



The ADA and a **Defensible** Process

PRESENTED BY LANCE HAFFNER, PHR, SHRM-CP



I seldom think about my limitations, and they never make me sad. Perhaps there is just a touch of yearning at times; but it is vague, like a breeze among flowers.

Hellen Keller



Why is it important?



[EEOC Sues Media Star Promotions For Disability Discrimination - 10/2/2015](#)

[EEOC Sues Coca-Cola Bottling Of Mobile for Sex Discrimination - 10/1/2015](#)

[EEOC Sues Safeway, Inc. For Disability Discrimination - 10/1/2015](#)

[EEOC Launches FOIAXpress to New Automated Program for FOIA Requests - 10/1/2015](#)

[Reserve Casino Hotel Sued by EEOC for Age and Sex Discrimination - 10/1/2015](#)

[Austin's Park N Pizza Sued by EEOC for Disability Discrimination - 10/1/2015](#)

[EEOC Sues Glaser Organic Farms for Discrimination Based on National Origin and Color - 9/30/2015](#)

[EEOC Sues John Q. Hammons Hotel Management for Race Harassment - 9/30/2015](#)

[Northwest Territorial Mint Sued by EEOC for Sexual Harassment - 9/30/2015](#)

[EEOC Sues Philips Lighting for Retaliating Against Employee - 9/30/2015](#)

[Bloomfield Senior Living at Bluffton Sued for Race Discrimination - 9/30/2015](#)

[Sierra Academy of Aeronautics Voluntarily Settles EEOC Pregnancy Charge for \\$60,000 - 9/30/2015](#)

[New 'Digest Of EEO Law' Issued By EEOC - 9/30/2015](#)

[EEOC Sues Peoria Dealership Green Chevrolet for Disability Discrimination and Retaliation - 9/30/2015](#)

[Georgia Mentor Sued By EEOC For Pregnancy Discrimination - 9/30/2015](#)



EEOC Sues Safeway, Inc. For Disability Discrimination

Grocery Store, Refused to Grant Reasonable Accommodation, Fired Clerk, Federal Agency Charges

BALTIMORE -Safeway, Inc., a leading grocery store chain, violated federal law when it refused to accommodate a clerk and terminated her because of her disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit announced today.

According to EEOC, Patricia Bonds worked as a food clerk at Safeway's Westminster, Md. store, when she sustained a work-related injury that caused adhesive capsulitis and a torn rotator cuff in her right shoulder. As a result, she was substantially limited in her musculoskeletal functioning and lifting ability.. Safeway initially accommodated Bonds' disability by reassigning her to work at the customer service desk. Despite her satisfactory performance, Safeway placed Bonds on unpaid, indefinite leave, claiming she had exhausted her time limit for modified duty. Safeway refused to grant Bonds' request for a reasonable accommodation

Clerk suffered a work related injury, torn rotator cuff, received permanent lifting restriction, she was assigned to the customer service desk but then subsequently terminated after the store decided to end the accommodation

"Ms. Bonds suffered a work-related injury that resulted in a significant impairment to her musculoskeletal functioning and a lifting restriction, which is a disability under the ADA," said EEOC Philadelphia District Director Spencer H. Lewis, Jr. "Unfortunately, Safeway made it worse when it decided to no longer provide her with a job reassignment as required by the law."

EEOC Regional Attorney Debra M. Lawrence said, "No one wins when an employer imposes an arbitrary limit on how long it will provide a reasonable accommodation-not the employee who suddenly is out of work and not the employer who must face an EEOC enforcement action."

EEOC Philadelphia District Office has jurisdiction over Pennsylvania, Maryland, Delaware, West Virginia and parts of New Jersey and Ohio. Attorneys in the EEOC Philadelphia District Office also prosecute discrimination cases in Washington, D.C. and parts of Virginia.

EEOC enforces federal laws prohibiting employment discrimination. Further information about the agency is available at its website, www.eeoc.gov.

EEOC Sues Cessna for Disability Discrimination

Aircraft Manufacturer Rescinded Job Offers Using Workers Compensation Guidelines Without Regard for the ADA, Federal Agency Charges

MILWAUKEE - Aircraft manufacturer Cessna Aircraft Company violated federal law by rescinding job offers to applicants – who were medically qualified to perform the jobs – because of generalized standards that were not relevant to the individual employee, the U.S. Equal Employment Opportunity Commission charged in a lawsuit filed yesterday. These standards included workers' compensation maximum medical

Cessna rescinded a job offer after he passed his post-offer medical examination and they learned he had outpatient surgery scheduled for carpal tunnel syndrome based on workers' compensation policy, which it was following. Here the ADA conflicted with the company's workers' compensation policy.

