?

Use an Interactive Process

The ADA requires you to make accommodations for both current and prospective disabled employees to perform the “essential functions” of a job.¹ To do so, you must use an interactive process. Here is a model, recommended by legal experts, for you to follow:

Step 1: Define the Job.

First, you must decide which tasks are “essential” to the job. The EEOC is more inclined to believe that functions are essential if they are (1) mentioned in the job description when the job is first advertised and (2) reviewed when interviewing applicants.²

To compile a list of the job's duties, talk with current job holders, observe them doing their jobs, and note duties listed in established job descriptions. Ask current job holders to evaluate these duties based on how important they are to performing the job and how often they are performed. Those tasks that have

either above-average importance or above-average frequency can be classified as essential job functions.³

Another way to pinpoint essential functions is to ask such questions as these:

- Would removing the function fundamentally alter the job?
- Is performance of the function the reason the position exists?
- Can other employees perform the function instead?
- Does the function require a special skill that a new employee is expected to have?

Prepare a KSAP Matrix.

To quantify essential job functions, you'll find it useful to prepare a KSAP matrix. KSAP stands for Knowledge, Skills, Abilities, and Personal characteristics.⁴ Have the people familiar with the job identify which KSAPs are necessary for which duties and which ability level is needed for each KSAP on an employee's first day. Based on their conclusions, rate each job function from 0 to 10 in

terms of its importance, with 0 being unimportant and 10 being essential. Then rate each job function according to how often it is performed, with 0 meaning that the duty is never performed and 10 meaning that the duty is performed constantly.

For example, Figure 1 shows a KSAP matrix for a job that has five essential functions—lifting, typing, throwing, catching, and grabbing. On this matrix, the task of lifting has an importance rating of 4 and a frequency rating of 2. Later on, we'll show how you can use this matrix in a variety of ways.

Step 2: Talk to the Applicant.

Next, discuss the job with the applicant. Discuss how the person's disability affects performance of the essential functions of the job.

Be sure to focus on performing job functions rather than asking about the disability itself. For example, you may not ask if the indi-

Figure 1: KSAP Matrix, Productivity Calculation

FUNCTION	IMPORTANCE RATING	FREQUENCY RATING	PRODUCT
Lifting	4	2	8
Typing	5	1	5
Throwing	3	4	12
Catching	4	4	16
Grabbing	1	5	5
Total Productivity Factor			46

vidual has back problems. You may, however, require a lifting demonstration that tests the specific lifting requirements of the job.

In this discussion, you'll find it helpful to use the KSAP matrix you prepared in Step 1. Focusing on the knowledge, skills, abilities, and personal characteristics necessary to perform the job will keep your discussion focused on essential tasks rather than general health problems.

Step 3: Decide if Accommodations Can Be Made.

You and the applicant should identify possible ways of altering the work environment so that the employee can perform the essential job functions. Consider how effective each method would be.

You must provide an accommodation unless (1) you and the applicant aren't able to identify an accommodation or (2) the accommodation will cause an "undue hardship" on your organization.

Can You Prove "Undue Hardship"?

Undue hardship is defined as either a significant difficulty, such as the unavailability of someone to design a unique product, or an expense which would be a financial burden to the organization.

The test for undue hardship involves comparing the cost of accommodation to the resources of the organization. For example, a

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school in Ohio was told that it needed to install an elevator to accommodate its disabled students. Because of the unique structure of the building, however, adding an elevator would cost \$280,000. The Ohio court ruled that the school was not in violation of the ADA, since the elevator's expense was significant in light of the school's resources.⁵

In most cases, however, organizations have a hard time proving undue hardship, because the costs aren't usually so high. The average cost to make job accommodations is \$200, and 50% of all job accommodations cost less than \$50.⁶ Often, the accommodation is an easy fix, such as providing the person with an ergonomic chair.

If you think the expense would create an undue hardship on your organization, use the following procedure to document this fact:

1. Find the job that needs accommodations on the KSAP matrix you prepared in Step 1 (see the matrix in Figure 1). Use the list of essential tasks you created for this job. Multiply each task's importance

rating with its frequency rating. In Figure 1, for example, you multiply 4 by 2 for a product of 8 for the task of lifting. For typing, you multiply 5 by 1 for a product of 5. Do this for each essential task for the job in question.

2. Next, add the products of all the tasks. The resulting number is the total productivity factor for the job in question. For the job in Figure 1, for example, the total productivity factor is 46.

3. Take the annual salary for the job, and divide by the total productivity factor from Step 2. For example, if the job in question has an annual salary of \$50,000, you divide \$50,000 by 46 for an answer of \$1,086.96.