Such alleged conduct violates the Americans with Disabilities Act (ADA), which prohibits discrimination based on disability. It also prohibits use of qualification standards, such as compliance with workers compensation standards, which tend to screen out persons with disabilities. The lawsuit, filed in the U.S. District Court for the Eastern District of Wisconsin (*Equal Employment Opportunity Commission v. Cessna Aircraft Co.*, Civil Action No. 2:15-cv-01166-LA), seeks damages for Cote and other conditional employees whose job offers were rescinded because of their disabilities, as well as injunctive relief. "Workers' compensation guidelines do not supersede the ADA," said EEOC Chicago District Regional Attorney John Hendrickson. "Employers are required to comply with both laws. With regard to the ADA, that means that employers must make individualized assessments of applicants and employees abilities to perform the essential functions of their jobs as soon as the employer becomes aware of impairments. An employer cannot wait to comply with the ADA until an employee is at maximum medical improvement."

EEOC's Chicago District Office is responsible for processing discrimination charges, administrative enforcement and the conduct of agency litigation in Wisconsin, Minnesota, Illinois, Iowa, North Dakota and South Dakota, and operates Area Offices in Milwaukee and Minneapolis.

EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.



Xerox State Healthcare, LLC Sued By EEOC For Disability Discrimination

Health Care Company Denied Accommodation for Urine-Based Drug Screening for Applicant With Renal Failure, Federal Agency Charged

Pre-employment policy conflicts with ADA. Applicant with renal failure could not perform a traditional urinalysis test. Applicant offered to work with dialysis center to produce a sample but the employer refused and rescinded the offer.

September 2014. The employment offer was contingent upon successful completion of a pre-employment drug screening. Although Dozier was willing to undergo drug screening, she informed both the company and the lab representative at the drug testing facility, her disability prevented her from providing a urine sample. The complaint alleges Dozier also informed both Xerox Healthcare and the lab representative her dialysis center would perform a drug test in place of the urine testing. Xerox Healthcare denied the request and Dozier was not hired.

The alleged conduct violates the Americans with Disabilities Act (ADA), which requires employers to provide qualified disabled employees, as well as applicants, with reasonable accommodations, including during the application process. EEOC filed suit in U.S. District Court for the Western District of North Carolina, Charlotte Division (*Equal Employment Opportunity Commission v. Xerox State Healthcare, LLC*, Civil Action No. 3:15-cv-00427) after first attempting to reach a pre-litigation settlement through its conciliation process.

"A company's applicants are covered by the ADA just as employees are," said Lynette A. Barnes, regional attorney for EEOC's Charlotte District Office. "When a company is aware that a qualified applicant needs a reasonable accommodation in order to complete an aspect of the hiring process, the company must grant that request unless it poses an undue hardship for the company."

EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.

Tucson-Area Trucking Company CTI to Pay \$300,000 to Settle EEOC Disability Discrimination Lawsuit

Company Failed to Provide a Reasonable Accommodation to Class of Individuals with Disabilities Federal Agency Charged

PHOENIX - CTI, Inc., a Tucson-area regional trucking company, will pay \$300,000 and furnish other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to EEOC's suit, CTI denied reasonable accommodations to a class of individuals with disabilities. Specifically, CTI denied requests for unpaid leave beyond 12 weeks and transfers into open positions for which the disabled employees were qualified.

For example, the EEOC charged that CTI discriminated against Elizabeth Barr because of her disability. CTI employed Barr as a payroll and billing clerk from November 2002 until August 2010. Barr suffered from a rare eye disease that substantially limited her eyesight, and she needed multiple surgeries to correct her eyesight. Barr took leave under the Family Medical Leave Act (FMLA). Prior to the expiration of her FMLA leave, CTI wrote her a letter informing her that if her doctor did not release her to "full, unrestricted duty" by the time her FMLA leave expired, her employment and benefits might be terminated. Barr asked CTI for additional time to recover, but CTI denied her requests, refused to explore possible accommodations, and terminated her on the day her FMLA leave expired.

Trucking company settles suit for \$300K. It had a strict policy allowing no more than 12 weeks of leave, irrespective of circumstances. It also denied disabled employees to transfer into open positions for which they were qualified.

- eliminate its policy of requiring employees to return to work with no medical restrictions;
- eliminate its policy of not considering leaves of absence, extended time off, light duty or reassignment as reasonable accommodations for individuals with disabilities;
- every six months for five years, report to the EEOC on compliance;
- train all its employees, including president, vice president, and human resources manager, on the ADA each year for five years;
- give Barr and other aggrieved individuals an apology and positive letter of reference;
- make job offers to the aggrieved individuals and Barr if there are job openings; and
- institute an evaluation system for supervisors and managers regarding their compliance with EEO laws.

"Employers should know they violate the law when they have blanket policies requiring disabled employees not to return to work until they are 100% healed," said EEOC Phoenix Regional Attorney Mary Jo O'Neill. "Such employers violate the ADA because they fail to conduct individualized assessments to explore reasonable accommodations that may allow disabled employees to return to work. Employers also violate the ADA when they have inflexible, rigid policies limiting unpaid leave to 12 weeks. Again, employers have an obligation beyond the FMLA to provide unpaid leave as a reasonable accommodation unless to do so would result in an undue hardship to the employer."

EEOC District Director Rayford O. Irvin added, "Employers must grant employees with disabilities reasonable accommodations including leaves of absence, time off, light duty and reassignment -absent undue hardship. And they also must conduct fact-specific individualized evaluations when deciding a proposed accommodation is indeed an undue hardship rather than simply relying on assumptions or beliefs."



United Airlines to Pay over \$1 Million To Settle EEOC Disability Lawsuit

Supreme Court Lets Stand 7th Circuit Ruling That Reassignment Is Reasonable Accommodation

CHICAGO - In a case that garnered nationwide attention, air transportation giant United Airlines Inc. has agreed to pay more than \$1 million and implement changes to settle a federal disability lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

The EEOC's lawsuit charged that United's competitive transfer policy violated the Americans with Disabilities Act (ADA). The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would impose an undue hardship for the employer. By requiring workers with disabilities to compete for vacant positions for which they were qualified and which they needed in order to continue working, the company's practice frequently prevented employees with disabilities from continuing employment with United, the EEOC said.

The consent decree settling the suit, signed by Hon. Judge Harry Leinenweber and entered today, requires United to pay \$1,000,040 to a small class of former United employees with disabilities and to make

United airlines settles disability case for \$1MM for policy that required disabled employees to compete for openings. Court ruled that United should have assigned the employees to the openings vs. making them compete with their non-disabled peers assuming it doesn't cause an undue hardship.

an employer assign employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship to the employer." The Supreme Court refused United's subsequent request for review on May 28, 2013. EEOC Appellate Attorney Barbara Sloan handled the appeal and Supreme Court briefing for the agency.

"The appellate court's decision provided an important clarification regarding an employer's responsibility under the ADA to provide a reasonable accommodation so qualified employees may lead economically independent lives," said EEOC General Counsel David Lopez. "I am pleased this major decision also served as a springboard for the strong monetary and non-monetary remedies in today's resolution."

EEOC Regional Attorney William Tamayo said, "If a disability prevents an employee from returning to work in his or her current position, an employer must consider reassignment. As the Seventh Circuit's decision highlights, requiring the employee to compete for positions falls short of the ADA's requirements. Employers should take note: When all other accommodations fail, consider whether your employee can fill a vacant position for which he or she is qualified."

EEOC San Francisco Acting District Director Michael Connolly noted, "We commend United for agreeing to make these important companywide changes that will enable employees with disabilities to stay employed at jobs they are qualified to do, as was intended under the ADA's protections."

According to the company website, United Airlines has almost 84,000 employees in every U.S. state and in many countries around the world. The air carrier has the world's most comprehensive route network, including U.S. mainland hubs in Chicago, Denver, Houston, Los Angeles, New York / Newark, San Francisco and Washington, D.C. and operates an average of nearly 5,000 flights a day to 373 airports across six continents.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.

Baker Concrete to Settle EEOC Disability Case

Company Discharged Employee With Asthma After Refusing Her a Reasonable Accommodation, Federal Agency Charged

HOUSTON - Baker Concrete Construction, a construction company located in Houston, will pay \$58,000 and provide substantial injunctive relief to settle a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC) the federal agency announced.

Construction company settles case after terminating the payroll manager who had requested an accommodation to temporarily work from home following an asthma flare-up related to chemical dust in the workplace. Terminated by HR who told her, that even if they accommodated her, she would only become ill again.

U.S. District Judge Nancy Atlas entered a consent decree on May 11, 2015 resolving the case. The consent decree provides that Baker will pay Castillo \$58,000 and requires that the company institute EEOC-monitored training at its facility on employment discrimination law, including the ADA. The decree also requires the company to implement an ADA policy which includes permitting telework as a reasonable accommodation in appropriate circumstances.

"All Ms Castillo wanted was to continue to do her job at home for a while because of her asthma flare-up due to dust in the office," said EEOC's Houston District Office Regional Attorney Jim Sacher. "As Congress had wanted, this resolution will enable employees and the company to fairly consider a broader range of options to accommodate disabled workers."

The Houston District Office of the EEOC oversees Eastern Texas and Louisiana.

The EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.

America's Thrift Stores Pays \$50,000 to Settle EEOC Disability Discrimination Suit

Company Refused to Accommodate Employee With Joint Condition And Then Fired Her, Federal Agency Charged

BIRMINGHAM, Ala. - America's Thrift Stores of Alabama, Inc. will pay \$50,000 and furnish other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today. The EEOC had charged that the company violated federal law by refusing to provide an employee with a reasonable accommodation and subsequently firing her because of her disability, degenerative joint disease. America's Thrift buys new and used items from local charities and department stores to sell to the public, and operates 17 stores in five states.