4. On the matrix, find the product for the task in question. For example, if accommodation is needed in the throwing function, the product shown in Figure 1 is 12. Multiply this number by the answer from Step 3. This gives you the value of the activity to the organization. For the throwing function, for example, multiply 12 by \$1,086.96. Thus, the value of this function to the organization is \$13,043. You could therefore set \$13,043 as the maximum amount you would spend on accommodations for this function. If accommodations cost more than that, you would have a good case for proving undue hardship.

Can You Prove a "Direct Threat"?

Even if you can make reasonable accommodation without undue hardship, you can refuse to hire a dis-

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abled person if the disability has a high probability of hurting others (or a low probability if the potential damage to others is severe). For example, one court ruled that an HIV-positive surgeon posed a significant health risk and wasn't protected under the ADA.⁷

Note the New Court Ruling.

The courts revised the ADA in November, 1998. Now disabled workers who can't perform their jobs and for which accommodations would be unreasonable must be given a vacant job if they meet the minimum qualifi-

cations.⁸ Previously, only equal consideration for vacant jobs was required.

Do You Need Financial or Technical Assistance?

If you can't find a way to accommodate the applicant without undue hardship, you may qualify for financial or technical assistance from the government. For example, a \$2,400 tax credit is available for hiring disabled workers referred by the government. Assistance is also available from such sources as the ADA

Regional Business and Disability Technical Assistance Centers, the Job Accommodation Network, and the President's Committee on Employment of People with Disabilities.⁹

Step 4: Make Reasonable Accommodations.

If you decide that you can accommodate a disabled worker without undue hardship or direct threat, you must make such accommodations. If possible, use the accommodation method preferred by the worker.

What Will Happen if You Don't Use the Interactive Process?

An example is provided by Utah's Snow College.¹⁰ One of its student workers was diagnosed with bipolar affective disorder (a mental disability covered by the ADA). The college's first step should have been to determine how this disability affected performance of her job's essential functions. Next, the college should have talked with her about ways to provide reasonable accommodations. Instead, the college fired her. Because it didn't follow the interactive process, the college violated ADA rules.

On the other hand, several recent cases showcase organizations that used the interactive process effectively. In one case, an employee had trouble gripping things. After discussing the problem with him, the organization replaced his office door-knob with a lever and gave him an automatic gate opener for the office parking lot. In another case, an organization installed special bill-reading machines for its blind cashiers and a flashing alarm system for its deaf employees.¹¹ Such accommodations proved far less expensive than the lawsuits that have dogged Snow College because it didn't use the interactive process. Not only are

lawsuits expensive, but they are disruptive, time-consuming, and demoralizing and may even spell the demise of an organization. ■

Footnotes

¹The ADA went into effect in 1992 with the purpose of reducing unemployment among people with disabilities. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities, such as walking, standing, and lifting. (State and local laws may have broader definitions to include other activities.) The ADA states that an employer can’t dismiss a qualified applicant because of a disability. Employees are required to provide accommodations for disabled workers in the following three areas: (1) the application process, (2) the essential functions of a job, and (3) the benefits of employment. See “Nonprofits and the Americans with Disabilities Act” and “Do Your Job Descriptions Comply with ADA?” in *Law & Taxation, Leadership Series, Volume II* (to order, call 608-274-9777).

²EEOC, *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, 1992*, <http://janweb.icdi.wvu.edu/kinder/pages/taml.htm>.

³Hollwitz, J., Bolte, D. and D.F. Goodman, “Complying with the Americans with Disabilities Act: Assessing the Costs of Reasonable Accommodation,” *Academic Universe*, 1995.

⁴Drauden, G.K. and N.G. Peterson, *A Domain Sampling Approach to Job Analysis*, St. Paul: Test Validation Center, 1974.

⁵Foster, L., “Elevator Too Costly for School but Lyncourt Can Make Other Changes to Accommodate Pupils with Disabilities,” Syracuse: *The Post*, Feb. 11, 1999.

⁶See H. Lippman, “A Helping Hand,” *Business and Health*, Vol. 16, No. 12, 1998, and K.N. Robinson, *A Human Resource Perspective on Implementing the ADA*, http://janweb.icdi.wvu.edu/kinder/pages/HR_perspective.html.

⁷Postol, L.P. “A Reasonable Hardship: Complying with the Americans with Disabilities Act,” *Risk Management*, Vol. 43, No. 5, 1996.

⁸Casison, J., “Employers Face a New Battle,” *Incentive*, Vol. 173, No. 2, 1999.

⁹EEOC, *op. cit.*

¹⁰Egan, D., “Allegations of Bias Dog College,” Salt Lake City: *Salt Lake City Tribune*, Feb. 15, 1999.

¹¹Fine, H., “Companies Take ADA Compliance in Stride,” *Orange County Business Journal*, Vol. 20, No. 8, 1997.

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