Retailer settles suit for \$50,000 after employee was fired following the submission to her employer of a permanent lifting restriction due to degenerative joint disease. Company alleged they could not accommodate the restriction however it was ultimately deemed they could.

The conduct alleged violates the Americans with Disabilities Act (ADA). The EEOC filed suit in U.S. District Court for the Northern District of Alabama (*EEOC v. America's Thrift Inc.*, Case No. 2:11-cv-03466-AKK) after first attempting to reach a pre-litigation settlement through its conciliation process.

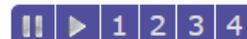
The consent decree settling the suit, approved by U.S. District Judge Abdul K. Kallon, requires America's Thrift to pay monetary damages of \$50,000. The decree also contains non-monetary provisions. The company is required to train its employees, including its managers and supervisors, regarding an employer's obligations and the rights of employees under the ADA.

"A person who happens to have a disability should not be excluded from or limited in employment opportunities," said EEOC District Director Delner Franklin-Thomas. "We appreciate America's Thrift's willingness to provide relief for Ms. Grimes and to ensure that this sort of discrimination does not recur."

C. Emanuel Smith, regional attorney for the EEOC's Birmingham District, added, "The ADA and its amendments prohibit discrimination based on disability against people who are able to perform their jobs. The EEOC is committed to enforcing the law and defending the right of employees to work with an accommodation."

The EEOC's Birmingham District consists of Alabama, Mississippi (except 17 northern counties) and the Florida Panhandle.

The EEOC is responsible for enforcing federal laws prohibiting employment discrimination. Further information about the EEOC generally is available on its web site at www.eeoc.gov.



New 'Digest of EEO Law' Issued by EEOC

Includes Key Federal Sector Decisions, Special Article on Religious Expression

Learn More



What You Should Know

[Archived Topics]

The EEOC and the Enforcement Protections for LGBT Workers

Newsroom



- Commission Federal Sector Appellate Decisions to Use Randomly Generated Names - 10/5/2015
- New Mexico Department of Corrections Sued by EEOC for Age Discrimination and Retaliation - 10/2/2015
- Stanley Martin Companies, LLC Sued By EEOC For Pay Discrimination - 10/2/2015
- EEOC Sues Media Star Promotions For Disability Discrimination - 10/2/2015
- EEOC Sues Coca-Cola Bottling Of Mobile for Sex Discrimination - 10/1/2015
- EEOC Sues Safeway, Inc. For Disability

EEOC Shutdown Contingency Plan in the Event of Lapsed Appropriations
 EEOC has developed this Shutdown Contingency Plan in the event of an absence of appropriations, as required by OMB Circular A-11, and in accordance with the Antideficiency Act, 31 U.S.C. 1341-1342, the Comptroller General's opinion of March 3, 1980, and the Attorney General's opinions of April 25, 1980, and January 16, 1981. This plan identifies excepted activities which will continue during the shutdown.



How to ...

- File a charge of employment discrimination
- Check on the status of a charge
- Submit a Freedom of Information Act request or appeal
- Find help for small businesses
- Get training and technical assistance
- Complete an EEO survey
- Download or order publications
- Find an EEOC office





disability discrimination



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About 3,310,000 results (0.41 seconds)

Disability Discrimination

Ad www.olmsteadrights.org/

Know ADA Rights for the Disabled! Review Act and Supreme Court Ruling

Scholarly articles for disability discrimination

Employee Health--AIDS **Discrimination** - Larson - Cited by 834
... limited protection from **disability discrimination**: the ... - Burgdorf Jr - Cited by 224
Eugenics and **disability discrimination** - Pfeiffer - Cited by 86

Disability discrimination is the unequal treatment of an individual based on that individual's real or perceived **disability**.

Disability Discrimination - FindLaw

civilrights.findlaw.com/discrimination/disability-discrimination.html

Feedback

Disability Discrimination - EEOC

www.eeoc.gov/ United States Equal Employment Opportunity Commi...

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a **disability** who is an employee or applicant unfavorably because she has a **disability**.

Your Employment Rights - Policy & Guidance - Disability Discrimination

Disability Discrimination - Workplace Fairness

<https://www.workplacefairness.org/disability-discrimination>

Disability discrimination means treating individuals differently in employment because of their disability, perceived disability, or association with an individ.

Disability Discrimination - FindLaw

civilrights.findlaw.com > ... > Civil Rights > Discrimination

Disability discrimination is the unequal treatment of an individual based on that individual's real or perceived **disability**.

Ads

HUD Disability Rules

www.hud.gov/fairhousing

(877) 970-2615

Reasonable Modification is the Law
Learn More & File a HUD Complaint.

Disability Discrimination Act

pacer.org/disability+discrimination+act

Know your rights. Find helpful info on post-secondary **disability** acts

Disability Discrimination Act

www.impactfund.org/

Non-Profit Legal Support to Fight Racial Discrimination. Get Involved

Disabled discrimination

www.easterseals.com/

Easter Seals therapy & support.
Support for people w/ **disabilities**.

Help Disabled discrimination

www.northstarcs.org/ProtectIndependence

Help People with Disabilities get Complex Wheelchair Access Needed

Disability Awareness

www.discriminationfreezone.com/

End Discrimination against Disabled
We Promote Disability Awareness

Disability Rights

www.handicap-international.us/

Working for the Rights of Disabled People Worldwide.



Benefits



Civil Rights



Community
Life



Education



Emergency
Preparedness



Employment



Health



Housing



Technology



Transportation

Guide Me to Information

Welcome to **Disability.gov**, the U.S. federal government website for information on disability programs and services nationwide.

The site connects people with disabilities, their families and caregivers to helpful resources on topics such as how to apply for disability benefits, find a job, get health care or pay for accessible housing. You can also find organizations in your community to help you get the support you need.

Let Disability.gov be your guide!

[GUIDE ME](#)

NEW HERE?



USE THE "GUIDE ME"
TOOL TO NAVIGATE
DISABILITY.GOV



The "Guide Me" tool makes searching on Disability.gov easier by walking you through 4 steps to get to the information you want.



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



[PDF Version](#)



[DOC Version](#)



[Audio Version](#)

[Americans with Disabilities Act Basics](#)

[Requesting an Accommodation](#)

[Negotiating an Accommodation](#)



The ADA: Your Employment Rights as an Individual With a Disability

[The Americans with Disabilities Act of 1990](#) (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This booklet explains the part of the ADA that prohibits job discrimination. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission and State and local civil rights enforcement agencies that work with the Commission.

What Employers Are Covered by the ADA?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations,
- and labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the ADA, enforced by the U.S. Department of Justice, prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the ADA establishes overlapping responsibilities in both EEOC and DOJ for employment by State and local governments, the Federal enforcement effort is coordinated by EEOC and DOJ to avoid duplication in investigative and enforcement activities. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor similarly coordinate the enforcement effort under the ADA and the Rehabilitation Act.

Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the [list of specific changes to the ADA](#) made by the ADA Amendments Act.



Are You Protected by The ADA?

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability, even if you don't.

To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

What is Reasonable Accommodation?



Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

Current U.S. Unemployment Statistics for Persons with Disabilities, Not Seasonally Adjusted

9.3%	Unemployment rate for people with disabilities
5.3%	Unemployment rate for persons with no disability, not seasonally adjusted
20.0%	Percentage of people with disabilities in the labor force
69.1%	Percentage of people with no disability in the labor force

Source: June 2015

[U.S. Bureau of Labor Statistics](#)

What is the American's with Disabilities Act?

- ▶ First passed in 1990, amended in 2008 (ADAAA)
- ▶ Prohibits employers from discriminating against qualified individuals with disabilities
- ▶ Defines a disability
- ▶ Stipulates certain requirements on employers
- ▶ Enforced by the EEOC

Disability

An individual with a disability is a person who:

- ▶ Has a **physical or mental impairment that substantially limits** one or more **major life activities**;
- ▶ Has a **record** of such an impairment; or
- ▶ Is **regarded as** having such an impairment.

Major Life Activities

- ▶ Caring for oneself
- ▶ Performing manual tasks
- ▶ Seeing
- ▶ Hearing
- ▶ Eating
- ▶ Sleeping
- ▶ Walking
- ▶ Standing
- ▶ Lifting
- ▶ Bending
- ▶ Speaking
- ▶ Breathing
- ▶ Learning
- ▶ Reading
- ▶ Concentrating
- ▶ Thinking
- ▶ Communicating
- ▶ Working
- ▶ And....

Major Bodily Functions

- ▶ Immune system
- ▶ Normal cell growth
- ▶ Digestive
- ▶ Bowel
- ▶ Bladder
- ▶ Neurological
- ▶ Brain
- ▶ Respiratory
- ▶ Circulatory
- ▶ Endocrine
- ▶ Reproductive Functions

If a person has a disability

- ▶ Employer is required to make a **reasonable accommodation** for the person
- ▶ Assuming there is no **undue hardship**

Reasonable Accommodation

Adjustments to the **place of employment, conditions of employment or the job itself** that allow an individual to perform the essential functions of the job

- ▶ Leave
- ▶ Flexible scheduling
- ▶ Reassignment
- ▶ Modification of equipment or devices
- ▶ Amending policies
- ▶ Job restructuring

Accommodation Examples

- ▶ Four months of leave/time-off for cancer treatment
- ▶ Standing desk for employee with a broken back
- ▶ Special respirator for an employee with asthma
- ▶ Deaf employee may need a sign interpreter during an interview
- ▶ Employee with rheumatoid arthritis may be re-assigned to a job with lesser physical requirements

Undue Hardship

An action requiring **significant difficulty or expense** when considering certain factors

- ▶ Financial resources of the facility
- ▶ Number of employees at a facility
- ▶ Impact on the facility's operation
- ▶ Overall financial resources of the employer
- ▶ Size of the employer
- ▶ Geographic separateness
- ▶ And more....

The Process

Where do you start?

Job Descriptions - make sure you have them and they accurately reflect the essential job functions and physical requirements

Essential job functions, they are the basic job duties an employee must be able to perform, consider:

- ▶ Whether the position exists to perform that function
- ▶ The number of others available to perform the function
- ▶ The degree of expertise or skill required to perform the function

ADA - CHECKLIST FOR PHYSICAL ACTIVITIES & REQUIREMENTS, VISUAL ACUITY, AND WORKING

CONDI

TITLE: _____

POSITIO

1.	The physical activity of this position. (P
A.	Climbing. Ascending or descending ladders and/or hands and arms. Body agility is employed required exceeds that required for ordinary
B.	Balancing. Maintaining body equilibrium to prevent slipping, or erratically moving surfaces. This is required for ordinary locomotion and maintenance of
C.	Stooping. Bending body downward and forward to a considerable degree and requires full n
D.	Kneeling. Bending legs at knee to come to a
E.	Crouching. Bending the body downward and
F.	Crawling. Moving about on hands and knee
G.	Reaching. Extending hand(s) and arm(s) in
H.	Standing. Particularly for sustained periods
I.	Walking. Moving about on foot to accomplish to another.
J.	Pushing. Using upper extremities to press a downward or outward.
K.	Pulling. Using upper extremities to exert force
L.	Lifting. Raising objects from a lower to a high and back muscles.
M.	Fingering. Picking, pinching, typing or other as in handling.
N.	Grasping. Applying pressure to an object with
O.	Feeling. Perceiving attributes of objects, such particularly that of fingertips.

PHYSICAL REQUIREMENTS QUESTIONNAIRE

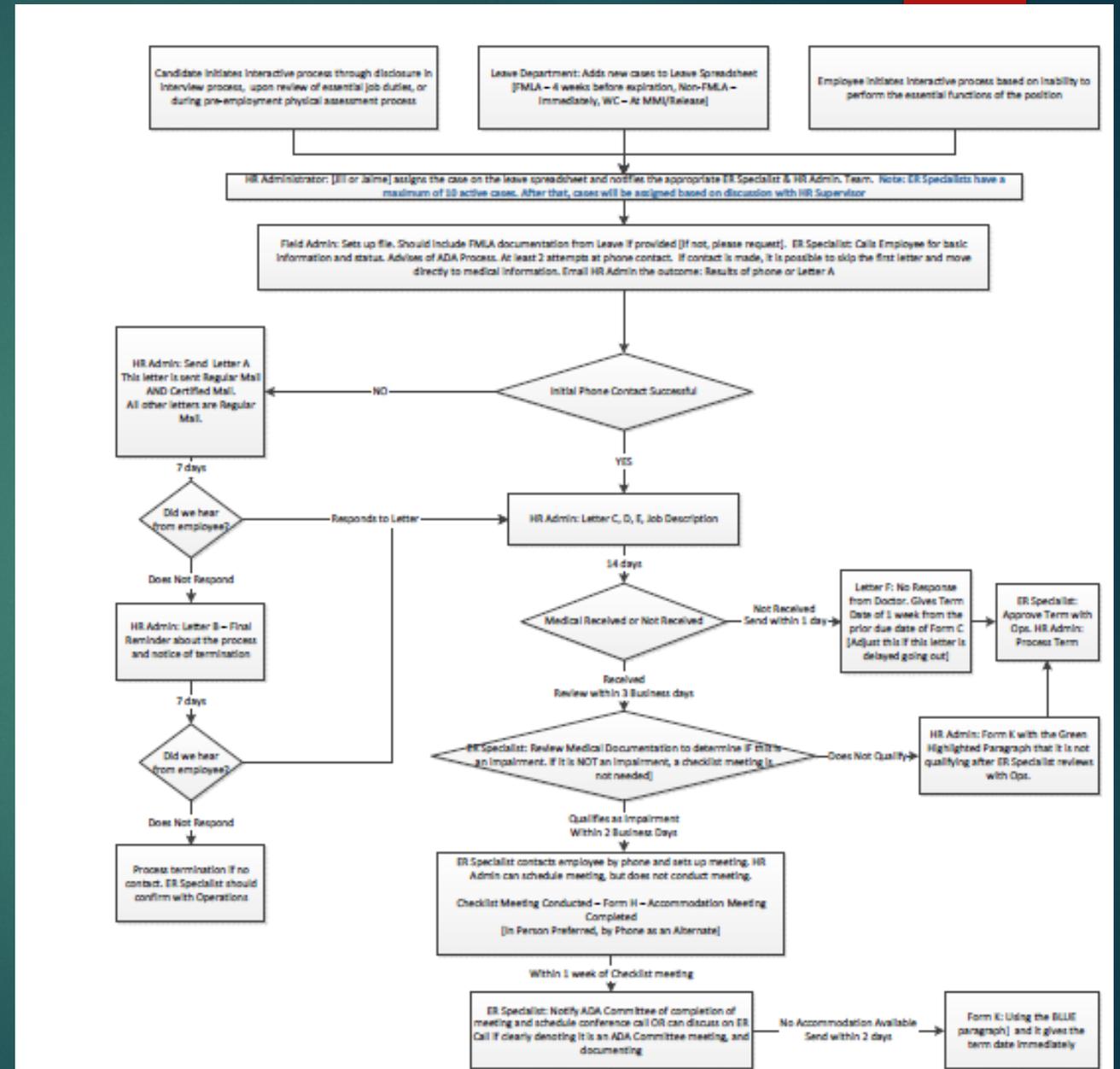


	Constant (> 2/3 of time)	Frequent (1/3 - 2/3 of time)	Occasional (> 1/3 of time)	None
Movement Demands				
Stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Talk or hear	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Use hands to manipulate with fingers, handle or feel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climb or balance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stoop, kneel, crouch or crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach with hands and arms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Taste or smell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weight and Force Demands - Lifting				
Up to 10 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 25 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 50 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 75 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 100 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More than 100 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weight and Force Demands - Pushing/Pulling				
Up to 10 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 25 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 50 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 75 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Up to 100 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More than 100 pounds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Atmosphere Demands				
Wet, humid conditions (non-weather)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work near moving mechanical parts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work in high, precarious places	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fumes or airborne particles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toxic or caustic chemicals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outdoor weather conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cold (non-weather)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hot (non-weather)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risk of electrical shock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work with explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risk of radiation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vibration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vision Requirements			Check all that Apply:	
Ability to see at a close distance (clear vision at 20 inches or less)			<input type="checkbox"/>	
Ability to see at a long distance (clear vision at 20 feet or more)			<input type="checkbox"/>	
Color- Ability to identify and distinguish colors			<input type="checkbox"/>	
Peripheral- Ability to observe an area that can be seen up and down or left and right while eyes are fixed on a given point			<input type="checkbox"/>	
Depth perception- Ability to judge distances and spatial relationships, three-dimensional vision			<input type="checkbox"/>	
Ability to adjust focus (adjust the eye to bring an object into sharp focus)			<input type="checkbox"/>	
No special vision requirements			<input type="checkbox"/>	
Noise Requirements			Check all that Apply:	
Very quiet conditions (i.e. isolation booth)			<input type="checkbox"/>	
Quiet conditions (i.e. private office)			<input type="checkbox"/>	
Moderate noise (i.e. open office area, exposed to light vehicle traffic)			<input type="checkbox"/>	
Loud noise (i.e. heavy machinery)			<input type="checkbox"/>	
Very loud noise (i.e. jack hammer work, front row at rock concert)			<input type="checkbox"/>	

What's next?

Document your process,
even if it's simple –

document



Processes documented, NEXT?

Receipt of **accommodation request**

How do I know I've received an accommodation request?

- ▶ Applicant or employee **asserts** that s/he has an **impairment**
- ▶ Ask the employee/applicant if s/he can perform the essential job functions **with or without a reasonable accommodation**

Accommodation Requests in **lay** **terms**

" I received a permanent lifting restriction due to my degenerative disc disease, I don't think I can lift the heavy boxes anymore..."

"Due to chemotherapy treatments, I'm going to need a couple of days a week off..."

"I've been experiencing a bout of depression and may need an afternoon or two off to see my psychiatrist..."

"I'm not able to drive anymore so I can't make the mail or bank runs, it's an advancing macular degeneration..."

"The pain medication I take for my rheumatoid arthritis says I shouldn't operate heavy machinery so I'm not sure I can drive the forklift..."

What to do once I have an accommodation request?

- ▶ **Document** the request
- ▶ **Validate** the employee has an **impairment** that **substantially limits** a major life activity or major bodily function
 - ▶ You may request additional documentation from the employee's **healthcare** provider
 - ▶ You may review other documentation already in your possession, e.g., FMLA certification or short disability insurance application

Disability is established, **NEXT?**

- ▶ **Meet** with employee to discuss accommodations.
- ▶ Ask “what accommodations do **you feel you need** to perform the essential functions of your job?”
- ▶ What does the **healthcare provider** have to say?

Consider Accommodations

- ▶ Meet with the **management team** to discuss the accommodations
- ▶ Is/are the accommodation(s) reasonable?
 - ▶ Discuss **alternatives**
- ▶ **Guide managers** on the tenets of ADA
- ▶ Make a decision as a **group or committee**

Final Determination...

- ▶ Meet with employee to **discuss** your final determination
- ▶ If you're unable to make the accommodation, explain
 - ▶ Discuss **alternative** accommodations, if applicable
- ▶ If accommodation is **temporary**, be sure to explain

WORD OF THE DAY: **Interact**

Interacting or **engaging** with the employee is **imperative, essential...**

THE MOST IMPORTANT STEP

Pitfalls

- ▶ Don't spend too long on determining if the condition is a disability
- ▶ An employee not covered by **FMLA is still covered by ADA**
- ▶ Failure to interact is de facto regarding the person as disabled
- ▶ Be careful of using the **direct threat** exception
- ▶ Avoid **applying policy universally** to every case, review each independently

Pitfalls continued

- ▶ Be careful of accommodations you've made for non-disabilities
- ▶ Be careful of accommodations you've made in work comp
- ▶ Be careful of de facto accommodations
- ▶ Be expeditious
- ▶ Look at how and on what you spend **money** as an organization
- ▶ **DOCUMENT, DOCUMENT, DOCUMENT**

A few **final** things to think about...

- ▶ Pre-employment physicals
- ▶ Understanding **transitory and minor** conditions
- ▶ Impairments in **remission or episodic**
- ▶ Not necessary to **create** a position to accommodate
- ▶ Training managers
- ▶ The nexus of performance and disability
- ▶ **Mental disabilities** require same care and consideration
- ▶ Engage and **Interact**
- ▶ Seek the **advice** of your attorney



Resources for you...

Disability Employment Resource P



TOP NEWS

[It Sounds Easy, So Why Is It Hard?](#)

The process for identifying reasonable accommodations under the ADA boils down to conversations between employers and employees with disabilities to identify accommodations. How hard can that really be? Turns out, it can be painstaking.

[Retaining Workers With Disabilities](#)

A company that wants to hire people with disabilities embeds a website video emphasizing its inclusive business culture, but the company can't attract job seekers. Why not?

[Lack of Expert Medical Evidence Dooms ADA Claim](#)

Expert medical evidence is required to establish that a plaintiff is disabled under the ADA. x

[Lack of Expert Medical Evidence Dooms ADA Claim](#)
Expert medical evidence is required to establish that a plaintiff is disabled under the ADA. x

[Arbitration Not Needed Before Disability Discrimination Suit](#)

A school worker didn't have to exhaust her union arbitration rights before suing for disability discrimination under Ohio law.

[No ADA Claim Where Employee Quit](#)

A diabetic former department store employee lacks an ADA claim because she quit while negotiating a disability accommodation.

[No Disability Bias in Refusal to Reinstate Mentally Challenged Cop](#)

A Michigan appeals court rejected a police officer's claim that the city discriminated against him because of a mental disability when it refused to reinstate him to his job.

[Human Rights Commission Rejects Holding that Strep Throat Can't Be Disability](#)

[Flextime to Accommodate Disabilities More Common at Small Companies](#)

Large employers should try harder to 'reinvent the way work is done,' report concludes.

[Cancer Patient's Firing Raises ADA Accommodation Questions](#)

Avoid assumptions about illness; explore creative schedules, new tasks.

[Telecommuting is Reasonable Accommodation Under](#)

SHRM RESOURCES

[Accommodating Employees' Disabilities](#) 🔒

[Employing Persons with Cognitive Disabilities](#) 🔒

[Employing Persons with Psychiatric Disabilities](#) 🔒

[Samples and Q&As from the SHRM Knowledge Center](#) 🔒

[HR Magazine: Dispel the Stigma of Mental Illness](#) 🔒

[SHRM Poll: Does your organization proactively recruit persons with disabilities?](#) 🔒

Articles with a lock symbol (🔒) are available for use

by SHRM members only. Become a SHRM member today. [Learn more.](#)

[Marching Beyond Compliance](#)

Available

Effective practices for defining your diversity strategy, information about key resources, and a free recruitment program that matches employers with qualified students with disabilities.

[View this webcast](#)

[Disability Employment Guide Available](#)

The U.S. Dept. of Labor's Office of Disability Employment Policy has released a new guide, Business Strategies that Work: A Framework for Disability Inclusion.

[What Can YOU Do?](#)

The Campaign for Disability Employment encourages employers to:

- [Order the free "I Can" PSA Discussion guide and posters.](#)



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Resources

- ▶ Office of Disability Employment Policy - <http://www.dol.gov/odep/>
- ▶ Job Accommodation Network - <http://askjan.org/>
- ▶ A Guide to Disability Rights Laws - <http://www.ada.gov/cguide.htm>
- ▶ US Dept of Labor Disability Nondiscrimination Advisor - <http://webapps.dol.gov/elaws/odep.htm>
- ▶ EEOC ADA Employer Fact Sheet - <http://www.eeoc.gov/facts/ada17.html>
- ▶ Society for Human Resource Management Disability Employment Resources - http://www.shrm.org/hrdisciplines/diversity/articles/pages/disability_072110.aspx

Thank you!